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STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

James R. Barber, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEWART RANDALL ARD,

APPELLANT

APPELLATE CASE NO. 2014-001463

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

CIRCUIT COURT

COUNTY OF RICHLAND

2014-GS-40-01777, -01756,
-01766, -01767, & -01771

STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

STEWART ARD,

Defendant.

HEARD ON MONDAY, JUNE 23, 2014,
TUESDAY, JUNE 24, 2014,
& WEDNESDAY, JUNE 25, 2014

BEFORE:

THE HONORABLE JAMES R. BARBER, III

AND A JURY

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1 ON MONDAY, JUNE 23, 2014 AT 11:46 A.M.:

2 THE COURT: I had a short pretrial conference with
3 the attorneys to go over any pretrial motions that we
4 have, go over the voir dire. I also had been informed
5 last week that the State had made a plea offer to the --
6 Ms. Zmroczek, and that she had passed that on to her
7 client, that she informed me just a little while ago that
8 her client had elected not to accept that plea offer.

9 You were advised of that plea offer, Mr. Ard?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: And you understand, of course, that
12 you're looking at the possibility of life without parole
13 if you're convicted of this offense?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And my understanding is the offer made
16 to you was -- what was it?

17 MS. ZMROCZEK: To plead straight. To plead to the
18 charges as indicted. Attempted murder.

19 THE COURT: Attempted murder. Is that the only
20 charge?

21 MS. ZMROCZEK: And I believe there are three
22 assault and battery second.

23 MS. GARFIELD: That's correct, Judge. And carrying
24 a concealed weapon.

25 THE COURT: Pardon me?

1 MS. GARFIELD: And carrying a concealed weapon.

2 THE COURT: And is that correct? Is that right?

3 You want to decline the proposal that was made by the
4 State to your attorney; is that right?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: You understand if you lose this thing,
7 I don't have any option in this case? Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You've taken all the discretion away
11 from the Court.

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: You've been fully advised by your
14 attorney?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: That's your decision?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: You're making that freely and
19 voluntarily?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: And nobody's threatened you, coerced
22 you, forced you, or pressured you into making that
23 decision?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: You're doing it because you want to

1 make that decision?

2 THE DEFENDANT: Yes, sir, Your Honor,

3 THE COURT: Okay. Y'all have a seat if you would.

4 Do we have the strike sheet?

5 THE CLERK: No, Your Honor.

6 THE COURT: All right. Folks, while we're waiting
7 on the strike sheet, why don't we take up some of the
8 motions? Do y'all mind doing that?

9 MS. GARFIELD: No, sir.

10 THE COURT: Ms. Zmroczek has filed several motions,
11 one of which is a motion to exclude the penalty of life
12 without parole which would be a motion, in my opinion, we
13 would deal with if in fact the Defendant is found guilty.
14 If he's not found guilty of something that would be life
15 without parole, then we don't need to address that.

16 MS. ZMROCZEK: Thank you, Your Honor.

17 Your Honor, I wanted to just go ahead and make
18 sure that I filed it. I agree that it's appropriate to
19 argue it should that be necessary.

20 THE COURT: Then the next next motion is a motion
21 to quash the indictment. What do you want to tell me?

22 MS. ZMROCZEK: Your Honor, it simply is a matter of
23 protecting the record.

24 This request or this motion is based on Blankford.
25 Originally when Mr. Ard was arrested he was charged with

1 lesser crimes. And, Your Honor, we feel like -- and
2 we've outlined it in the motion. We feel like the process
3 by him requesting a bond and possibly receiving a
4 reduction in bond, that that led to him being upgraded to
5 charges specifically because he asserted his right to
6 bond.

7 Your Honor, this is not even a year-old case at
8 this point. And, additionally, I noted in the time line
9 receiving as of last week or June 5th, over 500 pages of
10 medical records. And I received additional discovery not
11 previously provided to me on June 7th.

12 Your Honor, this is one of the issues I think that
13 the State's been dealing with with regards to who's
14 controlling the docket. And at this time we would ask
15 that the indictments be quashed and/or dismissed due to
16 what appears to be a vindictive prosecution in Mr. Ard's
17 eyes.

18 THE COURT: What do you want to tell me,
19 Ms. Garfield?

20 MS. GARFIELD: Your Honor, I find Ms. Zmroczek's
21 argument offensive.

22 THE COURT: You find what?

23 MS. GARFIELD: Her argument offensive.

24 THE COURT: Why would you do that?

25 MS. GARFIELD: Mr. Ard requested a trial at a

1 second appearance. At that point I asked Ms. Zmroczek if
2 this was really a trial because I was not in attendance,
3 and Ms. Zmroczek and I had not had any discussion about
4 the case up to that point.

5 She replied that what --

6 THE COURT: Well, first of all -- first of all,
7 understand this. Her motion may be made because her
8 client has requested that the motion be made.

9 MS. GARFIELD: I understand that. I'm
10 addressing --

11 THE COURT: I don't know what she believes to be
12 the merits of the motion or anything like that. So let's
13 just argue the motion itself.

14 MS. GARFIELD: I'm addressing what she put in her
15 written motion, Judge. She's trying to say that I
16 increased the charges because he's exercising his right to
17 trial. I did call her and tell her that upon looking at
18 the discovery and reviewing the videos that I thought the
19 appropriate charge with the -- regarding the case where
20 Jesse Patterson was the victim, the correct charge should
21 be attempted murder.

22 And also, Judge, there's other victims where -- two
23 other victims involved in the case. He was initially
24 charged with assault and battery in the first degree. I
25 disagreed with that charge and I actually thought it

1 should be a lesser charge of assault and battery in the
2 second degree.

3 I called Ms. Zmroczek in March and relayed to her
4 that I intended to proceed to grand jury the following
5 month with the charges that I thought were appropriate for
6 purposes of trial. I did that out of courtesy. I didn't
7 want to blind side her and I wanted her to understand if
8 her client wanted to take advantage of the plea as charged
9 which would be a lesser classified offense then he could
10 do that before it got to the grand jury.

11 I just wanted to clear that up. I did not do
12 anything to penalize Mr. Ard for electing a trial. I did
13 that because based on the evidence that's what I thought
14 the proper charges should be.

15 THE COURT: All right. I'm not exactly sure the
16 basis of Ms. Zmroczek's -- she indicated initially that
17 she had just gotten, received some discovery.

18 And that discovery had something to do with this
19 motion. And then -- but it appears that her argument in
20 her motion is that the motion is, I mean, the charges are
21 more as a punishment against your client because your
22 client elected to go forward with the trial.

23 I mean, she certainly has the right to do so. It's
24 not that -- I mean, if you've got some problem with Brady
25 or discovery or something like that, I'm not sure that

1 that, this is the motion that would be, encompass that
2 kind of argument.

3 But, you know, the State has wide latitude in
4 determining what it is, how they charge various defendants
5 in every case. And in many instances they over-charge.
6 In many instances they don't. And oftentimes when they
7 over-charge it comes back to haunt them.

8 And, you know, there's a possibility of some lesser
9 included in some of these. I don't know anything about
10 the facts other than I understand it was some sort of
11 altercation that took place down in Five Points and --

12 MS. ZMROCZEK: And, Your Honor, the only reason for
13 including the discovery was that those were the medical
14 records and Ms. Garfield is absolutely correct. She did
15 advise me that she believed that attempted murder was the
16 appropriate charge for Jesse Patterson.

17 Your Honor, I simply didn't have any way to express
18 that to my client because I did not have medical records.
19 So that's why I specifically put that in there as well.

20 THE COURT: Well, I guess if they don't prove the
21 elements or miss one of them, there's no circumstantial or
22 any direct evidence, then you might prevail on a directed
23 verdict motion.

24 All right. But I'm going to deny your motion. I
25 think that the State has --

1 MS. ZMROCZEK: The last motion I believe requires
2 testimony of witnesses.

3 THE COURT: What is that, the last one?

4 MS. ZMROCZEK: It's a motion in limine regarding
5 the cameras, the security cameras, the introduction of the
6 videos and security cameras.

7 THE COURT: Are y'all ready to go forward on the
8 jury?

9 MS. GARFIELD: Yes, sir.

10 THE COURT: All right. We'll take that up before
11 we start the trial.

12 MS. ZMROCZEK: Thank you.

13 THE COURT: All right. Let's bring the jury up, if
14 we could.

15 THE BAILIFF: Yes, Your Honor.

16 THE COURT: Ms. Garfield, do you have that
17 organization?

18 (Document handed to the Judge.)

19 MS. GARFIELD: Judge, is that reciprocal, Number
20 11?

21 THE COURT: Yes, ma'am.

22 MS. GARFIELD: We would just ask you to include
23 Project Innocence or Innocence Project. I'm not sure
24 which one it is.

25 MS. ZMROCZEK: Innocence Project.

1 MS. GARFIELD: Innocent Project or any other --

2 THE COURT: Wait a minute. What is the name of
3 it? Innocence Project?

4 MS. ZMROCZEK: The Innocence Project.

5 MS. GARFIELD: Or any other prisoner's rights
6 groups.

7 (Off-the-record discussion.)

8 (Jury panel enters courtroom at 12:20 P.M.)

9 THE COURT: Good afternoon, ladies and gentlemen.
10 My name is Jim Barber. And I'm a Circuit Judge here in
11 the Fifth Judicial Circuit. I'm holding what is called
12 general sessions court or criminal court this week.

13 And we are about to select a jury in the case
14 entitled the State of South Carolina versus Stewart
15 Randall Ard.

16 And Mr. Ard has been indicted for a number of
17 offenses, ladies and gentlemen. He has been indicted for
18 the offense of attempted murder. And the indictment
19 alleges that Mr. Ard did in Richland County on or about
20 July 28, 2013, with the intent to kill or attempt to kill
21 Jesse Patterson with malice aforethought, either express
22 or implied.

23 He's indicted for the offense of carrying a
24 concealed weapon which the indictment alleges that on or
25 about July 28, 2013, Mr. Ard did unlawfully carry a deadly

1 weapon usually used for the infliction of personal injury,
2 that being a knife, which was concealed about his person.

3 He's been indicted for the offense of assault and
4 battery second degree wherein the indictment alleges that
5 Mr. Ard did in Richland County on or about July 28, 2013,
6 commit an assault and battery in the second degree upon
7 the victim Gabriel McDaniel which resulted or could have
8 resulted in serious bodily injury.

9 He's been indicted with another offense of assault
10 and battery in the second degree where the indictment
11 alleges that he did on or about July 28, 2013, commit an
12 assault and battery in the second degree upon the victim
13 of Joseph Molino which resulted or could have resulted in
14 serious bodily injury.

15 And he's been indicted for a third offense of
16 assault and battery in the second degree. That
17 indictment alleges that Mr. Ard did in Richland County on
18 or about July 28, 2013, commit an assault and battery in
19 the second degree upon the victim Scott Flemming which
20 resulted or could have resulted in moderate bodily
21 injury.

22 Now, ladies and gentlemen, to these indictments the
23 Defendant has entered pleas of not guilty which now places
24 upon the State the burden of proving the Defendant guilty
25 and proving him guilty beyond a reasonable doubt of each

1 and every charge for which he is here in this courtroom.

2 I want you to understand one thing, ladies and
3 gentlemen. These indictments are not evidence and are not
4 to be considered by you for any purpose other than they
5 are notice documents. They have put the Defendant on
6 notice of the respective charges. And as I told you, he
7 has entered not guilty pleas to all of the charges.

8 In our system of justice, ladies and gentlemen, we
9 have two basic bedrocks which you need to keep in mind
10 throughout the course of this trial. The first is: In
11 every instance the Defendant comes into the courtroom
12 presumed to be innocent and that presumption of innocence
13 remains with the Defendant throughout the course of the
14 trial and would only change if the jury, after hearing all
15 of the evidence, has determined that the Defendant is
16 guilty and guilty beyond a reasonable doubt.

17 The second bedrock is that in every instance the
18 burden of proving these offenses falls upon the State of
19 South Carolina. The State must prove the Defendant guilty
20 of each and every offense for which he is charged and
21 prove him guilty by proof beyond a reasonable doubt. The
22 Defendant has no burden of proof whatsoever. As I told
23 you, he's presumed to be innocent and the burden falls
24 upon the State of South Carolina.

25 Now before we begin this process, ladies and

1 gentlemen, I have certain questions that I want to ask you
2 and I have some individuals who I want to either read
3 their name or introduce you if they are here today.

4 First I want to introduce you to Mr. Ard.

5 Mr. Ard, if you can please stand and face the jury.

6 THE DEFENDANT: (Complies.)

7 THE COURT: This is Mr. Stewart Ard, ladies and
8 gentlemen. And I would inquire at this time: Is there
9 any member of this jury panel or any member of the jury
10 panel's immediate family who is related by blood or
11 connected by marriage, or either now or in the past has
12 had a close personal relationship with Mr. Ard, or either
13 now or in the past has had an employment or a business
14 relationship with Mr. Ard? If so, please stand.

15 (No response.)

16 THE COURT: All right. Thank you.

17 Ladies and gentlemen, in most instances when
18 parties come into court they are represented by attorneys.
19 And that is in fact the case here today. The State of
20 South Carolina is represented by the Solicitor's Office of
21 the Fifth Judicial Circuit. Those attorneys from the
22 solicitor's office are Ms. Dolly J. Garfield. And this is
23 Ms. Garfield standing right here. Ms. Luck Campbell, and
24 this is Ms. Campbell, and Mr. Ramie Shalabi.

25 MR. SHALABI: That's right.

1 THE COURT: You're young, aren't you?

2 MR. SHALABI: I am.

3 THE COURT: Ladies and gentlemen, these are all
4 members of the South Carolina Bar. They're employed with
5 the Fifth Circuit Solicitor's Office.

6 And I would inquire at this time: Is there any
7 member of this jury panel or any member of the jury
8 panel's immediate family who's related by blood or
9 connected by marriage to any of these attorneys, or to
10 anyone in the Solicitor's Office of the Fifth Judicial
11 Circuit, or either now or in the past has had an
12 employment or a business relationship with the Fifth
13 Circuit Solicitor's Office, or either now or -- let me
14 finish -- had some connection with anybody in the
15 solicitor's office?

16 Yes, ma'am. Tell me your name.

17 THE JUROR: I am Elizabeth Poole, Juror Number 213.

18 THE COURT: All right. Ms. Poole, what is your
19 situation?

20 THE JUROR: My son-in-law is an Assistant Deputy
21 Solicitor for the Fifth Circuit. He is working out of the
22 Kershaw Office right now.

23 THE COURT: And who might that be?

24 THE JUROR: Curtis Hutchinson.

25 THE COURT: All right. I think probably with that

1 connection, I'm going to excuse you from service on this
2 jury. Okay?

3 THE JUROR: Yes, sir.

4 THE COURT: If you'll just have a seat, ma'am.
5 Thank you. All right.

6 Ladies and gentlemen -- yes, ma'am?

7 THE JUROR: My name is Helen Rapoport and my
8 husband, Mark, works for the Prosecution Commission and
9 represents the solicitors.

10 THE COURT: Well, that -- the fact that you have a
11 husband that works for the Prosecution Commission, would
12 that prevent you from listening to the evidence in this
13 case and based upon such evidence render a fair and
14 impartial verdict?

15 THE JUROR: I can do that.

16 THE COURT: You can be fair and impartial?

17 THE JUROR: Yes, sir.

18 THE COURT: Okay. Thank you, ma'am.

19 Ladies and gentlemen, representing Mr. Ard is
20 Ms. Aimee Zmroczek. And this is the young lady standing
21 right here. And Mr. Wade Downtin. This is Mr. Downtin
22 standing right here. And they too are members of the
23 South Carolina Bar and their offices are in Columbia, but
24 they practice throughout the State of South Carolina.

25 And I would inquire at this time: Is there any

1 member of this jury panel or any member of this jury's
2 panel's immediate family related by blood or connected by
3 marriage, or either now or in the past has had a close
4 personal relationship with either of these attorneys, or
5 either now or in the past has had an employment or a
6 business relationship with either of these attorneys, or
7 either now or in the past has been represented by either
8 of these attorneys? If so, please stand.

9 (No response.)

10 THE COURT: All right. Thank you.

11 Ladies and gentlemen, I'm now going to read you the
12 names of some potential witnesses who may testify in this
13 trial. If any of these witnesses are here, I would ask
14 them to stand so that the jury can see who they might be.

15 Mr. Scott Edward Fleming.

16 Kaitlyn Griffin, Richland EMS. Michael Menger,
17 EMS. Steve Tackett, T-A-C-K-E-T-T, with the Richland
18 County EMS.

19 Jesse Patterson.

20 Gabriel Michael McDaniel.

21 Jason Skaggs.

22 Benjamin Geno.

23 Brian Bundy.

24 Brett Babcock.

25 Stephen Richardson.

1 Alexander Donyphan Cromer.

2 James Edward Chitwood, Jr.

3 Amethyst Ladonna Lorraine Ganaway.

4 Kalyx Johnson.

5 Derrick Anderson.

6 Dr. Jeremy Reeves.

7 Moffatt Bradford.

8 Courtney Walker.

9 Ryan Kinard.

10 Investigator Matthew McCoy of the Columbia Police
11 Department.

12 Carey Shealy.

13 Officer Joseph Czeladko of the Columbia Police
14 Department. Officer Theodore MacLaughlin, Columbia Police
15 Department.

16 Jackie Richburg with 9-1-1.

17 Corporal Matthew Buck with the Columbia Police
18 Department. Sergeant Chad Branham with the Columbia
19 Police Department. Tammy Davis Moore with the Columbia
20 Police Department.

21 Dr. David Ford with the Palmetto Health Hospital.

22 Joseph Molino, Jr.

23 Sergeant Robert Waters, W-A-T-E-R-S, with the Alvin
24 S. Glenn Detention Center.

25 I'll inquire at this time, ladies and gentlemen:

1 Is there any member of the jury panel or any member of
2 this jury panel's immediate family related by blood or
3 connected by marriage, or either now or in the past have
4 had a close personal relationship with any of those
5 individuals, or either now or in the past has had an
6 employment or a business relationship with any of those
7 individuals? If so, please stand.

8 Yes, sir, your name?

9 THE JUROR: Brett Williams, 288. I work with Bell
10 South. I've been to Scott's business before, just work
11 related, nothing personal.

12 THE COURT: The fact that you've had that business
13 relationship, would that prevent you from listening to the
14 evidence in this case, and based upon such evidence render
15 a fair and impartial verdict?

16 THE JUROR: I don't think so, no.

17 THE COURT: I need you to be --

18 THE JUROR: I would say no.

19 THE COURT: No. Okay. Thank you, sir. All
20 right. Tell me your name.

21 THE JUROR: Jonathan King. I'm Juror 159. I'm a
22 physician. I work with -- have interactions with David
23 Ford at Palmetto.

24 THE COURT: The fact that you have that employment
25 situation, would that prevent you from listening to the

1 evidence in this case and based upon such evidence render
2 a fair and impartial verdict?

3 THE JUROR: No, sir.

4 THE COURT: All right. Thank you, sir.

5 All right. Ladies and gentlemen, has any member of
6 this jury panel ever been a witness in a criminal case?
7 And I don't mean a traffic case or a DUI or something like
8 that, but if you've been a witness in a criminal case
9 please stand at this time.

10 Yes, ma'am, your name?

11 THE JUROR: Joni Splett, 251.

12 THE COURT: I'm sorry?

13 THE JUROR: Joni Splett.

14 THE COURT: Splett?

15 THE JUROR: Number 251.

16 THE COURT: What is your situation?

17 THE JUROR: I was, like, seven years old and there
18 was just an incident of somebody, an assault, somebody hit
19 my sister and I was there to see it.

20 THE COURT: The fact that you had that experience,
21 would that prevent you from listening to the evidence in
22 this case and based upon such evidence render a fair and
23 impartial verdict?

24 THE JUROR: I don't think so, no.

25 THE COURT: Thank you, ma'am.

1 All right. Is there any member of this jury panel
2 who is a member or of, or donates money to, or receives
3 assistance from any community or law enforcement
4 department or victim's advocacy group or prisoner rights
5 group? And these include but not limited to Mothers
6 Against Drunk Driving, South Carolina Law Enforcement
7 Association, Al-Anon, partnership for a Drug-Free America,
8 Sister Care, the State Office of Victim's Assistance,
9 South Carolina Victim's Assistance Network, the Innocence
10 Project, or any other similar organization? If so, please
11 stand.

12 Oh, I'm sorry. Yes, ma'am, your name?

13 THE JUROR: Dianne Caldwell.

14 THE COURT: Ms. Caldwell, what's is your
15 situation?

16 THE JUROR: I am a licensed clinical social worker
17 so the agencies that you've mentioned, I work closely with
18 them.

19 THE COURT: The fact that you have that employment
20 experience, would that prevent you from listening to the
21 evidence in this case and based upon such evidence render
22 a fair and impartial verdict?

23 THE JUROR: No, it wouldn't.

24 THE COURT: All right. Thank you, ma'am.

25 Yes, sir, your name again?

1 THE JUROR: Juror 159, Jonathan King. I care for
2 patients who come to us through Victim's Assistance.

3 THE COURT: The fact that you have that employment
4 experience, would that prevent you from listening to the
5 evidence in this case and based upon such evidence render
6 a fair and impartial verdict?

7 THE JUROR: It will not adversely affect.

8 THE COURT: All right. Thank you, sir.

9 All right. Have any of you or your immediate
10 family or close personal friends ever worked for or had
11 other professional contact with any law enforcement,
12 investigative agencies, security companies, or agencies or
13 any prison agency? If so, please stand.

14 Yes, ma'am, your name?

15 THE JUROR: Carol Tripp.

16 THE COURT: All right.

17 THE JUROR: My daughter was a crime analyst with
18 the City of Columbia Police Department.

19 THE COURT: The fact that you have a daughter that
20 was in law enforcement, would that prevent you from
21 listening to the evidence in this case and based upon such
22 evidence render a fair and impartial verdict?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, ma'am. Yes, sir, your name?

25 THE JUROR: Sheldon Priester, Juror Number 217. I

1 have aunts and uncles throughout Richland County, some
2 retired.

3 THE COURT: You have some family members who either
4 have been or may still be in law enforcement?

5 THE JUROR: Yes, sir.

6 THE COURT: Would that prevent you from listening
7 to the evidence in this case and based upon such evidence
8 render a fair and impartial verdict?

9 THE JUROR: No, it would not.

10 THE COURT: Thank you, sir.

11 Y'all think about these things.

12 Yes, ma'am, tell me your name, please.

13 THE JUROR: Barbara Byers, Juror 36. I have a
14 son-in-law who is a deputy sheriff for Richland County.

15 THE COURT: The fact that you have a family member
16 in law enforcement, would that prevent you from listening
17 to the evidence in this case and based upon such evidence
18 render a fair and impartial verdict?

19 THE JUROR: No, sir.

20 THE COURT: Thank you, ma'am. Yes, ma'am, your
21 name again, please?

22 THE JUROR: Dianne Caldwell. My son is an
23 investigator with a state commission.

24 THE COURT: You have a son that's in investigative
25 work. Would that prevent you from listening to the

1 evidence in this case and based upon such evidence render
2 a fair and impartial verdict?

3 THE JUROR: No, sir.

4 THE COURT: Thank you, ma'am.

5 Yes, sir, Doctor, your name again?

6 THE JUROR: Jonathan King, Juror 159. I have a
7 brother-in-law who's a former deputy sheriff.

8 THE COURT: The fact that you have a family member
9 who was formerly in law enforcement, would that prevent
10 you from listening to the evidence in this case and based
11 upon such evidence render a fair and impartial verdict?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, sir. Yes, sir, your name?

14 THE JUROR: Juror 283, Derrick Washington. I used
15 to work for the Juvenile Justice Department.

16 THE COURT: The fact that you formerly were
17 employed with DJJ, would that prevent you from listening
18 to the evidence in this case and based upon such evidence
19 render a fair and impartial verdict?

20 THE JUROR: No, Your Honor.

21 THE COURT: All right.

22 Ladies and gentlemen, has any member of this jury
23 panel or any member of the jury panel's immediate family
24 or close personal friend ever been the victim of a crime?
25 And I mean something fairly serious. If so, please stand.

1 THE COURT: What I want you to do is come down here
2 and talk to me here with the court reporter if you would,
3 please, sir.

4 (Juror approaches.)

5 THE COURT: Yes, sir. Tell me your name, please.

6 THE JUROR: Sheldon Priester.

7 THE COURT: All right. Mr. Priester, what do you
8 want to tell me?

9 THE JUROR: A few years ago when I was roughly 20
10 my uncle by the name of Frederick Priester, he was stabbed
11 several times while being robbed at an ATM. And I don't
12 know if they ever caught the --

13 THE COURT: The fact that you have that history in
14 your family, would that prevent you from listening to the
15 evidence in this case and based upon such evidence render
16 a fair and impartial verdict?

17 THE JUROR: No, sir. It wouldn't.

18 THE COURT: Good. Thank you.

19 MS. GARFIELD: What's his name?

20 MR. SHALABI: Priester.

21 THE COURT: All right. Thank you, Mr. Priester.

22 (Juror approaches.)

23 THE COURT: Yes, sir, Doctor. Tell me your name
24 again.

25 THE JUROR: Jonathan King, Juror 59.

1 My son was a victim of an assault this spring. It
2 has yet to go to trial.

3 THE COURT: The fact that you have that, would that
4 prevent you from listening to the evidence in this case
5 and based upon such evidence render a fair and impartial
6 verdict?

7 THE JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 Is there any member of this jury panel or any
10 member of the jury panel's immediate family or close
11 personal friends who has been or is a member of Five
12 Points -- I think it may be Merchants Association, but
13 Five Points Association? If so, please stand.

14 THE JUROR: May I have a moment with you, please?

15 THE COURT: Sure.

16 (Juror approaches.)

17 THE COURT: Yes, sir.

18 THE JUROR: Juror 293.

19 THE COURT: Wait a minute.

20 THE JUROR: I'm sorry. I'm Juror 293, Richard
21 Williamson. I didn't want to say anything but my uncle
22 was a captain of Richland County under Sheriff Sloan. I
23 used to ride him on the graveyard shift and I saw a lot of
24 garbage. He's now deceased.

25 THE COURT: The fact that you have that history

1 would that prevent you --

2 THE JUROR: Most definitely. I saw a lot of
3 garbage.

4 THE COURT: So you could not be fair and
5 impartial?

6 THE JUROR: No, sir.

7 THE COURT: If you'll have a seat --

8 THE JUROR: I didn't want to embarrass anyone.

9 THE COURT: Just go all the way in the back where
10 that bailiff is. Thank you, sir.

11 This juror has been excused. What's your number,
12 please, sir?

13 THE JUROR: 293, sir.

14 THE COURT: Now, this was an interesting question.
15 Does any member of this jury panel frequent Five Points on
16 a regular basis? You define regular.

17 Yes, sir. Tell me your name.

18 THE JUROR: I'm Michael Heath.

19 THE COURT: Mr. Heath, the fact that you --

20 THE JUROR: Juror 47.

21 THE COURT: -- frequent Five Points, would that
22 prevent you from listening to the evidence in this case
23 and based upon such evidence render a fair and impartial
24 verdict?

25 THE JUROR: No, sir.

1 THE COURT: All right. Thank you, sir.

2 Yes, sir, your name?

3 THE JUROR: Patrick Schmeckpeper, Juror Number
4 235.

5 THE COURT: The fact that you frequent Five Points,
6 would that prevent you from listening to the evidence in
7 this case and based upon such evidence render a fair and
8 impartial verdict?

9 THE JUROR: No, Your Honor.

10 THE COURT: All right. Thank you.

11 Yes, ma'am, your name?

12 THE JUROR: Elisabeth Engle, 82.

13 THE COURT: The fact that you frequent Five Points,
14 would that prevent you from listening to the evidence in
15 this case and based upon such evidence render a fair and
16 impartial verdict?

17 THE JUROR: No.

18 THE COURT: All right. Thank you, ma'am.

19 Ladies and gentlemen, does any member of this jury
20 panel have any knowledge about this case, read anything
21 about it, seen anything about it, heard anything about
22 it? If so, please stand.

23 (No response.)

24 THE COURT: Any member of this jury panel formed or
25 expressed an opinion about this case or its outcome? If

1 so, please stand.

2 (No response.)

3 THE COURT: All right. Ladies and gentlemen, at
4 the end of this case I will charge you or instruct you as
5 to the law as it applies to this type of case. You, if
6 you are on the jury panel, will be the fact finders of the
7 case. You will listen to the evidence and you'll
8 determine what you believe to be the facts and then you
9 will apply the law as I give it to you relating to this
10 case. It is your obligation to accept the law as I give
11 it to you and apply it to the facts of this case.

12 Is there any member of this jury panel who believes
13 you will not be able to comply with my instructions? And
14 by that I mean, accept the law as I give it to you and
15 apply it to the facts of the case.

16 If you do not think you can comply with my
17 instructions, please stand at this time.

18 (No response.)

19 THE COURT: Any member of this jury panel know of
20 any bias or prejudice either for or against the State or
21 for or against the Defendant in this matter? If you do,
22 please stand.

23 (No response.)

24 THE COURT: Can each member of this jury panel be
25 fair and impartial to both the State and to the

1 Defendant? If you believe you cannot be fair and
2 impartial, please stand at this time.

3 (No response.)

4 THE COURT: All right. Any further instructions
5 from the State?

6 MS. GARFIELD: No, sir.

7 THE COURT: Any inquiry, any further inquiry from
8 the Defendant?

9 MS. ZMROCZEK: None from the defense.

10 THE COURT: Madam Clerk, we are going to pick two
11 alternates, five and five.

12 THE CLERK: As I call your number, please come to
13 the microphone at the center of the courtroom. At the
14 microphone just state your place of occupation.

15 Juror 262. Please bring any personal items that
16 you have with you.

17 (White male comes forward.)

18 THE JUROR: I'm a student at USC.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. ZMROCZEK: Please have a seat in the jury box.

23 THE BAILIFF: Sir -- sir, come this way, please.

24 THE CLERK: Juror Number 184.

25 (White male comes forward.)

1 THE JUROR: McEntire Produce.
2 THE CLERK: What says the State?
3 MS. CAMPBELL: Please present the juror.
4 THE CLERK: What says the defense?
5 MS. ZMROCZEK: Please present the juror.
6 THE CLERK: Please have a seat in the jury box.
7 Juror Number 39.
8 (Black female comes forward.)
9 THE JUROR: I'm a school social worker.
10 THE CLERK: What says the State?
11 MS. CAMPBELL: Please present the juror.
12 THE CLERK: What says the defense?
13 MS. ZMROCZEK: Please excuse the juror for the
14 trial of this matter.
15 THE CLERK: Please return to the back of the
16 courtroom.
17 THE BAILIFF: This way, ma'am.
18 THE CLERK: Juror Number 239.
19 (White male comes forward.)
20 THE JUROR: I'm a law student at USC. Law clerk at
21 South Carolina Attorney General's Office.
22 THE CLERK: What says the State?
23 MS. CAMPBELL: Please excuse the juror.
24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror Number 201.

2 (White female comes forward.)

3 THE JUROR: I'm a professor and department chair at
4 the University of South Carolina.

5 THE CLERK: What says the State?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: What says the defense?

8 MS. ZMROCZEK: Please seat the juror.

9 THE CLERK: Please have a seat in the juror box.

10 THE BAILIFF: Watch your step, please.

11 THE CLERK: Juror Number 86.

12 (White female comes forward.)

13 THE JUROR: University of South Carolina.

14 THE CLERK: What says the State?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says the defense?

17 MS. ZMROCZEK: Please excuse the juror for the
18 trial of this matter.

19 THE CLERK: Please return to the back of the
20 courtroom.

21 Juror Number 296.

22 (White male comes forward.)

23 THE JUROR: Time Warner Cable.

24 THE CLERK: What says the State?

25 MS. CAMPBELL: Please present the juror.

1 THE CLERK: What says the defense?
2 MS. ZMROCZEK: Please seat the juror.
3 THE CLERK: Please have a seat in the jury box.
4 Juror Number 97.
5 (Black female comes forward.)
6 THE JUROR: Stay-at-home mom.
7 THE CLERK: What says the State?
8 MS. CAMPBELL: Please present the juror.
9 THE CLERK: What says the defense?
10 MS. ZMROCZEK: Please seat the juror.
11 THE CLERK: Please have a seat in the jury box.
12 Juror Number 159.
13 (White male comes forward.)
14 THE JUROR: Physician.
15 THE CLERK: What says the State?
16 MS. CAMPBELL: Please present the juror.
17 THE CLERK: What says the defense?
18 MS. ZMROCZEK: Please excuse the juror for the
19 trial of this case.
20 THE CLERK: Please return to the back of the
21 courtroom.
22 Juror Number 88.
23 (White female comes forward.)
24 THE JUROR: Teacher, Richland County School
25 District One.

1 THE CLERK: What says the State?
2 MS. CAMPBELL: Please present the juror.
3 THE CLERK: What says the defense?
4 MS. ZMROCZEK: Please seat the juror.
5 THE CLERK: Please have a seat in the jury box.
6 Juror Number 305.
7 (White female comes forward.)
8 THE JUROR: Teacher, Lexington County Schools.
9 THE CLERK: What says the State?
10 MS. CAMPBELL: Please present the juror.
11 THE CLERK: What says the defense?
12 MS. ZMROCZEK: Please seat the juror.
13 THE CLERK: Please have a seat in the jury box.
14 Juror Number 244.
15 (White male comes forward.)
16 THE JUROR: Teacher, Lexington-Richland Five.
17 THE CLERK: What says the State?
18 MS. CAMPBELL: Please present the juror.
19 THE CLERK: What says the defense?
20 MS. ZMROCZEK: Please seat the juror.
21 THE CLERK: Please have a seat in the jury box.
22 Juror Number 253.
23 (White female comes forward.)
24 THE JUROR: Teacher, Richland County.
25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. ZMROCZEK: Please excuse the juror for the
4 trial of this matter.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 Juror Number 221.

8 (White female comes forward.)

9 THE JUROR: Teacher at Columbia College, and I'm an
10 attorney.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MS. ZMROCZEK: Please excuse the juror for the
15 trial of this matter.

16 THE CLERK: Please return to the back of the
17 courtroom.

18 Juror Number 198.

19 (White female comes forward.)

20 THE JUROR: Teacher, Newberry County.

21 THE CLERK: What say the State?

22 MS. CAMPBELL: Please present the juror.

23 THE CLERK: Does the defense challenge for cause?

24 MS. ZMROCZEK: I do not.

25 THE CLERK: Please have a seat in the jury box.

1 Juror Number 140.

2 (White female comes forward.)

3 THE JUROR: Teacher, Lexington-Richland School
4 District Five.

5 THE CLERK: What says the State?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: Does the defense challenge for cause?

8 MS. ZMROCZEK: We do not.

9 THE CLERK: Please have a seat in the jury box.

10 Juror Number 109.

11 (White male comes forward.)

12 THE JUROR: Self-employed mortgage broker.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: Does the defense challenge for cause?

16 MS. ZMROCZEK: We do not.

17 THE CLERK: Please have a seat in the jury box.

18 Juror Number 75.

19 (White female comes forward.)

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please excuse the juror.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 Juror Number 251.

25 (White female comes forward.)

1 THE JUROR: Post bachelor research fellowship at
2 USC.

3 THE CLERK: What says the State?

4 MS. CAMPBELL: Please present the jurors.

5 THE CLERK: Does the defense challenge for cause?

6 MS. ZMROCZEK: We do not.

7 THE CLERK: Please have a seat in the jury box.

8 Juror Number 295.

9 (Black male comes forward.)

10 THE JUROR: I'm a commercial truck driver.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What say the defense?

14 MS. ZMROCZEK: Please seat the juror.

15 THE CLERK: Please have a seat in the jury box.

16 Juror Number 163.

17 (Black female comes forward.)

18 THE JUROR: Teacher with Kershaw County School
19 District.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: What says the defense?

23 MS. ZMROCZEK: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 THE COURT: All right. Anything from the State

1 with respect to the composition of the jury?

2 MS. CAMPBELL: Beg the Court's indulgence.

3 (Pause.)

4 MS. CAMPBELL: No, sir.

5 THE COURT: Anything from the defense?

6 MS. ZMROCZEK: No motions from the defense, Your
7 Honor.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury panel that did not get selected, I thank all of you
10 for making yourself available. I'm going to ask you if
11 you will return back downstairs to the jury assembly
12 room. You'll get further instructions at that time.

13 Y'all have a nice day. Thank you again.

14 (Jury panel exits courtroom at 12:53 P.M.)

15 THE COURT: All right. Ladies and gentlemen, I'm
16 not going to swear you at this time. We're getting ready
17 to go to lunch. I'll let you leave and go to lunch. I'll
18 swear you when you get back.

19 But before you go I want to take a few minutes and
20 tell you about this process in case you've not served on a
21 jury before or it's been some time that you have.

22 I want to tell you, this case is very, very, very
23 important, both to the State and Defendant. So we want to
24 do everything we can to make sure that the State and the
25 Defendant get a fair and impartial trial. And one of the

1 ways I'm going to ask you to help me do that, ladies and
2 gentlemen, is that I'm going to ask that you not discuss
3 this case with each other or with anyone else at any time
4 until you have been given instructions by me that you can
5 begin your deliberations.

6 So any time we take a break, when you go back to
7 the jury room, do not discuss the case with each other.
8 When we take a break and you go out of the courthouse, you
9 go to lunch, you go home tonight, go home tomorrow night,
10 do not discuss the case with anybody that you come in
11 contact with.

12 And the reason I ask you to do that, ladies and
13 gentlemen, you're the judges of the facts in this case and
14 you are supposed to determine what you believe to be the
15 facts based on what is put forth here in this courtroom.

16 And we want to make sure that both sides have been
17 given a full opportunity to offer everything they wish to
18 offer in front of you before you begin to formulate any
19 opinion about the case. And if you go back to the jury
20 room and start talking to each other about it before both
21 sides have completed whatever it is they wish to offer,
22 then you may begin to formulate some opinion about the
23 case.

24 When you go home or go to lunch or go wherever you
25 go, and you run into a family member or a friend or

1 whoever, I promise you if you talk to them about the case
2 they'll offer you an opinion about the case and they will
3 not have heard one thing that has been offered into
4 evidence in this court. So, please do not do that at
5 all.

6 And every time you leave this courtroom I will
7 attempt to remember to remind you not to discuss the case
8 with each other or with anyone else. When you come back
9 in the morning, I will inquire, make inquiry with you
10 about whether you've been approached or you've discussed
11 the case.

12 The other thing I'm going to ask you to do is don't
13 do any private investigation in this case. Don't get on
14 the Internet, get on Google, don't see what you can find
15 out about it. If they mention locations, don't drive by
16 any locations. If they mention something that you think
17 is interesting, don't do your own independent inquiry. As
18 I told you, you are to decide this case based upon the
19 evidence that's presented here in this courtroom and not
20 on anything else.

21 Now, ladies and gentlemen, when we come back, I'm
22 going to take a few minutes and tell you a little bit
23 about the process, how a trial unfolds. I have a couple
24 matters I have to take up with the attorneys before we can
25 actually begin the trial. And when we begin the trial

1 that will be -- I'll turn it over to the attorneys and
2 they will make their opening statements and then begin the
3 process of calling witnesses and putting up evidence.

4 I'm going to ask you to be back here at 2:30. That
5 may seem like a long lunch but I have to take some time to
6 deal with these other matters.

7 I've introduced you to a number of people that are
8 going to testify in this trial. Let me tell you some of
9 the people that you're going to have contact with that
10 will be here to assist you and some of the people that you
11 will see in the courtroom during the course of the trial.

12 The young lady seated right to my right is my law
13 clerk and that's Kaitlin Preswick and somewhere around
14 here I have another law clerk. I don't know where he is.
15 Down there. The young lady that's seated in front of me
16 is Ms. Pendergrass. She is a clerk with the clerk's
17 office, and she will help me throughout the course of the
18 trial as you've observed in the jury selection process.

19 You may have heard Judge Benjamin talk about a
20 court of record this morning. Well, this is a court of
21 record. And it's a court of record because everything
22 that's being said is being taken down by our court
23 reporter, Ms. Young, who's from Aiken, and is lucky enough
24 to be up here in the hottest city in the State of South
25 Carolina this week and, but she'll make a record of

1 everything that's being said.

2 The folks that you're going to have the most
3 contact with, ladies and gentlemen, are our bailiffs. And
4 you're fortunate that you have good bailiffs, experienced
5 bailiffs, real gentlemen, and they will show you in just a
6 few minutes how to get from where you are to the jury
7 room, how to get to the jury room outside the courthouse.
8 They'll take roll when you come back. They'll take your
9 telephones when you come in in the morning or at lunch.

10 Our bailiffs are Mr. Dye, who is the gentleman
11 seated all the way in the back; Mr. Addison, who is the
12 gentleman seated there; and where is Mr. Talbert? There's
13 Mr. Talbert. He's over there with my law clerk hiding
14 out. So these men know what they're doing. They've been
15 here. They know the courthouse. Any questions, any
16 problems come up, bring it to their attention and they
17 will either give you an answer or they will go find who
18 can give you an answer. And they'll assist you in any way
19 they possibly can.

20 So y'all have a nice lunch. Do not discuss the
21 case with each other or anyone else while you're gone. Be
22 back here so that we can start at 2:30.

23 One of the things that I -- really it's a pet
24 peeve, promptness. And I expect everybody to be prompt.
25 And I ask you to be prompt. I expect the litigants and my

1 lawyers and all the court personnel to be on time. Your
2 time is valuable. Everybody's time is valuable. So
3 please be on time.

4 I operate on two rules; the Vince Lombardy Rule is
5 when I say 2:30, probably 2:20 is a good time to be here.
6 And I operate on the Chris Rock Rule. And that is, you're
7 never early, you're either on time or you're late. So
8 don't think getting here 10 minutes early is going to make
9 you early.

10 So y'all have a nice lunch and we'll see you back
11 here at 2:30 and we'll crank up the trial.

12 THE BAILIFF: Follow me, please.

13 THE COURT: Thank you all. If you'll go with
14 Mr. Dye and Mr. Talbert and Mr. Addison.

15 (Jury exits courtroom at 1:00 P.M.)

16 THE COURT: What kind of -- y'all going to offer
17 some testimony about this?

18 MS. CAMPBELL: Judge, she's requesting testimony.
19 I can tell you just basically. We have -- there is a
20 videotape from the cameras there in Five Points. We have
21 the person who's in charge of all the videotapes and
22 retrieved the videotapes in this case. He can
23 authenticate them.

24 In addition to that, they can be authenticated by
25 each and every witness that's in them as to what had

1 happened that night. I understand she's objecting, I
2 believe, to authentication. I'm not sure what her grounds
3 are.

4 And I don't know that any testimony is actually
5 necessary.

6 THE COURT: What is it you want witnesses to
7 testify to?

8 MS. ZMROCZEK: Thank you, Your Honor.

9 It's not -- it's not simply authenticity. Here's
10 the issue, and you may or may not be familiar with the
11 cameras down at Five Points.

12 THE COURT: I don't frequent Five Points. And I
13 encourage my children not to go to Five Points.

14 MS. ZMROCZEK: If they did they would be on camera,
15 Your Honor, because there are camera everywhere

16 THE COURT: That's probably a good thing.

17 MS. ZMROCZEK: Yes.

18 One of the issues, Your Honor, is that I had
19 several questions regarding how many cameras were
20 present. It's my understanding that they're entered into
21 with a contract with a private third party. I don't know
22 what kind of rules they have as far as monitoring or
23 protecting.

24 And, Your Honor, I've attempted to contact this
25 person over and over.

1 THE COURT: Who is the camera person?

2 MS. CAMPBELL: Mr. Shealy.

3 THE COURT: Who?

4 MS. CAMPBELL: Mr. Shealy.

5 THE COURT: Well, what do you want to do? Do you
6 want to talk to him?

7 MS. ZMROCZEK: That may solve --

8 THE COURT: I can't make him talk to you, but
9 I'll -- before he testifies, I'll give you an opportunity
10 to try and talk to him. I don't know why he wouldn't talk
11 to her and tell her how many cameras are down there or
12 whatever it is. She can certainly ask him on the stand.

13 MS. CAMPBELL: Your Honor, I think he'll be here at
14 1:30.

15 THE COURT: Well, I won't.

16 MS. CAMPBELL: I understand.

17 THE COURT: Is he going to be your first witness?

18 MS. CAMPBELL: Probably, yes.

19 THE COURT: All right. Well, if he's going to be
20 here at 1:30, I can give you a couple minutes to approach
21 him.

22 MS. CAMPBELL: Be back quarter after?

23 MS. ZMROCZEK: I'm not going anywhere, Your Honor,
24 unless they tow my car --

25 THE COURT: Unless what?

1 MS. ZMROCZEK: I said, unless they tow my car but
2 actually I'll still be here.

3 THE COURT: Are you still driving that short
4 distance?

5 MS. ZMROCZEK: Well, I know. It's hot out.

6 THE COURT: Well, we'll make the witness available
7 to talk to him first thing.

8 MS. ZMROCZEK: Thank you, Your Honor. That may
9 solve a lot of issues.

10 THE COURT: You know, I don't see how that's going
11 to affect whether he'll be able to testify or not testify.
12 If they can't authenticate them, then they got a problem,
13 but you can stop them at that point in time and they won't
14 get to say much.

15 MS. ZMROCZEK: Thank you.

16 THE COURT: All right. Y'all have a nice lunch and
17 we'll see you back here at 2:30. You be here at 2:15 or
18 so.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: All right. Thank you all.

21 (Lunch break taken at 1:07 P.M., until 2:18 P.M.,
22 and the trial resumed:)

23 THE COURT: Who's here on the the 403? Y'all
24 didn't get to come for jury selection?

25 UNIDENTIFIED SPEAKER: No, sir.

1 THE COURT: All right. Go find another judge.
2 Selecting a jury is one of the most important things on a
3 trial.

4 A couple things, I received two notes from the
5 jurors -- when y'all are finished y'all let me know.

6 MS. CAMPBELL: Sorry, Your Honor.

7 THE COURT: I have reviewed both notes with counsel
8 for the State and for Mr. Ard. One of which was about one
9 of our jurors is a nursing mother and she was concerned
10 about her being able to take certain breaks in order for
11 her to be able to do what she needed to do for her child.
12 We've reviewed it with the attorneys and I told them, I
13 got a great deal of expert advice from the lawyers after
14 reviewing it. And I told her and she feels very
15 comfortable that she'll be able to do what needs to be
16 done and still serve on this jury.

17 Also got a note from a Juror, Rebecca Neeley. That
18 other one was from Joni Splett.

19 Ms. Neeley says: I may or may not know one of the
20 lawyers. She, I believe, is a friend of a friend. And I
21 assume she's talking about defense counsel, and says: It
22 will not affect my ability to be fair in this matter.

23 So, I've reviewed that. I will query her in just a
24 moment before we start up.

25 Okay. Ms. Zmroczek?

1 MS. ZMROCZEK: Thank you, Your Honor.

2 I had an opportunity to speak with the private
3 owner that runs the security system. And, Your Honor, my
4 concern is that under Rule 106 the rule of completeness
5 applies to, I know, when they are -- when typically a
6 portion of a statement or a portion of a video is
7 introduced and then defense counsel can request that the
8 entire thing be produced.

9 Your Honor, my concern here is that we're
10 provided -- I'm told that there were eight cameras within
11 the bar and eight cameras outside of the bar, and there
12 were some across the street as well. So my concern is
13 that I wasn't provided all of those camera shots.

14 I was told, and I believe the testimony is going to
15 be, that they were edited as -- according to what he, the
16 private person who then delivers it to the police,
17 determines is relevant. Your Honor, my concern is that
18 we're not getting a complete picture of what happened that
19 night. There are questions about -- there are questions
20 that have been raised about who was the first arrest, what
21 things were said, what happened within the time periods.

22 Additionally, my videos did not have time stamps.
23 Apparently they are on the -- they are on the originals
24 but they weren't on the ones that were provided to me or
25 they didn't show up on my screen and I inquired about

1 that.

2 But my greater concern, Your Honor, is that someone
3 who's under no duty to preserve evidence or any kind of
4 obligation to provide all the evidence, they simply pick
5 out what they think is relevant which are a two-minute
6 clip here, a four-minute clip here, instead of just giving
7 the whole video and allowing us to decide if there's any
8 exculpatory evidence on there or not.

9 I can't say that there was or not because we
10 weren't allowed to see them. After three weeks the tapes
11 were destroyed. My concern is that we're not getting a
12 complete picture of --

13 THE COURT: You weren't allowed to see them?

14 MS. ZMROCZEK: Correct.

15 THE COURT: So they denied your being able to see
16 the tapes?

17 MS. ZMROCZEK: Well, they denied them because they
18 didn't exist.

19 THE COURT: So it wasn't a matter of you weren't
20 allowed to see them. They weren't available for you to
21 see because they had been damaged in some manner.

22 What do you want to tell me, Ms. Campbell?
23 Anything?

24 MS. CAMPBELL: No, Your Honor. I mean, her
25 argument, I think it's -- I guess she's arguing

1 completeness. The evidence is is what was pulled on the
2 dates that shows there's eight different, I think, camera
3 angles showing different angles of the actual
4 altercation.

5 And the cameras that were used and the inventory
6 that was retrieved was from the cameras that actually
7 showed something.

8 I believe as far as authentication or
9 admissibility, I'm not sure what her argument is. Maybe I
10 missed that.

11 THE COURT: I don't think that's her -- she's
12 arguing that she wasn't given the opportunity to see every
13 video that was taken on, for some period --

14 MS. CAMPBELL: At Five Points on that night?

15 THE COURT: For some period of time. I assume at
16 Five Points.

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: Just to --

19 MS. CAMPBELL: And as in every case -- in every
20 case involving an armed robbery case, a convenience store,
21 or anything else, I mean, the same is true in every single
22 case where we treat video. This is no different from a
23 convenience store robbery or anything else.

24 THE COURT: Well, I don't know what your motion is,
25 I guess to exclude this evidence. But I'm going to deny

1 that. And you can cross-examine him and attempt to show
2 what you think you can show on --

3 MS. ZMROCZEK: Certainly. And, Your Honor, can I
4 just for -- I understand your ruling and I just want to be
5 able to make sure that I understood that she said it's
6 just like any other armed robbery. And my issue is that
7 it just wasn't complete. And that's fine.

8 I understand that I can argue that to the jury.

9 THE COURT: All right. Are we ready to go?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Let's bring the jury in -- bring in
12 Juror Number 198 first, if you would, please.

13 MS. CAMPBELL: Your Honor, we have one other
14 matter. I just need to put one other statement on the
15 record. I just need to make a statement.

16 (Juror enters courtroom.)

17 THE COURT: Ms. Neeley, you can stay right there.
18 I'm going to send you right back out. I got your note in
19 which you indicate you may have some knowledge of one of
20 the attorneys and I assume it's Ms. Zmroczek because --

21 THE JUROR: Yes, sir.

22 THE COURT: -- you've said that she might be a
23 friend of a friend. And you indicated in your note that
24 she -- it would not affect your ability to be fair and
25 impartial in the trial. And I've reviewed your note with

1 the attorneys and don't be offended but your face is not
2 familiar to her. So it may be through a friend of a
3 friend --

4 THE JUROR: Yes, sir.

5 THE COURT: -- that you may have heard of her.
6 She's well known all over the State of South Carolina.

7 So anyway, just to be sure, even though you may
8 know somebody who knows this person, that would not affect
9 your ability to be fair and impartial in this case; is
10 that correct?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Thank you, ma'am. If
13 you'll step back. We'll bring you back in just one
14 minute.

15 (Juror exits courtroom.)

16 THE COURT: The note from Ms. Splett will be
17 Court's Exhibit No. One, and the note from Ms. Neeley will
18 be Court's Exhibit No. 2.

19 (Court's Exhibit Nos. 1 and 2, notes from Jurors
20 Splett and Neeley, were marked and received into
21 evidence.)

22 THE COURT: And what did you want to say,
23 Ms. Campbell?

24 MS. CAMPBELL: Your Honor, the Defendant was advised
25 of his rights and did give a statement; however, it is

1 self-serving in nature, therefore we're not going to
2 mention it and would not be mentioning it at all unless he
3 of course takes the stand. We've just advised defense
4 counsel of that so there wouldn't be any confusion or
5 mention of it in opening statement or anything like that.

6 THE COURT: I think she was informed the other day
7 that y'all did not intend to admit, to use the statement.

8 MS. CAMPBELL: Therefore wouldn't not be admissible
9 so she would not be mentioning it.

10 THE COURT: I don't know what she might be doing
11 with it. My guess is they're probably not going to -- I
12 don't know, maybe they're going to put up a case but they
13 do or they don't.

14 All right. Let's bring the jury in if we could,
15 please, sir.

16 (Jury enters courtroom at 2:39 P.M.)

17 THE COURT: All right. Ms. Pendergrass, would you
18 swear the jury, please?

19 THE CLERK: Yes, Your Honor.

20 (Jury impaneled.)

21 THE CLERK: You may be seated.

22 THE COURT: All right. Ladies and gentlemen,
23 before I turn this matter over to the attorneys let me
24 tell you a little bit about this process.

25 As I told you that when you come back and I let the

1 lawyers get up and begin the trial, the first thing
2 they're going to do is make an opening statement. The
3 State will go first in making the opening statements. As
4 a matter of fact, the State will go first throughout the
5 course of this trial because, as I told you before we
6 selected you, the State has the burden of proving their
7 case and proving their case beyond a reasonable doubt.
8 Because that burden falls upon the State, they get to go
9 first throughout the course of the trial.

10 The opening statement, ladies and gentlemen, is the
11 chance for lawyers to introduce themselves a little bit to
12 you and for them to tell you what this case is all about.
13 It's a chance for them to educate you or inform you about
14 the case so as it unfolds you will have some knowledge
15 about what the case is about.

16 As I told you, the Defendant, Mr. Ard, has been
17 indicted for five offenses. One is attempted murder. And
18 the State alleges that Mr. Ard did in Richland County on
19 or about July 28, 2013, with intent to kill, attempt to
20 kill Jesse Patterson with malice aforethought, either
21 express or implied.

22 He's also been indicted for carrying a concealed
23 weapon wherein the State alleges that he did on or about
24 July 28, 2013, unlawfully carry a deadly weapon usually
25 used for the infliction of personal injury, that being a

1 knife, concealed with, about his person.

2 In addition he is charged with assault and battery
3 second degree wherein the State says he in Richland County
4 on or about July 28, 2013, committed an assault and
5 battery in the in the second degree upon the victim,
6 Gabriel McDaniel, which resulted or could have resulted in
7 serious bodily injury.

8 The second assault and battery second degree
9 alleges that Mr. Ard did in Richland County on or about
10 July 28, 2013, commit an assault and battery in the second
11 degree upon the victim, Joseph Molino, which resulted or
12 could have resulted in serious bodily injury.

13 And the third assault and battery second degree
14 alleges that Mr. Ard did in Richland County on or about
15 July 28, 2013, commit an assault and battery in the second
16 degree upon the victim, Scott Flemming, which resulted or
17 could have resulted in moderate bodily injury.

18 As I told you earlier, ladies and gentlemen, these
19 indictments are documents that have put the Defendant on
20 notice of these particular charges. They are not
21 evidence. They're not to be considered by you for any
22 purpose other than they are notice documents.

23 And to these charges the Defendant has entered a
24 plea of not guilty to each one which now places upon the
25 State the burden of proving the Defendant guilty beyond a

1 reasonable doubt of all of the charges for which he has
2 been indicted.

3 This Defendant is presumed to be not guilty. He's
4 come into this courtroom with the presumption of not being
5 guilty. And you are to remember that that presumption
6 remains with him throughout the course of this trial and
7 would only change if he is convicted after a jury has
8 determined that he is guilty beyond a reasonable doubt.

9 Now, ladies and gentlemen, as I told you, this is a
10 very, very important case to both parties. They have
11 waited a long time to get this case up for trial. And now
12 they are in front of you, an independent fact-finding body
13 who will listen to the evidence, ultimately determine what
14 you believe to be the facts, apply the law, and resolve
15 the dispute that exists between the State of South
16 Carolina and Mr. Ard.

17 After opening statements are made, ladies and
18 gentlemen, the State will go forward with the presentation
19 of its evidence. And I assume most of its evidence will
20 come in by way of testimony from witnesses who will be put
21 under oath, get in the witness box right there in front of
22 your jury box and tell you what information they have
23 about this case. They've seen something, heard something,
24 tasted something, felt something, smelled something; they
25 have some knowledge from one of their senses that gives

1 them some factual basis to tell you what it is they know
2 about the case.

3 Now we could hear from what we call an expert
4 witness. That's a person who has specialized knowledge,
5 skill, training in some particular field and can offer an
6 opinion in his or her areas of expertise. Generally
7 expert witnesses are people like physicians or engineers,
8 people of that nature. And they can assist you, the
9 triers of fact, in understanding some matter in
10 controversy. Fact witnesses don't give opinions. They
11 tell you what factual knowledge they have.

12 Other types of evidence that could be introduced in
13 this case could be things like documents, photographs,
14 things of that nature. That type of evidence will
15 actually be given an exhibit number and will go with you
16 to the jury room in the course of your deliberations so
17 that you can review it and examine it during your
18 deliberations.

19 Testimony, ladies and gentlemen, will go with you
20 in your memory. So it is absolutely essential that you
21 pay close attention to what's being said here in the
22 courtroom.

23 If you can't understand somebody, if you can't hear
24 somebody, let me know in some way and we'll make sure that
25 witness or that lawyer or me, or whoever it is, speaks up

1 or speaks more clearly so that you can hear what is being
2 said here in the courtroom.

3 A third type of evidence that could come in is what
4 we call a stipulation. And that's where the parties
5 stipulate or agree as to some fact or some matter. If
6 there is a stipulation the lawyers will tell me and I will
7 tell you and you are to accept that fact as though it had
8 been proven here in the courtroom.

9 Now after the State has put up whatever evidence
10 the State wishes to offer, the Defendant is given an
11 opportunity to offer any evidence the defense wishes to
12 offer. But the Defendant does not have to put up
13 evidence. The Defendant has no burden in this case. They
14 don't have to do anything. It's all upon the State of
15 South Carolina. So if the defense puts up evidence, I
16 assume that most of it would be similar to the State's
17 evidence and that is testimony from witnesses.

18 When both sides have completed the presentation of
19 their evidence, ladies and gentlemen, the lawyers are
20 given another opportunity to speak with you. And this is
21 what we call a closing statement or a closing argument.
22 And it is a little different from the opening in that the
23 closing is a chance for the lawyers to review and recap
24 with you what they believe the evidence showed in the
25 course of the presentation and the trial. It is the

1 chance for them to emphasize to you what they hope you
2 will consider and discuss in the course of your
3 deliberations. It is an opportunity for the lawyers to
4 attempt to convince or persuade you as to why you should
5 ultimately return a verdict for their respective client.

6 When both sides have completed their closing
7 arguments, then I will charge you or instruct you as to
8 the law. You will then retire to the jury room, begin
9 your deliberations, determine what you believe to be the
10 facts in the case, apply the law and ultimately render
11 your verdicts in this case.

12 Now, ladies and gentlemen, as I told you, you are
13 the fact finders in this case. You're the sole fact
14 finders and nobody else will participate in that process
15 but you.

16 My responsibility is a little different from
17 yours. Mine is twofold. One, I'm sort of the referee in
18 this trial. In most structured events we have rules. And
19 we have rules for the trial of the case. We have rules of
20 evidence and rules of procedure, and it's my
21 responsibility to see that those rules are complied with.
22 My other responsibility is to charge you or instruct you
23 as to the law.

24 Now these lawyers have a responsibility in this
25 case and that is that they are advocates for their

1 respective clients. I want you to pay close attention to
2 what the lawyers say during the course of the trial. But
3 understand this: What the lawyers tell you is not
4 evidence. They are advocates for their clients. It's
5 their responsibility to put forth everything they think
6 that they should put in front of you that will assist
7 their clients in this matter. So pay close attention but
8 understand what they tell you is not evidence and it's not
9 to be considered by you as evidence.

10 Now, ladies and gentlemen, this case, I anticipate,
11 will go several days. I don't think it's going to go all
12 week but it will probably get to the middle of the week.
13 I anticipate that we will begin every day at 9:30 in the
14 morning and hopefully we'll conclude each day by no later
15 than 5:30.

16 We understand you have lives outside of this
17 courtroom and you need to attend to those responsibilities
18 as well. But as I told you, it's important and we want to
19 make sure that both sides get a full opportunity in this
20 matter.

21 I think with that said I'll now call on the
22 solicitor. Ms. Garfield, are you ready to proceed?

23 MS. GARFIELD: Yes, Your Honor.

24 THE COURT: Would you please, ma'am.

25 MS. GARFIELD: May it please the Court.

1 THE COURT: Yes, ma'am.

2 MS. GARFIELD: There are so many things that make
3 the City of Columbia truly a wonderful place. And one of
4 those treasures is the entertainment district known as
5 Five Points. It has been a venue for years and years to
6 people of all ages where celebrations have been held for
7 birthdays, graduations, engagements, reunions of all
8 sorts.

9 But on July 28 of last year, Stewart Ard, the
10 Defendant in this case, went to Five Points to create
11 nightmares for several individuals.

12 On that particular day, the incident location is
13 Group Therapy Restaurant and Tavern. It's a business
14 that's been there since the late '70s. It is on Green
15 Street right across the street from the Five Points Post
16 Office. It's a place that used to be the home of Group
17 Therapy Chili Cook-off that raised thousands and thousands
18 of dollars for charities in our community.

19 On that particular day the owner of Group Therapy,
20 Scott Flemming, who's here in the courtroom, was enjoying
21 a meal with his wife and some friends at a nearby business
22 parlor called Nicky's, a fairly new establishment in the
23 Five Points area.

24 When he concluded his meal he left his friends and
25 family to go to his bar which he owned to check on a new

1 employee by the name of Jesse Patterson. Jesse Patterson
2 had been there about a month and on that particular
3 evening he was working the door as the doorman. His
4 responsibility, to check identifications of patrons who
5 arrived at the establishment.

6 As the two of them were talking, Scott learned from
7 Jesse that there had been an incident just a few moments
8 earlier where four individuals had been kicked out of the
9 establishment for causing a ruckus, being a bit too
10 rowdy. Not exactly ground-breaking news for a place that
11 serves alcohol.

12 At any rate shortly thereafter, Benjamin Geno, who
13 will be one of the individuals who had been kicked out,
14 approached the two individuals at the door in front of
15 Group Therapy. At that time Benjamin Geno swung at Jesse
16 Patterson and behind him was Stewart Ard armed with a
17 knife where he began, multiple times, stabbing Jesse
18 Patterson and then Scott Flemming.

19 At that time Stewart Ard then ran back towards
20 where his car was parked across from the Post Office. Two
21 individuals, Gabe McDaniel and Joe Molino, who were
22 bouncers at the bar beside Group Therapy and saw the
23 commotion, began to chase Stewart Ard in the hopes of
24 either apprehending this person who had committed these
25 violent acts or getting any information that they could

1 provide to law enforcement in capturing them.

2 Stewart Ard turned to the two of them and tried to
3 stab them as well. Fortunately he did not succeed.
4 Stewart Ard got into the car with the three other
5 individuals that had been kicked out of the establishment
6 and fled the area while Jesse Patterson lay on the floor
7 in Group Therapy bleeding in pain and trying to breathe.

8 Ladies and gentlemen of the jury, I am Dolly
9 Garfield and I'm a prosecutor here in Richland County.
10 Seated at the table with me to my left is Luck Campbell a
11 Senior Assistant Solicitor, and to my right, Assistant
12 Solicitor Ronnie Shalabi. We are prosecutors for the
13 State of South Carolina. Our client is the people of the
14 State of South Carolina.

15 Just as you probably see crime shows on TV, CSI,
16 and there are so many numerous ones of them, we deal with
17 a lot of the same issues that you see on television on a
18 daily basis. But those particular TV shows are very
19 different from what you'll experience in this courtroom
20 because this courtroom is real. You will hear from real
21 witnesses, not paid actors with fictitious scripts. And
22 you'll hear from real victims who were injured, and one
23 particularly who fought for his life.

24 Ladies and gentlemen, Stewart Ard is charged with
25 one count of attempted murder, three counts of assault and

1 battery in the second degree, and carrying a concealed
2 weapon. We will prove to you these charges through
3 witness testimony.

4 As the Judge instructed, the burden is on the State
5 of South Carolina. And that is a burden that in this
6 courtroom we welcome, and we promise to deliver to you.
7 We will prove to you by calling several witnesses to the
8 stand to include employees of Group Therapy Restaurant and
9 Tavern, patrons, the people that were with Stewart Ard in
10 the evening in question, and medical personnel, and law
11 enforcement witnesses.

12 Ladies and gentlemen, today Stewart Ard sits before
13 you presumed innocent. And that's the way it should be.
14 That's what great about the United States of America.

15 Everyone in this courtroom has a job to do, as
16 Judge Barber introduced to you several members of the
17 courtroom staff. I also submit to you that you have an
18 important job. It will be your job to listen to all of
19 the evidence. Listen carefully. And at the conclusion of
20 all of the evidence and after closing arguments, I submit
21 that you will have no problem rendering a verdict finding
22 Stewart Ard guilty of these heinous and unspeakable acts.

23 You will want to send Stewart Ard a message that we
24 do not wish to violate and harm the people of Five Points
25 who just want to create happy memories. He is presumed

1 innocent but as each witness takes the stand and each
2 piece of evidence is introduced, I submit that a little
3 bit of that guilt (verbatim) will go away.

4 Presume he is wearing a cloak innocence around him
5 and as each person takes the stand, a piece of that cloak
6 will be ripped and at the end will bare him the guilty man
7 that he is.

8 Thank you.

9 THE COURT: Ms. Zmroczek?

10 MS. ZMROCZEK: Thank you, Your Honor. May it please
11 the Court.

12 Who is this? It's Packman, because when you flip
13 it over you have the other half.

14 Your job is to be the deciders of fact. There's a
15 great question of fact that needs to be answered. You
16 may be familiar with bullies on the playground. And these
17 bullies will tell you their side of the story and they'll
18 tell you what they want you to hear and they'll show you
19 what they want you to see so you don't look at them.

20 My name is Aimee Zmroczek. This trial is not about
21 me. It's not about Mr. Dawtin. It's about Stewart Ard.
22 Stewart Ard, sitting here at the table, his family right
23 behind him. And it's about four people. Let me write
24 those names down for you.

25 I'm going to make your job a little bit easier.

1 Stewart Ard is guilty of assault and battery second degree
2 against Scott Flemming. He'll tell that you right now.
3 This will make your job a little easier.

4 The difference in facts lies with Joe Molino and,
5 most importantly, with Jesse. You notice assault and
6 battery second degree. The legislature spent a long time
7 and the Judge will read you the facts -- no, the Judge
8 will read you the law. You apply the facts.

9 But assault and battery second degree implies that
10 there are other degrees. And, there are. And we submit
11 to you at the end of this trial the evidence will show
12 that he's also guilty of assault and battery second degree
13 on Jesse. And he's guilty of assault and battery third
14 degree on Joe and Gabe. He's not running away from what
15 he did. He's asking you to listen to those witnesses and
16 to carefully look at the evidence, that law enforcement
17 that testified did their job. They filled out their
18 reports, they made their charges, they made their case
19 based on what those witnesses will tell you.

20 So who becomes the most important people in this
21 case to prove the evidence beyond a reasonable doubt to
22 prove that they didn't encourage it, that they didn't
23 bully?

24 Listen carefully to the testimony of those
25 witnesses. Look closely at the evidence that the State

CAREY SHEALY - DIRECT BY GARFIELD

1 provides you. I submit when this evidence is all in
2 front of you, you'll see who the real playground bully
3 was. And it's at that point that you will come to the
4 correct fact finding, that he is guilty of these charges.
5 Thank you.

6 THE COURT: Madam Solicitor, are you ready to call
7 your first witness?

8 MS. GARFIELD: Thank you, Your Honor. The State
9 calls Carey Shealy.

10 CAREY WILLIAM SHEALY, having been duly sworn, was
11 examined and testified as follows:

12 THE CLERK: Please have a seat. State your full
13 name for the record.

14 THE BAILIFF: Watch your step, please.

15 DIRECT EXAMINATION

16 BY MS. GARFIELD:

17 Q. Mr. Shealy, if you'll state your full name for the
18 record.

19 A. Carey William Shealy.

20 Q. Where do you live?

21 A. Circle.

22 Q. Is that here in Columbia?

23 A. Yes.

24 Q. And where are you employed?

25 A. Statewide Security Systems.

CAREY SHEALY - DIRECT BY GARFIELD

1 Q. Share with the jury a little bit about what
2 Statewide Security Systems is.

3 A. Well, we've been in business over 30 years and we
4 do do security systems and we're known for, you know,
5 camera systems. We do them all over the state, hundreds
6 of cameras all over the city.

7 Q. Is this residential solely or also businesses?

8 A. It's everything; business, homes.

9 Q. Do you have a contract with the City of Columbia?

10 A. We have a contract with the Five Points
11 Association, Main Street Association, other associations,
12 homeowners associations, et cetera.

13 Q. So you're a private business?

14 A. Yes.

15 Q. Specifically what kind of contract do you have with
16 the Five Points Association?

17 A. Well, we install cameras like we do for our other
18 customers. We maintain service on them. Whenever they
19 have an incident, they call -- the police calls us. We
20 get subpoenaed for video. We go and search the video and
21 provide that to whoever requested it.

22 Q. Did you receive that type of request last July?

23 A. Yes.

24 Q. And specifically did it involve an assault at Group
25 Therapy Restaurant and Tavern?

CAREY SHEALY - DIRECT BY GARFIELD

1 A. Right.

2 Q. And did you provide such video to law enforcement?

3 A. Yes.

4 Q. Have you reviewed that video in an effort to get
5 ready for court today?

6 A. Yes, I looked at the video. I think I'm actually
7 the one that made the original video. So I remember it
8 very well.

9 Q. Sorry for interrupting. Have you reviewed videos
10 that would be on this zip drive?

11 A. Yes.

12 Q. And the zip drive, Your Honor, I'm looking in
13 reference to State's Exhibit Number 20.

14 Have you had an opportunity to review all of that
15 video?

16 A. Yes.

17 Q. And can you describe the nature of those videos?

18 A. Well, you're going to see, basically, basically a
19 person getting out of a car parked over by the Post
20 Office. And the, I guess, the victim, the Defendant or --
21 excuse me, Scott, who was standing by the door. As soon
22 as he turns from the door, a guy comes up and stabs him.
23 And you see two other guys that are with him. And then
24 after they do that, turns around and goes back back in the
25 direction they came.

CAREY SHEALY - CROSS BY ZMROCZEK

1 And so the cameras that are right there on the
2 building capture all of that.

3 Q. From your security video system, did you actually
4 retrieve the videos?

5 A. Yes.

6 Q. And did you edit them in any way?

7 A. No.

8 Q. And you've reviewed this in effort for court?

9 A. Yes.

10 Q. And it's the same video that you provided last
11 July?

12 A. Yes.

13 MS. GARFIELD: Your Honor, at this time I'd like to
14 introduce State's Exhibit Number 20.

15 MS. ZMROCZEK: Subject to my previous objection.

16 THE COURT: So admitted over the objection.

17 MS. GARFIELD: Beg the Court's indulgence.

18 (State's Exhibit No. 20, zip drive containing
19 videos, received into evidence.)

20 MS. GARFIELD: Thank you, Mr. Shealy. Please
21 answer any questions Ms. Zmroczek has for you.

22 THE WITNESS: Okay.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q. Mr. Shealy, how many cameras are depicted on this

CAREY SHEALY - CROSS BY ZMROCZEK

1 zip drive right here?

2 A. I believe there are seven or eight.

3 Q. Seven or eight?

4 A. Uh-huh.

5 Q. How many cameras actually captured the entire event
6 that evening?

7 A. All the cameras on that video?

8 Q. All the cameras on this video.

9 A. Right. In other words, the camera -- there was one
10 on the inside looking at, outside the door where he came
11 up. There's also a couple of other cameras on the inside
12 showing the person coming in and out. And then there's
13 cameras on the outside, showing him walking back and
14 forth.

15 Q. In fact, you have eight cameras inside of Group
16 Therapy; correct?

17 A. Yes, ma'am.

18 Q. Are all eight cameras depicted on that zip drive?

19 A. No.

20 Q. How many of the cameras on the inside are depicted
21 on that zip drive?

22 A. I believe two or three -- two, I think.

23 Q. Who made the decision to only present two or three
24 to the police?

25 A. That would have been me.

CAREY SHEALY - CROSS BY ZMROCZEK

1 Q. That would have been you?

2 A. Yes.

3 Q. And does that capture the entire evening or at
4 least the entire time period that Mr. Ard was there?

5 A. It captures, for example, when I got there of
6 course the incident's already happened. And I'm coming
7 trying to figure out what happened. I look at the video
8 and I see when it starts, when the person got out of the
9 car and walked over and they stabbed somebody and they
10 left.

11 So that was the main video I guess you would say.
12 So from start to finish, if you will, for that.

13 And then there was, I guess they were in there
14 earlier inside. So I made a video, a short video showing
15 them inside. But it wasn't there the whole time. It
16 might have been there.

17 Q. So it doesn't show any problems that occurred
18 between the parties or amongst the parties --

19 A. I didn't --

20 Q. -- before?

21 A. I didn't see that.

22 Q. I'm sorry?

23 A. I didn't see that. I didn't look through the whole
24 night of course, but --

25 Q. But you were the only one who got to make that

CAREY SHEALY - CROSS BY ZMROCZEK

1 decision; right?

2 A. Well, of course when I give the video to the
3 police, if there was any further reason for anybody
4 wanting more video they could have asked. We could have
5 gone back and looked to see if there's more video.

6 Q. But they ask didn't for it, did they?

7 A. No.

8 Q. And you're a private owner so you're not subject to
9 the Freedom of Information Act; right?

10 A. Yes, ma'am.

11 Q. In fact, you and the Five Points Association
12 specifically wrote that into your contract, didn't you?

13 A. They made that their agreement, yes.

14 Q. So that it wouldn't be subject to people to just
15 ask to see; correct?

16 A. Well, they could subpoena it, I'm sure. We've been
17 subpoenaed before.

18 Q. After a case has been brought?

19 A. At any time.

20 Q. And, how many -- how long do you keep those?

21 A. Well, the video records usually for three to four
22 weeks. So if somebody called me two months after
23 anything, you know, I'm not going to have that.

24 Q. Not going to have it even if it's subpoenaed?

25 A. Yeah, even if it's subpoenaed.

CAREY SHEALY - CROSS BY ZMROCZEK

1 Q. You stated that there were cameras outside that
2 captured what you figured was the event; correct?

3 A. Yes, ma'am.

4 Q. How many cameras are located on the outside of
5 Group Therapy?

6 A. Grill Teriyaki has eight cameras inside.

7 Q. Grill Teriyaki or Group Therapy?

8 A. Well, both actually. Grill Teriyaki has eight and
9 Group Therapy has eight.

10 Q. Okay.

11 A. Both looking at the same kind of areas.

12 Q. And just in case the jury doesn't spend as much
13 time at Five Points as we do, would it be safe to say this
14 is Group Therapy and the Post Office is here and Grill
15 Teriyaki is right here?

16 A. Uh-huh.

17 Q. And this is Harden Street?

18 A. Yeah, that's right.

19 Q. This is Harden Street. And which street is this?

20 A. Green Street.

21 Q. And so the cameras that are depicted on here, do
22 they show a frontal view of what happened or just a side
23 view?

24 A. We have a view looking this way. The camera's
25 usually both ways, straight ahead. And then you have a

CAREY SHEALY - CROSS BY ZMROCZEK

1 camera at the door over here where you're talking about.

2 Q. Right here?

3 A. Yeah. There's cameras on Grill Teriyaki. They're
4 a farther distance, of course. They're across the street.

5 Q. And what do these cameras show?

6 A. They look at the front of, you know, Harden Street,
7 the side of Green Street and the back towards the Post
8 Office.

9 Q. So essentially they look at the front door of Group
10 Therapy?

11 A. There's one camera that points in that direction,
12 yes.

13 Q. That camera wasn't provided to us, was it?

14 A. No.

15 Q. You said you don't edit the cameras?

16 A. That's right.

17 Q. But in essence you edit as far as the time. You
18 cut down what you think is important, correct?

19 A. Well, again, for example in this particular case,
20 you want to see what happened, okay. Here's what
21 happened. I see them pull up. I see them walk in. I see
22 them leave. That's beginning to end to me.

23 Now we could have gone an hour before, an hour
24 after. We didn't for those reasons, but if they had
25 wanted more we certainly would have gone back and looked

CAREY SHEALY - CROSS BY ZMROCZEK

1. for it but that's the way we do it.

2 Q. And you would agree with me that had we gone back
3 an hour or 30 minutes, that it could have shown the full
4 story, correct?

5 A. Well, I don't know what the full story is other
6 than what the video would show. But I can tell you all we
7 made the video of is what, what we have, what shows.
8 Well we could have went, sure, and went back as long as
9 you wanted to, as long as you needed to.

10 Q. I guess that's my point is that we don't know,
11 right? We won't be able to know?

12 A. No.

13 Q. How much are you paid for these cameras?

14 A. We charge a monthly fee for our service and setup
15 fee.

16 Q. You charge a monthly fee?

17 A. Uh-huh.

18 Q. And there actually has been discussion about
19 requesting the cameras to be monitored at certain prime
20 times for lack of a better word, right?

21 A. Sure.

22 Q. Have you had -- has that been done?

23 A. We've monitored cameras live like on New Years
24 Eve. Not all of the cameras, obviously. Very few of them
25 because you have to put them online, but we have a few on

CAREY SHEALY - CROSS BY ZMROCZEK

1 special occasions. We don't routinely.

2 Q. But not this evening?

3 A. No.

4 Q. But you would agree with me that the cameras, at
5 least the little snippets that we have, would depict an
6 accurate reflection of what was said, correct -- or, what
7 was done, correct?

8 A. Yes.

9 Q. And there's no audio?

10 A. No.

11 Q. And some of the cameras are in color and some are
12 in black and white. Explain to the jury why that is.

13 A. Cameras, some of them have an auto setting where
14 they automatically switch from day to night, switch to
15 color. Others depending on the lighting, you know, you
16 would set it to be just color or black and white. It
17 depends on the camera.

18 Q. And that can change or alter a little bit of what
19 is seen on the camera as well, correct?

20 A. Well, it couldn't alter the video but, you know,
21 obviously lighting affects -- just like in here, the
22 lighting affects what you see.

23 Q. And then if there are impediments in the way, such
24 as doors, then you obviously can only see -- if you just
25 go down the side building, I think you said that you got a

CAREY SHEALY - CROSS BY ZMROCZEK

1 view that comes this way, correct?

2 A. Yeah. When he come walking down the side, you see
3 that. And then when Mr. Scott steps away from the door
4 then you see from the inside.

5 Q. But you can't see what happens on the other side of
6 the door, can you?

7 A. No. You can see -- yeah, no, you can't.

8 Q. Okay. Beg the Court's indulgence.

9 (Pause.)

10 Are there plans to put up more cameras?

11 A. Yes.

12 Q. It's true that you put up cameras in places that
13 have a high incidence of problems, correct?

14 A. Well, we have customers, commercial customers,
15 regular customers that put them up. I wouldn't
16 necessarily say it's a high-crime area.

17 Q. Okay. Let's bring us back to Five Points.

18 A. Okay. Sure. Sure.

19 Q. There are a few areas of Five Points that you would
20 consider or that Five Points Association would consider
21 more dangerous than others, correct?

22 A. Well, I don't speak for them but there obviously
23 are more areas you have more trouble than other areas in
24 Five Points, that's true.

25 Q. And it's true that you have a lot more cameras

CAREY SHEALY - REDIRECT BY GARFIELD

1 located in and around Group Therapy, correct?

2 A. Well, around that area. Not just Group Therapy.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: Anything, Ms. Garfield?

5 MS. GARFIELD: Briefly, Judge.

6 REDIRECT EXAMINATION

7 BY MS. GARFIELD:

8 Q. Mr. Shealy, defense counsel asked you some
9 questions about videos that were not provided to law
10 enforcement concerning this particular incident.

11 A. Sure.

12 Q. Did you provide video of the closer angles?

13 A. Yes. Uh-huh.

14 Q. So the ones that were not provided were the ones
15 more far away?

16 A. Right.

17 Q. And she asked you about the cameras that are not
18 monitored. I believe she means manpower, a person,
19 somebody watching them 24-7?

20 A. That's right.

21 Q. But they are recording?

22 A. Yes, that's the main thing.

23 Q. And the last question she was asking you about
24 these cameras being in the area of Group Therapy. Is
25 there another particular -- are there other establishments

CAREY SHEALY - RECROSS BY ZMROCZEK

1 near Group Therapy that are problems for Five Points area
2 or formerly were?

3 A. There's areas in there that are, yeah.

4 Q. And close by the Group Therapy?

5 A. Yes.

6 Q. Especially around the Summer Blush here?

7 A. Absolutely.

8 MS. GARFIELD: Thank you.

9 MS. ZMROCZEK: I just have one follow-up question.

10 THE WITNESS: Sure.

11 RECROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q. So the information, the very limited information
14 that you provided the police depicts the incident. And no
15 one else gets a chance to ask you to see what else
16 happened that night. After three weeks that opportunity
17 is gone, correct?

18 A. Anyone could ask, you know, certainly, but after
19 three weeks there's nothing. Three or four weeks,
20 typically.

21 MS. ZMROCZEK: Thank you.

22 THE WITNESS: You're welcome.

23 THE COURT: Thank you, sir. You may step down.

24 THE WITNESS: Thank you. Appreciate it.

25 MS. GARFIELD: May Mr. Shealy be excused?

BRETT BABCOCK - DIRECT BY GARFIELD

1 THE COURT: He may. Call your next witness.

2 MS. GARFIELD: Thank you, Your Honor. The State
3 calls Brett Babcock.

4 BRETT BABCOCK, having been duly sworn, was examined
5 and testified as follows:

6 THE CLERK: Please have a seat. State your full
7 name for the record.

8 DIRECT EXAMINATION

9 BY MS. GARFIELD:

10 Q. Can you please state your name for the record?

11 A. Brett Babcock.

12 Q. Mr. Babcock, where are you from?

13 A. New Jersey.

14 Q. What brought you to Columbia, South Carolina?

15 A. I attend USC.

16 Q. I'm going to ask you to direct your questions
17 (verbatim) this way.

18 A. Sorry.

19 Q. You attend the University of South Carolina?

20 A. Yes, ma'am.

21 Q. Did you go straight to USC from high school?

22 A. No, ma'am.

23 Q. What did you do in between?

24 A. I joined the Marine Corps.

25 Q. How long were you with the Marine Corps?

BRETT BABCOCK - DIRECT BY GARFIELD

1 A. I did four years active duty and three and a half
2 years Reserves.

3 Q. And specifically, what were your duties in the
4 Marine Corps?

5 A. I was what's called a sniper.

6 Q. And when did you come to Columbia for, to obtain an
7 education from USC?

8 A. Two years ago.

9 Q. And last summer, where were you working?

10 A. Group Therapy.

11 Q. And are you still employed there?

12 A. Yes, ma'am.

13 Q. Specifically what was your duties with Group
14 Therapy Restaurant and Tavern?

15 A. At that time I was the door guy.

16 Q. Were you working the door that night?

17 A. I was working inside as the bouncer inside the
18 club, not the front door, ma'am.

19 Q. Okay.

20 (State's Exhibit No. 21, drawing, marked for
21 identification.)

22 BY MS. GARFIELD:

23 Q. Before I show the jury, Brett, do you recognize
24 State's Exhibit Number 21 for ID purposes?

25 A. Yes, ma'am.

BRETT BABCOCK - DIRECT BY GARFIELD

1 Q. And what does this reflect?

2 A. Our bar.

3 Q. Is it a picture of a bar?

4 A. It's the interior of how our bar is minus where we
5 go out to the deck. There's the sketch for it over here.

6 Q. Is it a drawing?

7 A. Yes, ma'am.

8 Q. Is it to scale?

9 A. Yes, ma'am.

10 MS. GARFIELD: Your Honor, at this time I'd like to
11 introduce State's 21 into evidence.

12 MS. ZMROCZEK: Without objection.

13 THE COURT: So admitted.

14 (State's Exhibit No. 21, drawing, received into
15 evidence.)

16 MS. GARFIELD: Your Honor, with the Court's
17 permission, can I ask Mr. Babcock to step down?

18 THE COURT: You may. Mr. Babcock, if you'll get on
19 the other side of that diagram so you can speak back
20 towards the court reporter.

21 THE WITNESS: Yes, sir.

22 BY MS. GARFIELD:

23 Q. Brett, I'm going to hand you this marker and if you
24 can just show -- give an illustration to the jury the
25 description of the bar's layout.

BRETT BABCOCK - DIRECT BY GARFIELD

1 A. All right. So this is our main entrance right here
2 on Green Street. You come in. This is our front bar area
3 and then you come back, you have a pool table and some
4 tables.

5 This doorway leads to a back room which is closed
6 off which is where the manager is and, like, our liquor is
7 stored and stuff like that. This door a little bit from
8 it is what leads to a patio area where we have another
9 outside bar, right over here.

10 And then this is our back bar. We keep this door
11 closed which is on Harden Street. So that way we only
12 have people coming in and out of this entrance and the
13 other entrance that's on the deck bar over here.

14 Q. Why do you keep the door on Harden Street closed?

15 A. It's just easier for us to keep our numbers in
16 count because we're only allowed to have so many people in
17 the bar at any given time, otherwise it's illegal for us
18 and we need to make sure that our counts are on point at
19 all times. And it's a lot easier to do two doors than it
20 is to do three.

21 Q. Brett, where were you positioned on July 28?

22 A. At this night I was floating out in the back patio
23 area because it's usually our busy spots because people
24 can smoke outside because there's no cover and you're
25 allowed to...

BRETT BABCOCK - DIRECT BY GARFIELD

1 Q. And if you were to -- okay. Go ahead and take the
2 stand.

3 A. (Complying.)

4 Q. Now when you are working, Mr. Babcock, are you
5 allowed to partake of any alcohol?

6 A. No, ma'am.

7 Q. And are you allowed to carry any type of weapon on
8 yourself?

9 A. No, ma'am.

10 Q. And so were you drinking at all that night?

11 A. No, ma'am.

12 Q. And did you have the occasion to come into contact
13 with the Defendant --

14 A. Yes, ma'am.

15 Q. -- Stewart Ard? Please describe to the jury what
16 you first noticed about him.

17 A. There was a group of four individuals in the bar.
18 They had caught my attention based on their attitude and
19 behaviors, their kinesthetics, if you will, of what they
20 were portraying.

21 So I kept my eye on them, you know. They had
22 thrown their hat down and stuff like that. I didn't do
23 anything at that point because, you know, drunk people
24 will be drunk. You got to give them some leeway.

25 Then the smallest of the group of four punched the

BRETT BABCOCK - DIRECT BY GARFIELD

1 wall at which point you are done in my opinion.

2 So I walked over to them. I asked him very calmly,
3 I go, "Excuse me, sir. You can't be hitting walls. I'm
4 going to have to ask you to leave." At this point in time
5 he actually did start to leave and then the other of the
6 group, they got in my face and put their hands on me in
7 which case I just, you know, I don't like people touching
8 me. I don't touch you, you don't touch me.

9 And I asked all of them to leave. And then a lot
10 of things were said. I don't really remember specifically
11 what. They were just running their mouths.

12 And then my other bartender, Derrick, and my other
13 bouncer, Ryan, came down. And so there was three of us
14 and then three of them or four of them and, at which point
15 they -- we escorted them out the bar.

16 Q. And, would you characterize them as being loud?

17 A. Yes.

18 Q. Were they rowdy?

19 A. Yes, ma'am.

20 Q. And did they make any threats towards you?

21 A. It was a long time ago. I mean, I don't really
22 remember off the top of my head.

23 Q. Would it help you to refresh your memory if you
24 reviewed your statement that you gave back then?

25 A. Yes, ma'am.

BRETT BABCOCK - DIRECT BY GARFIELD

1 MS. GARFIELD: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. GARFIELD:

5 Q. (Document handed to the witness.) Just take a
6 moment to review that.

7 A. (Complying.) That's right. Okay.

8 Q. Okay?

9 A. Yeah. They did because I wrote it down. They told
10 me they didn't -- I didn't know who I was messing with and
11 stuff like that so...

12 Q. And did they subsequently leave the establishment?

13 A. Well, we ended up walking them back out the front.
14 After -- like, there was a lot of us there and they didn't
15 want anything to do with it. They still ended up pushing
16 me. And then once we got back outside, they ended up
17 pushing us again, a couple -- me and the other bouncer
18 there, and then they walked off and came back later, 20
19 minutes later and stabbed Jesse.

20 Q. When they left, did they say anything to you?

21 A. At that point I needed to get back inside the bar
22 because there has to be somebody inside the bar if there's
23 any more confrontations or anything else.

24 So after I escorted them outside I only stuck
25 around for a minute or two before I proceeded to go back

BRETT BABCOCK - DIRECT BY GARFIELD

1 to my post.

2 Q. Is this the first patron you've had to escort out?

3 A. No, ma'am.

4 Q. And on this particular evening, did you see the
5 incident where Jesse and Scott get stabbed?

6 A. I did not see that.

7 Q. Where were you at that time?

8 A. I was back at my post in the back.

9 Q. And you're familiar that there is video inside and
10 outside of Group Therapy; is that right?

11 A. Yes, ma'am.

12 Q. And have you had an opportunity to review some of
13 the videos from that night?

14 A. I have.

15 Q. Specifically have you reviewed a video in that back
16 area where you're referring to?

17 A. Yes, ma'am.

18 Q. And when you say "back area," it's actually an
19 outside area?

20 A. Yes, ma'am. It's the deck bar we call it, ma'am.

21 MS. GARFIELD: Your Honor, with the Court's
22 permission give us a moment to bring the video around and
23 then I'm going to have Mr. Babcock review one of the
24 videos.

25 MS. ZMROCZEK: Your Honor, may we approach while

BRETT BABCOCK - DIRECT BY GARFIELD

1 she's setting that up?

2 (Pause.)

3 MS. GARFIELD: I'm going to ask my co-counsel here
4 to bring up the video because I technologically just can't
5 do it.

6 (Pause.)

7 BY MS. GARFIELD:

8 Q. Mr. Babcock -- can you see it, Mr. Babcock?

9 A. Yes, ma'am.

10 Q. And are you familiar with this video?

11 A. Yes, ma'am.

12 Q. And why don't you come down so you can point out
13 things on the video?

14 A. (Complying.)

15 Q. Can you show the jury where the individuals are
16 that you were having problems with?

17 A. Give me one second.

18 THE COURT: You need to speak up, please.

19 THE WITNESS: I'm sorry, sir. Give me one second.
20 I just got to see them again when I find them. (Pause.)

21 It's all these guys down here in the bottom.

22 BY MS. GARFIELD:

23 Q. Speak up.

24 A. It's all the gentlemen down in the bottom left. I
25 just had to make sure.

BRETT BABCOCK - DIRECT BY GARFIELD

1 Q. What were you viewing at this time?

2 A. This is where the Defendant is putting his hands on
3 me and I told him not to touch me.

4 Q. And can you identify the Defendant in this video?

5 A. Right there. He's out of the picture right now,
6 but right there.

7 Q. And he looks different than he does today; is that
8 correct?

9 A. Yes, ma'am.

10 Q. How is he different?

11 A. He had -- he was completely shaved at the time and
12 now he obviously has a full head of hair.

13 Q. Who are these individuals?

14 A. This is Derrick, our general manager now but at the
15 time he was a bartender. And this is Ryan, another
16 bouncer with me that works with me.

17 Q. And the individual that you were having the
18 altercation with at this point, he's with the Defendant?

19 A. Yeah. Yes, ma'am.

20 Q. Now at this time, are you escorting them through
21 the bar?

22 A. Yeah, we walked them out.

23 MS. GARFIELD: Mr. Shalabi, I'm going to ask you to
24 rewind it to where the argument begins.

25 MR. SHALABI: (Complying.)

BRETT BABCOCK - DIRECT BY GARFIELD

1 BY MS. GARFIELD:

2 Q. And you've reviewed this video previously?

3 A. Yes, ma'am.

4 Q. Is that the individual you were asking to leave?

5 A. Yes, ma'am. That's the one that hit the wall
6 originally.

7 Q. And what do you observe about the Defendant as far
8 as his hands in his pockets?

9 A. He pulls -- or he starts to pull a knife after he's
10 standing here touching me.

11 Q. And that's with what hand?

12 A. His right hand. And you can see it, it's about to
13 be on the screen right here. See it right there in his
14 hand?

15 Q. Okay. Thank you.

16 A. (Returns to witness stand.)

17 Q. Now you say you did not see the incident where
18 Jesse actually gets hurt or Scott gets hurt?

19 A. No, ma'am.

20 Q. Did you come into contact with Jesse at any point?

21 A. As soon as I found out there was a stabbing, I came
22 out front and proceeded to take care of Jesse who was on
23 his hands and knees bleeding out of his back.

24 Q. When you say "take care of Jesse," explain to the
25 jury what precautions you took.

BRETT BABCOCK - DIRECT BY GARFIELD

1 A. In the Military you're trained for first aid and
2 other things such as that. So I checked, and I wanted to
3 see what the wound exactly looked like. So I wiped it
4 off. I grabbed my ID card out of my pack because I saw
5 that there was a -- it was in his lungs. So I stuck that
6 over the top of his wound at the time so I could hold
7 pressure with the towel because it's better to stop a
8 collapsed lung or it could collapse a lung if you have
9 that extra pressure seal around it. So that's what I
10 did. I just cleaned his wound for the blood and stopped
11 and waited for the paramedics to get there. And then I
12 just grabbed my stuff back at the end when the ambulance
13 got there.

14 Q. And you were there with him until the ambulance
15 arrived?

16 A. Yes, ma'am. I helped them carry him into the
17 ambulance.

18 Q. Did you notice anything about Scott?

19 A. I did not see Scott except he was holding his
20 forearm. I was mainly worried about Jesse because he had
21 a pretty severe wound and there was a lot of blood.

22 Q. Was he in pain?

23 A. Yes, ma'am.

24 Q. Was his breathing normal?

25 A. No, ma'am.

1 Q. Can you describe it for the jury?

2 A. It was very ragged. And he was clearly in shock,
3 what it looked like to me.

4 Q. Had you ever seen any of these individuals that
5 you've escorted out of the bar before?

6 A. Prior to that night, no, ma'am.

7 MS. GARFIELD: Beg the Court's indulgence.

8 (Pause.)

9 Q. The individual that you saw that night pull a knife
10 out of his pocket, do you see him in the courtroom?

11 A. He's sitting right there.

12 Q. Can you just describe him for the record?

13 A. At the time or right now?

14 Q. Right now.

15 A. He's wearing a blue button-down shirt with curly
16 hair. He looks to be in his 40s, low 40s.

17 Q. May the record reflect --

18 THE COURT: He's identified the Defendant.

19 MS. GARFIELD: Thank you. Thank you,
20 Mr. Babcock. Please answer any questions defense counsel
21 may have for you.

22 THE COURT: Ladies and gentlemen, we're going to
23 take a little break. I'm going to let you step back to
24 the jury room. Please do not discuss the case when you're
25 back there. We'll bring you back in about 10 to 15

1 minutes.

2 Mr. Babcock, keep your seat, please.

3 THE WITNESS: Okay.

4 (Jury exits courtroom at 3:31 P.M.)

5 THE COURT: All right. Mr. Babcock, you can step
6 down. Don't discuss your testimony while we're on break
7 and we'll take about a 15-minute break.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: What do y'all need to go?

10 MS. GARFIELD: I just gave it to her.

11 (Break taken at 3:33 P.M. At 3:46 P.M., the trial
12 resumed:)

13 THE COURT: Ms. Garfield, do you think you can
14 struggle along without Luck for a few minutes?

15 MS. GARFIELD: I'll try my best, Your Honor.

16 THE COURT: Let's bring the jury in.

17 THE BAILIFF: Yes, Your Honor.

18 MS. ZMROCZEK: And my client.

19 THE COURT: Don't bring the jury. They're
20 bringing him. You can come back up. Don't bring the jury
21 in.

22 (Witness returns to witness chair, Defendant enters
23 courtroom.)

24 THE COURT: All right. Now we can bring them.

25 (Jury enters courtroom at 3:47 P.M.)

BRETT BABCOCK - CROSS BY ZMROCZEK

1 THE BAILIFF: Jury's seated, Your Honor.

2 THE COURT: All right. Thank you. You're going to
3 do this?

4 MS. ZMROCZEK: Yes, Your Honor. Thank you.

5 THE COURT: If you would, please, ma'am.

6 MS. ZMROCZEK: If it please the Court.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q. Mr. Babcock, if you don't mind stepping down. And
10 again, keep your voice up so that the court reporter can
11 hear you.

12 A. Yes, ma'am.

13 Q. And I'm going to show you -- I'm going to put up
14 here and obviously these are not permanent. I'd like for
15 you to point out on your drawing or under your rendition
16 on the board. I know it's not to scale and everything and
17 that's okay. Would you put where all the cameras were
18 located?

19 A. All right. Right here. One here. There's one
20 back here.

21 Q. I'll get it.

22 A. Thank you. That's one right here. These ones are,
23 like, there's one in our office.

24 Q. Make sure you speak up.

25 A. Sorry. There's one in the manager's office too.

BRETT BABCOCK - CROSS BY ZMROCZEK

1 And then there's one that, like, sees the whole back area
2 too.

3 Q. So we'll leave those over there.

4 Now the camera that -- the view that we were just
5 watching, the little portion, which camera was that?

6 A. This one right here?

7 Q. Number five, or where it's marked number five.

8 A. Yes, ma'am.

9 Q. And, where did -- it wasn't Mr. Ard that punched
10 the wall, was it?

11 A. No, ma'am.

12 Q. It was --

13 A. The smaller, short gentleman, the smallest of the
14 group.

15 Q. And he was the one that had the hat on?

16 A. I don't remember what he was wearing, ma'am, but if
17 you show me the video again I can tell you.

18 Q. Did they all have hats or just the one?

19 A. Just the one.

20 Q. And the one that -- and he's the one that punched
21 the wall?

22 A. Yes, ma'am.

23 Q. And where did he punch the wall?

24 A. It's right here, like, that spot right there.

25 Q. We don't get to see that on the video?

BRETT BABCOCK - CROSS BY ZMROCZEK

1 A. We cannot see that, ma'am.

2 Q. All right. Have a seat for me.

3 A. Yes, ma'am.

4 Q. Ms. Garfield asked you if as a bouncer you're
5 allowed to consume alcohol, correct?

6 A. Yes, ma'am.

7 Q. And you're not, correct?

8 A. Yes, ma'am.

9 Q. You're also not allowed to consume marijuana or
10 cocaine, are you?

11 A. Yes, ma'am -- no, ma'am, we're not allowed to
12 consume --

13 (Laughter.)

14 Q. Okay. So you're not allowed --

15 A. No, ma'am.

16 Q. -- to have marijuana or cocaine?

17 A. Yes.

18 Q. You would agree that later in the evening when
19 everybody is drunk and you've been babysitting people all
20 night that tensions can get a little high, can't they?

21 A. Tensions can get high; yes, ma'am.

22 Q. And how long were you in the Marines? Are you
23 still in the Marines?

24 A. I am not anymore, ma'am.

25 Q. How long were you there?

BRETT BABCOCK - CROSS BY ZMROCZEK

1 A. I was four years active duty and three, three and a
2 half Reserves.

3 Q. So close to eight years?

4 A. Yes, ma'am.

5 Q. And, but now you're still working at Group Therapy?

6 A. Yes, ma'am.

7 Q. Were you working on June 14th, just last Saturday?

8 A. I'm positive I was.

9 Q. You're positive you were?

10 A. I'm pretty sure, yeah. I don't take many nights
11 off, ma'am.

12 Q. You know Jesse Patterson, don't you?

13 A. Yes, ma'am.

14 Q. How do you know him besides work?

15 A. He used to be my roommate, ma'am.

16 Q. Okay. He also was at Group Therapy last Saturday,
17 wasn't he?

18 A. Yes, ma'am. I think so. If that's the same day
19 we're talking about, but he was there recently. I don't
20 remember which day it was, ma'am.

21 Q. And you showed on the video the little glimpse that
22 we saw where Stewart Ard took the knife out of his pocket?

23 A. Yes, ma'am.

24 Q. But he didn't display it actually, did he?

25 A. No, ma'am.

BRETT BABCOCK - CROSS BY ZMROCZEK

1 Q. In fact, you didn't even see it that night, did
2 you?

3 A. I did not, ma'am.

4 Q. You did not see it that night?

5 A. I did not see it until the video.

6 Q. That was something that was pointed out to you
7 later?

8 A. Yes, ma'am.

9 Q. And, in fact, as we watched the video, Geno was
10 still arguing with you after Stewart had left, just like
11 you asked him to, correct?

12 A. Well, I had asked the littlest one to leave first,
13 ma'am, and then the other three got in my face and the
14 little guy, like, I never saw him again. He was just
15 (makes sound) poof, like, then.

16 And the only reason I had a problem with them was
17 because they touched me. I don't like being touched.
18 Don't touch me. And I asked them not to touch me and they
19 needed to all leave the bar.

20 Q. After they left, though, after you asked them to
21 leave, rightfully so, Mr. Ard left. He followed your
22 command, didn't he?

23 A. It looked like he argued with me for a minute and
24 then he followed my command.

25 Q. And then it looked like he actually grabbed Geno,

BRETT BABCOCK - CROSS BY ZMROCZEK

1 the guy that continued to argue with you, and pulled him
2 out of the bar; isn't that correct?

3 A. In the video it appears to be that way, ma'am.

4 Q. And then you said there was an altercation when you
5 got outside?

6 A. It was just a quick push.

7 Q. A quick push?

8 A. Yeah, a push. Whatever you want to call it.

9 Q. But Mr. Ard was not involved in that at all, was
10 he?

11 A. I actually don't remember which one of them pushed
12 me.

13 Q. But there's video that shows this, right?

14 A. I have no idea, ma'am.

15 Q. Okay. You haven't reviewed that video?

16 A. I reviewed this video and that was the one that was
17 pertaining to me, ma'am.

18 Q. And, you kept saying "They told me that they didn't
19 know who they were messing with." I'm sure there were
20 heated words, right, between -- I think you had a group of
21 people and they had a group of people, right?

22 A. Well, no, it was just me at first, ma'am. I was
23 the only one. And they were the only ones that were
24 becoming aggressive to me. And I was standing my ground
25 and obviously when they touched me I told them not to

BRETT BABCOCK - CROSS BY ZMROCZEK

1 touch me. And that was, like, the extent of my aggression
2 back to them is, like, just yelling at them not to touch
3 me.

4 Q. Of course.

5 A. And then at that point probably a minute or two,
6 whatever it was, I don't know, my other bouncer and -- or
7 bartender, I'm sorry, came over at which point they didn't
8 really want anything to do with, you know -- only three --
9 they didn't want anything to do with a three-on-three
10 confrontation when it was, you know, a three-on-one or
11 four-on-one before that.

12 Q. Certainly. And boys tend to get in fights and you
13 didn't want that situation to escalate, right?

14 A. Yes, ma'am.

15 Q. And in fact was it you that slapped the drink out
16 of Geno's hand or was that one of the other bartenders?

17 A. I never slapped a drink out of anybody's hand,
18 ma'am.

19 Q. It was another. You just know you did not do that.

20 A. No, ma'am. I've never seen that.

21 Q. And you would agree that people make bad decisions
22 when they're angry?

23 A. That usually seems to be the way of things.

24 Q. Short tempers usually end up with words getting
25 said or actions happening --

BRETT BABCOCK - CROSS BY ZMROCZEK

- 1 A. Yes, ma'am.
- 2 Q. -- that you regret or that other people regret?
- 3 A. Yes, ma'am.
- 4 Q. And that's safe to say that that happens more often
5 than not when you're the only sober person or you're one
6 of the few sober people in the bar, correct?
- 7 A. I'm paid to keep a cool head, ma'am.
- 8 Q. I want to talk just briefly -- you talked about
9 your military and your medical training. Did you -- you
10 didn't diagnose Jesse with a collapsed lung, did you?
- 11 A. I at no point did anything like that. I just did
12 what I thought was best to help him out, ma'am. That's
13 it.
- 14 Q. And you stopped the bleeding and the ambulance got
15 there pretty quick, didn't they?
- 16 A. Yeah. I mean, it wasn't too long at all.
- 17 Q. Did you have an occasion to see -- were y'all still
18 roommates at that time?
- 19 A. Yes, ma'am.
- 20 Q. And the answer was yes?
- 21 A. Yes, ma'am.
- 22 Q. Did you visit him in the hospital?
- 23 A. Yes, ma'am. Yes, ma'am.
- 24 Q. He was about ready to go after a few days, wasn't
25 he?

BRETT BABCOCK - REDIRECT BY GARFIELD

1 A. Yeah, I think so. I don't know. He just -- nobody
2 likes hospitals. Right, ma'am.

3 Q. Do you recall that incident that happened last
4 Saturday with Jesse?

5 A. I was working behind the bar, ma'am. So, no, I did
6 not. I did not have any witness to it at all, ma'am.

7 MS. ZMROCZEK: Beg the Court's indulgence.

8 (Pause.)

9 Q. Mr. Babcock, is it possible that you or one of the
10 other bartenders would respond in an aggressive way or
11 with with aggressive words if somebody said, "You don't
12 know who you're messing with"?

13 Is it possible that you would scream back just to
14 get somebody out of the bar?

15 A. Is it possible? Yes, ma'am.

16 MS. ZMROCZEK: Thank you. I meant to take these
17 off. Thank you, Judge.

18 REDIRECT EXAMINATION

19 BY MS. GARFIELD:

20 Q. Mr. Babcock, I'm going to go back to State's
21 Exhibit Number 21. You were asked to put some sticky
22 notes to reflect where the cameras are inside Group
23 Therapy. A couple of them you placed where -- and I'm
24 going to be focusing, for the record, below the area of
25 the diagram. What cameras would those have been facing?

BRETT BABCOCK - RECROSS BY ZMROCZEK

1 A. Well, the deck bar obviously has a camera that
2 faces the register and there's obviously another one that
3 faces the whole outside area so you can see what's going
4 on in the area.

5 Q. And that would be the one that captured the video
6 that we showed earlier?

7 A. (Nods head.)

8 Q. And I believe there was also a video -- I mean, a
9 sticky placed in this area?

10 A. It's -- yes, because there's a back bar too, but I
11 mean, that was irrelevant to this.

12 Q. And to your knowledge did the defendants ever go
13 into that back bar?

14 A. No, ma'am.

15 MS. GARFIELD: Thank you, Mr. Babcock. I have
16 nothing further.

17 THE COURT: Anything?

18 MS. ZMROCZEK: I just have one more question.

19 RECROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. You said to your knowledge they did not go into the
22 back bar, but if it were reflected on the video then we
23 would be able to know for sure, right?

24 A. Yes, ma'am.

25 MS. ZMROCZEK: Thank you.

RYAN KINARD - DIRECT BY CAMPBELL

1 THE COURT: Thank you, sir. You may step down.

2 MS. GARFIELD: Your Honor, may Mr. Babcock be
3 excused?

4 MS. ZMROCZEK: Without objection.

5 THE COURT: You're free to leave. Thank you.

6 THE WITNESS: Thank you, Your Honor.

7 MS. CAMPBELL: May it please the Court. The State
8 calls Ryan Kinard.

9 RYAN KINARD, having been duly sworn, was examined
10 and testified as follows:

11 THE CLERK: Please have a seat. State your full
12 name for the record.

13 THE WITNESS: My name's Ryan Kinard.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. How old are you?

17 A. Twenty-two.

18 Q. And where are you from?

19 A. Clover, South Carolina.

20 Q. Clover, South Carolina?

21 A. (Nods head.)

22 Q. And how did you come to be here in the Columbia
23 area?

24 A. Me and my brother got a place together down here.
25 I had enough money to put a down payment on a house,

RYAN KINARD - DIRECT BY CAMPBELL

1 figured I'd come down here and help him out. I started
2 working at Five Points just like him.

3 Q. And so how long have you been living here in
4 Columbia?

5 A. I lived here for seven, eight months.

6 Q. Seven or eight months?

7 A. (Nods head.)

8 Q. And prior to moving to Columbia, did you use to
9 frequent down here or work down here?

10 A. No.

11 Q. Once you came here, where did you get a job?

12 A. At Group Therapy.

13 Q. And what was your job at Group Therapy?

14 A. Door guy.

15 Q. When did you actually start working there?

16 A. I worked with Scott or Derrick was the bartender
17 and Palmer. Those are my bouncers.

18 Q. And on a typical night, what did your duties
19 include?

20 A. Checking identifications, making sure if they're
21 too drunk to come in the bar; basically keeping bad guys
22 out and good guys in.

23 Q. Is there a certain number count y'all need to keep
24 up with and everything to make sure not too many people
25 get in there?

RYAN KINARD - DIRECT BY CAMPBELL

1 A. Yes, ma'am.

2 Q. Do you ever coordinate between -- or how many
3 entrances are there typically open for the Group Therapy?

4 A. That one, and when I first started that back door.
5 But they ended up closing that back door so it was easier
6 for them.

7 Q. On the night when all of this happened, where was
8 the -- only one door open that night to come in and out
9 of?

10 A. Uh-huh.

11 Q. And which door was that?

12 A. The front door that Jesse was on.

13 Q. That night, what area of the bar were you working
14 on?

15 A. I was patrolling by the pool table and right there
16 just in front of, on the back end of the front bar and
17 Brett was on the deck.

18 Q. And you say "Brett," who is that Brett? Is that
19 who just testified?

20 A. Yes.

21 Q. And that night, did something catch your attention
22 that you had to go and help Brett out?

23 A. Yeah, there was --

24 Q. Can you tell the jury about that?

25 A. All right. Well, sitting in my seat where I can

RYAN KINARD - DIRECT BY CAMPBELL

1 see everything, see down the bar and Jesse. All I had to
2 do was turn my head and see Brett. While I was sitting
3 there looking around, just trying to scope that area, I
4 seen those the guys jumping around, whooping and
5 hollering, whatever. It's a bar. That's what happens.

6 I looked back and looked again, I realized he was
7 talking to Brett. And that's whenever I walked and
8 approached him and asked him what was going on. And what
9 he said, "This guy's about to get his ass beat."

10 Q. Let me back up a little bit. That night were you
11 drinking anything?

12 A. No, not allowed to drink.

13 Q. Were you allowed to carry weapons?

14 A. No.

15 Q. That night did you have a weapon?

16 A. No.

17 Q. And was anybody in the bar supposed to have weapon
18 on them?

19 A. No, not at all.

20 Q. You said that you looked over and you saw Brett
21 having some words or something with someone?

22 A. Uh-huh.

23 Q. And you noticed some people being a little bit
24 rowdy?

25 A. Uh-huh.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. Had you ever seen those people before?

2 A. No.

3 Q. Could you tell how many of them were together in
4 the group?

5 A. Yeah, when I walked up it was all four of them
6 standing there.

7 Q. Four of them?

8 A. Standing there talking.

9 Q. And when you walked up and they were talking, who
10 were they talking to?

11 A. Brett and Derrick.

12 Q. And what was their demeanor like as a group?

13 A. Just a very -- very fighty, ready to see what's up.

14 Q. And were they saying anything?

15 A. Oh, yeah. Talking.

16 Q. Do you remember anything they were saying?

17 A. I remember them saying -- they threatened Brett
18 saying that --

19 MS. ZMROCZEK: Your Honor, I'm going to object to
20 hearsay. They keep saying they. I'm confused.

21 THE COURT: Let's identify who's saying what.

22 MS. CAMPBELL: It would also be res gestae.

23 Q. Okay. Do you remember any members of the group
24 saying anything?

25 A. I don't remember exact words from each single

RYAN KINARD - DIRECT BY CAMPBELL

1 person but, yeah, it was the shorter guy who was
2 originally getting kicked out.

3 Q. Uh-huh.

4 A. And the gentleman sitting over there talking about
5 how they're about to fight Brett.

6 Q. And what was the shorter guy saying?

7 MS. ZMROCZEK: Objection, Your Honor.

8 THE WITNESS: "Y'all going to kick me out --

9 THE COURT: Sustained.

10 Ms. CAMPBELL: May we approach?

11 THE COURT: No, ma'am.

12 BY MS. CAMPBELL:

13 Q. Was he -- what was his demeanor like? Can you
14 describe that?

15 A. Aggressive.

16 Q. And as far as the Defendant who you identified as
17 sitting over here, what specifically was he saying?

18 A. When I first walked up he was the one that said,
19 "He's about to get his ass beat." And I'm like, "No, he's
20 not. It's time for y'all to leave."

21 Q. And when you said "He's about to get his ass beat,"
22 who was he referring to?

23 A. Brett.

24 Q. And that was this person here?

25 A. Yes.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. Seated at this table?

2 A. Yes, ma'am.

3 Q. Back then when he was in the bar that night, did he
4 look different?

5 A. Yeah, he had a shaved head.

6 Q. A what head?

7 A. A shaved head. He had real short hair.

8 Q. And those were his words?

9 A. Uh-huh.

10 Q. What happened next that you remember?

11 A. I remember them -- or Brett was telling them, you
12 know "Don't touch me, don't touch me," this and that. I'm
13 like, "It's time for y'all to leave."

14 "We ain't got to touch you as long as you start
15 moving toward the door," you know, "It's time to go."

16 Q. And at this point your whole goal is what?

17 A. Get them outside the bar so that they're not
18 bothering the rest of our patrons that come in there all
19 the time.

20 Q. And eventually did they comply?

21 A. Yes.

22 Q. Do you remember the Defendant saying anything else
23 while he was in the bar prior to leaving?

24 A. He might have said stuff under his breath but he
25 was walking toward the front of the door.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. And you're familiar with the layout?

2 A. Yes.

3 Q. If I show you State's Exhibit Number 20 -- Your
4 Honor, may the witness step down? Thank you.

5 Just so we're all on the same page. The front
6 entrance, the one that was open that night, do you see it
7 there on the diagram?

8 A. Yes, ma'am.

9 Q. And where is it?

10 A. It's right here.

11 THE COURT: You need to speak up a little bit.

12 THE WITNESS: Oh. It's right here where the arrow
13 goes, right in front of Green Street.

14 BY MS. CAMPBELL:

15 Q. Right there on Green Street?

16 A. Yes, ma'am.

17 Q. And that was the only entrance open to the outside
18 that night?

19 A. Yes, ma'am.

20 Q. And you mentioned initially when you saw some
21 people being rowdy and that Brett went over to confront
22 them, which area of the bar was that taking place in?

23 A. Where Brett was was right here beside the front
24 door. And where I was sitting whenever I was watching my
25 area was right here.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. So were they -- what area is this?

2 A. This would be the area where the back or the bar on
3 the --

4 Q. The deck?

5 A. Yeah, the deck.

6 Q. The deck area. Were they out on the deck area at
7 that point or were they inside?

8 A. They were on the deck.

9 Q. And you were seated next to this door?

10 A. Uh-huh.

11 Q. So you were able to go out to the outer area?

12 A. Yes.

13 Q. And is that where people a lot of times go to smoke
14 and things like that?

15 A. Yes, to smoke. It's an open area.

16 Q. And there are cameras out there too?

17 A. Uh-huh.

18 THE COURT: You need to say yes or no.

19 THE WITNESS: Yes, yes.

20 BY MS. CAMPBELL:

21 Q. I'm sorry, Your Honor. There were cameras out
22 there too?

23 A. Yes.

24 Q. And when you went out there, that's when you first
25 saw the confrontation with the four people and Brett?

RYAN KINARD - DIRECT BY CAMPBELL

- 1 A. Yes.
- 2 Q. And at that point that's when you heard him say
3 what?
- 4 A. That's when -- he was going to get his ass beat.
- 5 MS. ZMROCZEK: Objection, Your Honor. I believe
6 she's asking the same question over again.
- 7 THE COURT: Overruled.
- 8 MS. CAMPBELL: Thank you, Your Honor.
- 9 Q. I'm sorry. What did you say?
- 10 A. That Brett was about to get his ass beat.
- 11 Q. And at that point did anyone else come out there
12 and assist y'all in escorting these people out?
- 13 A. No. At that point Derrick was standing there.
- 14 Q. Derrick was there?
- 15 A. Brett was there and I was there.
- 16 Q. And it was the four of them?
- 17 A. Yes.
- 18 Q. So when you escorted them out, which area did you
19 escort them to? How did they leave the bar that night?
- 20 A. They left through the front. Right here. Down
21 this way and walked out through the front entrance
- 22 Q. And at that point once they were outside, did you
23 keep -- did you see them anymore right then and there at
24 that moment?
- 25 A. Yes. Whenever they got to the outside doors they

RYAN KINARD - DIRECT BY CAMPBELL

1 turned around and started yelling about, "We'll be back,
2 don't worry about that." You know, "Y'all going to get
3 y'all's." "We're going to be back," and hollering and,
4 you know. We're like, "All right, you got to go. You
5 can't be in front of the bar. It's time to leave."

6 And one of them come and got in my face and said
7 something to me and then pushed me into Jesse and whenever
8 we come back, we're like, "It's really time to go because
9 we're about to call the cops right now. Talking to my
10 bartender telling him it's time to call the cops." And
11 that's when they ended up walking off.

12 Q. When you were saying, "It's time to call the cops,"
13 were they within hearing distance?

14 A. Oh, yeah.

15 Q. And at that point that's when they elected to leave
16 at that point?

17 A. Uh-huh, yes.

18 Q. You said that you ran into Jesse there at the
19 entrance; is that correct? You actually fell back onto
20 him?

21 A. Yeah, got pushed back into him.

22 Q. And who is Jesse?

23 A. Jesse is the victim.

24 Q. And at that point what was his job that night?

25 A. At that point he was the front door guy. He was

RYAN KINARD - DIRECT BY CAMPBELL

1 going to make sure they weren't going to come back in.

2 And at that Pacific (sic) moment it was, you know, let's

3 keep them from going back in the bar. And --

4 Q. And once they heard you saying "Call the cops,"

5 which way did they walk? Could you tell?

6 A. Down -- or they walked towards Harden Street.

7 Q. Towards Harden Street?

8 A. Yeah. So this way.

9 Q. Okay. And at that point did you think the whole

10 thing had been diffused?

11 A. I thought it was over, you know.

12 Q. Did y'all ever call the cops at that point?

13 A. No.

14 Q. Okay. Go back to the stand.

15 A. (Complying.)

16 Q. Once they left from where y'all could see them from

17 the front of the bar, did everybody go back in the bar as

18 far as the bouncers and the bartenders and everybody?

19 A. Well, Jesse was closer. He had to stay at the

20 front door.

21 Q. He was still at the front door?

22 A. Yes. Brett went back and, like I said, he couldn't

23 leave all these other customers that were in the bar by

24 themselves because once something starts, you know,

25 everybody starts talking about it, something else could

RYAN KINARD - DIRECT BY CAMPBELL

1 start. So we had to have at least one person in the bar
2 and that was Brett. I was standing out front for a little
3 bit with Jesse, you know, and I went back to make sure
4 Brett was calmed down. I walked back there and he said,
5 "Yes, I'm good." That's when I seen Jesse getting pulled
6 in, blood everywhere, all over his shirt. You know, first
7 thing I did, I didn't go outside and see where the guys
8 were or nothing, I strolled over to him and grabbed for a
9 bar towel to stop the bleeding.

10 Q. So you --

11 A. Sorry.

12 Q. Are you a little nervous today?

13 A. I just --

14 Q. You talk fast like I do.

15 A. Whatever.

16 Q. You said that you went back into the bar?

17 A. Yeah.

18 Q. And so you left Jesse at the front door?

19 A. Yes.

20 Q. And once you got back in the bar and been in there
21 for a period of time, you then turned around and you saw
22 them carrying Jesse in?

23 A. Yes.

24 Q. Exactly where were they carrying Jesse in from?

25 A. From where he was -- or from outside.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. And who was carrying him in, could you tell?
2 A. Yes.
3 Q. Who was that?
4 A. Alex.
5 Q. Who?
6 A. Alex. Right there (pointing).
7 Q. And you mentioned blood. Could you tell who was
8 bleeding when Jesse was being carried in?
9 A. Yes.
10 Q. And who was bleeding?
11 A. It was Jesse.
12 Q. Was he saying anything at that point?
13 A. Yeah, "He stabbed me, he stabbed me." And I, you
14 know, he's in a whole lot of stress. And he's, like, "I
15 feel like I'm going to bleed out. He stabbed me."
16 I'm, "Dude, you're not going to die." Just trying
17 to calm him down. So I was putting pressure, I said --
18 Brett come over there. He's like, "I got to see it. I
19 got to see it." And I know he was in the Marines so I was
20 like, "Look at it." He looked at it, pulled his ID out,
21 stopped it, which was a good idea. I didn't do that. You
22 know, I'm not in the Marines.
23 Q. And at that point, were you and Brett both trying
24 to help him?
25 A. Yes.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. And was he able to -- was he standing up or how was
2 he at that point?

3 A. He was crouched down, head on the ground, blood
4 just flowing out of his side.

5 Q. And you said that you tried to stop the blood. Why
6 were you trying to stop the blood?

7 A. Because it was a big old knife wound in my buddy's
8 side. I had to stop the bleeding.

9 Q. Or?

10 A. Or he would die right there in the middle of Group
11 Therapy.

12 Q. And that's when Brett came over --

13 A. Uh-huh.

14 Q. -- and actually was more effective?

15 A. Yeah, yeah.

16 Q. Okay. Did anybody call 9-1-1?

17 A. I did.

18 Q. And have you had the opportunity to review the
19 9-1-1 tape?

20 A. Yes.

21 Q. And that would be the tape that was recorded on
22 this disk?

23 A. Yeah.

24 MS. CAMPBELL: Your Honor, at this time we'd offer
25 into evidence the 9-1-1 tape.

RYAN KINARD - DIRECT BY CAMPBELL

1 MS. ZMROCZEK: Without objection, Your Honor.

2 THE COURT: So admitted.

3 (State's Exhibit No. 22, 9-1-1 recording, received
4 into evidence.)

5 BY MS. CAMPBELL:

6 Q. Does this accurately reflect the 9-1-1 call you
7 made that night?

8 A. Yes.

9 MS. CAMPBELL: Your Honor, we ask permission to
10 publish.

11 THE COURT: Yes.

12 MS. CAMPBELL: Thank you.

13 (9-1-1 call played for the jury.)

14 BY MS. CAMPBELL:

15 Q. And that was the 9-1-1 call that night?

16 A. Yes, ma'am.

17 Q. And shortly thereafter did EMS respond?

18 A. Yes, ma'am.

19 Q. And the police?

20 A. Uh-huh. Yes, ma'am.

21 Q. And when the police got there and EMS got there,
22 were any of the individuals that had been there earlier
23 that night still there?

24 A. As far as the four guys?

25 Q. Yeah.

RYAN KINARD - DIRECT BY CAMPBELL

1 A. No.

2 Q. Specifically, was the Defendant still there?

3 A. No, no.

4 Q. And did you actually witness the stabbing itself?

5 A. No.

6 Q. Were there cameras -- you were aware there were
7 cameras in Group Therapy?

8 A. Yes.

9 Q. And do some of those cameras reflect certain things
10 you testified about?

11 A. Yes.

12 MS. CAMPBELL: Your Honor, I'd ask permission to
13 publish those parts of the video.

14 THE COURT: Is this different from what's already
15 been published?

16 MS. CAMPBELL: Yes, sir.

17 Q. The video that was shown just a minute ago with
18 Brett, you actually are seen in that video as well?

19 A. Yes.

20 Q. And does it accurately reflect what you were
21 talking about?

22 A. Yes.

23 Q. There's just no audio on it?

24 A. Yes, ma'am.

25 MS. ZMROCZEK: Your Honor, may we approach

RYAN KINARD - DIRECT BY CAMPBELL

1 briefly?

2 (Off-the-record discussion.)

3 MS. CAMPBELL: Your Honor, may the witness step
4 down?

5 THE COURT: He may.

6 MS. CAMPBELL: Thank you. Can y'all see?

7 THE COURT: Get on that side of the screen and talk
8 back towards the court reporter if you would, please.

9 BY MS. CAMPBELL:

10 Q. This goes pretty quickly so if you need to back up
11 at that point in time, just let me know.

12 What does this show?

13 A. Us escorting them out the front of Group Therapy.

14 Q. And where are you in this?

15 A. Right there.

16 Q. Who are the people in front of you?

17 A. The four guys including the Defendant.

18 Q. Okay. Can we back that up one more time? (Pause.)

19 Can you tell which one is the Defendant?

20 A. That tall guy.

21 Q. The tallest one?

22 A. Yeah, the tallest one out of the group.

23 Q. And then at that point at the end of the bar, what
24 do you see?

25 A. At the end of the bar?

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. At the end.

2 A. Whenever they walk out and they turn around,

3 start --

4 Q. And that's when the conversation took place that

5 you already related to the jury?

6 A. Uh-huh. Yes, ma'am.

7 Q. And is it at that point when you start saying,

8 "Call 9-1-1," or "Call the police?"

9 A. Yeah. "Y'all going to cause me to call."

10 Q. What's this angle before we start it?

11 A. This is the front entrance. Angle's the door guy.

12 Q. So before we saw going down the bar, and this is

13 where they ended up going out?

14 A. Yes. This is the end.

15 Q. Okay. Is that one of the group?

16 A. Yeah. And see --

17 Q. Are these two part of the group?

18 A. Yes.

19 Q. And who is that?

20 A. That would be the Defendant.

21 Q. And who are those people?

22 A. That's me and Brett.

23 Q. And what's going on right now?

24 A. This is us trying to get them to leave the front of

25 the bar where they had turned around and started just

RYAN KINARD - DIRECT BY CAMPBELL

1 talking crap, you know.

2 Q. Who got shoved there?

3 A. Me.

4 Q. And who shoved you?

5 A. I believe it was the, one of the shorter guys that

6 shoved me.

7 Q. And at this point, what's going on?

8 A. They're a little bit farther down the street and

9 still talking, you know, just making sure they get all the

10 way out and all the way down the street.

11 Q. What's going on now?

12 A. I believe they're about halfway down the street.

13 They're just slowly but surely walking away.

14 Q. Is that Brett that just walked back in?

15 A. Yes.

16 Q. And is that you?

17 A. Yes.

18 Q. And who's that in the hat?

19 A. That's Jesse.

20 Q. With the hat on backwards?

21 A. Yes, ma'am.

22 Q. What's Brett explaining to you there?

23 A. About what had happened before I had got there.

24 Q. Okay. And at this point do you think it's all

25 over?

RYAN KINARD - DIRECT BY CAMPBELL

1 A. Yeah. I mean, you know.
2 Q. Where are y'all going?
3 A. Back to the back to check on the rest of the bar.
4 Q. And where is Jesse at this point?
5 A. Jesse is out front with all the patrons.
6 Q. Does that say "staff" on his shirt?
7 A. Yes, ma'am.
8 Q. And Jesse's first interaction with that group was
9 as they were being escorted out?
10 A. Yes.
11 Q. So nothing had happened inside that had anything to
12 do with him?
13 A. He didn't know nothing about it.
14 Q. And what area does this show before it starts?
15 A. This is showing the exact area, just from a
16 different angle, just an outside camera.
17 Q. That is what doorway?
18 A. This is at the front door.
19 Q. This is the front door. So this is the outside
20 versus what we just saw was the inside view?
21 A. (Nods head.)
22 Q. Okay. And can you see Jesse right there?
23 A. Yes. Top right.
24 Q. And are those the people we're talking about?
25 A. Yes.

RYAN KINARD - DIRECT BY CAMPBELL

1 Q. And do you see the Defendant right there?
2 A. Yes, ma'am.
3 Q. What's going on at this point?
4 A. They was just making threats. Talking about, we're
5 not about it, you know.
6 Q. Are they still arguing? Now they're walking away?
7 A. Yeah. I believe they started walking off.
8 Q. And who is this right here in the T-shirt, kind of
9 brownish T-shirt?
10 A. The one right there talking to Jesse right now?
11 Q. Uh-huh.
12 A. That's Scott. That's the owner of the bar.
13 Q. The owner of the bar?
14 A. Uh-huh.
15 Q. And then y'all go back in. And I believe Scott and
16 Jesse stayed at the front door?
17 A. Yes.
18 Q. And, again, Jesse didn't participate in any --
19 A. Altercation inside, no.
20 Q. No, no. His only other action would have been
21 maybe check their IDs as they come in?
22 A. Uh-huh.
23 Q. And at that point are they gone?
24 A. Yeah. Yes, ma'am. At this point they walked down
25 the street, turned the corner. I don't know where they

RYAN KINARD - CROSS BY ZMROCZEK

1 went.

2 Q. Okay. You can go ahead back to the stand.

3 A. (Complying.)

4 Q. And that night, was that the first night you have
5 ever had any interaction with any of those people?

6 A. Yes.

7 Q. And the person that you saw, the tall one with the
8 bald head that said those things to you that you told the
9 jury about --

10 A. Yes.

11 Q. -- do you see him in the courtroom?

12 A. Yes, ma'am

13 Q. Has his appearance changed?

14 A. Yes. He has longer hair.

15 Q. He has hair now?

16 A. Yes.

17 Q. But that's the person that was with the group and
18 the one that made the threats?

19 A. Yes, ma'am.

20 MS. CAMPBELL: Beg the Court's indulgence.

21 (Attorneys conferring.)

22 Thank you. I don't have anything further.

23 THE COURT: All right. Counsel?

24 MS. ZMROCZEK: Thank you, Your Honor.

25

RYAN KINARD - CROSS BY ZMROCZEK

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. I'm sorry. I didn't catch your name.

A. Ryan.

Q. Rod?

A. Ryan.

Q. Ryan. I'm sorry. Ryan, did you write a statement that evening?

A. Yes.

Q. You wrote a statement for the police?

A. Yes, ma'am.

Q. Okay. I want to go back and ask you a couple of questions about some of the videos, if you don't mind. Now you stated that the Defendant said he was going to bet your ass or Brett's ass?

A. Brett's ass, yeah. He said, "He's about to get his ass beat." When I walked out there, that was one of the first things I heard.

Q. And that video would have been which one?

A. That would have been the one that Brett was up here talking.

Q. Right.

A. It would've been the one when they was out there on the deck.

Q. Okay. So that would have been reflected if you're

RYAN KINARD - CROSS BY ZMROCZEK

1 talking to him there?

2 A. Yeah.

3 Q. Okay. And, when you were escorting everybody out,
4 Mr. Ard, Stewart, was actually the first one leading the
5 way, the first one out of the bar, wasn't he, of the
6 group?

7 A. No. He was not the first one out of the bar. I
8 think he was third. He had -- the guy in the gray shirt
9 was right behind him.

10 Q. But he had to pull his -- he went -- actually went
11 out and then came back and pulled his friend out, right?

12 A. Yeah, "Let's walk out."

13 Q. To take him out of the bar; right?

14 A. Uh-huh.

15 Q. I'm sorry. You have to say yes or no.

16 A. Yes, yes.

17 Q. Okay. All right. Pause it here for me. So
18 you're actually -- you actually threw a punch, right?

19 A. No, I did not throw a punch. I pushed him back.

20 Q. Let's back it up a little. Will you come down and
21 speak loud and point out which one of these --

22 A. Which one I am?

23 Q. Yes.

24 A. I believe this is me right here. I have a black
25 hat on.

RYAN KINARD - CROSS BY ZMROCZEK

1 Q. Okay. You have a black... Okay. So this is
2 as -- they haven't come out of the bar, correct?

3 A. Correct. Not yet.

4 Q. That's the Defendant, and that's Geno, right? And
5 he's pushing him away, right? And that's you in the hat,
6 right?

7 A. Yep.

8 Q. Okay. And then Mr. Ard doesn't push or shove
9 anybody, does he?

10 A. No.

11 Q. Someone pushes you and then what do you do right
12 there?

13 A. I went to push him back to get him back to -- they
14 were right there at the doorway.

15 Q. But Mr. Ard's still not involved in any of that
16 altercation, is he?

17 A. No.

18 Q. In fact, he's walking away, right, helping his
19 friends out?

20 A. At this moment right here, but you see him turning
21 back around. And he goes back, approaches, and starts
22 yelling, "Don't worry, you're going to get yours."

23 Q. Okay. So he starts yelling?

24 A. Yeah. He's over here talking, just like all four
25 of them were. Right here is where he's talking to me and

RYAN KINARD - CROSS BY ZMROCZEK

- 1 Brett.
- 2 Q. He is? Or Geno is?
- 3 A. He is. Right here. Tall bald guy.
- 4 Q. And this right here is actually Scott Flemming,
- 5 right?
- 6 A. Yes.
- 7 Q. So he was actually there, he witnessed the whole
- 8 thing, right?
- 9 A. Yeah. Of them being out there. He did not witness
- 10 what was inside.
- 11 Q. Right. He didn't witness what was inside but he
- 12 was outside?
- 13 A. Yes.
- 14 Q. Okay. Go back to the inside view, please.
- 15 That's one of the short guys leaving and they're
- 16 friends, right?
- 17 A. Uh-huh.
- 18 Q. You have to say yes or no.
- 19 A. Yes.
- 20 Q. Okay. And that's actually Stewart pushing him out
- 21 the bar, correct?
- 22 A. Yes.
- 23 Q. And which one is you?
- 24 A. That's me in the hat.
- 25 Q. You're in the hat. And Brett who testified earlier

RYAN KINARD - CROSS BY ZMROCZEK

- 1 is standing next to you, right?
- 2 A. Yes, ma'am.
- 3 Q. Okay. Do you see what falls right here on the
- 4 ground, that she just --
- 5 A. I do not.
- 6 Q. Can you rewind it a little for me?
- 7 MR. SHALABI: Yeah.
- 8 MS. ZMROCZEK: That's good.
- 9 Q. Okay. And I'm directing your attention to right
- 10 here in front of the door..
- 11 A. Uh-huh.
- 12 Q. Back up. Sorry.
- 13 MR. SHALABI: No problem.
- 14 BY MS. ZMROCZEK:
- 15 Q. That's good. Right there you are and Brett. And
- 16 I want to draw your attention to right about where your
- 17 feet are. A shoving match occurs and then right there an
- 18 item falls on the ground, would you agree with me, and
- 19 then she kicks it?
- 20 A. Yes..
- 21 Q. Okay. You can have a seat for me.
- 22 A. (Complying.)
- 23 Q. It got pretty heated that night, right?
- 24 A. Yes, ma'am.
- 25 Q. It's a common occurrence to throw people out of the

RYAN KINARD - CROSS BY ZMROCZEK

1 bar, correct?

2 A. Really at Group Therapy, it's not that bad. There
3 is not -- it's not ordinary. Few and far between we have
4 to ask somebody to leave.

5 Q. And the reason that they don't want you as a
6 bouncer or a bartender to ingest substances like marijuana
7 and cocaine is because that can affect how you react in a
8 situation, can't it?

9 A. I'm going to say so, yes.

10 Q. And they want you thinking with a clear head while
11 you're protecting the patrons of the bar; isn't that
12 right?

13 A. Yes, ma'am.

14 MS. ZMROCZEK: Those are all the questions I have.

15 THE COURT: Anything?

16 MS. CAMPBELL: No, sir.

17 THE COURT: All right. Thank you, sir. You may
18 step down.

19 MR. SHALABI: The State calls Alexander Cromer.

20 ALEXANDER DONYPHAN CROMER, having been duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Please have a seat. State your full
23 name for the record.

24

25

ALEXANDER CROMER - DIRECT BY SHALABI

DIRECT EXAMINATION

BY MR. SHALABI:

Q. State your name for the record.

A. Alexander Donyphan Cromer.

Q. Can I call you Alex?

A. Yes, sir

Q. Where are you from?

A. Columbia, South Carolina.

Q. You lived here your entire life?

A. A couple months in Maryland but otherwise straight back.

Q. I want to draw your attention to July 28, 2013. Do you recall that night?

A. The night of the incident, yes.

Q. Where were you that night?

A. Standing at the front door for the majority of the night. I'm a bit of an information junky, if you will. I like to wander the bar. I don't drink but I like to people watch.

Q. You don't drink alcohol?

A. (Shakes head.)

Q. But you're at a bar?

A. Every night.

Q. Is Group Therapy that kind of place?

A. I stand there and people watch every night.

ALEXANDER CROMER - DIRECT BY SHALABI

1 Q. Do you -- you say you're standing outside the bar.
2 Do you observe anything unusual?

3 A. The first unusual thing that I noticed was a blue
4 car pulling into a parking spot directly in front of the
5 tanning salon right next to Group Therapy. It was the
6 fashion in which it pulled in that got my attention.

7 Q. You said it was a blue car?

8 A. I think it was blue. Was it red? I'm red-orange
9 colorblind and sometimes colors just slip.

10 Q. So you see a blue or red car pull into where?

11 A. The parking spot directly in front of the tanning
12 bed (verbatim).

13 Q. Was that unusual?

14 A. It was the fashion. It pulled in very hastily and
15 people don't typically pull into those parking spots with
16 such speed.

17 Q. Did you see anyone get out of the car?

18 A. No. I saw it pull in and I said, "Well, I'm going
19 go inside get a ginger ale." I didn't stare at it when it
20 pulled into the spot, but I went and got a ginger ale.
21 That's what I drink, ginger ale and lime.

22 Q. So you went inside?

23 A. (Nods head.)

24 THE COURT: You need to answer. Don't shake your
25 head. The court reporter can't --

ALEXANDER CROMER - DIRECT BY SHALABI

1 THE WITNESS: Oh, I'm sorry.

2 THE COURT: -- so you need to say yes or no.

3 THE WITNESS: Yes, sir.

4 BY MR. SHALABI:

5 Q. So you went inside to get a ginger ale?

6 A. Yes, sir.

7 Q. Without any alcohol in it?

8 A. Yes, sir.

9 Q. And what happened after that?

10 A. As I was waiting to get my drink, I heard the fear
11 of man. I heard him scream. I heard Jesse scream and I
12 turned and he had been struck.

13 Q. Did you know by what?

14 A. At first, no. But, he crumbled so I knew it wasn't
15 just a punch. Like, I heard him scream and I turned and I
16 saw him crumble, and I tried to catch him to pull him
17 inside at that point.

18 Q. And how long were you with Jesse?

19 A. Seconds. I immediately started trying to alert
20 other people around me of what was going on.

21 Q. Okay. So after you pulled Jesse into the bar, what
22 did you do next?

23 A. Ran to find a manager.

24 Q. And where was that?

25 A. At the far end of the bar.

ALEXANDER CROMER - DIRECT BY SHALABI

1 Q. Okay. And did you find a manager?

2 A. Yes, I did.

3 Q. Who was that?

4 A. I believe it was Brian Bundy at the time but --
5 yeah, it was Bundy.

6 Q. Okay. So after you told Brian, did you stay in the
7 bar?

8 A. Yeah. They were -- they wanted to keep people out,
9 but they didn't want to just send the people within the
10 bar out into what could very well be somebody just
11 flailing around with a knife.

12 Q. Did you not at any point exit Group Therapy and
13 look outside?

14 A. I did.

15 Q. And when did you do that?

16 A. I did it in order to close the front door. I poked
17 my head outside to see if there was anything still going
18 on. I just wanted to remove Jesse from the situation
19 because I knew he was in danger. So I was trying to get
20 him inside, close the door. I didn't notice that Scott
21 was cut, but I saw him, trying to get him to come inside
22 as well.

23 (State's Exhibit No. 23, chart, marked for
24 identification.)

25 BY MR. SHALABI:

ALEXANDER CROMER - DIRECT BY SHALABI

1 Q. I'm showing you what's been marked for
2 identification as State's Exhibit 23. What is this?

3 A. Well, the very center of the picture is the alley
4 right between Group Therapy and Ultra-Tan.

5 Q. Is this the bar you were at that night?

6 A. Yes.

7 Q. Does this picture substantially reflect the way it
8 looked on that night?

9 A. More cars and more people but that's --

10 Q. As far as structures, buildings, the same thing?

11 A. Yes, sir.

12 MR. SHALABI: Your Honor, at this time the State
13 would like to admit State's Exhibit 23 into evidence.

14 MS. ZMROCZEK: Without objection.

15 THE COURT: So admitted.

16 (State's Exhibit No. 23, chart, received into
17 evidence.)

18 MR. SHALABI: Your Honor, may I ask the witness to
19 step down?

20 THE COURT: You may.

21 BY MR. SHALABI:

22 Q. So where were you standing when the car pulled up?

23 A. Directly in front of the front door.

24 Q. And where did the car -- which spot did the car
25 pull up to?

ALEXANDER CROMER - DIRECT BY SHALABI

1 A. I believe it was this one, or this one. It was one
2 of the two because they pulled straight in. There was no
3 turn as they pulled into the parking spot. So I know it
4 was one of those two spots.

5 Q. Okay. So they pull in at this point. Which door
6 did you enter into?

7 A. This one.

8 Q. To go back into the bar?

9 A. Yes.

10 Q. Okay. And when he stepped back out -- you said
11 you shut the door, where did you -- which door did you
12 come out of?

13 A. This one. There was a wedge holding -- a wood
14 block holding the door open. I had to kick it out in
15 order to get the door closed.

16 Q. Did you see anyone running towards the car?

17 A. I didn't see them running towards the car but I did
18 see Gabe and Joe heading down that direction because if
19 they --

20 Q. From which direction? Show it the jury.

21 A. They came from this direction this way because they
22 worked at the establishment next door.

23 Q. Why were they running that way?

24 A. Group Therapy and Pour House are a family of
25 people. We were just looking out for each other.

ALEXANDER CROMER - DIRECT BY SHALABI

1 Q. So they heard something?

2 A. They saw people running from Group Therapy down the
3 street.

4 Q. Okay.

5 A. Which is an unusual occurrence. People don't run
6 out of a bar.

7 Q. Did you see them interact with those individuals
8 that ran to the car?

9 A. No, I didn't.

10 Q. You can take a seat.

11 A. (Complying.)

12 Q. Did you -- did you see the Defendant there?

13 A. Yes, but I didn't know he was problematic at the
14 time. As I said, I only saw the car pull up and I saw
15 him in the car but I didn't -- nothing -- I didn't know
16 that he had been ejected from the bar previously so
17 nothing clicked in my mind.

18 Q. Is that person you saw in this courtroom today?

19 A. Yes, sir.

20 Q. And could you tell the jury what he looks like,
21 where he is in the courtroom?

22 A. Blue shirt, curly hair. Right there.

23 MR. SHALABI: Let the record reflect that the
24 witness identified the Defendant.

25 THE COURT: It does.

ALEXANDER CROMER - CROSS BY ZMROCZEK

1 BY MR. SHALABI:

2 Q. Did you see him with a weapon?

3 A. I didn't see a weapon at all.

4 Q. Now do you look a little different than you did
5 back then?

6 A. Yes.

7 Q. How so?

8 A. I got a hair cut.

9 Q. How long was your hair?

10 A. Beyond shoulder length.

11 Q. Okay.

12 THE COURT: All right.

13 MR. SHALABI: No further questions.

14 THE COURT: Ms. Zmroczek?

15 CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. You people watch every night at Group Therapy?

18 A. Yes, ma'am.

19 Q. Every single night?

20 A. Rarely do I have an occasion that I miss.

21 Q. Did you miss last Saturday night?

22 A. I went home early because I had a previous
23 engagement to attend.

24 Q. You stated that you didn't see Mr. Ard, Stewart, as
25 problematic; right?

ALEXANDER CROMER - CROSS BY ZMROCZEK

1 A. I saw the car drive up in a hasty fashion. That
2 was unusual. But I hadn't been alerted to him being
3 ejected prior to that incident.

4 Q. And just so I'm hearing your testimony right, you
5 pulled Jesse back into the bar?

6 A. He crumbled and wherever he may -- wherever he was
7 standing or crouching or crumbled, I scooped him and
8 pulled him inside.

9 Q. And then you didn't go chasing after them?

10 A. I didn't chase after anybody, no. I immediately
11 tried to get more help.

12 Q. And that evening at Group Therapy you had on a
13 white T-shirt, long hair?

14 A. Red shorts and a black hat.

15 Q. And, you were actually inside when Geno, or
16 Benjamin Geno, the person who hit Jesse, actually hit him,
17 right? So you didn't see any of that?

18 A. We were maybe four feet apart. My back was to him
19 though.

20 Q. And, you would agree that they were arguing back
21 and forth about, "Give me my watch?"

22 A. No.

23 Q. You didn't?

24 A. Never heard a word about a watch.

25 Q. Never heard anything?

1 A. Nope. Also I don't work there, though.

2 MS. ZMROCZEK: That's all the questions I have.

3 THE COURT: Anything further?

4 MR. SHALABI: No, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 Call your next witness.

7 MS. GARFIELD: Judge, we have a matter of law to
8 take up outside of the presence of the jury before our
9 next witness.

10 THE COURT: Ladies and gentlemen, I'll let you step
11 back to the jury room. Please don't discuss the case
12 while you're there and we'll be with you in just a few
13 minutes.

14 (Jury exits courtroom at 4:46 P.M.)

15 MS. GARFIELD: Your Honor, our next witness is
16 Jesse Patterson. I just wanted to make sure that we're in
17 agreement as far as impeachment information. I don't
18 believe he has convictions. I don't believe there's
19 anything that Ms. Zmroczek can impeach him with.

20 She also been alluding to an incident that occurred
21 a couple weeks ago and asking witnesses if they're
22 familiar with June 14th. I don't understand how that's
23 relevant. I wanted to bring this all to the Court's
24 attention before we put him on the stand.

25 THE COURT: Well, is there something in the record

1 you think -- background, you think? What is that?

2 MS. ZMROCZEK: I think, Your Honor, it goes to
3 show --

4 THE COURT: What is his record that you think is --

5 MS. ZMROCZEK: Oh no, not in his record, Your
6 Honor. In his medical records.

7 Your Honor, that evening when he goes to the
8 hospital he tests positive for cocaine and marijuana. And
9 that's what I will be asking him about, impeaching him.

10 MS. GARFIELD: Your Honor, there's nothing to
11 indicate that he had ingested cocaine or marijuana that
12 day. Metabolites stay in your body 30 days for marijuana
13 and 72 hours for cocaine. I don't know how that's
14 relevant to this case at hand.

15 THE COURT: Well, I don't understand -- tell me how
16 that has something to do with this case.

17 MS. ZMROCZEK: Because, Your Honor, it all goes to
18 his behavior. And what was said and not -- when the other
19 witnesses come in --

20 THE COURT: Well, is this a self-defense case? You
21 just got up and admitted that your client did all four of
22 those things.

23 MS. ZMROCZEK: Right, right. No, no. It's not a
24 self-defense case, Your Honor, but it is -- it is -- to
25 get a full understanding of what happened that evening,

1 the way that the picture is painted is that these people
2 were just obnoxious, they didn't do -- I mean, they were
3 just horrible and they were thrown out.

4 But, Your Honor, the behavior, which I know you
5 can't see because you're looking at the back of the
6 television, displays that there was aggression between the
7 bartenders, bouncers and the, and the patrons, all of
8 them, all four of them including the Defendant.

9 THE COURT: What does that -- you've come in here
10 and admitted your client did certain things of which he
11 can get three years in prison for -- what do we have up
12 there?

13 MS. ZMROCZEK: Three-six-nine.

14 MS. GARFIELD: Six years and 60 days.

15 THE COURT: I mean, so there's nothing justifiable
16 about what you're saying at this point in time. I mean,
17 you're really talking about what the injuries were as
18 opposed to why he might have done what he did; right?
19 Your basic argument is, hey, well probably on the
20 attempted murder there's no malice aforethought and --

21 MS. ZMROCZEK: That's my --

22 THE COURT: -- then as you work your way down, you
23 know, there's not great bodily injury, but that doesn't
24 have anything to do with whether one of them had marijuana
25 in their system or whether there was an argument.

1 Apparently there was some sort of confrontation and four
2 people left and four people came back. Or do y'all deny
3 that?

4 MS. ZMROCZEK: No, we don't deny that, Your Honor.
5 And I think you hit it right on the head. It's a
6 confrontation. And the state of mind of what was said
7 and what --

8 THE COURT: I don't think that has anything to do
9 with this case, the state of mind. Whose state of mind?

10 MS. ZMROCZEK: It goes to explain how this was an
11 altercation and not just an attack. And that's I think
12 why it falls directly within the assault and battery.

13 THE COURT: You've admitted it's an attack with
14 minor injuries.

15 MS. ZMROCZEK: Correct.

16 THE COURT: So I don't understand. Are you going
17 to be able to show that he was smoking marijuana that
18 night and under the influence of alcohol or marijuana? I
19 mean, under the influence of cocaine.

20 MS. ZMROCZEK: I think that's a question for the
21 medical doctor.

22 THE COURT: The medical doctor?

23 MS. ZMROCZEK: But it also goes to his
24 truthfulness, Your Honor, because --

25 THE COURT: So you got a medical doctor that's

1 going to testify that he had smoked marijuana that night?

2 MS. ZMROCZEK: No, Your Honor. I think they have
3 medical doctors that put the medical records into
4 question. And he also is asked about it at the hospital
5 and they make a big deal about how bouncers aren't
6 supposed to drink and they're supposed to be pure of --
7 and clear-headed. And that's not the case here, Your
8 Honor.

9 THE COURT: So that might be -- if he was doing it,
10 that might be a fire-able offense. But that doesn't --
11 you're not telling me that because he was smoking
12 marijuana your client was justified in sticking him with a
13 knife.

14 MS. ZMROCZEK: No, Your Honor, but what I am
15 telling you is because he was smoking marijuana and/or
16 high on cocaine that he was aggressive towards my client
17 and that's why my client fought back.

18 THE COURT: Which gave your client justification of
19 coming and stabbing him --

20 MS. ZMROCZEK: Certainly --

21 THE COURT: -- then he wouldn't be guilty of
22 assault and battery?

23 MS. ZMROCZEK: Certainly not justification, but
24 explanation.

25 THE COURT: I don't see the relevance.

1 What happened last Saturday night that we're
2 talking about?

3 MS. ZMROCZEK: Your Honor, last Saturday night at
4 Group Therapy Jesse somehow ended up with a big cut on his
5 head and had to go to the hospital. Your Honor, it shows
6 a pattern of ingesting either alcohol or drugs and getting
7 hurt.

8 THE COURT: We're not going into that.

9 MS. ZMROCZEK: And I think --

10 THE COURT: If you have something to show that
11 Mr. Patterson was under the influence that night, that
12 might be something -- of alcohol or drugs. You got
13 testimony from somebody that says that, then maybe.

14 MS. ZMROCZEK: Okay.

15 THE COURT: But just to speculate that because he
16 tested for marijuana which could have been three weeks
17 earlier, it's not sufficient.

18 MS. ZMROCZEK: Okay.

19 THE COURT: And what happened last Saturday night
20 has nothing to do with this.

21 MS. ZMROCZEK: All right.

22 THE COURT: Now, who's the next witness?

23 MS. GARFIELD: Mr. Patterson.

24 THE COURT: All right. Let's bring in the jury.
25 How long is Mr. Patterson going to take?

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 MS. GARFIELD: Thirty, 45 minutes.

2 THE COURT: You don't want to do your EMS people?

3 MS. CAMPBELL: We can.

4 THE COURT: Get them out of here. That way -- we
5 probably won't finish with Patterson today.

6 MS. GARFIELD: Okay.

7 THE COURT: How many you got?

8 MS. GARFIELD: Just one for today.

9 THE COURT: You got anybody else after EMS?

10 MS. CAMPBELL: The 9-1-1 call.

11 MS. GARFIELD: We got another short witness.

12 THE COURT: Let's do it. Let's bring them in.
13 We'll do Mr. Patterson tomorrow.

14 (Jury enters courtroom at 4:54 P.M.)

15 THE COURT: All right. Madam Solicitor?

16 MS. GARFIELD: Thank you, Your Honor. The State
17 calls Kaitlyn Griffin.

18 KAITLYN ELIZABETH GRIFFIN, having been duly sworn,
19 was examined and testified as follows:

20 THE CLERK: Please have a seat. State your full
21 name for the record.

22 THE WITNESS: Kaitlyn Elizabeth Griffin.

23 DIRECT EXAMINATION

24 BY MS. GARFIELD:

25 Q. Ms. Griffin, where are you employed?

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 A. Richland County EMS.

2 Q. And can you explain to the jury your employment
3 with EMS? What exactly do you do?

4 A. I'm a paramedic. I've been with Richland County
5 for about four and a half years. At the time I was on
6 night shift. And when someone calls 9-1-1 if it's a
7 medical reason we'll respond.

8 Q. I'm going to ask that you pull that microphone up
9 to you a little bit. You're soft spoken.

10 Ms. Griffin, were you working back on July 28 of
11 last year?

12 A. Yes, ma'am.

13 Q. And you were working the night shift?

14 A. Yes, ma'am.

15 Q. Did you get a call to respond to a Five Points area
16 venue, Group Therapy Bar?

17 A. Yes, ma'am.

18 Q. And what was the nature of the call you received?

19 A. It came out as a stabbing.

20 Q. As a stabbing?

21 A. Yes.

22 Q. And when you arrived, what did you observe?

23 A. Well, when we got dispatched from the stabbing, at
24 the time we didn't know how many people were stabbed. And
25 it was me and my partner and also the supervisor responded

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 in an SUV just in case I needed a backup. And my
2 supervisor went inside because one gentleman was coming
3 out towards us that had been stabbed and me and my partner
4 greeted him and my supervisor went in because they said
5 somebody else was stabbed that was inside.

6 Q. What's the name of your partner?

7 A. It's Michael Menger.

8 Q. What's the name of your supervisor?

9 A. It's Sergeant Steve Tackett.

10 Q. And when you came in contact with the individual
11 standing outside that had been stabbed, what was his
12 name? Would it help you to have your report?

13 A. Yes.

14 Q. (Document handed to the witness.) Just take a
15 second to review that.

16 A. (Complying.) It was Scott Flemming.

17 Q. And what did you observe or can you tell the jury
18 the nature of the injuries that you treated regarding
19 Mr. Flemming?

20 A. He had, he had a stabbing to the left lower chest
21 and also to the left arm.

22 Q. And what did you do in the course of your business
23 of treating Mr. Flemming?

24 A. We have a policy that anything to the chest,
25 abdomen, or back we put an adhesive addressing on.

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 Q. Would you explain what that means to the jury?

2 A. It's a Vaseline gauge and basically we put it on
3 and tape it on three sides. And it's just in case any
4 major organs, but especially the lungs, get hit. Because
5 air can become trapped. And when we tape it on three
6 sides we can call -- we can do what's called burping where
7 we can lift the one side up, because air can become
8 trapped, to release the air to help the person breathe if
9 the lung is actually hit.

10 Q. That's what you did to Mr. Flemming?

11 A. Yes, we did that, just to the one that was to his
12 core. The other one, I believe we just put a regular
13 bandage on, onto his arm.

14 Q. And did you also have anything to do with any
15 treatment to the other individual that was inside?

16 A. I did not. When he came out my supervisor and, I
17 believe, one of the workers from Group Therapy helped my
18 supervisor carry him out. He was already on the board.
19 And he already had the dressings, the Vaseline gauge. He
20 already had those on his wounds to his back.

21 Q. Were you familiar with the nature of his injuries?

22 A. Yes. My supervisor told me exactly what he saw and
23 then when we got to Richland they took the Vaseline gauze
24 off and I also saw there.

25 Q. Can you share with the jury the nature of the

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 injuries?

2 A. Yes.

3 Q. I'm sorry. What's the name of that second patient?

4 A. That was Jesse Patterson.

5 Q. Please share with the jury the nature of
6 Mr. Patterson's injuries.

7 A. Okay. He had a stabbing to the left upper shoulder
8 blade. And he also had a stabbing to the left side of
9 his back, just by his lower ribs. And that one was, I
10 estimated probably about a three-inch opening. And he
11 also was complaining of arm pain. He had his arm up in
12 the air and he couldn't put his arm down.

13 Q. That arm pain, was that significant to you?

14 A. Yes.

15 Q. And can you explain to the jury why?

16 A. Just the way he was stabbed, I don't know if he --
17 if there was trauma to the actual arm or if he had hit a
18 nerve. But just the fact that he couldn't move that arm
19 up and down at all.

20 Q. And, would you have characterized Mr. Patterson's
21 injuries as life threatening?

22 A. Yes. We consider anything to the core, anything to
23 the core and to the head life threatening.

24 Q. And did you transport Mr. Patterson and

25 Mr. Flemming to Richland Hospital -- Palmetto Health

KAITLYN GRIFFIN - DIRECT BY GARFIELD

1 Richland?

2 A. Yes, to the trauma center.

3 Q. And they were transported in the same ambulance?

4 A. Yes.

5 Q. And once you got to the hospital, did you continue
6 to participate in their care?

7 A. Once I filled the doctors in and the nurses on what
8 I observed and the injuries that I saw and gave them an
9 update of what I actually did, then we actually leave and
10 go available to take other calls.

11 Q. To take other calls for other injuries?

12 A. Yeah, other 9-1-1 calls.

13 MS. GARFIELD: Beg the Court's indulgence.

14 (Pause.)

15 Thank you, Ms. Griffin. Please answer any
16 questions the defense counsel may have.

17 MS. ZMROCZEK: I have no questions.

18 THE COURT: Thank you, ma'am. You may step down.

19 MS. GARFIELD: Your Honor, may Ms. Griffin be
20 excused?

21 THE COURT: She may. Thank you, ma'am.

22 MS. CAMPBELL: The State calls Courtney Walker.

23 COURTNEY WALKER, having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat. State your full

COURTNEY WALKER - DIRECT BY CAMPBELL

1 name for the record.

2 THE WITNESS: Courtney Walker.

3 DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q. Ms. Walker, how old are you?

6 A. I am 24.

7 Q. And are you currently employed?

8 A. Yes, ma'am.

9 Q. What do you do for a living?

10 A. I'm a test administrator at Prometric Testing.

11 Q. At what kind of testing?

12 A. Prometric Testing. That's the name of the company.

13 Q. And how long have you been employed there?

14 A. Since last October.

15 Q. I want to turn your attention back to last summer.

16 Were you living here in the Columbia area?

17 A. Yes, ma'am.

18 Q. And were you from Columbia?

19 A. Yes, ma'am. I'm from West Columbia.

20 Q. And last summer were you attending school or
21 through school or what was going on with you?

22 A. I graduated last August.

23 Q. Okay. So you were actually in summer school?

24 A. Yes, ma'am.

25 Q. And I want to turn your attention back to the night

COURTNEY WALKER - DIRECT BY CAMPBELL

1 when this occurred at Group Therapy. Were you actually at
2 Group Therapy that evening?

3 A. Yes, ma'am. I was with my friends.

4 Q. And, when say you were with your friends, who were
5 you with that night?

6 A. I was with some of my friends that I met in
7 college. They were out drinking, and I'm not a drinker
8 so I was just there.

9 Q. You're not a drinker?

10 A. No, ma'am.

11 Q. But you were out because --

12 A. They were out there just having one or two beers.

13 Q. They're the ones that wanted to go?

14 A. Uh-huh. Yes, ma'am.

15 Q. So you all were actually inside the bar that
16 night?

17 A. Yes, ma'am.

18 Q. Tell the jury what you actually observed that night
19 when you were in the bar sometime after midnight.

20 A. My friend Kalyx and I were sitting on the bench
21 closest to the front door.

22 Q. To the front door?

23 A. Yes, ma'am.

24 Q. That's the door on which street?

25 A. I believe that is Green Street, yes.

COURTNEY WALKER - DIRECT, BY CAMPBELL

1 Q. Green Street? Okay.

2 A. Yes, ma'am. And we noticed a loud commotion. We
3 didn't really know what was going on. And then I got --
4 the guy who was working the door came in and fell on the
5 floor and said, "Someone call 9-1-1." And he said, "He
6 stabbed me, he stabbed me".

7 Q. You heard him say "He stabbed me"?

8 A. Yes. So my friend kind of went to the floor to,
9 like, check on him, I guess. And I got up and walked
10 outside so I could call 9-1-1.

11 Q. And at that point you were actually inside when you
12 saw him come in, right?

13 A. Yes, ma'am.

14 Q. When he fell on the floor?

15 A. Yes, ma'am.

16 Q. And did you notice anything about him that
17 indicated any type of injuries when he came inside?

18 A. He was bleeding.

19 Q. You said your friend went over and tried to help
20 him?

21 A. She went down to him at eye level. I left. She --
22 at first she was trying to hold me back, but then he said
23 "Call 9-1-1. He stabbed me." So she dropped down to the
24 floor to him and then I walked outside to call 9-1-1.

25 Q. And by the time you got outside, could you see any

COURTNEY WALKER - DIRECT BY CAMPBELL

1 of the attackers or anybody that had done that?

2 A. No, ma'am.

3 Q. Once you were outside -- why did you go outside to
4 call 9-1-1?

5 A. So that the operator would be able to hear me and
6 so I could keep calm.

7 Q. So you could keep calm?

8 A. Yes, ma'am.

9 Q. Once you were outside, did you make a 9-1-1 call?

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

11 Q. And have you had an opportunity to listen to that
12 call?

13 A. Yes, ma'am, I have.

14 Q. I show you this disk. You've actually reviewed the
15 9-1-1 tape and it accurately reflects the phone call you
16 made that night?

17 A. Yes, ma'am.

18 (State's Exhibit No. 24, 9-1-1 call, marked for
19 identification.)

20 MS. CAMPBELL: Your Honor, at this time we'd offer
21 State's Exhibit 24 into evidence.

22 MS. ZMROCZEK: Without objection, Your Honor.

23 THE COURT: So admitted.

24 MS. CAMPBELL: Permission to publish?

25 THE COURT: You may.

COURTNEY WALKER - DIRECT BY CAMPBELL

1 (9-1-1 call, State's Exhibit No. 24, played for the
2 jury and received into evidence.)

3 BY MS. CAMPBELL:

4 Q. And you mentioned there on the 9-1-1 tape that
5 you're trying to wave someone over?

6 A. Yes, ma'am. When I was outside the bar, I saw
7 police, you know. They just patrol Five Points. And they
8 were coming down the street. So I ran over to them and
9 tried to get them to come over.

10 Q. You were trying to get them into the bar?

11 A. Yes, ma'am, to let them know what happened.

12 Q. And the man -- the guy at the door that was working
13 at the door, he was the one that got stabbed?

14 A. Yes, ma'am.

15 Q. Did you know him before that night?

16 A. No, ma'am, I didn't.

17 Q. When you said that he came in, you mentioned that
18 you saw blood?

19 A. Yes, ma'am.

20 Q. And where did you see blood coming from?

21 A. From him. I couldn't see exactly where it was
22 coming from. It was on the floor.

23 Q. On the floor?

24 A. Yeah. He had fell on the floor.

25 Q. And, would you characterize it as a good bit of

COURTNEY WALKER - DIRECT BY CAMPBELL

1 blood?

2 A. Yes, ma'am.

3 Q. And what was his condition as he was on the floor?

4 MS. ZMROCZEK: Objection, Your Honor. Speculation.

5 MS. CAMPBELL: What she observed.

6 THE COURT: Well, I think she can testify to what
7 she observed.

8 MS. CAMPBELL: Thank you, Your Honor.

9 Q. Go ahead. I'm sorry.

10 A. He looked to be in pretty bad good condition, and
11 in a lot of pain.

12 Q. That night when you saw him and everything, what
13 did you do?

14 A. I got up and I went outside and I called 9-1-1.

15 Q. And once you were outside, did you do anything
16 about the situation to comfort yourself?

17 A. I just, I was just taking deep breaths because I
18 was really, really nervous. And my friends were freaking
19 out, so I was just trying to stay calm. I was the only
20 sober one, so I just tried to stay really calm.

21 Q. And at some point did you say a prayer?

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

23 Q. Who were you saying a prayer for?

24 A. For Jesse.

25 THE COURT: All right. Anything?

1 MS. CAMPBELL: I have no further questions.

2 MS. ZMROCZEK: I have no questions, Your Honor.

3 THE COURT: All right. Thank you, ma'am. You may
4 step down.

5 All right. Ladies and gentlemen, we're going to
6 recess for the evening so I'm going to ask that you not
7 discuss the case with each other or anyone else when
8 you're gone tonight. Don't do any investigating. Don't
9 get on your computer. Don't ride by Five Points and check
10 things out.

11 We will start tomorrow morning at 9:30. So, y'all
12 have a nice evening, and we will see you at that time.

13 (Jury exits courtroom at 5:10 P.M.)

14 THE COURT: All right. Anything we need to take
15 up? You'll be ready in the morning?

16 MS. GARFIELD: Yes, sir.

17 MS. ZMROCZEK: Your Honor, would you like us to get
18 here a little early to -- if they have any exhibits. I
19 don't know if they're going to have -- if he's testifying
20 they may have some pictures that show the wounds and Your
21 Honor may want to address that just we don't have to make
22 the jury wait.

23 MS. GARFIELD: We can do that right now.

24 THE COURT: I'll be here whenever you want me to.
25 How many pictures of the injuries?

1 MS. CAMPBELL: Mr. Flemming, we have four and only
2 have one from Mr. Patterson.

3 THE COURT: Mr. Flemming had the cut arm?

4 MS. GARFIELD: Yes, sir. Mr. Patterson was taken
5 straight to surgery and only able to get one.

6 THE COURT: All right. Y'all bring them in the
7 back. I'll take a look at them.

8 END OF DAY'S PROCEEDINGS: 5:11 P.M.

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1 ON TUESDAY, JUNE 24, 2014 AT 9:34 A.M.:

2 THE COURT: All right. Solicitor, ready to go
3 forward?

4 MS. GARFIELD: Yes, sir.

5 THE COURT: Are y'all ready?

6 MS. ZMROCZEK: Yes, Your Honor.

7 THE COURT: All right. Let's bring us a jury in if
8 we could, Mr. Talbert.

9 (Jury enters courtroom at 9:35 A.M.)

10 THE COURT: Good morning, ladies and gentlemen.
11 Nice to see you this morning.

12 Before we turn this over to the attorneys, let me
13 ask you a couple questions if I could.

14 First of all: Has anybody approached you about
15 this case, discussed it with you at all since we left
16 yesterday?

17 (No response.)

18 THE COURT: Have you had any conversation with
19 anybody, including each other or someone else since we
20 left the courthouse yesterday?

21 THE JURY (COLLECTIVELY): No.

22 THE COURT: Anybody done their own investigation or
23 made any inquiry on a computer or otherwise since we
24 left?

25 THE JURY (COLLECTIVELY): No.

THEODORE MacLAUGHLIN - DIRECT BY GARFIELD

1 THE COURT: All right. As you recall when we
2 finished yesterday afternoon, the State's in the process
3 of putting up its evidence in the case in chief. And so I
4 assume they're ready to proceed.

5 MS. Garfield, are you ready to go?

6 MS. GARFIELD: Yes, sir. Thank you, Your Honor.
7 May it please the Court.

8 The State will call Officer Theodore MacLaughlin.

9 THEODORE MacLAUGHLIN, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: State your full name for the record.

12 THE WITNESS: Theodore MacLaughlin, City of
13 Columbia Police Department.

14 DIRECT EXAMINATION

15 BY MS. GARFIELD:

16 Q. Officer MacLaughlin, how long have you been
17 employed with the Columbia Police Department?

18 A. Three years now.

19 Q. And before you were employed with the police
20 department, what did you do?

21 A. I was an Aiken County Deputy for eight years.
22 Before that I worked for Batesburg-Leesville.

23 Q. Any military experience?

24 A. Yes. I have 23 years in the United States Army.

25 Q. And what was your duty with the Army?

THEODORE MacLAUGHLIN - DIRECT BY GARFIELD

1 A. I'm currently a sergeant first class over at the
2 321st Infantry as a drill sergeant.

3 Q. Officer MacLaughlin, with your employment with the
4 Columbia Police Department, what are your duties?

5 A. I patrol the Five Points Area.

6 Q. And that's primarily the district that you are
7 assigned to?

8 A. Yes.

9 Q. Were you -- when you patrol it, what all do you do?

10 A. We patrol the area to ensure that the citizens that
11 go down to Five Points are safe.

12 Q. And were these your duties back in July of last
13 year?

14 A. Yes, they were.

15 Q. Were you working on the night of -- or the
16 early-morning hours of July 28th of last year?

17 A. Yes, I was.

18 Q. And did you have an occasion to be flagged down to
19 the Group Therapy Restaurant and Tavern?

20 A. Yes, I was.

21 Q. Can you explain to the jury what caused you to be
22 flagged down?

23 A. There was a disturbance at Group Therapy. And the
24 owner or one of the bar staff came out and told us that
25 there was a stabbing inside.

THEODORE MacLAUGHLIN - DIRECT BY GARFIELD

1 Q. Were you flagged down by a patron or did you get a
2 call?

3 A. Flagged down by a patron.

4 Q. And did you then in turn go to the Group Therapy?

5 A. Yes, I did.

6 Q. And were you alone?

7 A. No, there was other officers with me.

8 Q. And did you go inside?

9 A. Yes, I did.

10 Q. And when you went inside, what was the scene like?

11 A. It was awful loud inside. People were hollering
12 for this and that. I observed Jesse laying on the floor
13 and I could hear him wheezing from the door.

14 Q. And did you -- do you have any medical experience?

15 A. Yes, I was a US Army Medic. I also worked for
16 Richland County EMS.

17 Q. And how long did you do that?

18 A. I become a medic in 1985 and my EMS, my
19 certificates ended in to 2001.

20 Q. And when you went over to Jesse, did you observe
21 his wounds?

22 A. I didn't observe the wounds but -- because he still
23 had a shirt on at that time, but he did have blood coming
24 down his shirt. And they were holding their hands over
25 his back, right under his arm.

THEODORE MacLAUGHLIN - DIRECT BY GARFIELD

1 Q. When you say they, who was they?

2 A. Bar staff.

3 Q. And based on your experience, what did you think
4 about his wounds when you first saw them?

5 A. I believe he had a collapsed lung due to the
6 wheezing.

7 Q. And in your experience, would you characterize a
8 collapsed lung as life threatening?

9 A. Yes, I would.

10 Q. Did you have any contact with the bar owner, Scott
11 Flemming?

12 A. Just a brief contact with him before he was
13 transported.

14 Q. And did you observe him to have injuries as well?

15 A. He had blood running down his arm.

16 Q. And were you able to find out what had happened?

17 A. Not right away. I was too busy working the scene.

18 Q. Did Jesse tell you anything that had happened?

19 A. When I went in, I bent down to him. It wasn't
20 initially, but I bent down to him before he got taken
21 away. He said that he had took from two or three people
22 out of bar earlier and that they had came back and
23 attacked him.

24 Q. Was there a description given?

25 A. Yes. He said that the man was bald headed with a

1 lime green shirt, shorts, tattoos.

2 Q. Officer MacLaughlin, did you do anything to try to
3 assist Jesse?

4 A. No, at that time I didn't. There was too many
5 people working on him at that time.

6 Q. Did EMS shortly arrive?

7 A. Yes.

8 Q. And did you remain on the scene while EMS treated
9 Jesse Patterson and Scott Flemming?

10 A. Yes.

11 Q. And what were you doing inside the bar? Was the
12 scene being secured?

13 A. Yes. I was securing the scene, keeping people from
14 walking in the blood.

15 Q. And what about the other patrons in the bar, what
16 happened to them?

17 A. We made them go out the back door.

18 Q. Did you assist in any interviews of any witnesses?

19 A. No, I didn't.

20 Q. And that is pretty much the extent of your
21 involvement in this case?

22 A. Yes.

23 MS. GARFIELD: Thank you, Officer. Please answer
24 any questions the defense counsel has.

25 MS. ZMROCZEK: No questions.

STEPHEN TACKETT - DIRECT BY GARFIELD

1 THE COURT: All right. Thank you, Officer. You
2 may step down. Any objection to him leaving?

3 MS. GARFIELD: He may be excused.

4 THE COURT: You may -- you're free to leave. Thank
5 you.

6 MS. GARFIELD: The State calls Officer Stephen
7 Tackett.

8 STEPHEN MICHAEL TACKETT, having been duly sworn,
9 was examined and testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: Stephen Michael Tackett, Richland
13 County EMS.

14 DIRECT EXAMINATION

15 BY MS. GARFIELD:

16 Q. Mr. Tackett, how long have you been employed with
17 EMS?

18 A. Thirteen years.

19 Q. And what are your duties with EMS?

20 A. Currently act as a corporal which is a crew chief.
21 I supervise about six individuals underneath me.

22 Q. One of the people you supervise, is that Kaitlyn?

23 A. At the time, yes.

24 Q. Oh. At the time?

25 A. Yes, ma'am.

STEPHEN TACKETT - DIRECT BY GARFIELD

1 Q. At the time of this incident?

2 A. Yes.

3 Q. Do you actually respond to calls for emergency
4 help?

5 A. Yes, ma'am.

6 Q. And what kind of calls do you respond to?

7 A. Gunshots, stabbings, car entrapments.

8 Q. Do you respond to all calls or just specifically
9 those?

10 A. At the time just specifically those.

11 Q. And those were your duties back in July of last
12 year?

13 A. Yes, ma'am. That's correct.

14 Q. On July 28th, of last year in the early-morning
15 hours, did you have an occasion to respond to Group
16 Therapy Restaurant and Tavern?

17 A. Yes, ma'am.

18 Q. And can you just explain to the jury what you
19 observed upon arriving at that scene?

20 A. Yes, ma'am. Pulled up to Group Therapy about 30
21 seconds to a minute before the ambulance pulled up and
22 quick response vehicle. I got out of the vehicle, was
23 directed to a 40-ish-year-old gentleman. Observed the
24 stab wound to his left arm as well as his left chest. He
25 was able to talk to me. So I sent him to the ambulance.

STEPHEN TACKETT - DIRECT BY GARFIELD

1 He had told me upon my arrival that there was another
2 gentleman inside the bar that was much worse off. As soon
3 as the ambulance arrived, I directed the gentleman to go
4 to the ambulance to seek aid from the other paramedic
5 arriving on the scene.

6 Upon entering the bar, noticed a large amount of
7 blood on the floor and a gentleman on his knees with two
8 large cuts in his shirt. I removed his shirt, noticed two
9 large lacerations, stab wounds, to the back. One was to
10 the left upper rear shoulder, and the other was to the
11 lower lateral posterior or -- excuse me, back rib cage
12 area.

13 Q. And what did you do as your course of action upon
14 observing these injuries?

15 A. Placed an occlusive dressing on both of the stab
16 wounds. Placed him in full spinal precaution, put a
17 collar on his neck, put him on a hard board just in case
18 he had a spinal injury that no further damage would have
19 been done to that. The occlusive dressings are dressings
20 that we use in case there is a chest wound, it prevents it
21 from becoming a tension pneumothorax.

22 Q. Mr. Tackett, were there other members or other
23 people in Group Therapy assisting Jesse when you arrived?

24 A. Yes, ma'am. There was one or two people. I
25 believe they were bar staff, I'm not sure, but they knew

STEPHEN TACKETT - DIRECT BY GARFIELD

1 the gentleman by name. And they were trying to hold
2 pressure on his stab wounds.

3 Q. Did you consider these -- when you first arrived
4 and observed the injuries, did you consider them life
5 threatening?

6 A. Absolutely.

7 Q. To Mr. Patterson?

8 A. Yes, ma'am. To both victims.

9 Q. To both victims?

10 A. Yes, ma'am.

11 Q. And did you -- what was your next course of action?

12 A. After I paged the 22-year-old gentleman that was in
13 the bar, got him on the spine board, got the cohesive
14 dressings on him, me and one of the bar staff carried him
15 out to the ambulance, loaded him into the ambulance. And
16 that's when the crew left with both victims and took them
17 to the hospital.

18 Q. Did you notice anything odd about Mr. Patterson's
19 arm?

20 A. Is that the younger gentleman?

21 Q. That's the younger one. Yes, sir.

22 A. Yes, ma'am. He was complaining of severe pain to
23 where he was unable to move his arm.

24 Q. And did -- at that time were you able to ascertain
25 why?

STEPHEN TACKETT - CROSS BY ZMROCZEK

1 A. No, ma'am. We weren't sure if it was due to a
2 nerve or something like that, but his injuries to his back
3 were severe enough we considered them life threatening
4 that his -- the severe pain to his arm was the least of
5 our concerns.

6 Q. Did you travel to the hospital?

7 A. No, ma'am.

8 Q. And is that the end of your involvement in the care
9 of Mr. Patterson and Mr. Flemming?

10 A. Yes, ma'am.

11 MS. GARFIELD: Beg the Court's indulgence.

12 (Pause.)

13 Thank you, Mr. Tackett. Please answer any
14 questions defense counsel has.

15 THE WITNESS: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Good morning.

19 A. Good morning.

20 Q. I just have a few questions. I think you said you
21 treated both of them as life threatening --

22 A. Yes, ma'am.

23 Q. -- at that time, right?

24 A. Yes, ma'am.

25 Q. And in fact you assigned what you call trauma

STEPHEN TACKETT - CROSS BY ZMROCZEK

1 scores --

2 A. Yes, ma'am.

3 Q. -- to them? Do you recall what the trauma scores
4 were?

5 A. In reviewing the paperwork that Ms. Marshall did,
6 they both had revised trauma scores of 12.

7 Q. They both had the same trauma scores of 12?

8 A. Yes, ma'am.

9 Q. And how are the trauma scores rated?

10 A. From zero to 12.

11 Q. And what's zero being?

12 A. Zero is dead.

13 Q. Is what?

14 A. Dead.

15 Q. Zero is dead?

16 A. Yes.

17 Q. And what is the highest?

18 A. Twelve.

19 MS. ZMROCZEK: Thank you. I have no further
20 questions.

21 THE COURT: Anything?

22 MS. GARFIELD: Nothing further, Judge.

23 THE COURT: Thank you, sir. You may step down and
24 you are free to leave.

25 THE WITNESS: Thank you.

DAVID FORD - DIRECT BY GARFIELD

1 MS. GARFIELD: The State calls Dr. David Ford.

2 DAVID THOMAS FORD, having been duly sworn, was
3 examined and testified as follows:

4 THE CLERK: Please have a seat. State your full
5 name for the record.

6 DIRECT EXAMINATION

7 BY MS. GARFIELD:

8 Q. Doctor, if you'll state your full name for the
9 record.

10 A. David Thomas Ford.

11 Q. And, Dr. Ford, where are you employed?

12 A. At Palmetto Health Richland.

13 Q. And what are your duties at Palmetto Health
14 Richland?

15 A. I teach resident physicians and medical students
16 and we run the emergency department.

17 Q. And what is your prior background? If you'll just
18 give the jury your background information.

19 A. I'm board certified in emergency medicine and
20 hyperbaric medicine. And I'm an associate professor of
21 clinical surgery with the University of South Carolina
22 School of Medicine.

23 Q. And where did you attend school?

24 A. At Albany Medical College in New York.

25 Q. And how long have you been employed with Palmetto

DAVID FORD - DIRECT BY GARFIELD

1 Health Richland?

2 A. Twenty-one years.

3 MS. GARFIELD: Your Honor, at this time we'd like
4 to introduce Dr. Ford as an expert in emergency room
5 medicine.

6 MS. ZMROCZEK: Without objection.

7 THE COURT: Ladies and gentlemen, I told you
8 yesterday, if scientific, technical, or other specialized
9 knowledge will assist you the triers of facts in
10 understanding any matter that may be in controversy or any
11 fact that is in issue, and a witness can be qualified as
12 an expert by virtue of his or her knowledge, skill,
13 experience, training, or education, and as such can offer
14 opinions in his or her areas of expertise.

15 I'm going to find the doctor to be qualified as an
16 expert in the field of -- trauma medicine?

17 MS. GARFIELD: Emergency medicine.

18 THE COURT: -- emergency medicine. As such he can
19 offer opinions in this field. I tell you, you are to give
20 his testimony such weight and credibility as you deem
21 appropriate as you will with any and all witnesses who
22 testify in this trial.

23 MS. GARFIELD: Thank you.

24 Q. Doctor, you were working in the early-morning hours
25 of July 28th of last year?

DAVID FORD - DIRECT BY GARFIELD

1 A. That is correct.

2 Q. And you had the occasion to treat both Scott
3 Flemming in the emergency room?

4 A. I did.

5 Q. And as well as, I believe, there was another
6 patient there, Jesse Patterson?

7 A. Yes, there was. I treated Scott Flemming.

8 Q. Can you just sort of outline for the jury what the
9 scene would be like when these two individuals arrived by
10 the emergency -- by the ambulance.

11 A. Yeah. The first word that we got that this patient
12 was going to be coming is when emergency medical service
13 called ahead on the radio and said that they were bringing
14 a trauma 9-1-1 patient.

15 And trauma 9-1-1 is the highest level of trauma
16 designation to get us geared up so that I can get my team
17 ready for a patient that's very sick. There's a trauma
18 8-1-1 which is one step below that which is less potential
19 severity. 9-1-1 is the highest potential severity. So I
20 got my team in our resuscitation bay which is like a
21 miniature operating room scenario with everything that we
22 need in there in order to save somebody's life.

23 So I was in there, my resident was in there, my
24 emergency nurse team is in there as well, and we're
25 standing around the stretcher waiting for this patient to

DAVID FORD - DIRECT BY GARFIELD

1 be brought in by ambulance.

2 The patient arrived and right away I noticed
3 bleeding from the left anterior chest and also from his
4 arm --

5 Q. Now I'm going to stop you.

6 A. -- from laceration.

7 Q. You're describing Scott Flemming at this time?

8 A. That is correct.

9 Q. Was the 9-1-1 call or the 9-1-1 classification, was
10 that applied to both patients?

11 A. Both patients were trauma 9-1-1s, but Mr. Flemming
12 was my patient that I was going to be taking care of.

13 Q. Okay. Thank you. Please proceed.

14 A. And so at that point in time we begin to work on
15 Mr. Flemming. One of my nurses starts an IV in his arm
16 and hangs normal saline so that we can start to replace
17 any blood that's lost.

18 One of my residents is now evaluating the patient,
19 listening to their lungs. And we have sort of a scale
20 that we go on. First we make sure their airway is
21 intact. If it's not, we fix it. Then we make sure their
22 breathing is intact. And if not, we fix it. And then we
23 make sure their circulation is being fixed.

24 That's because that's the order in which -- that
25 things will kill you quickest. So we call it ABC, airway,

DAVID FORD - DIRECT BY GARFIELD

1 breathing, circulation. So we're doing the ABC stuff
2 right off the bat.

3 Another resident is doing ultrasound checking to
4 see if there's any evidence of injury. And the big thing
5 is with a laceration to the left anterior chest wall,
6 underneath that is the heart and the lungs. So he's doing
7 ultrasound to look and see if there's any evidence of
8 bleeding or bad damage to the heart or lungs.

9 The heart can get stabbed. The lung can get
10 stabbed and punctured. And that's how you get a collapsed
11 lung is from getting punctured, and in a penetrating
12 trauma situation like this. So that resident is looking
13 for those sorts of injuries in that case.

14 Q. What was your next course of action after doing all
15 of those?

16 A. After?

17 Q. ABC.

18 A. Yeah. After doing airway, breathing, circulation,
19 then the D stands for deficit. So we do a neurologic
20 examination and determine if there's any damage to the
21 motor nerves or the sensory nerves of the person's body.

22 And then the E stands for exposure. Then we take
23 all their clothes off, check the front of them, we flip
24 them over and check the back. I teach that if you don't
25 roll the patient over and check their back you've only

DAVID FORD - DIRECT BY GARFIELD

1 seen 50 percent of the patient.

2 And then the F stands for Folley standard tubes if
3 needed. You start doing internal exams on the patient if
4 there's evidence of damage to things like the abdomen and
5 such.

6 Q. So while you're doing this checklist A through F,
7 explain to the jury what your findings were.

8 A. We found that -- the primary thing that we were
9 concerned with on him was the stab wound to the left
10 anterior chest. And as I mentioned, the real concern
11 there is that the heart lies under that, and the lungs lie
12 under that. Is the person going to die in the next five
13 minutes from the stab wound to the left anterior chest.
14 And so we were concerned that it's a potentially life-
15 threatening wound to the left anterior chest in my
16 opinion.

17 So I addressed -- after making sure that airway and
18 breathing and circulation were being taken care of, I
19 addressed looking at that wound first with ultrasound. So
20 what we did is we ultrasounded the patient's heart and
21 thankfully there wasn't any evidence of bleeding around
22 the heart. And we ultrasounded the patient's lungs and we
23 were concerned that there might have been a punctured
24 lung. On the ultrasound it was a little bit difficult to
25 see because of the bleeding from the laceration in that

DAVID FORD - DIRECT BY GARFIELD

1 area, so we decided we needed to go further.

2 We ordered a chest x-ray and while we were
3 resuscitating, in other words, trying to bolster the
4 patient, we did a chest X-ray on the patient. And the
5 X-ray thankfully did not show a collapsed lung on that
6 side.

7 So the next step after that was we continued to
8 give intravenous fluid and check him out to make sure that
9 nothing else is injured because I've seen patients that
10 have been injured and the obvious things jump out of you,
11 the chest wound, the arm wound that we're cleaning and
12 working on, and then you rotate them over and spread their
13 butt cheeks apart and you find there's an injury there.

14 So I tell my residents don't let your guard down
15 until you check every inch of the patient from the top of
16 their heads to the soles of their feet. So we're
17 continuing to check this patient all over from head to
18 toe.

19 At that point Dr. Reeves, his trauma team assisted
20 us and I believe they did some further exploration.

21 Q. What kind of doctor is Dr. Reeves?

22 A. He's a trauma surgeon.

23 Q. And he's in there as well?

24 A. Yeah, initially his team is there and so emergency
25 medicine and trauma surgery are working side by side on

DAVID FORD - DIRECT BY GARFIELD

1 the patient. And I believe Dr. Reeves specifically
2 explored the chest wound to the left anterior chest as
3 well as the arm wound.

4 Q. Explain to the jury what kind of procedure goes
5 into doing those kind of checks to the arm and the heart?

6 A. Well, the first thing you need to do is alleviate
7 the patient's pain. You've got to use some sort of pain
8 relief. What we'll usually use in a trauma scenario is
9 lidocaine. You don't want to be giving this person a
10 whole lot of morphine or demerol because that can drop
11 their blood pressure and in trauma that can be really
12 dangerous. So lidocaine is taken.

13 The wounds are infiltrated. That's when you put
14 the needle under the skin and puff up the skin with the
15 lidocaine to make the pain receptors go numb in that
16 area. It's still going to be uncomfortable for the
17 patient. And then actually what you do is you take your
18 finger and you probe inside to see how deep. It tells you
19 what structures are injured.

20 Q. This lidocaine, is that considered a local
21 anesthesia?

22 A. It is. Yeah. It's similar to what happens at the
23 dentist office if she or he does it right, numbs you up
24 before drilling and working on your teeth.

25 Q. And during the course of this procedure, what was

DAVID FORD - DIRECT BY GARFIELD

1 your -- what kind of treatment did you elect to do on Mr.
2 Flemming after you went through this checklist?

3 A. After going through the checklist we elected to do
4 the local exploration to the cervical. Local
5 exploration. And it was Dr. Reeves' team actually that did
6 that.

7 Q. That did the local exploration. Okay. And then
8 after that exploration, what did you do to Mr. Flemming?

9 A. Well in a patient like this, that had -- that
10 was -- that had potentially life-threatening injuries when
11 you first saw them, even with the local exploration we
12 don't discharge them right away. We want to make sure
13 nothing crops up a little bit later.

14 So there's a period of observation that's needed.
15 So we kept him in the emergency department and observed
16 him. I can't give you an exact amount of time. You'll
17 have to look that up in the record. I don't remember,
18 it's a year later now. But he was observed for a period
19 of time afterwards in the emergency department to make
20 sure that no life-threatening injuries cropped up
21 afterwards.

22 And indeed during that period of observation he
23 remained stable. And that's what we're looking for.
24 Three hours later, two hours later, does he start to drop
25 his blood pressure 120 over 60 to 90 over 50, 80 over 30,

DAVID FORD - DIRECT BY GARFIELD

1 70 over 20. I've seen that happen in a patient that
2 really looked good up front so we call it tincture of
3 time, watching them for a period of time to make sure that
4 nothing jumps out later on that's life threatening.

5 So we watch them and observe them for a period of
6 time.

7 Q. This observation period, you're not talking about
8 minutes?

9 A. No. Hours.

10 Q. Hours. Did he -- did you -- did you administer
11 any staples or stitches or anything like that to
12 Mr. Flemming?

13 A. I believe Dr. Reeves after full exploration of the
14 chest wound and the arm wound did staple the wounds
15 closed.

16 Q. And what is going on with the other patient that
17 came in during all of this time?

18 A. He's also being worked on at the same time. This
19 happens quite often and we're used to doing two things at
20 the same time. We'll split our team up and just do what
21 needs to be done.

22 Q. And who is treating the other patient which is
23 identified as Jesse Patterson?

24 A. I believe that was the remainder of the trauma
25 team. I do not know the extent of the injuries on the

DAVID FORD - CROSS BY ZMROCZEK

1 other patient.

2 Q. The trauma team to include Dr. Reeves?

3 A. That's correct. Dr. Reeves is the attending so
4 he's the captain of the ship for the trauma team, just
5 like I'm the captain of the ship for the emergency team.

6 Q. And, Doctor, I believe you testified it's your
7 expert opinion within a reasonable degree of medical
8 certainty that the wounds sustained by Scott Flemming were
9 life threatening?

10 A. That is correct.

11 MS. GARFIELD: Beg the Court's indulgence.

12 (Pause.)

13 Dr. Ford, thank you. Please answer any questions
14 defense counsel may have.

15 CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. Doctor, I just want to make sure I heard you
18 correctly that the wounds sustained by Scott Flemming were
19 life threatening?

20 A. That is correct.

21 Q. And I believe you -- after you see a patient, you
22 do all of the protective care, you write kind of a closing
23 or a follow-up of what happened, right?

24 A. Indeed. That is correct.

25 Q. And if I'm reading this correctly, if you need to

DAVID FORD - CROSS BY ZMROCZEK

1 review your notes let me know, but it states he believes
2 that he was -- the object he was attacked with was either
3 a box knife or a very small knife?

4 A. Yeah. My resident is the physician that dictated
5 that note, Bart Douglas, and he did dictate that.

6 Q. And you have to sign off on that to make sure it's
7 correct?

8 A. Yes. Yep.

9 Q. And in general appearance you noted: He is alert,
10 oriented, and in no apparent distress or your resident
11 noted that?

12 A. Yeah, and that's a neurologic evaluation. That
13 he's alert and able to talk to us. Oriented, that he's
14 able to say where he is. And in no apparent distress
15 means at that point in time that his blood pressure isn't
16 70 over 30 and going down the tank.

17 Q. Certainly. And I think that was noted under
18 general appearance, right?

19 A. Yes, ma'am.

20 Q. That's where y'all placed that. And, so your
21 final diagnosis was a laceration to the left anterior
22 chest and a laceration to the left elbow, right?

23 A. Yes. Left arm and left anterior chest.

24 Q. And although I'd like to pretend I went to medical
25 school because I have watched a lot of Doogie Howser when

JEREMY REEVES - DIRECT BY CAMPBELL

1 was growing up but --

2 A. Yes, I did too.

3 Q. -- laceration means cut, right?

4 A. And the reason we use the term laceration is that
5 when we're seeing him as a physician we don't know what
6 caused it. So we don't say --

7 Q. Stab wound?

8 A. Yeah. Rather describe what the skin looks like in
9 front of us.

10 Q. Right. You take the emotion out of it and you
11 simply describe what it is, a laceration?

12 A. Yes.

13 Q. Which is a cut. Thank you.

14 A. Yes, ma'am.

15 THE COURT: Anything further?

16 MS. GARFIELD: No, sir.

17 THE COURT: All right. Thank you, Doctor. You may
18 step down and you are free to leave.

19 MS. CAMPBELL: May it please the Court.

20 THE COURT: Yes.

21 MS. CAMPBELL: The State calls Dr. Reeves.

22 JEREMY REEVES, having been duly sworn, was examined
23 and testified as follows:

24 THE CLERK: Please have a seat. State your full
25 name for the Court.

JEREMY REEVES -- DIRECT BY CAMPBELL

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. If you will, state your name.

A. Jeremy Reeves.

Q. And, Dr. Reeves, where are you employed?

A. Palmetto Health Richland.

Q. And what do you do there, sir?

A. Trauma surgery.

Q. Can you tell this jury a little bit about your education and your training in the field of trauma surgery?

A. Sure. I went to medical school at Ross University School of Medicine. I did a general surgery residency at Palmetto Health Richland, a surgical critical care fellowship at Palmetto Richland and I've been employed as a trauma surgeon for the last three years at Richland.

Q. And when you said that you did different residencies, are you currently a trauma surgeon?

A. Yes, I'm double boarded in general surgery and surgery critical care.

Q. So you are actually board certified in both general surgery and critical care?

A. Yes.

Q. And you actually are an attending physician at Richland Memorial --

JEREMY REEVES - DIRECT BY CAMPBELL

1 A. Correct.

2 Q. -- is that correct? As a trauma surgeon?

3 A. Correct.

4 MS. CAMPBELL: Your Honor, at this time we'd offer
5 him as an expert in critical care and trauma surgery.

6 MS. ZMROCZEK: No objection.

7 THE COURT: Again, ladies and gentlemen of the
8 jury, as I've explained to you, scientific, medical or
9 other specialized knowledge will assist you in
10 understanding any evidence or any matters that may be in
11 controversy, then a witness can be qualified as an expert
12 by virtue of his knowledge, skill, experience, training,
13 or education and may offer opinions in his or her areas of
14 expertise.

15 I find the doctor to be qualified as an expert in
16 the field of surgery and trauma surgery and as such he can
17 offer opinions, and you are to give his testimony such
18 weight and credibility as you deem appropriate.

19 Proceed.

20 MS. CAMPBELL: Thank you, Your Honor. May it
21 please the Court.

22 Q. Doctor, I want to turn your attention back to the
23 early-morning hours of July 28th of last year. Were you
24 on call that night?

25 A. Yes.

JEREMY REEVES - DIRECT BY CAMPBELL

1 Q. And did you receive a call to respond to the
2 emergency room for a certain --

3 A. Yes.

4 Q. -- emergency?

5 A. 9-1-1 trauma.

6 Q. And when you say a 9-1-1 trauma, can you explain to
7 the jury what that means to you?

8 A. Sure. As Dr. Ford alluded to earlier, 9-1-1 trauma
9 is alert-tier criteria where the trauma surgery team gets
10 involved with a patient as well as the emergency medical
11 services.

12 We have two alert tiers, a 9-1-1 and an 8-1-1.

13 A 9-1-1 is obviously higher. These are the highest level
14 alerts and folks with the potential for significant
15 life-threatening injuries.

16 Q. And --

17 A. It's based on a set of criteria that we use to
18 determine which one is which.

19 Q. And specifically for purposes of this hearing here
20 today, I want to focus on Jesse Patterson who became your
21 patient that night; is that correct?

22 A. Yes.

23 Q. You also, I believe, treated the other patient but
24 Mr. Patterson's injuries were more severe. Would that be
25 correct?

JEREMY REEVES - DIRECT BY CAMPBELL

1 A. Yes.

2 Q. Once you got to the emergency room that night and
3 made contact with Dr. Ford and his team, what, if
4 anything, did you assess about Mr. Patterson?

5 A. Well, Dr. Ford's team had again initially performed
6 the ABCs which is essentially examining the patient's
7 airway, making sure that there's nothing life threatening
8 that's going to cause the patient to go perhaps into
9 respiratory arrest.

10 I noted that he was awake, alert. His Glasgow coma
11 score which is a score we use to give us someone's life
12 capacity was 15 which is the highest it can be. So he was
13 talking. Obviously when we rolled the patient over he had
14 what appeared to be two lacerations to his back, left
15 upper and left middle back.

16 Q. When you say lacerations to the back, basically for
17 people like me that don't do medicine, that just means a
18 cut?

19 A. Yes.

20 Q. And were the lacerations in your opinion
21 significant?

22 A. Yes. When you look at a laceration you have no
23 idea how deep it is. You just know that the skin is cut.
24 So, again, potentially, you know, you're trying to assess
25 how deep things are. You're trying to assess the wound.

JEREMY REEVES - DIRECT BY CAMPBELL

1 That's my job. I get involved to determine how deep this
2 was and is it life threatening.

3 Q. And at that point when you first made contact with
4 him, I believe he had already been characterized as a
5 9-1-1 trauma?

6 A. That's correct.

7 Q. And did he qualify as a 9-1-1 trauma in more ways
8 than just one?

9 A. He did: Based on our information in the medical
10 records here, he was stabbed in the torso which
11 automatically makes you 9-1-1 alert as well as blood
12 pressure less than 90 systolic the top number of the blood
13 pressure.

14 Q. And what does that mean to you?

15 A. Well 120 over 80 is, you know, a normal blood
16 pressure for folks. Anything less than 90 is considered
17 an alert criteria and his was.

18 Q. And anything less than 90, that means that his
19 blood pressure was 90 over what?

20 A. It was 90 over palp which means they really weren't
21 able to hear the second sound, so it was quite low.

22 Q. And you mentioned that trauma to the torso, stab
23 wound to the torso automatically -- and why is that,
24 Doctor, what --

25 A. Any penetrating injury to the head, neck or torso

JEREMY REEVES - DIRECT BY CAMPBELL

1 is potentially life threatening until proven otherwise --

2 Q. And why is that?

3 A. -- thus is the criteria for alerts.

4 Q. Is there specific organs that can be stabbed that
5 can cause severe problems?

6 A. Sure.

7 Q. And can you explain that to the jury?

8 A. Sure. Anything that has to do with the airway,
9 anything that has to do with the heart or great vessels,
10 the aorta, et cetera.

11 Q. And the lungs would be included in that?

12 A. Sure. Absolutely.

13 Q. When you first came in contact with him, can you
14 tell the jury a little bit about your assessment and what
15 you did at that point?

16 A. Sure. When I got involved, again, we examined his
17 wounds. Felt they were pretty deep at this point, deep
18 enough to warrant an exploration of the wound. At some
19 point during my exam air began to leak out of his chest,
20 bubbling out of his chest. I knew automatically his lung
21 was injured.

22 At that time we went ahead and put a chest tube
23 into his left chest. That's a cylindrical tube used to
24 drain air or blood or both to prevent collapsing of the
25 lung and/or the chest on either side of filling up with

JEREMY REEVES - DIRECT BY CAMPBELL

1 blood which would potentially be life threatening.

2 Q. And what type of injury did he have to his lung?

3 A. He had a laceration to his lung which is a cut.

4 Q. A cut. So the stab wound was deep enough to
5 actually penetrate the lung?

6 A. Correct.

7 Q. And is that significant in your assessment?

8 A. Absolutely. Absolutely.

9 Q. Did you take any further steps in order to treat
10 this young man that night?

11 A. Yes. He was given IV fluid, resuscitation. And we
12 further assessed him with a CT of the chest, abdomen, and
13 his pelvis to elucidate any other potential wounds and/or
14 injuries at the time and further assess our treatment for
15 him.

16 Q. The chest tube that you put in, was that necessary
17 in order to save his life?

18 A. Yes, it was necessary.

19 Q. And, did he require hospitalization as a result of
20 his wounds?

21 A. He did, yes.

22 Q. And before I forget, did he also have a secondary
23 wound as well?

24 A. He did.

25 Q. And can you describe that to the jury?

JEREMY REEVES - DIRECT BY CAMPBELL

1 A. Sure. It was stab wound to his left upper back
2 near his shoulder area. It did not appear to penetrate
3 into his lung, but it did penetrate into his chest wall
4 near the area of his lung. And he did have blood in his
5 chest or around that edge of his chest where his lung
6 touches the chest wall. So it was, again, deep enough to
7 go to the chest wall where the lung is. It just did not
8 lacerate the lung itself.

9 Q. So the more significant wound was the one you
10 described to the back?

11 A. Yeah.

12 Q. And the other one was secondary?

13 A. The other one was present, yes. He had two.

14 Q. And potentially life threatening as well?

15 A. Yes.

16 Q. Did he also have an issue with his arm?

17 A. Yes, he had a left shoulder dislocation.

18 Q. And what is that?

19 A. The ball and socket joint of the shoulder. The
20 ball is essentially out of the socket, if you will. So
21 it essentially renders the arm non-functional. It has to
22 be relocated. And that was done by Dr. Ford and his
23 team.

24 Q. They took steps to actually put the socket back
25 where it was supposed to be?

JEREMY REEVES - DIRECT BY CAMPBELL

- 1 A. Correct, correct.
- 2 Q. These wounds and his situation that night, would he
3 have been in considerable pain?
- 4 A. Yes. I mean, you know, that's -- pain is a
5 subjective finding --
- 6 Q. Uh-huh.
- 7 A. -- but certainly these injuries could produce pain,
8 yes.
- 9 Q. That night this young man was able to get help
10 pretty quickly. Did that aid in your ability to get him
11 the -- render him --
- 12 A. Anytime somebody is brought to us quickly, that
13 certainly is a positive factor in their recovery or
14 treatment.
- 15 Q. He was hospitalized as a result of these wounds?
- 16 A. He was, yes.
- 17 Q. And when was he actually discharged from the
18 hospital?
- 19 A. I believe he was discharged on 8-1-2014 (verbatim).
- 20 Q. August the 1st?
- 21 A. Yes.
- 22 Q. And then a few days later did he then return back
23 to the hospital?
- 24 A. He did. I was not present for that but I was told
25 about it. He told that he had pain and felt quote-

JEREMY REEVES - DIRECT BY CAMPBELL

1 unquote bubbling near his injury site which is not
2 relatively uncommon after someone sustains a wound to
3 their lung, their chest wall.

4 Q. But with the right treatment and everything he was
5 able to recover from his wounds?

6 A. As far as I know, yes.

7 Q. Because of the care he got?

8 A. I think you can say that, sure.

9 Q. Stab wounds to the chest are potentially life
10 threatening because of what you've already explained to
11 the jury?

12 A. Yes. The heart, the lungs, the great vessels have
13 a significant amount of blood that goes to them and any
14 injury to them with blood leaking out of them can cause
15 potentially life-threatening injury and/or air that leaks
16 out of the lung itself.

17 When air leaks out of the lung it fills up the
18 chest potentially, and if that happens it begins to push
19 other organs, including the heart, to the other side.
20 It's called tension pneumothorax or tension collapsed
21 lung. And when that happens the blood returning to the
22 heart is minimized and essentially the patient can't pump
23 enough blood to the remainder of the body and they can
24 potentially fail.

25 Q. But Mr. Patterson was able to get treatment?

JEREMY REEVES - DIRECT BY CAMPBELL

1 A. Correct, yes. That's what the chest tube was for.

2 Q. The wound to -- that caused the injury to the lung,
3 were there certain X-rays or CTs that were taken that
4 night?

5 A. Yes, he got both. He got a chest X-ray, he got a
6 CT of the chest.

7 Q. And specifically would those X-rays aid in
8 explaining the wound and how deep it was to this jury?

9 A. Absolutely, absolutely.

10 Q. State's Exhibit 26, I believe that shows two of
11 those X-rays from that night?

12 A. Yes.

13 MS. CAMPBELL: Your Honor, at this time, we'd offer
14 State's Exhibit 26 into evidence.

15 MS. ZMROCZEK: Your Honor, I've never seen them.

16 THE COURT: Ladies and gentlemen, let me let you
17 step back to the jury room, please. Don't discuss the
18 case while you're there, please.

19 (Jury exits courtroom at 10:14 A.M.)

20 THE COURT: All right. Ms. Campbell, what's the
21 deal?

22 MS. CAMPBELL: Your Honor, it's my understanding in
23 talking with Ms. Garfield that she met with defense
24 counsel and at that point she said that she was getting
25 the X-rays, that she did not have them yet and that if she

JEREMY REEVES - DIRECT BY CAMPBELL

1 wanted to see them they would be available.

2 THE COURT: I don't know what that means. She was
3 going to get them and they weren't available. If she
4 wanted to see them, how could she see them if they weren't
5 available?

6 MS. CAMPBELL: Once we got them they would be
7 available like any other evidence.

8 MS. GARFIELD: They had been subpoenaed. We just
9 did not pick them up yet. And I let Ms. Zmroczek know we
10 would be using them.

11 THE COURT: Do you object to them being admitted?

12 MS. ZMROCZEK: I mean, I'd like to see them. I
13 think they're potentially inflammatory. I don't see
14 what -- I mean, his testimony is what it is. I don't --

15 THE COURT: Are you objecting to their being
16 admitted because you haven't had an opportunity to review
17 them?

18 MS. ZMROCZEK: Yes, Your Honor.

19 THE COURT: Your objection is sustained.

20 MS. CAMPBELL: Your Honor, can we give her the
21 opportunity to review them?

22 THE COURT: I'm not going to stop the trial for her
23 to try to go find a box or something like that.

24 MS. CAMPBELL: We have it. We can put it up right
25 here.

JEREMY REEVES - CROSS BY ZMROCZEK

1 THE COURT: We're just moving forward. We're not
2 going to -- all right. Bring the jury in, please.

3 (Jury enters courtroom at 10:17 A.M.)

4 THE COURT: All right. Madam Solicitor?

5 MS. CAMPBELL: Thank you.

6 Q. Doctor, the wound that's demonstrated on those
7 X-rays that we've been referring to, that was a
8 penetrating wound to the lung area?

9 A. Yes.

10 Q. How close did that actually come to Jesse
11 Patterson's heart?

12 A. A matter of an inch and a half or two inches at the
13 most. Trajectory was towards the heart but, yes.

14 Q. And, Doctor, in your opinion, stab wounds, are
15 those life threatening?

16 A. Yes, potentially life threatening without therapy,
17 yes.

18 THE COURT: All right. Are you going to object?

19 MS. CAMPBELL: That's all I have.

20 THE COURT: Proceed please, ma'am.

21 MS. ZMROCZEK: Thank you.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Good morning, Doctor.

25 A. Good morning.

JEREMY REEVES - CROSS BY ZMROCZEK

1 Q. You said that he, he being Jesse, received several
2 X-rays and CT scans; is that correct?

3 A. That's correct.

4 Q. What's a pneumo -- pneumothorax -- you know, I'm
5 probably not pronouncing that --

6 A. It's a collapsed lung.

7 Q. Was there any finding of a collapsed lung on those
8 X-rays or CT scans? Would it help you to review? I'm not
9 trying to test you.

10 A. No. Sure. I mean, would you like for me to review
11 them?

12 Q. If you need to. If you can recall.

13 A. No. Sure. We didn't get a chest X-ray prior to
14 putting the chest tube in because we don't routinely do
15 that in emergency because it doesn't matter whether the
16 lung is down or up. A stab wound to the chest with the
17 air leaking out of the chest is a pneumothorax by
18 definition. So a chest X-ray would be a moot point.

19 And he got a chest X-ray after that was done. It
20 did not show evidence of a pneumothorax which it should
21 not have because he had a chest tube.

22 Q. And, it also showed a normal-sized heart and
23 unremarkable metastatal (verbatim) contours. What does
24 that mean?

25 A. That means his heart and his great vessels around

JEREMY REEVES - CROSS BY ZMROCZEK

1 the heart and lungs were of normal size and caliber for
2 someone his age and size.

3 Q. And so if there would have been trauma that would
4 have been noted?

5 A. If he had injury to the great vessels or heart then
6 more than likely it would have been seen on the CT scan,
7 correct.

8 Q. Okay. And, so the impression that they put was a
9 left thoracostomy tube in place without pneumothorax or
10 other definite acute finding appreciated. So and I just
11 want to make sure I'm understanding this correctly.

12 You as a trauma surgeon absolutely did your job and
13 took care of the problem immediately. And then when the
14 X-rays and everything, all the testing was done,
15 everything was fine, not fine, but okay with him. He
16 wasn't life threatened?

17 A. I think the CT scan impression by the radiologist
18 who reads these was that, yes, there was a thoracostomy
19 tube in place. There was a pulmonary or lung laceration
20 and injury with bleeding or blood in the chest but,
21 correct, no injury to the heart or great vessels.

22 Q. And I believe you said the lower lung pulmonary
23 laceration and hemorrhage with adjacent more superficial
24 stab wounds noted at the left posterior chest?

25 A. So, he was describing both wounds.

JEREMY REEVES - CROSS BY ZMROCZEK

1 Q. Both wounds?

2 A. Correct.

3 Q. And after that the tube was removed?

4 A. Well after several days, correct.

5 Q. After several days the tube was removed. And, his
6 follow-up, they did another CT scan, correct, just to make
7 sure that there was no collapsing of the lung at that
8 point?

9 A. I wasn't present for that. I'm not sure.

10 Q. Okay. And they continued to do CT scans and X-rays
11 while he was in there just to follow up to make sure there
12 were no developing problems; correct?

13 A. Yeah, we usually get one CT scan initially and then
14 the injury to the lung and/or chest is followed up with
15 routine chest X-rays.

16 Q. And as the attending trauma physician, do you
17 follow up with those?

18 A. It depends. I may be on call one night, see a
19 patient at two in the morning, go home the next day and
20 not see them again because they're on my partner's
21 rounding rotation or something like that. So I believe in
22 his case I did see him again though.

23 Q. But you did do the discharge on him, correct?

24 A. I was present the day he was discharged, yes.

25 Q. Did you --

JEREMY REEVES - CROSS BY ZMROCZEK

1 A. I think I signed the discharge summary that the
2 residents took.

3 Q. Okay. And so on the discharge diagnosis you have
4 him as assault stab wound to the left back and shoulder,
5 left shoulder dislocation and then some other things. But
6 those are the main, those were the first three and main
7 issues; correct?

8 A. I'd have to look at the record again.

9 Q. (Document handed to the witness.)

10 A. Thanks. Yes, there are six diagnoses.

11 Q. And you don't need to go through all six.

12 A. Okay. The first being assault, the second being
13 stab wound, third being shoulder dislocation, fourth being
14 hemopneumothorax.

15 Q. And you can stop there. And I guess -- I'm not
16 guessing. I'm reading on the -- also the day that he was
17 evaluated, he was also evaluated by your team, the trauma
18 surgery team on discharge after demonstrating a negative
19 check date for reoccurrence of this hemopneumothorax and
20 he was -- I'm sorry. I can't read this. Is it --
21 does that mean his shoulder was back in place?

22 A. The printer obviously didn't work very well there.
23 Are you talking about this sentence here?

24 Q. Yeah.

25 A. It says: Patient was asymptomatic at the time and

JEREMY REEVES - CROSS BY ZMROCZEK

1 discharged home.

2 Q. Okay. Thank you.

3 Did y'all have any conversations with the police or
4 anyone to let them know of their injuries?

5 A. I don't routinely do that.

6 Q. That's not part of y'all's job?

7 A. No.

8 Q. If they reported that they were non life
9 threatening, they would have gotten that from somewhere
10 else?

11 A. Usually -- I do not speak to law enforcement unless
12 asked to specifically.

13 MS. ZMROCZEK: Thank you, Your Honor.

14 THE COURT: Ms. Campbell, anything?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Thank you, Doctor. You may step down.

17 MS. CAMPBELL: Your Honor, may he be excused?

18 THE COURT: Yes, ma'am. You're free to leave,
19 Doctor.

20 THE WITNESS: Thank you.

21 MS. GARFIELD: The State calls Jesse Patterson.

22 JESSE PATTERSON, having been duly sworn, was
23 examined and testified as follows:

24 THE CLERK: Have a seat and state your full name
25 for the record.

JESSE PATTERSON - DIRECT BY GARFIELD

1 THE WITNESS: Jesse Patterson.

2 MS. GARFIELD: Beg the Court's indulgence.

3 (Pause.)

4 DIRECT EXAMINATION

5 BY MS. GARFIELD:

6 Q. Jesse, where do you live?

7 A. Columbia.

8 Q. And have you always lived in Columbia?

9 A. For the past 14 years.

10 Q. Are you nervous today?

11 A. Uh-huh.

12 THE COURT: I need you to say yes or no.

13 THE WITNESS: Yes. Sorry.

14 BY MS. GARFIELD:

15 Q. Where did you go to high school?

16 A. Blythewood.

17 Q. And did you continue any education past high
18 school?

19 A. I've been in and out of college. I've gone on
20 through three different degrees; electrical engineering,
21 criminal justice and business management.

22 Q. Are you currently enrolled in school?

23 A. No, ma'am.

24 Q. Are you currently working?

25 A. Yes, ma'am.

JESSE PATTERSON - DIRECT BY GARFIELD

1 Q. Where are you working?

2 A. I work for a company called Concept Unlimited,
3 Incorporated. I am the -- I do shipping fabrications and
4 coordinate logistics.

5 Q. Were you working there last summer?

6 A. No, ma'am.

7 Q. Where were you working last summer?

8 A. I was a bouncer at Group Therapy.

9 Q. When did you start working at Group Therapy?

10 A. Sometime in June.

11 Q. And what were your duties at Group Therapy?

12 A. I was a bouncer, and I checked IDs and grabbing
13 anything the bartenders needed, if there was a problem try
14 to sort it out and just fix it before it turned into
15 something bigger.

16 Q. Had you had any previous experience working in
17 bars?

18 A. Yes, ma'am.

19 Q. Where?

20 A. I had bartended at the Sharky's Rib House.

21 Q. Where is Sharky's?

22 A. Down Harden Street from Group Therapy.

23 Q. And is that in the City of Columbia?

24 A. Yes, ma'am.

25 Q. Is that Richland County?

JESSE PATTERSON - DIRECT BY GARFIELD

1 A. Yes, ma'am.

2 Q. Were you working the night of July 27th and into
3 the early morning hours of July 28th?

4 A. Yes, ma'am.

5 Q. And what was your job at Group Therapy on that
6 night?

7 A. I was -- that night I got stationed to the front
8 door so I was checking IDs and just to keep an ear out for
9 the walkie-talking in case something was going on inside.

10 Q. And were -- what time do you think you came on duty
11 that night?

12 A. We usually started our shift, for the secondary
13 bouncers they come in at ten.

14 Q. Were you a secondary bouncer?

15 A. Yes, ma'am.

16 Q. So you had been at work since ten o'clock?

17 A. Uh-huh.

18 Q. Roughly?

19 A. Uh-huh.

20 Q. And was your duty the whole night to be at the
21 front door?

22 A. Yes, ma'am.

23 Q. And you said you were listening for the walkie-
24 talkie. Is that something you had on you?

25 A. Yeah. We would usually clip them on our pockets.

JESSE PATTERSON - DIRECT BY GARFIELD

1 Now since everything happened, they've actually got ear
2 pieces. So you don't -- it's a lot easier to get to.
3 It's quicker. You can just talk instead of, you know,
4 reaching for something and pulling it to your head and
5 clicking buttons and whatever else.

6 Q. I want to just go through the course of the night
7 concerning the Defendant and his friends. Do you recall
8 the Defendant and his friends arriving at Group Therapy?

9 A. I, I mean, you see so many people come into a bar
10 in one night, you don't really pinpoint a face. You might
11 remember somebody if they were to say something to you or
12 if something happened, but outside of that if they're in
13 and out of the bar you don't really pay too much attention
14 to them.

15 Q. So with that explanation, Jesse, are you saying
16 there was nothing about them to caused you to remember
17 them in any way?

18 A. Not really, no.

19 Q. Since then, have you viewed the video when they
20 entered Group Therapy?

21 A. Yes, ma'am.

22 Q. So you don't remember them arriving. Do you
23 remember them being asked to leave?

24 A. I wasn't back there when they were asked to leave.

25 All I know is I was at the front door and I heard yelling

JESSE PATTERSON - DIRECT BY GARFIELD

1 coming up behind me because my back was faced to it so I
2 could continue to check IDs. And I heard yelling and
3 cussing and I turned around and I see them getting
4 escorted out by my bouncers.

5 Q. Okay. Before I continue on, I'm going to ask you a
6 couple questions about your employment at Group Therapy.
7 Are you allowed to consume alcoholic beverages while
8 you're working?

9 A. No.

10 Q. And are you allowed to arm yourself with any type
11 of weapon?

12 A. No.

13 Q. Do you check every single person's identification
14 that enters the bar?

15 A. Yeah, for the most unless it's somebody that's
16 clearly of age or that, you know, been in there multiple
17 times throughout the night.

18 Q. That you're familiar with being of age?

19 A. Yes, ma'am.

20 Q. All right. So back to them being escorted out.

21 Can you just describe for the jury what you recall at the
22 scene during that process?

23 A. I just, I heard them coming up behind me. And I
24 was standing there. I was eating a piece of pizza and
25 checking people's IDs. And I heard them coming up, so I

JESSE PATTERSON - DIRECT BY GARFIELD

1 just stepped out of the way. I didn't realize how many
2 people there were at first until I saw them go down and
3 there was four of them. But at the same time, you know,
4 they were yelling and cussing and whatever else but my
5 other bouncers, they were talking. So I just kind of
6 stayed off to the side just in case something happened. I
7 kept to myself about it.

8 Q. You weren't part of the ejecting of these people?

9 A. I didn't find out what was going on until after
10 they had left the bar.

11 Q. Did anyone get shoved in the process of this?

12 A. Yes, ma'am.

13 Q. And who was that?

14 A. That was Ryan.

15 Q. Ryan Kinard?

16 A. Yes, ma'am.

17 Q. And that's who testified yesterday?

18 A. Yes, ma'am.

19 Q. And did they quietly leave the establishment?

20 A. Not at all.

21 Q. And explain to the jury what you saw.

22 A. Well, they got them out front and I was off to the
23 side eating my piece of pizza. And, you know, I wasn't
24 expecting anything. A lot of times people they'll yell
25 threats at you, stuff like that, because a bouncer, you --

JESSE PATTERSON - DIRECT BY GARFIELD

1 I mean, it happens. It's part of the job. But you don't
2 really -- people never really take it that far.

3 And so, they're sitting there and I specifically
4 remember Ard, Stewart Ard, "Dude, I'm going to fuck you
5 up." You know, I'll get mine. "Don't worry about that,
6 I'm not scared of you. Y'all are a bunch of bitches and
7 staff shitters."

8 Geno Smith, I believe that's his name, Geno, he was

9 --

10 Q. Is that the person that was with the Defendant?

11 A. Yes, ma'am.

12 Q. Are you referring to Benjamin Geno?

13 A. I don't know his name. I believe so.

14 Q. Okay.

15 A. He was getting held back by the other two, just
16 screaming to the point where he had -- his face is blood
17 red. He got veins shooting out of his neck. "I'm going
18 to fuck you up. I'm going to get you, I'm going to get
19 you."

20 And Stewart Ard is just, you know, nodding up,
21 following stuff, putting his own words in, pretty much
22 agreeing with him.

23 They left the bar finally. They walked around the
24 corner of Pour House down towards where the saloon was
25 down Harden Street and I'm not sure exactly how, you know,

JESSE PATTERSON - DIRECT BY GARFIELD

1 how much longer it was after that but they came back a
2 second time.

3 And my bouncer had told me, "Hey these guys are,
4 you know, they're kind of wild. Just keep an eye out." I
5 was like, "okay," you know, "I'll be fine". I didn't --
6 yeah, they were saying a lot of stuff but, like I say, you
7 hear a lot of things as a bouncer when you piss somebody
8 off. I didn't think much about that.

9 But they come back a second time and it's the same
10 situation. They came halfway down the sidewalk. Geno is
11 still being held back, screaming at the top of his lungs.
12 He -- Ard is, you know, staring and threats and "Let's
13 go."

14 And I kept my head straight. I put my hands down
15 at my side just because I know not to provoke somebody
16 especially when I'm the only person against, you know,
17 three or four people, not to make them mad. So I just
18 kept doing my job. I ignored them and eventually they
19 left after the second time.

20 And then the third time they came to the bar I was
21 standing out front and I was talking --

22 Q. I'm going to stop you right there.

23 A. Yes, ma'am. Uh-huh.

24 Q. Can you describe what Stewart Ard looked like that
25 night?

JESSE PATTERSON - DIRECT BY GARFIELD

1 A. Tall, older looking, bald headed, green shirt,
2 skinny guy.

3 Q. Had you ever seen him before?

4 A. No, ma'am.

5 Q. Had you ever seen any of these individuals before?

6 A. No, ma'am.

7 Q. Do you know if they had frequented Group Therapy?

8 A. I had never seen them and usually, you know, if
9 there's regulars coming into the bar, you know their face.

10 Q. And you just mentioned that they came back yet a
11 third time. Did they come back by foot?

12 A. No. The third time they pulled up into a parking
13 spot in front of the tanning salon.

14 Q. Did you see them pull up?

15 A. I didn't. I was in the middle of a conversation
16 with Scott, the owner.

17 Q. Scott Flemming?

18 A. Yes, ma'am.

19 Q. All right. Go ahead and just describe to the jury
20 what happened next.

21 A. We were just talking, not even about them, just
22 about the night in general. I mean, it was not uncommon.
23 And I hear almost from behind me, "I'm going to fuck him
24 up. I'm going to get him."

25 And I turned around and I saw him and Geno Benjamin

JESSE PATTERSON - DIRECT BY GARFIELD

1 both come walking at me. And I put my hands up. And I
2 was, like, "I'm tired. Y'all chill out," because I even
3 told them the first time, "Y'all need to go. Nobody needs
4 to get arrested. Like, I got my people and you got your
5 people. Separate. Nobody goes to jail. Nobody gets in
6 trouble. Call it a night."

7 They came walking up on me and I was just, "Hey
8 y'all, like, I'm tired of this. Y'all stop." And with no
9 hesitation Benjamin just swings on me. The second he gets
10 up to me, just swings on me, starts trying to hit me.

11 And then he steps back for one second and I see him
12 step in front of me and I put my hands up and told him to
13 stop. And the next thing know I'm on the ground laying in
14 a puddle of blood, not knowing what's going on.

15 I knew I got stabbed how bad it hurt. It was a
16 lot more than just a punch to the ribs. And, I mean, that
17 was it. He hid behind a guy while he was trying to fight
18 me, then snuck up behind him and stabbed me.

19 Q. At that time, Jesse, were you bleeding?

20 A. Yes.

21 Q. Were you able to breathe?

22 A. Not very well. I even -- I very, very firmly
23 remember telling people I thought I was going to die.

24 Q. Were you in pain?

25 A. Very much.

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1 Q. Do you remember going to the hospital?

2 A. For the most part, yes.

3 Q. I'm going to show you what's been marked as State's
4 Exhibit Number Eight. Do you recognize this photograph?

5 A. Yes.

6 Q. Can you tell me what this is a picture of, Jesse?

7 A. That's a picture of my back and shoulder after they
8 stabbed me, before they put the staples in it.

9 MS. GARFIELD: Your Honor, may I publish this to
10 the jury?

11 THE COURT: Has it been introduced?

12 MS. GARFIELD: I'm sorry. I'd like to move State's
13 Exhibit Number Eight.

14 MS. ZMROCZEK: Without objection.

15 THE COURT: So admitted.

16 MS. GARFIELD: Thank you.

17 (State's Exhibit No. 8, photograph, was received
18 into evidence.)

19 BY MS. GARFIELD:

20 Q. Jesse, what kind of treatment did you get at the
21 hospital?

22 A. They put the chest tube in me. They had to put my
23 shoulder back into place. They were giving me medications
24 for my pain. I had to stay there for a couple of days
25 with the chest tube in me, just X-rays, checkups, and

JESSE PATTERSON - DIRECT BY GARFIELD

1 just -- I was getting checked on every, it was probably
2 every 20, 30 minutes to make sure I was okay.

3 I had a couple instances where while they had the
4 chest tube in me, my lungs would shrink around it and I
5 couldn't breathe. When I woke up in the morning I
6 literally could not breathe and I'd have to hit the
7 emergency button and the nurses would come in and they'd
8 try to ask me what was wrong and I couldn't even talk to
9 them because I didn't have any air in my lungs to speak.

10 Q. Was that hard to walk?

11 A. Yeah. They, they told me I wasn't going to be
12 walking for, you know, like, a week or so. And, I mean,
13 the whole, the whole couple days I was in there if I had
14 to use the bathroom I was wiggling for five minutes to pee
15 in a cup. I couldn't shower. I couldn't do anything, you
16 know. Anything, any needs that I had to ring a button and
17 wait on somebody to come in the room. They wouldn't let
18 me get out of the bed.

19 Q. And you were discharged five days later?

20 A. I'm not sure exactly how long it was. I, I know I
21 was really persistent on getting out of the hospital. I
22 didn't want to be in there. So, I mean, even after the
23 first day I was, "Let me go home." Second day, "Let me go
24 home." Third day, "Let me go home." It was not a place I
25 really wanted to be in.

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1 Q. Do you still have any complications?

2 A. Yeah. I -- actually just about two months ago, I
3 was -- simple stuff. I was swimming and dislocated my
4 shoulder just from the resistance pushing against it. You
5 know, pulling on a T-shirt it can hurt. Raising my arm
6 too high. I had an instance where I was sleeping and I
7 rolled over and that dislocated my shoulder.

8 Pretty much anything that has to do with my left
9 shoulder I can't do. I used to train cross-fit, you know,
10 working out. I can't do that anymore. I mean, I'm just
11 not capable of doing it.

12 It's never really stopped hurting since it
13 happened.

14 Q. Do you see the person in the courtroom that stabbed
15 you that night?

16 A. Yes, ma'am.

17 Q. And can you point him out for the record?

18 A. Right there in the blue shirt with the curly hair.

19 MS. GARFIELD: Your Honor, may the record reflect
20 he's identified the Defendant?

21 THE COURT: You're indicating at the defense table
22 there?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. The record reflects --

25 BY MS. GARFIELD:

JESSE PATTERSON - DIRECT BY GARFIELD

1 Q. Does he look --

2 THE COURT: -- he identified Mr. Ard.

3 BY MS. GARFIELD:

4 Q. Does he look different?

5 A. He's got hair now but outside of that, no.

6 Q. Jesse, have you reviewed the video from the night
7 in question?

8 A. I have.

9 Q. Several different angles?

10 A. Yes, ma'am.

11 MS. GARFIELD: Beg the Court's indulgence?

12 (Pause.)

13 Your Honor, may the witness step off the witness
14 stand?

15 THE COURT: You may. Mr. Patterson, if you'll get
16 on the other side of the screen so when you talk you talk
17 back to the court reporter.

18 THE WITNESS: Yes, sir.

19 BY MS. GARFIELD:

20 Q. Jesse, you've indicated that you don't recall them
21 coming into the bar; is that correct?

22 A. Yes, ma'am.

23 THE COURT: You need to speak up now,
24 Mr. Patterson. We all got to be able to hear you.

25 THE WITNESS: Yes, sir.

JESSE PATTERSON - DIRECT BY GARFIELD

1 BY MS. GARFIELD:

2 Q. Have you reviewed the video here of individuals
3 coming in?

4 A. Yes, ma'am.

5 Q. And you're familiar with that video?

6 A. Yes, ma'am.

7 Q. At this time, I'm going to ask my co-counsel to
8 assist me in playing that video.

9 This is on State's Exhibit Number 20 that is
10 already in evidence.

11 Before we push play, can you -- I want to give you
12 this marker to help. Can you show the jury where you are
13 located in the video?

14 A. I'm sitting right there at the door.

15 Q. Okay. Thank you. And who is that individual?

16 A. That's Benjamin. That's the guy that initially
17 swung on me whenever everything happened. That was the
18 guy driving the car. That's Ard. And that kid, I mean,
19 he really didn't have too to much do. That was the guy
20 that Brett asked to leave but, I mean, he was the only one
21 that really cooperated with everybody.

22 Q. Is he finishing up a cigarette before he enters the
23 establishment?

24 A. Yes, ma'am.

25 Q. At this point there's nothing that causes you

JESSE PATTERSON - DIRECT BY GARFIELD

1 concern or even any reason to remember these people?

2 A. No, ma'am. I mean, they walked in, just a couple
3 guys going into a bar to have some drinks. I didn't
4 really think anything of it.

5 Q. It seemed like a happy crowd?

6 A. Yeah, I mean, they were talking.

7 Q. Have you also -- and I know, Jesse, this is going
8 to be hard for you. Well, before I get to the actual
9 incident.

10 Do you recall reviewing the video when the
11 individuals are actually asked to leave?

12 A. I do.

13 Q. At that time -- if you'll play the video.

14 Now at that time, where are you located? Are these
15 individuals leaving?

16 A. That's me right there eating my pizza.

17 Q. And is this the Defendant and his friends leaving?

18 A. Yes, ma'am.

19 Q. And what's going on outside, outside the camera
20 view?

21 A. Like I said, they were sitting there. These guys,
22 they're yelling threats to my bouncers and stuff. I was
23 just standing off to the side in case it got physical.
24 And that's when they pushed Ryan. And I ended up having
25 to get involved also because there was four of them and

JESSE PATTERSON - DIRECT BY GARFIELD

1 only three of us.

2 Q. But was anyone injured at that time?

3 A. No, ma'am.

4 Q. And what's going on?

5 A. Right now?

6 Q. Outside. Yes, sir.

7 A. They're just backing down the sidewalk, yelling at
8 us, screaming. Benjamin was, you know, just going crazy
9 is the only word I can think of for it. It pretty much
10 got to the point where it was just me and Ard talking, you
11 know, "Hey, you need to calm down and get your people,"
12 you know, whatever. He's still kind of making those
13 threats at me but they're leaving.

14 Q. I see some people who just left earlier, Jesse,
15 appeared to be dancing. Is there music being played in
16 Group Therapy?

17 A. At this point, yes, ma'am.

18 Q. Now what do you recall what these people are
19 talking about? I believe that's Brett Babcock and Ryan
20 Kinard?

21 A. Yeah. Actually what happened, and he just gave me
22 a quick little rundown, "Hey, these guys were --

23 MS. ZMROCZEK: Your Honor, I object to hearsay.

24 THE COURT: Sustained.

25 THE WITNESS: He was -- he was giving me a quick

JESSE PATTERSON - DIRECT BY GARFIELD

1 little rundown of what happened.

2 BY MS. GARFIELD:

3 Q. Don't say what they actually said.

4 A. Oh, no. He was just -- I mean, he just --

5 Q. Just telling you what had happened?

6 A. Yeah. This guy was punching a wall. He was going
7 to --

8 Q. Don't tell what they said. Just, he was giving you
9 a rundown?

10 A. Oh. I'm sorry. I'm sorry. He was just telling me
11 what happened and then, I mean, that's I guess really all
12 I can say about it.

13 Q. Okay. Have you seen another angle of this incident
14 from the outside?

15 A. I believe so.

16 Q. At this time I'm going to ask my co-counsel to
17 queue that up.

18 Now is this outside of Group Therapy?

19 A. Yes, ma'am.

20 Q. And, the door that we see, would that be the
21 entrance into Group Therapy?

22 A. Yes, ma'am.

23 Q. Now it's covered up, but there was a barstool. Is
24 that where you had previously been sitting?

25 A. Yes, ma'am.

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1 Q. Okay. Now who is the person in the red shirt?
2 A. Right there?
3 Q. Yes, sir.
4 A. That's Scott.
5 Q. And when you say Scott, are you referring to Scott
6 Flemming?
7 A. Yes, ma'am.
8 Q. And he's the owner of this establishment?
9 A. Yes, ma'am.
10 Q. I believe it looks like you're giving someone some
11 directions of some sort or talking to some other patrons;
12 is that correct?
13 A. Yeah. I mean, there's a million people a night
14 just coming in and out.
15 Q. The person right there with the khaki pants and, I
16 guess that's a white shirt, is he an employee?
17 A. No, ma'am. He was just somebody hanging out.
18 Q. You see a lot of different kinds of people in Five
19 Points, don't you, Jesse?
20 A. Yes, ma'am.
21 Q. Are these the individuals being asked to leave?
22 A. Yes, it is.
23 Q. That is them, including Stewart Ard?
24 A. Yes, ma'am.
25 Q. Now, are y'all just telling them to leave and go

JESSE PATTERSON - DIRECT BY GARFIELD

1 on?

2 A. Yeah. That's all it was. We were just telling
3 them to go before the cops got called. And nobody needed
4 to get in any trouble. There didn't need to be any
5 fights.

6 And as you can see, they didn't just walk away.

7 Q. Now ultimately they did walk off?

8 A. Yes, ma'am.

9 Q. Did you think that was it for the night?

10 A. I mean, I assumed so. That's normally -- if
11 anything ever did happen, that's usually how it was.

12 Q. And you have reviewed the video of when you were
13 hurt?

14 A. Yes, ma'am.

15 Q. I'm going to ask Mr. Shalabi to queue that up.

16 I believe you have some from inside and some from
17 outside?

18 A. Yes, ma'am.

19 Q. Would you agree with me there's two videos from the
20 outside area? One from far away, one from close up?

21 A. Yes, ma'am.

22 Q. I'm going to ask Mr. Shalabi to show the one from
23 far away first.

24 Now, you see in the upper right-hand corner, is
25 that the door to Group Therapy?

JESSE PATTERSON - DIRECT BY GARFIELD

- 1 A. Yes, ma'am.
- 2 Q. And leaning against that door, who is that?
- 3 A. That's Scott Flemming, the owner. And then that's
- 4 Alex Cromer, one of the guys that was up here yesterday.
- 5 Q. Mr. Cromer's hair was much longer at that time,
- 6 right?
- 7 A. Yes, ma'am.
- 8 Q. And where were you?
- 9 A. I was standing right there on the other side of the
- 10 door.
- 11 Q. To give perspective just for the jury as far as
- 12 Five Points is concerned, across the street -- what is
- 13 located across the street?
- 14 A. Directly across there's Grill Teriyaki and then to
- 15 the left of that there's a Post Office.
- 16 Q. And if you walked out of Group Therapy and went to
- 17 the left, what is that?
- 18 A. There's a tanning salon and then Nicky's Pizzeria.
- 19 Q. Is that Mr. Geno?
- 20 A. Yes, it is.
- 21 Q. I'm going to ask you to just to rewind back to when
- 22 we first see Mr. Geno. Hit pause right there. Oh sorry.
- 23 Rewind it just a little bit.
- 24 Do you see Mr. Ard's hand at that time?
- 25 A. Yes, ma'am.

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1 Q. And where is his hand?

2 A. In his pocket.

3 Q. All right. Go ahead and continue.

4 Do you see him run away?

5 A. Yes, ma'am.

6 Q. And who is that person running away?

7 A. It's Benjamin.

8 Q. Who are these individuals running?

9 A. That's Gabe and Joe, the bouncers at Pour House.

10 Q. And that's Alex Cromer?

11 A. Yes, ma'am.

12 Q. Who is this individual?

13 A. That's Moffatt Bradley. He's one of our regulars.

14 He was in there every night.

15 Q. What's he armed himself with?

16 A. Oh, that's his walking cane.

17 Q. Where are you at this time, Jesse?

18 A. I was laying on the floor trying to figure out what
19 just happened to me.

20 Q. Let's go to the video that's closer to the door.

21 You've reviewed that video as well, correct?

22 A. Yes, ma'am.

23 Q. This is the same scene but closer?

24 A. Yes, ma'am.

25 Q. Again, this is Scott Flemming?

JESSE PATTERSON - DIRECT BY GARFIELD

1 A. Uh-huh. Yes.

2 Q. And you're closer to the door?

3 A. Yes.

4 Q. Go ahead and play that, Mr. Shalabi.

5 What just caused them to look?

6 A. Them yelling down the sidewalk how they were about

7 to fuck somebody up.

8 Q. Who is that in the red hat?

9 A. Gabe.

10 Q. Gabe is a bouncer from next door?

11 A. Yes, ma'am.

12 Q. I believe that's Courtney going to call 9-1-1?

13 A. I don't know.

14 Q. You didn't know her?

15 A. No, ma'am.

16 Q. And who is that individual in the red hat to the

17 left?

18 A. That's Jeff.

19 Q. And he's the other bouncer from Pour House?

20 A. Yes, ma'am.

21 Q. And Pour House is located where?

22 A. If you walk out of the bar, out of the door of

23 Group Therapy that's off of Green Street, it's to the

24 right. The bar right next door to us.

25 Q. Is it on the corner of Green and Harden?

JESSE PATTERSON - DIRECT BY GARFIELD

1 A. Yes, ma'am.

2 Q. Is it still in business?

3 A. No, ma'am.

4 Q. You also reviewed video from inside?

5 A. Yes, ma'am.

6 Q. And that would be from a camera that's placed

7 inside of Group Therapy?

8 A. Yes, ma'am.

9 Q. And the angle towards the door?

10 A. Uh-huh.

11 Q. The same angle from when they first entered the

12 establishment; correct?

13 A. Yes, ma'am.

14 Q. Again, Jesse, where are you?

15 A. Right there.

16 Q. What's Scott picking up; do you know?

17 A. I have no idea.

18 Q. And who is that with the phone?

19 A. That's Ryan.

20 Q. Ryan also called 9-1-1?

21 A. Yes, ma'am.

22 Q. And -- you were in the far left corner?

23 A. Yes, ma'am. You can actually -- you can see my

24 shoes right there.

25 Q. Who is the person closest to the screen putting his

1 glasses back on?

2 A. That's Scott.

3 Q. Scott Flemming?

4 A. Yes, ma'am.

5 Q. Is that you hunched over, Jesse?

6 A. Yes, it is.

7 Q. Why are you in that position?

8 A. Actually, I mean, I couldn't move. I realized what
9 was going on and I was laying on my back. And I just kind
10 of started thinking, I got stabbed in the back. I don't
11 really think I should lay on it. So I got up on my hands
12 and knees. And I couldn't stand up. I couldn't move my
13 arm. That was really the only position I could get myself
14 into.

15 Q. Who that is walking in?

16 A. That's Sergeant MacLaughlin.

17 Q. Thank you, Jesse. If you'd take your seat.

18 A. (Complying.)

19 Q. Jesse, when you were laying on the floor in Group
20 Therapy, were you in fear for your life?

21 A. I was.

22 MS. GARFIELD: Thank you, Mr. Patterson. Please
23 answer any questions defense counsel has.

24 THE COURT: All right. We're going to take a break
25 before we go to cross-examination.

1 Ladies and gentlemen, I'm going to take about a
2 15-minute break. Let you step back to the jury room.
3 Please don't discuss the case while you're back there.
4 We'll bring you back and resume cross-examination in just
5 a little bit.

6 (Jury exits courtroom at 11:01 A.M.)

7 THE COURT: All right. Mr. Patterson, you may step
8 down but don't discuss your testimony while we're on
9 break. Okay?

10 THE WITNESS: Yes, sir.

11 MS. CAMPBELL: Could I take up one thing up?

12 During the course of that testimony when the video
13 was being shown, the defense counsel chose to sit right
14 next to the forelady of the jury. And her pad, she had it
15 angled so that the juror next to her was looking directly
16 at it. I don't know what's on that piece of paper. I'm
17 not saying anything is, however the juror, the forelady or
18 the person in that seat looked over at it several times
19 because of how she held it for her to see. We would just
20 ask that she -- what she just put on the bottom --

21 MS. ZMROCZEK: I have three.

22 MS. CAMPBELL: It's that page right there.

23 MS. ZMROCZEK: This page? It's got a bunch of
24 writing on it. I mean, it's a Facebook page. I wasn't
25 showing it to anybody to read it. Your Honor, I mean, in

1 fact the bailiff, you know, I asked to sit in the back and
2 he said, "You can sit here."

3 MS. CAMPBELL: I'm not taking dispute in where she
4 sat. I'm taking dispute in what she showed the juror.
5 Just what's on that piece of paper is all I am asking.

6 THE COURT: I don't know what she showed the juror,
7 if anything.

8 MS. CAMPBELL: If anything, Your Honor, we don't
9 need to know but if you can review it to make sure it's
10 nothing.

11 MS. ZMROCZEK: Sure. I mean, I can show you all my
12 papers.

13 THE COURT: Just keep your papers away from the
14 eyesight of the jury.

15 MS. ZMROCZEK: Okay.

16 THE COURT: All right. We'll take a break.

17 (Break taken at 11:03 A.M. At 11:19 A.M., the
18 trial resumed:)

19 THE COURT: All right. Let's bring the jury in,
20 please.

21 MS. GARFIELD: Your Honor, before we bring the jury
22 in --

23 THE COURT: Hold on.

24 MS. GARFIELD: Ms. Zmroczek did provide us some of
25 the materials that she had in her possession. I just

1 wanted to take up with the Court one of the pages she had
2 that a juror could potentially see is a Facebook page that
3 she's obviously printed from Jesse Patterson's account
4 where he's referencing the altercation that occurred in
5 Group Therapy earlier this year as in 2014. I would just
6 object that --

7 THE COURT: What do you want me to do,
8 Ms. Garfield?

9 MS. GARFIELD: I want to limit her cross-
10 examination. She could not ask about this fight that
11 happened some six months after the incident.

12 THE COURT: What does that have to do with
13 anything?

14 MS. ZMROCZEK: Your Honor, I was simply going to
15 inquire as to how tensions rise. Yesterday we had this
16 discussion about how I'm not raising self-defense. I'm
17 absolutely not raising self-defense but, Your Honor, I
18 also have to talk about intent because he's charged with
19 an intent-to-kill crime.

20 And, this was a fight, Your Honor, that my client
21 was stupid and this was a fight. And bartenders get into
22 fights. Particularly this bartender gets into fights
23 because of things that come out of his mouth and things
24 that come out of other people's mouths.

25 Your Honor, I think I'm allowed to inquire as to

1 the situation surrounding this fight as it goes to my
2 client --

3 THE COURT: Just a second. Has anybody stopped you
4 from asking about the incident that night?

5 MS. ZMROCZEK: Yeah.

6 THE COURT: All right. We're not going to stop you
7 from talking about the incident that night.

8 MS. ZMROCZEK: Okay.

9 THE COURT: But incidents that happened six months,
10 two years, something like that, that doesn't have anything
11 to do with it.

12 MS. ZMROCZEK: Okay.

13 THE COURT: If you want to talk about the general
14 atmosphere in a place, I mean, within limits, I think you
15 might be able to do that.

16 MS. ZMROCZEK: Okay. It's not that I necessarily
17 plan to ask him, Your Honor. I just had all his papers
18 sitting right there. And I really don't think that
19 anybody can read them. And I wasn't showing them to --

20 THE COURT: I'm not accusing you of doing that. You
21 might have done something that you shouldn't have done and
22 having them available for somebody that shouldn't be
23 looking at them looking at them.

24 But if you're sitting over there, turn your papers
25 over or leave them back --

JESSE PATTERSON - CROSS BY ZMROCZEK

1 MS. ZMROCZEK: I will.

2 THE COURT: Probably would be a good idea not to
3 sit there because you might make notes and you don't want
4 people looking at your notes.

5 MS. ZMROCZEK: Sure.

6 THE COURT: We do not have an ideal situation with
7 videos in this courtroom. And, I don't know what she's
8 going to ask. You'll have to deal with it through a
9 proper objection.

10 MS. GARFIELD: And I didn't know if she was
11 either. I just wanted to have a cautionary ruling not to
12 go into something that happened six months later.

13 THE COURT: Well, we'll see what the nature of her
14 cross is. All right. Bring the jury out, please.

15 (Jury enters courtroom at 11:22 A.M.)

16 THE COURT: All right. Ms. Zmroczek, are you ready
17 to proceed?

18 MS. ZMROCZEK: Yes, Your Honor. May it please the
19 Court.

20 THE COURT: If you would, please, ma'am.

21 MS. ZMROCZEK: Thank you.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Mr. Patterson, it's true that Stewart Ard called
25 the hospital to check on you that night, didn't he?

JESSE PATTERSON - CROSS BY ZMROCZEK

1 A. No.

2 Q. As a bartender and a bouncer, one of your jobs is
3 to make sure that everybody's safe, right?

4 A. Yes.

5 Q. And when people get angry and people get heated,
6 words get exchanged, correct?

7 A. Yes.

8 Q. You would agree that on the video it shows when
9 they were thrown out the first time that Mr. Ard walked
10 out and when the punches were being thrown back and forth
11 between -- or pushes, however you want to describe them,
12 were being thrown back and forth between the groups, he
13 was not part of that physical altercation, was he?

14 A. Yes, he was.

15 Q. So if the video shows him standing there drinking a
16 drink the video would be incorrect?

17 A. (No response.)

18 Q. Is that a yes?

19 A. That's -- what are you asking me?

20 Q. I'll move on.

21 You described three incidents amongst the group and
22 the bar, correct?

23 A. Yes.

24 Q. So the first incident we saw was on the video when
25 they got thrown out and then there was the altercation,

JESSE PATTERSON - CROSS BY ZMROCZEK

1 right?

2 A. Yes.

3 Q. And then the third one was when they came back?

4 A. Yes.

5 Q. And you say there was a second one?

6 A. Yes.

7 Q. Okay. But we don't have a video of that one,
8 right?

9 A. No, ma'am.

10 Q. And, Ms. Garfield asked you about consuming
11 alcohol. Why aren't bartenders allowed to consume
12 alcohol, or bouncers?

13 A. For incidents like this. If you're intoxicated
14 when something like this happens your word's kind of out
15 the window. I mean, you might not have known what you're
16 talking about.

17 Q. And they're also not supposed to consume marijuana
18 or cocaine, are they?

19 A. Not legally, no.

20 Q. And you would agree that there were words exchanged
21 between Brett and Ryan and yourself with the group,
22 correct?

23 A. I had -- me, no. Them -- like I said, by the time
24 they got out there, I didn't know what was going on. I
25 was just there trying to help out my other bouncers.

JESSE PATTERSON - CROSS BY ZMROCZEK

1 Q. So you never told them, you never said any curse
2 words or anything. They were all just cursing at you and
3 you weren't saying anything?

4 A. I did not say one violent thing that entire night
5 to anybody.

6 Q. When that first fight happened, Geno Benjamin lost
7 his watch, didn't he? In fact, we saw it come flying in
8 the video, right?

9 A. So I've been told, right.

10 Q. And you picked it up?

11 A. No.

12 Q. Would it refresh your memory to watch that video
13 again?

14 A. Yeah. That video I was picking up a piece of pizza
15 I had dropped to stop them from pushing my bouncers.

16 Q. Didn't pick up anything else?

17 A. No, that is why I put on the plate, and I threw it
18 in the trash can.

19 Q. Okay. So, when Geno comes back and he's on that
20 second video when we watched stuff and he was walking
21 really fast, he was saying, "I want my watch, man".

22 A. No. He was saying, "I'm going to fucking get you."
23 He didn't say anything about a watch. And he immediately
24 jumped on me and started hitting me before he stabbed me.

25 Q. Geno?

JESSE PATTERSON - CROSS BY ZMROCZEK

1 A. Benjamin. While he was -- there was never anything
2 about a watch from him or Geno or anybody.

3 Q. Geno Benjamin or Benjamin Geno?

4 A. What about him?

5 Q. Okay. When you walked in -- let's go back to the
6 first video when they showed you were checking IDs,
7 right? Remember that?

8 A. Yeah.

9 Q. And the four walked in?

10 A. Yes, ma'am.

11 Q. And, you didn't check Mr. Benjamin Geno, did you?

12 A. No, ma'am.

13 Q. You shook his hand. Y'all do a little shake.

14 A. As I said, somebody that comes in clearly looks of
15 age, as given in any restaurant or establishment, it's a
16 courtesy thing. When you know they're of age -- he's
17 clearly not some 18-, 19-year-old kid. I figured he was
18 well into his 30s or 40s.

19 Q. You pointed out Stewart Ard. Remember? You
20 pointed him out. Was he of age clearly?

21 A. Yes.

22 Q. Okay. But you checked his ID, right?

23 A. He already had his ID pulled out to show it to me.

24 Q. Okay. When you were in the hospital you received
25 good treatment, right?

JESSE PATTERSON - CROSS BY ZMROCZEK

1 A. Otherwise I wouldn't be here.

2 Q. So it's your contention you would have died?

3 A. I mean, I know I had a hole in my lungs. How would
4 I have lived?

5 Q. And, were you able to return to work?

6 A. Not for about two months.

7 Q. And why did you leave that job?

8 A. I -- for two months, because I got stabbed and I
9 couldn't work.

10 Q. Why did you leave eventually? I think you said you
11 have a new job?

12 A. There was an altercation where I got threatened. I
13 had a shirt ripped off my back. And the kid wouldn't let
14 go of me. So in that case because of what happened I felt
15 threatened and I had to do what I had to do to make sure I
16 was safe. Whether it was, you know, what you should or
17 shouldn't do in a bar or not. I had a kid throw stuff at
18 me across the bar, ripped my shirt off, wouldn't listen to
19 me when I told him multiple times to let me go. And I
20 felt threatened especially because of the situation I had
21 been through, so I did what I felt necessary to get him
22 off me so I knew that I would be okay.

23 MS. ZMROCZEK: Beg the Court's indulgence.

24 (Pause.)

25 Thank you, Mr. Patterson. Those are all the

JESSE PATTERSON - REDIRECT BY GARFIELD

1 questions I have.

2 THE COURT: Anything on redirect?

3 MS. GARFIELD: Beg the Court's indulgence.

4 (Conferring with co-counsel.)

5 REDIRECT EXAMINATION

6 BY MS. GARFIELD:

7 Q. Jesse, Ms. Zmroczek mentioned three incidents. I
8 believe we can agree the first incident is when that they
9 were first being kicked out?

10 A. Yes.

11 Q. And just to clear it up for the jury. What do you
12 mean by the second incident?

13 A. The second one where they -- I mean, they had
14 already left. They went around the corner of the Pour
15 House. They came back out of nowhere. I was the only
16 person at the door and there were just more yelling and
17 threats.

18 Q. But really it was, like, they walked up and then
19 came back. They had not actually left your perception or
20 your view at that time?

21 A. No. They, they left and came back a second time.

22 Q. But still right there within that time frame, those
23 few minutes?

24 A. Yes, ma'am.

25 Q. Okay. I'm going to -- Ms. Zmroczek was referring

JESSE PATTERSON - REDIRECT BY GARFIELD

1 to picking up a watch or something of that nature. I'm
2 going to pull the video back out. If you can show for me
3 what you picked up.

4 A. Yes, ma'am.

5 MS. GARFIELD: May the witness step down?

6 THE COURT: Yes, ma'am.

7 BY MS. GARFIELD:

8 Q. This is the video from inside of Group Therapy
9 looking out; is that correct?

10 A. Yes, ma'am.

11 Q. And here the gentlemen are leaving?

12 A. You can see the whole time. That's my plate.
13 That's my pizza crust.

14 Q. Okay. At this time you don't know anything has
15 happened?

16 A. I had no idea. I thought they just got asked to
17 leave and they were bumping up against me.

18 Q. I believe you just took a bite of pizza?

19 A. Yes, ma'am. You can even see it down to here,
20 I still have it in my hand. And I drop it right there.
21 Right there.

22 Q. I believe this woman, she just kicks it?

23 A. Yes, ma'am.

24 Q. Did you ever see a watch fall?

25 A. No.

JESSE PATTERSON - REDIRECT BY GARFIELD

1 Q. Did you know anything about a watch?

2 A. No.

3 Q. When did you first learn anything about a missing
4 watch involved in this case?

5 A. When all of this started happening and they
6 apparently needed a reason to come back to the bar.

7 Q. You found out that night?

8 A. Oh, no.

9 Q. When did you find out?

10 A. Six months, eight months. Months after the fact.

11 Q. Thank you. Where is the pizza at this time?

12 A. It's still sitting right there, and my plate's over
13 there. And then I was even mad. I was, like, they made
14 me drop my piece of pizza. And being a bouncer you have
15 to pick your trash up. So it was now or later, I was
16 going to have to pick that up.

17 Q. That's what you just picked up?

18 A. Yeah. I picked that up. And I picked my plate up
19 and I balled it up and I threw it in the trash can.

20 Q. That's what you just threw away?

21 A. Yes, ma'am.

22 Q. I'm going to ask my co-counsel to queue up the
23 video from the outside, just briefly.

24 Just a couple questions. And what is the black
25 thing hanging from your pocket, Jesse?

1 A. That's my walkie-talkie.

2 Q. What is that on the ground that's rolling right
3 there?

4 A. It looks like my walkie-talkie.

5 Q. That's your walkie-talkie? That patron right there
6 just picked up your walkie-talkie?

7 A. Yes, ma'am.

8 Q. Are you familiar with who that patron is?

9 A. It was one of those guys that wanted to talk and
10 not leave you alone. I have no idea.

11 Q. He's now returning the walkie-talkie to you?

12 A. Yes, ma'am.

13 MS. GARFIELD: Thank you. You can take a seat.

14 Thank you.

15 THE COURT: Anything, Ms. Zmroczek?

16 MS. ZMROCZEK: I have nothing further.

17 THE COURT: All right.. Thank you, Mr. Patterson.

18 You may step down.

19 All right. Call your next witness.

20 MS. CAMPBELL: The State would call Scott Flemming.

21 SCOTT FLEMMING, having been duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE WITNESS: Scott Flemming.

SCOTT FLEMMING - DIRECT BY CAMPBELL

DIRECT EXAMINATION

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BY MS. CAMPBELL:

Q. Mr. Flemming, where do you work?

A. Group Therapy.

Q. And what is your position there, sir?

A. I'm the owner.

Q. How long have you been the owner of Group Therapy?

A. For about seven years.

Q. What kind of establishment is Group Therapy?

A. It's a neighborhood tavern.

Q. And what are generally the hours that y'all are open at night?

A. Depending on the day of the week, usually close around two but later on in the weekends we stay open later, like, three, 3:30, four.

Q. At least on a weekend night it would be open until at least until two o'clock in the morning?

A. Yeah.

Q. And do you employ bartenders there?

A. We do.

Q. As well as bouncers?

A. Correct.

Q. And what's the need? Why do you have to have bouncers in your club?

A. It's for when people need assistance on when they

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 can't make the call themselves and the bartender cuts them
2 off, to help them get a cab, help them out of the bar,
3 make sure they get in a cab safe.

4 And in a case that there may be an altercation,
5 that they're able to split the people up, get them out of
6 the bar, away from the other customers.

7 Q. And are your bartender or your bouncers allowed to
8 carry weapons?

9 A. No.

10 Q. Are they allowed to imbibe in any -- do you serve
11 alcohol there?

12 A. We do.

13 Q. Are they allowed to drink alcohol while they're
14 working?

15 A. They are not.

16 Q. Generally on a weekend night -- or let me turn back
17 to July the 28th of last year. How many bouncers did you
18 have in the bar that night; do you remember?

19 A. Normally on a weekend night -- I can't recall the
20 exact number on that day. There's usually one for each
21 door and then usually one or two inside. Plus the general
22 manager fills in where needed. If one has to go to the
23 restroom or whatever, he'll take over their space.

24 So that would put us about six, not including the
25 general manager.

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 Q. And you also have bartenders?

2 A. We do.

3 Q. And that night specifically, were you working?

4 A. I was not.

5 Q. What are the policies you have in place as far as
6 conduct within the club as far as when your bouncers are
7 allowed to eject someone?

8 A. If there's customers trying to cause a fight, or in
9 an altercation, if someone seems intoxicated beyond and
10 the bartender cuts them off, then that's the kind of
11 things. We need to get them home safely.

12 Q. And your bouncers, before you employ them, do you
13 go over with them generally the type of behavior that is
14 acceptable or not acceptable?

15 A. Most definitely. Yeah, most definitely.

16 Q. And is there a way for the bouncers to communicate
17 with each other while in different parts of the bar?

18 A. Yes, through the walkie-talkies.

19 Q. How do you decide or that night how were the
20 bouncers set up? Do they have certain areas they patrol
21 or how does that work?

22 A. Correct, correct. We try to keep someone on each
23 door that's open, and then someone in all the areas so
24 that there's eyes, at least two people can see what's
25 going on in an area.

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 Q. And is that to ensure the safety of your patrons?

2 A. That is correct.

3 Q. Including the ones that are causing problems?

4 A. Correct.

5 Q. And as far as the type of force that is necessary
6 to eject someone, what policy do you have in place there?

7 A. We usually don't need to lay hands on people unless
8 they're being violent. And it's more to protect them and
9 the other customers. And basically all that is is what we
10 call wrapping them up where we put them in an arm bar or
11 arm lock to keep them from swinging and kicking.

12 Q. And do you have any policy about calling 9-1-1?

13 A. Yes. If there's injuries or someone that, you
14 know, needs assistance we definitely call 9-1-1.

15 Q. And your bouncers are told to use that as a backup
16 as well?

17 A. Correct, correct.

18 Q. On July the 28th, that evening, what were you
19 doing?

20 A. I had came down here to the Nickelodeon Theatre,
21 watched the movie with some friends. Went to a fairly new
22 establishment next door to us called Nicky's Pizzeria, had
23 dinner.

24 And then the folks that I was with were leaving and
25 so I walked over because I saw Jesse on the door and I

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 hadn't properly introduced myself to him yet. I just
2 wanted to get to know him a little better. And while
3 doing so I ran into some people that I hadn't seen in a
4 while that were regular customers and got into a
5 conversation with them is why I was actually there as long
6 as I was, so.

7 Q. And that evening -- so what part of the bar were
8 you actually hanging out? Where was Jesse when you saw
9 him?

10 A. He was at the front door.

11 Q. And was that the only door open that night?

12 A. I believe the back door was open temporarily until
13 business started slowing down.

14 Q. Okay. And that night though, Jesse was stationed
15 at the front door?

16 A. That's correct.

17 Q. And you also -- is it part of the bouncer's duties
18 that they keep up with kind of the number of people inside
19 as they fill up the seats?

20 A. That's correct, for fire code.

21 Q. Fire code?

22 A. Yes.

23 Q. When you went over and made contact with Jesse, was
24 that at the front door?

25 A. Correct.

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 Q. And while there, I believe you indicated you saw
2 some other people you knew as regulars?

3 A. Correct. Outside the door. I don't believe I ever
4 stepped inside the building.

5 Q. Okay. And as you were talking to the other people
6 outside of Group Therapy -- right there on Green Street;
7 is that right?

8 A. Uh-huh. That's correct

9 Q. -- tell the jury what you observed.

10 A. As far as?

11 Q. As anything -- as -- while you were there, what you
12 observed.

13 A. I saw -- if you're referring to the incident, I saw
14 the gentlemen being ejected. They weren't forcefully,
15 they walked out. Once they were out, they started
16 getting aggressive, shouting, and then pushing. They were
17 trying to start a fight --

18 Q. Okay.

19 A. -- once they were outside.

20 Q. And where were you when that was going on?

21 A. I was actually standing right beside the door. I
22 try to stay out of these things because the doormen handle
23 these things.

24 Q. Okay.

25 A. Go ahead.

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 Q. Do you know what had happened inside that caused
2 them --

3 A. No, I didn't.

4 Q. -- to ask them to leave?

5 A. No, I didn't.

6 Q. So your first encounter with the men with Stewart
7 Ard was outside?

8 A. Correct.

9 Q. And at that point who was doing the threats or the
10 yelling?

11 A. As far as that goes, I mean, there was a lot of
12 commotion, a lot of yelling. I know that the -- I believe
13 his name is Geno and Skaggs were both seeming to try to
14 instigate it more. Mr. Ard stood back. I walked up to
15 Mr. Ard. He was giving some kind of verbal, I'm not
16 sure. I asked him to get his buddies and leave, we don't
17 want any trouble.

18 At that time he stated, "Well, I've been to jail.
19 I don't want to go back." I said, "Well I don't want to
20 you go back either."

21 Q. And at that point did they leave?

22 A. With -- they kind of took off, I mean --

23 Q. Was there actual, a physical touching out there
24 when you were there?

25 A. There was some shoving, yeah.

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 Q. And who was involved in the shoving; do you recall?

2 A. No, I don't. I think, and this is only thinking
3 because I haven't reviewed the videos, I think Mr. Skaggs,
4 the driver, was the one that actually did one of the
5 pushings. Like I said, I turned and was trying to get
6 Mr. Ard to get his people out of there.

7 Q. So, and that was, I believe, involving Ryan Kinard?

8 A. Yes.

9 Q. Okay. And when you said they were starting a
10 fight -- trying to start a fight, who was trying to start
11 the fight? Was it your bouncers?

12 A. No, no. They were all saying, "Please leave, just
13 get out of here. It's done." You know, we -- I actually
14 heard them say, "There's plenty other places to go. Just
15 go." You know, "just don't come back here."

16 Q. And, as far as you were concerned at some point
17 after the physical altercation at the front, did they then
18 walk away as if they were leaving?

19 A. Correct. They went up towards Harden Street and
20 actually disappeared. I didn't see them for a little bit
21 at least.

22 Q. And when is the next time you actually saw that
23 group of men?

24 A. Mr. Geno come running back, kind of wildly,
25 screaming, and like he was coming back to start back up or

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 something, start a fight.

2 Q. Did he actually get back to the door at that
3 point?

4 A. No. He got close to the door. I think at that
5 time Mr. Ard came and grabbed him and was like, "We'll
6 take care of this."

7 Q. And during these first two times you saw them, at
8 any point did you see anyone with a weapon?

9 A. I did not.

10 Q. After Geno came running towards the door then
11 Mr. Ard got him and got away from the door, did they
12 disappear again?

13 A. They did.

14 Q. And could you tell what direction they went in?

15 A. It looks like, back the direction they came,
16 towards Harden Street.

17 Q. And at both, the first time they left and the
18 second time they came back left, were they on foot or in a
19 vehicle or how were they ---

20 A. They were on foot.

21 Q. And were you still near the front door of your
22 establishment?

23 A. Yes.

24 Q. What did you observe next?

25 A. The next instance with them involved, I was

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 actually -- I believe my back was turned to the door as I
2 was talking to somebody. And I heard a commotion.

3 Q. Could you tell where it was coming from?

4 A. Well, I knew it was behind me at the door itself.

5 Q. Okay.

6 A. And with what's now known, it's obviously when
7 Jesse was being attacked.

8 Q. So you didn't actually see the attack?

9 A. I did not.

10 Q. In your establishment are there cameras set up?

11 A. There is.

12 Q. And do all eight cameras see the same thing?

13 A. No, they're spread out through the whole bar to
14 cover areas. More for burglary than this kind of
15 instance.

16 Q. Once you heard the commotion behind you, what did
17 you next observe?

18 A. Well, I started to spin around to see what was
19 going on and there was Geno in front of me.

20 Q. Did you know their names at that point?

21 A. I did not. I never met them.

22 Q. Had you ever see them before?

23 A. No.

24 Q. The person we now know as Benjamin or Geno or
25 whatever it is, was he in front of you?

SCOTT FLEMMING - DIRECT BY CAMPBELL

- 1 A. He was.
- 2 Q. And what did you see next?
- 3 A. His fist in my eye.
- 4 Q. Oh, and he actually hit you?
- 5 A. Correct.
- 6 Q. Then what happened?
- 7 A. I guess just a natural reaction. I tried turning
8 my head. And when did I saw Mr. Ard laying or getting up
9 from the ground in the doorway.
- 10 Q. Mr. Ard, the Defendant?
- 11 A. Uh-huh.
- 12 Q. Okay.
- 13 A. And at that time --
- 14 Q. Did you observe anything?
- 15 A. At that time I thought he was trying to punch me
16 but in turn it turned out that he was actually stabbing
17 me.
- 18 Q. And what part of his body was he stabbing you in?
19 Where did you get stabbed?
- 20 A. I got stabbed in the arm and in the chest next to
21 the heart.
- 22 Q. Those were two different stab wounds or could you
23 tell?
- 24 A. Correct.
- 25 Q. And who was trying to stab you?

SCOTT FLEMMING - DIRECT BY CAMPBELL

- 1 A. Mr. Ard.
- 2 Q. The Defendant?
- 3 A. That's correct.
- 4 Q. And at that point did you know Jesse had been
- 5 stabbed?
- 6 A. No.
- 7 Q. And did you even know that he was stabbing you?
- 8 A. No, I did not.
- 9 Q. You thought you were getting hit?
- 10 A. Yeah.
- 11 Q. How did you realize that you'd been stabbed?
- 12 A. Someone told me.
- 13 Q. Would you say all of this was happening pretty
- 14 fast?
- 15 A. Yes.
- 16 Q. Could you feel the pain in your arm or in your
- 17 chest?
- 18 A. No.
- 19 Q. Was your adrenalin going?
- 20 A. Yeah.
- 21 Q. What did you see next as far as either Geno or
- 22 Mr. Ard? Did you ever see the other two gentlemen --
- 23 A. I did not.
- 24 Q. -- that came in initially with them?
- 25 A. No. I did witness -- to back it up a bit. I did

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 witness a car pulling into the Ultra Tan parking lot kind
2 of unusual.

3 Q. Was that before this last incident?

4 A. Way before, yeah -- not way before but just
5 before.

6 Q. Just before?

7 A. Yeah.

8 Q. Do you remember what color the car was or anything?

9 A. I do not.

10 Q. Okay.

11 A. I do not.

12 Q. Then prior to that car pulling in, you hadn't seen
13 a car involved with them at all?

14 A. No, no.

15 Q. When Mr. Ard was actually stabbing you, you said he
16 was trying to get up off the ground, was he stabbing you
17 from the ground or was he upright at that point?

18 A. He was -- it seemed like he was in the motion of
19 getting up from the ground.

20 Q. And you could actually see him lash out at you --

21 A. Correct, correct.

22 Q. -- and you thought it was his fist then?

23 A. Correct, correct. I was trying to deflect it.

24 Q. What happened next?

25 A. They ran off. I learned about -- (losing

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 composure) sorry.

2 Q. This was pretty upsetting?

3 A. I saw what had happened to Jesse. And immediately
4 was, like, "Call the police, call 9-1-1."

5 Q. And at that point did you even know you had been
6 stabbed?

7 A. Huh-uh.

8 Q. Did you know you were bleeding too?

9 A. Huh-uh.

10 Q. So your concern was for Jesse?

11 A. (Nods head), yes.

12 Q. What was Jesse's condition when you saw him?

13 A. He was in a huge pool of blood, screaming. Brett
14 had mentioned that he thought he had a punctured lung
15 because he saw the bubbling. So at that time it was just
16 a matter of getting Jesse out of there and in the
17 hospital.

18 Q. And did the police respond quickly?

19 A. Yes.

20 Q. Did EMS respond quickly?

21 A. Yes. Thank God.

22 Q. When the police got there, did you talk to them
23 briefly?

24 A. Yes.

25 Q. But you had -- by the time they got there, did you

SCOTT FLEMMING - DIRECT BY CAMPBELL

1 realize you'd been injured significantly too?

2 A. I thought I'd only been cut on the arm. I had a
3 napkin on it trying to stop the blood.

4 Q. And did you get transported to the hospital?

5 A. I did. I walked to the ambulance or was told to go
6 to the ambulance trying to get them to come up for Jesse.

7 Q. For Jesse?

8 A. Uh-huh.

9 Q. And your focus was on Jesse that night?

10 A. Uh-huh.

11 Q. Not your own injuries?

12 A. (Nods head.)

13 Q. Once you got to the hospital you got treatment?

14 A. Correct.

15 Q. And Jesse luckily got treatment too?

16 A. Yeah. He was in the next room.

17 Q. And later that day were you released from the
18 hospital?

19 A. That night, yes.

20 Q. That night?

21 A. Yeah.

22 Q. But you got there in the morning hours?

23 A. Correct. Well, that morning, I guess.

24 Q. At any point did you ever hear anything about
25 anybody asking for a watch?

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 A. No, ma'am.

2 Q. Did you ever see a watch?

3 A. No, ma'am.

4 Q. Did you take a watch?

5 A. No, ma'am.

6 Q. Did you do anything to provoke the attack on you
7 and Jesse?

8 A. No, ma'am.

9 Q. Did Jesse do anything?

10 A. No, ma'am.

11 Q. The person that you thought hit you but ended up
12 stabbing you, do you see him here in the courtroom?

13 A. I do.

14 Q. Can you point him out for the jury?

15 A. He's in the blue shirt with the curly hair.

16 Q. And has his appearance changed in any way?

17 A. Yes, he's grown hair.

18 Q. Any doubt that's him?

19 A. No.

20 MS. CAMPBELL: Thank you.

21 THE COURT: All right. Ms. Zmroczek?

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. I just have few questions for you. Are you sure
25 you're okay?

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 A. Yeah.

2 Q. Okay. I think you told the jury and I think that
3 you were probably the most clear headed because you
4 weren't in the bar that night with all the energy and the
5 music, were you?

6 A. No.

7 Q. No. So you were kind of able to -- I'm assuming,
8 as I am, a little older than the bartenders, you're able
9 to kind of step back and take the emotion out of it,
10 right.

11 A. Correct.

12 Q. But you have seen fights in the bar, and you have
13 seen your guys get mad at other guys, and not that it's
14 your guys' fault, but you've seen the aggression level
15 raise, right?

16 A. As far as what?

17 Q. As far as when drunk guys are screaming at them,
18 they don't just sit there and say, "Please leave," do
19 they? Or do they say --

20 A. They start with that, yes.

21 Q. Right. It starts with that, but eventually it
22 elevates to "Get the blank out," et cetera, because they
23 want to leave? They want them to leave.

24 A. They don't usually curse at them, no.

25 Q. Okay. But you did witness the shoving and the

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 pushing between the two groups, between Geno and Skaggs
2 who's another --

3 A. I saw them push the doorman.

4 Q. Right.

5 A. I did not see the doorman make any aggressive move
6 towards them.

7 Q. You didn't see them push back?

8 A. No. And I will -- to elaborate, I mean, I was
9 standing there. So, that would take even less of a
10 reason for them to even be aggressive.

11 Q. Right. Because you told them not to do that?

12 A. Right. It's a policy.

13 Q. And we have video, at least some of them the
14 videos, that show some angles, right?

15 A. I don't know what angles you have.

16 Q. Okay. But we have some cameras that were provided
17 to us. I mean, you've been sitting in the courtroom so
18 you know we've been watching them, right?

19 A. Right.

20 Q. And I believe that you told Ms. Campbell that you
21 were actually having a conversation with Ard, like, "Dude,
22 get your kids out of here, get these, get these guys out
23 of here"?

24 A. Right.

25 Q. So that's a conversation that you and he were --

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 A. . Not -- it was not a conversation-conversation. I
2 was asking him to get his other guys out of there.

3 Q. And he was saying "C'mon, let's go"?

4 A. After he made the statement that he had been to
5 prison and he didn't want to go back. And I think that's
6 why he was standing back. That's what he said to me, I'm
7 sorry.

8 MS. ZMROCZEK: Your Honor, I have a matter of law.

9 THE COURT: All right. Ladies and gentlemen, you
10 can step back to the jury room. Please don't discuss the
11 case while you're there.

12 (Jury exits courtroom at 11:58 A.M.)

13 MS. ZMROCZEK: Your Honor, at this time I'd like to
14 move for a mistrial. I think that maybe he said it when
15 Ms. Campbell said it, she was so close up I couldn't hear
16 it, but it's extremely prejudicial for him to say that Ard
17 said "I'd been to prison."

18 I've been very careful to keep out things that they
19 have wanted me to keep out. And, Your Honor, I think that
20 they have instructed all of their witnesses not to bring
21 that up. And the fact that --

22 THE COURT: I don't know. Were you told not to
23 talk about he had been to jail?

24 THE WITNESS: No, sir.

25 THE COURT: Did y'all know that conversation

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 existed?

2 MS. GARFIELD: I did, and I thought I had
3 instructed all the witnesses. I know I spoke with several
4 of them not to mention the jail. I thought I had spoken
5 personally to Mr. Flemming.

6 THE COURT: Well, you did or you didn't.

7 MS. GARFIELD: If he says I didn't then --

8 THE WITNESS: I do not recall. I thought we
9 were -- I was under the assumption that I needed to say
10 what was said to me.

11 THE COURT: Well, that's true and not necessarily
12 true, of course. Were you aware that he had made that
13 statement before?

14 MS. ZMROCZEK: Not to -- no, I was not aware that
15 he had said that to him at all. The conversation that I
16 was told about, he -- I've never been provided a statement
17 from him. So the conversation I was told about, that
18 happened in the back of the bar with the other, all the
19 other bartenders who were coming up who hadn't said a word
20 about it. When they said they were saying stuff.

21 THE COURT: So you never had any indication that
22 your client had made the statement to him or that somebody
23 was going to say that he had been to jail before and
24 didn't want to go back.

25 MS. ZMROCZEK: None.

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 MS. GARFIELD: Ms. Zmorczech, I told you that he
2 said that to the bartenders as he was leaving.

3 MS. ZMROCZEK: I've never been provided that.

4 MS. GARFIELD: He wasn't scared because he'd been
5 to prison before. I told that you on June 6th in that
6 meeting.

7 THE COURT: Talk to me. Don't talk to her.

8 MS. GARFIELD: I'm sorry, Your Honor.

9 I instructed counsel in our discovery meeting that
10 witnesses said -- I specifically remember. I said,
11 "Witnesses would say that the Defendant was yelling that
12 he wasn't scared, he'd been to jail." And she even
13 smiled. Ms. Zmroczech smiled at me and said, "You're going
14 to instruct the witnesses not to say that." And I said,
15 "Of course." But I did disclose that to Ms. Zmroczech.

16 THE COURT: There wasn't any motion in limine made
17 to see that that was not done.

18 (Pause.)

19 All right. I'm going to deny your motion. He's
20 testifying to what was told him by your client at the time
21 that's right before this incident occurred. I will -- do
22 you have a curative instruction you would like me to give
23 this jury?

24 MS. ZMROCZEK: I will, Your Honor.

25 THE COURT: Well, you don't want one now?

SCOTT FLEMMING - CROSS BY ZMROCZEK

1 MS. ZMROCZEK: I guess, Your Honor, at this point I
2 want them to be instructed that that has no -- that's not
3 in any way to be considered. Whether or not he went to
4 prison or didn't go to prison is in no way to be
5 considered in the charges for this case.

6 THE COURT: All right. Don't say anything about --
7 and I caution anybody that testifies, better not say
8 anything about the statement that he made to the witness
9 prior to this incident occurring.

10 All right. Bring the jury in if you would,
11 please.

12 (Jury enters courtroom at 12:04 P.M.)

13 THE BAILIFF: The jury is seated, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, I'm
15 going to specifically instruct you at this time that any
16 comments that were made or allegedly made by the Defendant
17 prior to the alleged incident relating to his not having
18 any interest in going to jail at any time are to be
19 disregarded by you and are not be considered by you
20 whatsoever with respect to anything involved in this
21 trial. They don't have anything to do with the case. So
22 you disregard those.

23 And when you have your deliberations I'm going to
24 instruct you that that is not to enter into your
25 deliberations and be part of your conversation.

1 So, all right.

2 MS. ZMROCZEK: Thank you, Your Honor.. I just have
3 a few more questions.

4 Q. So as you recall, Mr. Skaggs and Mr. Benjamin Geno
5 were the ones causing the trouble in the group?

6 A. Yes.

7 Q. And you instruct your bartenders not to get into
8 fights, not to push back, not to cause trouble, right?

9 A. Correct.

10 Q. Did you eventually have to fire Mr. Patterson?

11 A. I did have to release him, yes.

12 Q. Is that because he got into a fight?

13 A. No. It was because he was a bartender and
14 bartenders do not step behind the bar to handle customers
15 and that's why he lost his job.

16 MS. ZMROCZEK: I have no further questions.

17 THE WITNESS: Okay.

18 MS. ZMROCZEK: Thank you.

19 THE COURT: All right. Anything?

20 MS. CAMPBELL: No, sir.

21 THE COURT: All right. Thank you, Mr. Flemming.

22 You may step down. Do you want to call your next witness,
23 please?

24 MR. SHALABI: The State calls Joseph Molino.

25 JOSEPH MOLINO, having been duly sworn, was examined

JOSEPH MOLINO - DIRECT BY SHALABI

1 and testified as follows:

2 THE CLERK: Have a seat in the witness stand.

3 State your name for the Court.

4 THE WITNESS: Joseph Molino.

5 DIRECT EXAMINATION

6 BY MR. SHALABI:

7 Q. Joe, where are you from?

8 A. Philadelphia.

9 Q. And when did you move to Columbia?

10 A. In 2010.

11 Q. And you've been living here since then?

12 A. Yes, sir.

13 Q. Where do you currently work?

14 A. I'm currently unemployed. The Pour House just shut
15 down. I'm in the act of looking for new employment.

16 Q. You were working at the Pour House until they
17 closed down?

18 A. Yes, sir.

19 Q. And when did they close down?

20 A. They closed down June 1st of this year.

21 Q. I want to draw your attention to July 28th of last
22 year, were you working at the Pour House on that night?

23 A. Yes, sir.

24 Q. And what was your position at the Pour House?

25 A. Just a door guy and a bar back.

JOSEPH MOLINO - DIRECT BY SHALABI

1 Q. And what do you do as the door guy and a bar back?

2 A. Just check IDs and I keep the peace, get stuff for
3 the bartender and stuff like that.

4 Q. Are you allowed to consume alcohol while you were
5 working?

6 A. No, sir.

7 Q. Did you consume alcohol that night while you were
8 working?

9 A. No, sir.

10 Q. I want to draw your attention to the incident on
11 that night. Did you notice anything unusual at the Group
12 Therapy, outside Group Therapy?

13 A. Yes, sir. I was working the door and I noticed
14 people running from the door. And usually when people run
15 in Five Points, there's usually something wrong happening.

16 Q. And tell the jury what you did.

17 A. Basically ran to where everybody else was running
18 to to see what was going on.

19 Q. Where did you run towards?

20 A. Towards Group Therapy and the tanning salon.

21 (State's Exhibit No. 27, chart, marked for
22 identification.)

23 BY MR. SHALABI:

24 Q. Joe, I'm showing you what's been marked for
25 identification as State's Exhibit 27. What is this?

JOSEPH MOLINO - DIRECT BY SHALABI

1 A. It's a picture of Five Points.

2 Q. Okay. And does this look substantially similar to
3 how it looked on that night of the 28th?

4 A. Minus a lot more people on the street and dark,
5 yes.

6 MR. SHALABI: Your Honor, at this time I'd like to
7 introduce State's Exhibit 27 into evidence.

8 THE COURT: So admitted.

9 MR. SHALABI: Can I ask the witness to step down?

10 THE COURT: You may.

11 (State's Exhibit No. 27, chart, received into
12 evidence.)

13 BY MR. SHALABI:

14 Q. Show the jury where Pour House is.

15 A. Pour House is right here on the corner, 800
16 Harden. And this is the front door right here. This is
17 Group Therapy, the tanning salon, and then the back alley
18 were Group's back door's at.

19 Q. So where did you hear the commotion coming from?

20 A. Well I saw the people running out the front door
21 and towards the tanning salon.

22 Q. Is that where you ran?

23 A. Yes, sir.

24 Q. How far did you get to?

25 A. I got to right there, the tanning salon, the first

JOSEPH MOLINO - DIRECT BY SHALABI

1 the spot and that's when Stewart Ard was halfway in the
2 car and got out and start swinging a knife at us. I ran
3 away.

4 Q. And where did that happen?

5 A. Roughly this area right here.

6 Q. Okay. Re-take the stand.

7 A. Yes, sir.

8 Q. Was anything said to -- did you say anything to --
9 do you know what happened?

10 A. I had no idea what I was getting into that night.

11 Q. You just ran over to see what was going on?

12 A. I just ran down there, yes, sir.

13 Q. And at that point Stewart Ard leaves the vehicle?

14 A. Yes. He was halfway in the vehicle and got out,
15 coming at me and my friend, Gabriel.

16 Q. With?

17 A. With a knife. Like a knife, an object in his
18 hand. Most people when they fight they hold up their
19 hands (indicating). When someone comes like this,
20 (indicating) it's a totally different story.

21 Q. Did he swing at you?

22 A. He swung it. I put my hands up and I said, "I
23 don't want anything." I recall him yelling something.
24 "Do you want this, do you want this." I was, like,
25 "You're through, man." I was out.

JOSEPH MOLINO - DIRECT BY SHALABI

1 Q. So what did you do then?

2 A. I just ran, start flailing my arms and trying to
3 flag down the police.

4 Q. What was that man wearing that night?

5 A. A lime green shirt, shorts, white shoes, bald head.

6 Q. Is he in the courtroom right now?

7 A. Yes, sir.

8 Q. Could you identify him for the jury?

9 A. It's that man right there, sir (indicating).

10 Q. What's he wearing?

11 A. Blue shirt, curly hair.

12 MR. SHALABI: Your Honor, let the record reflect
13 that the witness identified the Defendant.

14 THE COURT: All right. He's identified the
15 Defendant.

16 BY MR. SHALABI:

17 Q. Were you scared that night?

18 A. Yes, sir.

19 Q. Did you have any -- did you even see them at any
20 point before that incident?

21 A. I'd seen them earlier that night. I was outside
22 smoking a cigarette. They walked by. And sometimes you
23 see people and you just know that they're going to cause
24 trouble. Working at Five Points for a couple years, you
25 can --

JOSEPH MOLINO - DIRECT BY SHALABI

1 Q. Did you --

2 A. -- just tell.

3 Q. I'm sorry. Go ahead.

4 A. I said, you can just tell sometimes about some
5 people, you just know.

6 Q. Did you have any interaction with them at all prior
7 to this incident?

8 A. Not at all.

9 MR. SHALABI: Your Honor, can I ask the witness to
10 step down here?

11 THE COURT: You may.

12 BY MR. SHALABI:

13 Q. Have you had a chance to review the videos?

14 A. Yes.

15 Q. I'm showing you what's State's Exhibit 20. What
16 is this?

17 A. That's the parking lot of the Ultra Tan, Nicky's
18 Pizza over there.

19 Q. So where is Group Therapy in relation to this?

20 A. This would be an alleyway, and then Group would be
21 to left of that alleyway.

22 Q. And then Pour House would be?

23 A. To the left of Group Therapy.

24 Q. So at this point nothing, right?

25 A. Nothing.

JOSEPH MOLINO - DIRECT BY SHALABI

1 Q. Is that the car?
2 A. That's the cross over.
3 Q. And who is this man?
4 A. That's Stewart Ard.
5 Q. Is that the guy sitting at the table in the blue
6 shirt?
7 A. Yes, sir.
8 Q. At this point you heard in the commotion?
9 A. Yes, sir. That's why I ran down there.
10 Q. Did you see him mess with that license plate?
11 A. I did not.
12 Q. And where are you?
13 A. This is me, sir. I put my hands up. "What do you
14 want?" Knife comes out.
15 Q. And what did he say to you?
16 A. I don't recall exactly the words. It was, like,
17 "What do you want," or "Do you want this, do you want
18 this," skipping away too, like he's happy.
19 Q. Did you have a chance to look at the license plate?
20 A. No, sir. I was -- you know, someone comes at you
21 like that, I was out. Fight or flight. I didn't have
22 anything to fight with.
23 Q. All right. You can retake your seat.
24 A. Yes, sir.
25 MR. SHALABI: Your Honor, I have no further

JOSEPH MOLINO - CROSS BY ZMROCZEK

1 questions of this witness.

2 THE COURT: All right. Ms. Zmorczek?

3 MS. ZMROCZEK: Thank you. I just have a few.

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. Mr. Molino, the incident that you came running down
7 for to see if you could help, that was -- that was the
8 first instance you had heard that night, that's the first
9 commotion you had heard from down there, right?

10 A. Yes, ma'am.

11 Q. And you gave a statement to the police that night
12 or the next morning, right?

13 A. Yes.

14 Q. But you never told them that you had a funny
15 feeling about that group of people?

16 A. No.

17 Q. No? Okay. You had an opportunity to speak and get
18 ready for trial and get prepared, right?

19 A. Yes, ma'am.

20 Q. Mr. Ard was acting like a crazy man, right,
21 swinging a knife at you?

22 A. Yes.

23 Q. But he didn't hit you, right?

24 A. If I would have stayed around, I probably would
25 have been dead right now.

JOSEPH MOLINO - CROSS BY ZMROCZEK

1 Q. Right. But he didn't?

2 A. But the intention in his eyes --

3 THE COURT: Answer the question.

4 THE WITNESS: No, he did not hit me. Sorry.

5 BY MS. ZMROCZEK:

6 Q. That's okay. And he didn't hit anybody else, he
7 didn't hit Gabe?

8 A. No.

9 Q. In fact, when you put your hands up, "I don't want
10 any of this," I think your words were fight or flight,
11 right --

12 A. Yes, ma'am.

13 Q. -- because that's a natural reaction in that
14 situation?

15 A. Yes.

16 Q. If somebody became aggressive towards you, you have
17 two reactions, you fight or you flight?

18 A. Or you run away. Yes, ma'am.

19 Q. And you're a skinny guy. You didn't have much to
20 fight with, you took off, right?

21 A. Well, soft body and sharp steel.

22 Q. Don't match. And you didn't tell him you had a
23 knife or anything like that?

24 A. No, ma'am. I had no weapon on me or else I
25 probably would have stuck around a little bit longer.

JOSEPH MOLINO - REDIRECT BY SHALABI

1 Q. And I believe you watched all the videos in this.
2 So there is video of when you come back and you were kind
3 of having a conversation out front --

4 A. Yes, ma'am.

5 Q. -- of Group Therapy. I think you were dancing
6 around, you were showing him how you were able to --

7 A. Yes, I was happy in my agility that night.

8 Q. Absolutely.

9 A. Yeah, I was alive.

10 Q. Y'all were joking about it. I mean, you all were
11 laughing about it, right?

12 A. Yes, it was good to be alive that day.

13 MS. ZMROCZEK: All right. I have no further
14 questions.

15 REDIRECT EXAMINATION

16 BY MR. SHALABI:

17 Q. Did you know that he had stabbed Jesse?

18 A. I was not aware that anyone had been stabbed that
19 night.

20 MR. SHALABI: That's all I have.

21 THE COURT: Thank you. You may step down. Call
22 your next witness.

23 MR. SHALABI: The State calls Gabe McDaniel.

24 GABRIEL McDANIEL, having been duly sworn, was
25 examined and testified as follows:

GABRIEL McDANIEL - DIRECT BY SHALABI

1 THE CLERK: Please have a seat. State your name
2 for the record.

3 DIRECT EXAMINATION

4 BY MR. SHALABI:

5 Q. State your name for the record.

6 A. Gabriel McDaniel.

7 Q. You go by Gabe?

8 A. I do.

9 Q. Can I call you Gabe?

10 A. It works for me.

11 Q. Gabe, where are you from?

12 A. I'm from Orangeburg originally.

13 Q. Do you currently reside in Columbia?

14 A. Yes.

15 Q. And how long have you been living in Columbia?

16 A. About six years now.

17 Q. Where do you currently work?

18 A. Patterson Logistics in Blythewood. I was an
19 employee of the Pour House the night of the incident.

20 Q. How long have you been working at your current job?

21 A. My current job?

22 Q. At Patterson?

23 A. About three years.

24 Q. Okay. So you were actually working two jobs at the
25 time?

GABRIEL McDANIEL - DIRECT BY SHALABI

- 1 A. Yes.
- 2 Q. Because you were working at Pour House?
- 3 A. Uh-huh.
- 4 Q. Did you work there on July 28th of last year?
- 5 A. Yes, sir.
- 6 Q. What was your position at Pour House?
- 7 A. I was a door guy.
- 8 Q. What are your duties as a door guy?
- 9 A. I check on IDs, basically make sure everyone is
- 10 safe, make sure the bartenders don't need anything, make
- 11 sure all the patrons are being decent people.
- 12 Q. You have the same position as --
- 13 A. Yes, as Joe.
- 14 Q. -- as Joe, who testified before you?
- 15 A. Yes, sir.
- 16 Q. Are you allowed to consume alcohol?
- 17 A. No, sir.
- 18 Q. And did you consume alcohol on that night?
- 19 A. No, sir.
- 20 Q. Are you allowed to have weapons while you're
- 21 working?
- 22 A. No.
- 23 Q. Did you have a weapon on you that night?
- 24 A. No, sir.
- 25 Q. I want to draw your attention to that night around

GABRIEL McDANIEL - DIRECT BY SHALABI

1 one A.M. Did you notice anything unusual while you were
2 working?

3 A. I'm guessing one A.M. is --

4 Q. I'm sorry?

5 A. I'm guessing one A.M. is right when the incident
6 happened. You're asking right before that?

7 Q. Yeah.

8 A. No. I didn't notice anything until me and Joe were
9 actually at the front door together. And we saw just a
10 big commotion. And the door guys at Group and the door
11 guys at Pour House are like family, kind of just look out
12 for each other in case we need help. So we ran down there
13 just to see what was going on.

14 We had no idea anything had happened out of the
15 ordinary, out of just anything really.

16 Q. What were you running towards?

17 A. Just towards the people. Just towards -- we ran
18 towards the alleyway and the Ultra Tan parking lot and
19 Nicky's Pizzeria. Just that's where the commotion was
20 going on outside of Group. They ran off. We looked,
21 sometimes there will be a fight in the alleyway if it's
22 just two random patrons just end up fighting in the alley
23 or somewhere. So we ran down there just to check to see
24 what was going on.

25 Q. And then at that point what happened?

GABRIEL McDANIEL - DIRECT BY SHALABI

1 A. We stopped for -- we got to the alleyway and
2 stopped. Joe was a little in front of me. We stopped for
3 a brief second. And Mr. Ard came out with his knife.

4 He was yelling. I don't recall what exactly he
5 said. But it was pretty threatening. He came out
6 immediately but he obviously didn't want to actually have
7 a fight. He wanted to stab someone because, I mean, if I
8 want to fight someone --

9 Q. Why would you think that?

10 A. Well, I mean, if I want to fight you I'm going to
11 put my hands up and, you know, we can fight like men.

12 Q. Did he have a knife on him?

13 A. Oh, immediately.

14 Q. Did you see it?

15 A. Yeah, he pulled it. That's the first thing he
16 did. He came out of the car and started yelling and
17 whipped his knife out. And as soon as he pulled his knife
18 out he started coming at us. And that's when Joe -- I
19 think he was asking what we wanted, why we were there and
20 Joe immediately put his hands up. You know, he was, like,
21 "Oh, we don't..." He went at Joe first and Joe went to
22 run and that's when he came at me.

23 Q. And what did you do?

24 A. I started back peddling. I didn't want to turn my
25 back on a man trying to stab me.

GABRIEL McDANIEL - DIRECT BY SHALABI

1 Q. Did he came at you?

2 A. Yeah, he came at me. He -- actually with his left
3 hand he caught the front of my shirt. He didn't get a
4 good grasp on it because I was back peddling about as fast
5 as I possibly could. I ended up actually falling. And
6 right when I fell he came around and actually swung the
7 knife at me with his right hand, kind of like if you're
8 throwing a hook at boxes and swung it right around me. He
9 missed me. I can't really recall by how much. But he
10 swung it right at me but when I fell he missed. Whenever
11 he missed he took a step back and kind of -- I 100 percent
12 believe he thought he was going to stab me so when he
13 missed me he was confused. And as soon as that happened I
14 was -- he gave me that little bit of space I needed to be
15 sure that I could get away and I turned and ran.

16 Q. Where did you run to?

17 A. Just back towards Pour House, away from him.

18 Q. Did you see him get back into that car?

19 A. Yeah. I turned back around, was looking by then.
20 I saw him get back in the car.

21 Q. And he drove away?

22 A. Yeah.

23 Q. Did you see him at any point prior to that
24 incident?

25 A. Yeah, when me and Joe were both sitting outside

GABRIEL McDANIEL - DIRECT BY SHALABI

1 smoking a cigarette. We actually had a conversation about
2 it. I believe I told Joe, "I hope those guys don't try to
3 come in there." It's just something we do. I mean, it's
4 just something we do, you know, as -- I bounced for five
5 years. And you get to a point where, you know, sometimes
6 you look at people and, you know, I really just don't want
7 to have to deal with those people tonight.

8 And they just gave off that vibe. As soon as we
9 saw them they walked -- I remember like it was yesterday.
10 They walked up from, like, they were coming from down
11 towards Rite-Aid. They walked around Pour House and was
12 going towards Group Therapy.

13 Q. Did you talk to them at all?

14 A. No.

15 Q. Didn't have a word with them?

16 A. Not a single word, not with any of them.

17 MR. SHALABI: May I ask the witness to step down
18 for a moment, Your Honor?

19 THE COURT: You may.

20 BY MR. SHALABI:

21 Q. I'm showing you State's Exhibit 23. Point to the
22 alleyway you're referring to.

23 A. Right there.

24 Q. And why was that alarming when you ran down?

25 A. Well, sometimes whenever -- whenever we ran down we

GABRIEL McDANIEL - DIRECT BY SHALABI

1 came from obviously right here. Pour House, that's
2 actually the backside of Pour House right there. We ran
3 down right here.

4 Q. This tan building?

5 A. Yeah, the tan building. We ran down right here.
6 Joe stopped somewhere up in here. And I stopped right
7 there because we didn't see anything so we're, like, all
8 right.

9 Q. See anything where?

10 A. We didn't see -- like, we looked in the alley and
11 then that's when we looked towards the car because he was
12 about halfway in the car. He started getting back out.
13 And I was like, you know, I pointed at him. All right.
14 We might need to watch out for this guy and immediately he
15 comes back, he's swinging a knife.

16 Q. Where exactly were you when he was swinging a
17 knife?

18 A. I was back here.

19 Q. And where were you back peddling?

20 A. I was back peddling right here. That's where I
21 actually -- I started, I probably started from right
22 there. I was back peddling. I guess I hit that slope and
23 that's what actually caused me to fall, but he was
24 coming. The car was parked right here. He was in the
25 back passenger side. And he was getting in right whenever

GABRIEL McDANIEL - CROSS BY ZMROCZEK

1 we came up and he came from right there and ran all the
2 way over here to us while Joe put his hands up and that's
3 whenever all of that happened.

4 Q. All right. Thank you.

5 THE COURT: You can have a seat.

6 BY MR. SHALABI:

7 Q. Do you think that little stumble you had kept him
8 from stabbing you?

9 A. Oh, 100 percent. There's no doubt.

10 Q. Is that man in the courtroom right now?

11 A. That's him sitting right there in the blue shirt
12 with the curly hair.

13 MR. SHALABI: Your Honor, let the record reflect
14 that the witness identified the Defendant.

15 No further questions.

16 MS. ZMROCZEK: I just have a very few, Your Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Gabe, you gave a statement to the police that
21 night; right?

22 A. Yes, ma'am.

23 Q. You did not tell them that you got close enough to
24 cut your shirt, did you?

25 A. I didn't say he cut my shirt. He got close enough

GABRIEL McDANIEL - CROSS BY ZMROCZEK

1 to where he barely missed me. That's what I told them.

2 Q. Okay. Would it help to review your statement?

3 A. I mean, if you would like me to. I remember it.

4 Q. I'm just confused. You're saying he got close
5 enough to cut your shirt --

6 A. Whenever --

7 Q. -- when you stumbled, or touch your shirt?

8 A. Yeah. He didn't cut my shirt. Whenever I started
9 back peddling, he reached out with his left hand and he
10 caught the very front of my shirt. He didn't get a good
11 grip on it. He just caught the front of it like that
12 (indicating). I was back peddling and whenever he caught
13 it that's when he came around with the knife. And when he
14 came around with the knife that's when I was in the midst
15 of falling and he was -- like, the shirt -- whenever I
16 fell the shirt came out of his grasp and he swung the
17 knife at me. And that's whenever -- he didn't stab my
18 shirt with the knife. He missed me by about, if I had to
19 guess, I'd say about that far (indicating).

20 Q. If he wanted to stab you he probably could have if
21 you were lying on the ground; right?

22 A. Well, he thought he could. As soon as he swung
23 through he went to back peddling and as soon as he back
24 peddled and took a couple steps I was already gone.

25 Q. And you claim that you saw the group earlier and

GABRIEL McDANIEL - CROSS BY ZMROCZEK

1 you said, "Don't come in the bar"? Because drunk people
2 are obnoxious, right?

3 A. No, I didn't tell them not to come into the bar. I
4 just, I told Joe I hoped they didn't.

5 Q. Right. And you stated that they walked in front
6 of Pour House?

7 A. Uh-huh.

8 Q. Towards Rite-Aid?

9 A. No. They walked -- the only time I saw them -- and
10 we switch around throughout the night. They could have
11 come by five or six times, I may not know it. But the
12 time that I saw them they came from, from Rite-Aid. It
13 was a while before the incident happened. They came from
14 the, where Rite-Aid is and walked around Pour House.

15 Q. Down Green Street?

16 A. Yes.

17 Q. I mean, down Harden to Green Street?

18 A. Yes, ma'am.

19 Q. And that's the only time you saw them that night
20 other than --

21 A. Other than until --

22 Q. -- this incident?

23 A. Yes, ma'am.

24 Q. Okay. And you didn't have any -- see any commotion
25 or hear any commotion?

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- 1 A. Other than that, no, ma'am.
- 2 Q. Other than that?
- 3 A. No, ma'am.
- 4 Q. And, you don't know Mr. Ard at all, do you?
- 5 A. Other than from that night and all of this, no,
- 6 ma'am.
- 7 Q. So for you to say he was confused or make any
- 8 guesses about emotions, those are simply guesses, right?
- 9 A. Yeah.
- 10 Q. Okay. And, thankfully you did not get hurt that
- 11 evening, did you?
- 12 A. No, ma'am.
- 13 Q. And you and Joe came back and you all had a little
- 14 meeting in front of Group and were laughing?
- 15 A. We still at that point had no idea that anything
- 16 had happened with the guys at Group. We were kind of
- 17 laughing about it, like, man, that was crazy. But then we
- 18 started -- of course everyone's talking at that point, and
- 19 we stuck our head in and saw Jesse laying there and that's
- 20 when, like, it actually kind of hit us.
- 21 Q. Right. It was at that point --
- 22 A. Yes.
- 23 Q. -- not before?
- 24 A. Yes, ma'am. Before that we had no idea that he had
- 25 even stabbed anyone. So we were just thankful that he

1 didn't stab us.

2 Q. Okay. Thank you.

3 A. Yes, ma'am.

4 MR. SHALABI: No questions.

5 THE COURT: All right. Thank you very much. You
6 may step down.

7 All right. Ladies and gentlemen, we're going to go
8 ahead and break for lunch. It's almost 12:30. I'm going
9 to ask you to come back here in an hour 15 minutes which
10 will be quarter till two. That will give us an hour and
11 15 minutes for you to have lunch.

12 Please do not discuss the case while you're gone
13 with each other or with anyone else. And y'all have a
14 nice lunch. We'll see you in a little while.

15 (Jury exits courtroom at 12:32 P.M.)

16 THE COURT: All right. What do we got coming up?

17 MS. GARFIELD: Do you stipulate to the knife?

18 MS. ZMROCZEK: Yeah.

19 MS. GARFIELD: At the most six more, Judge.

20 THE COURT: Who are we going to call next?

21 MS. GARFIELD: Next will be Corporal Buck who's the
22 second officer that came on the scene and took
23 photographs.

24 THE COURT: All right.

25 MS. GARFIELD: And then the next witness is

1 Ms. Ganaway.

2 THE COURT: Ms. Who?

3 MS. GARFIELD: Ms. Ganaway. Amethyst Ganaway.

4 THE COURT: All right.

5 MS. GARFIELD: And then following that would be the
6 co-defendants.

7 THE COURT: Geno and Skaggs?

8 MS. GARFIELD: Yes, sir.

9 THE COURT: Is Bundy one of them?

10 MS. GARFIELD: And Stephen Richardson. He wasn't
11 charged but he was with them.

12 THE COURT: One, two, three, four, five. That's
13 six?

14 MS. GARFIELD: Investigator McCoy. And we may call
15 someone from the jail. We're going to discuss that at
16 lunch.

17 THE COURT: Seven?

18 MS. GARFIELD: Yes, sir.

19 THE COURT: Possibly eight?

20 MS. GARFIELD: I lost count. Sorry. Math is not
21 my forte.

22 THE COURT: Huh?

23 MS. GARFIELD: Math is not my forte. If I counted
24 wrong, sorry.

25 MS. ZMROCZEK: Your Honor, I would inquire about

1 this jail --

2 MS. GARFIELD: Phone calls.

3 MS. ZMROCZEK: -- person. I don't think phone
4 calls are relevant but I guess we'll have an issue about
5 that unless there have been more phone calls that we were
6 not provided. He, he does not talk about the incident on
7 there. All it is is his brother is talking him into a
8 plea.

9 So I don't think that's relevant or appropriate.

10 THE COURT: Is that all you're going to put up?

11 MS. GARFIELD: I would disagree with the content.
12 I think he does talk about it, but I just told
13 Ms. Campbell before you asked that I'm going to listen to
14 them again at lunch to make sure before we reconvene.

15 THE COURT: Y'all intend to offer any evidence?

16 MS. ZMROCZEK: Nope.

17 THE COURT: All right. So --

18 MS. ZMROCZEK: I mean, I know you want to wait
19 until the end but you can do a colloquy now.

20 THE COURT: We'll wait until after. All right.

21 Well y'all have a good lunch and we'll see you back
22 here.

23 Well, let me ask you something. Do you want any
24 lesser included?

25 MS. ZMROCZEK: Yes, your Honor.

1 THE COURT: Which ones?

2 MS. ZMROCZEK: We would be asking for -- I looked
3 at the case law last night and the lesser includes we'd be
4 asking for are assault first which is a lesser included of
5 attempted murder and assault third which is a lesser
6 included of assault.

7 THE COURT: Not assault HAN?

8 MS. ZMROCZEK: No, we wouldn't be asking for that
9 one.

10 MS. CAMPBELL: Your Honor, we would like to be
11 heard on the assault first. We do not think it would be
12 appropriate in this case to the lesser included of
13 attempted murder. I would agree ABHAN would be.

14 THE COURT: Well, if y'all got something you need
15 me to look at --

16 MS. CAMPBELL: I'll get it to you after lunch.

17 THE COURT: Well --

18 MS. ZMROCZEK: I mean, the statute says that
19 assault first is a lesser included of attempted murder.

20 MS. CAMPBELL: We would not disagree with that but
21 in this case there's an injury.

22 THE COURT: There's what?

23 MS. CAMPBELL: There was an injury in this case on
24 the attempted murder. I'll look at the case law again,
25 Your Honor, too.

1 And I don't understand --

2 THE COURT: Assault first would be a lesser
3 included of ABHAN too, wouldn't it?

4 MS. CAMPBELL: It can be, depending on the facts.

5 THE COURT: Well, I understand depending on the
6 elements but the ones that were met.

7 MS. CAMPBELL: My understanding of assault first,
8 Your Honor, is under Subsection A, injures another and
9 either touches the private parts or occurs in a robbery,
10 burglary or other offense. We don't have that.

11 THE COURT: Hold on.

12 MS. CAMPBELL: Then under B attempts to --

13 THE COURT: Hold on, hold on.

14 MS. CAMPBELL: But I do agree with you that ABHAN
15 would be a lesser included.

16 I'm sorry, Your Honor. I left my copy of the
17 actual statute upstairs.

18 MS. ZMROCZEK: I have it here.

19 MS. CAMPBELL: Do you mind if I look at it? Thank
20 you so much. I appreciate it.

21 MS. ZMROCZEK: (Document handed to Ms. Campbell.)

22 THE COURT: I don't understand. You mean assault
23 first, a person commits the offense of assault and battery
24 in the first degree if a person unlawfully offers or
25 attempts to injure another person with the present ability

1 to do so and the act is accomplished by means likely to
2 produce death or great bodily injury.

3 MS. CAMPBELL: That's the offer to do it. It's the
4 attempt, not the actual injury. If it's an injury then it
5 falls under ABHAN, otherwise the first subsection under A
6 if there's an actual injury and then you have the
7 aggravating circumstances under A which are limited to the
8 touching and occurring during robbery, burglary or
9 kidnapping. If it's an attempt to injure and likely to
10 produce great bodily injury, that would then be subject to
11 B.

12 MS. ZMROCZEK: But then on Section One it says: If
13 accomplished by means likely to produce great bodily
14 injury or death. I think it's absolutely appropriate.

15 MS. CAMPBELL: That's ABHAN you're reading there.
16 That's not assault and battery first. That's what you
17 gave me.

18 MS. ZMROCZEK: Huh-uh.

19 THE COURT: Well, you better get me what you want
20 me to look at.

21 MS. CAMPBELL: Yes, sir. But we would agree with
22 the Court's assessment that ABHAN would apply here.

23 THE COURT: So your position would be it would be
24 attempted murder, ABHAN, and assault in the second
25 degree?

1 MS. CAMPBELL: No, sir. I would just say attempted
2 murder and ABHAN would be appropriate in this case.

3 THE COURT: Why is that? Why wouldn't assault
4 second degree?

5 MS. CAMPBELL: She wasn't -- she didn't --

6 MS. ZMROCZEK: Three people are charged with
7 assault second degree, Your Honor.

8 THE COURT: I mean, on the attempted murder if the
9 jury determines it was moderate bodily injury.

10 MS. CAMPBELL: Your Honor, the only testimony I
11 believe before this jury is that this was a
12 life-threatening injury, but I could be wrong.

13 THE COURT: That doesn't necessarily make it a
14 serious bodily injury under the definition. I mean, great
15 bodily injury.

16 MS. CAMPBELL: Okay. I understand.

17 THE COURT: You might be right on assault first
18 degree. But you can look at it and you can get me what
19 you want.

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: All right. Y'all have a nice lunch.

22 (Luncheon recess taken at 12:39 P.M. At 1:47 P.M.,
23 the trial resumed:)

24 THE COURT: Doesn't this case say it needs to be
25 charged?

1 MS. CAMPBELL: No, sir. It says when there is no
2 injury it needs to be charged.

3 MS. ZMROCZEK: Your Honor, the way I read it, it
4 was an error but it was a harmless error because it wasn't
5 charged.

6 MS. CAMPBELL: Because there was no injury. It
7 talks specifically about two different parts of the
8 statute.

9 THE COURT: I understand. But I mean, the way I
10 read this thing I think it needs to be charged too. In
11 this instance it was harmless but it's, but --

12 MS. CAMPBELL: No, sir. They said -- in the case
13 involving it said specifically the one with no injury.

14 THE COURT: I haven't read the whole case but
15 you'll have to point that out.

16 MS. CAMPBELL: I'll point that out. And then they
17 said it's harmless as to that one. It says harmless
18 error.

19 THE COURT: Where are you reading?

20 MS. CAMPBELL: Subsection headnote two.

21 THE COURT: What page?

22 MS. CAMPBELL: First page.

23 THE COURT: All right. Paragraph two.

24 MS. CAMPBELL: To instruct first degree assault and
25 battery as a lesser-included offense of attempted murder

1 as to the victim who did not suffer any injury was
2 harmless.

3 THE COURT: Well, I understand that. It says it
4 should have been charged but the failure to do so was
5 harmless error.

6 MS. CAMPBELL: No, but in the body of it it talks
7 about the two subsections. Under C(1)(A) when there's an
8 injury and then the difference between C(1)(B).

9 THE COURT: Well, I know, but I interpret that to
10 mean in that instance if it had not been charged it would
11 not have been harmless.

12 MS. CAMPBELL: It says Subsection A does -- then if
13 you go on, see where it quotes Brewer it says: While
14 Subsection A does require an injury to the victim,
15 Subsection B of the statute applies when there is no
16 injury to the victim.

17 THE COURT: Correct.

18 MS. CAMPBELL: In this case the only attempted
19 murder lesser included we have is there is an injury so
20 only Subsection A could apply.

21 THE COURT: It says that that was error not to
22 charge it but harmless error because --

23 MS. CAMPBELL: There were two different victims.

24 THE COURT: In the one where there was no injury it
25 was in error but it was harmless.

1 MS. CAMPBELL: That's correct. Then there was no
2 injury.

3 THE COURT: Failure to charge. So you're asking me
4 to go ahead and commit error but it will be harmless.

5 MS. CAMPBELL: I believe if you look at the facts
6 of this case that there were two --

7 THE COURT: I did look at the facts. Somebody
8 pulled it up.

9 MS. CAMPBELL: Two counts of attempted murder and
10 one had injuries and one didn't.

11 THE COURT: Somebody drives up with a pistol and
12 shoots and misses this one. The Court says it should
13 have been charged but the fact that it wasn't because
14 there was no injury it was harmless error.

15 MS. CAMPBELL: Because one victim was injured and
16 one was not. They refused on both.

17 THE COURT: The one that wasn't --

18 MS. CAMPBELL: Injured, they said it should have
19 been on that one, not the other one is what the case says.

20 THE COURT: Well, I'll read it.

21 MS. CAMPBELL: Okay.

22 THE COURT: All right. Are we ready to go? All
23 right. Let's bring the jury in if we can.

24 MS. ZMROCZEK: You Honor, I think she had some
25 pictures that I objected to.

1 THE COURT: Something more than what we've had last
2 night?

3 MS. CAMPBELL: Your Honor, I think we narrowed it
4 down this afternoon. We only have three witnesses left.
5 Over lunch we were able to eliminate some.

6 THE COURT: Are they something different from what
7 we discussed last night?

8 MS. GARFIELD: I showed them to Ms. Zmroczek. She
9 said she objected to all of them and we agreed to argue it
10 later on.

11 THE COURT: I don't know what that means. Last
12 night I told you all what you could do.

13 MS. GARFIELD: Not these.

14 THE COURT: So these are so different?

15 MS. GARFIELD: These you didn't see.

16 THE COURT: These then are in addition to what we
17 had last night?

18 MS. GARFIELD: I had them with me back there but we
19 agreed to discuss it later.

20 THE COURT: All right. Let me see.

21 MS. CAMPBELL: They're just stills from the video,
22 Your Honor, showing certain things.

23 THE COURT: You got 17, 18 and 19. Why do you need
24 17, 18 and 19?

25 MS. CAMPBELL: Can I just look at the picture?

1 THE COURT: Same guy walking which is the
2 Defendant.

3 MS. CAMPBELL: Your Honor, I can narrow it down to
4 17. How about that?

5 THE COURT: That's good. Why do you need that?

6 MS. CAMPBELL: I don't. I'll withdraw 16 or I won't
7 offer it. And I can narrow it down to one of those.
8 State's 14.

9 MS. ZMROCZEK: Your Honor, my objection would just
10 be that they're cumulative, duplicative. They have the
11 video. They can see it. I mean, they want to take out
12 the stab scene and just keep showing that, but they have
13 the entire video which I think is a better reflection of
14 what happened. That's my objection.

15 THE COURT: Well, it may be a more complete. I
16 don't know that it's better. That will be a decision that
17 the jury will have to make.

18 MS. ZMROCZEK: Right. And it would be more
19 complete if we had the whole video too, but we don't. So
20 I understand.

21 It's -- I mean, I would have no objection to them
22 using, like, stills in closing. I just don't think that
23 they need to also go back to the jury.

24 THE COURT: I'm going to let them admit two of
25 those pictures.

MATTHEW BUCK - DIRECT BY GARFIELD

1 MS. CAMPBELL: Thank you, Your Honor.

2 THE COURT: All right. Let's bring the jury in,
3 please.

4 (Jury enters courtroom at 1:56 P.M.)

5 THE COURT: All right. Madam Solicitor, are y'all
6 ready to call your next witness?

7 MS. GARFIELD: Yes, sir. Thank you, Your Honor.
8 The State calls Corporal Matthew Buck.

9 MATTHEW BUCK, having been duly sworn, was
10 examined and testified as follows:

11 THE CLERK: Have a seat. State your name for the
12 record.

13 THE WITNESS: Matthew Buck.

14 DIRECT EXAMINATION

15 BY MS. GARFIELD:

16 Q. Corporal Buck, where are you employed?

17 A. City of Columbia Police Department.

18 Q. How long have you been employed with the City of
19 Columbia?

20 A. It will be eight years in August -- or, correction,
21 September.

22 Q. What are your duties with the Columbia Police
23 Department?

24 A. At the time my duties, supervise, patrol, respond
25 to calls and, you know, handling calls for service.

MATTHEW BUCK - DIRECT BY GARFIELD

1 Q. And are you assigned to any specific area of the
2 city?

3 A. Assigned to our Shop Region which incorporates Five
4 Points, Outbound, Garners Ferry Road and parts of Forest
5 Drive.

6 Q. And were these your same duties back in July of
7 last year?

8 A. Last year I was assigned to Five Points,
9 specifically Five Points, but now I'm on the road patrol.

10 Q. Back in July it was only Five Points where you
11 were?

12 A. Yes, ma'am.

13 Q. And were you working on July 28th of last year?

14 A. Yes, I was.

15 Q. Specifically the early-morning hours?

16 A. Yes, ma'am.

17 Q. And did you have an occasion to respond to Group
18 Therapy Restaurant and Tavern?

19 A. I did.

20 Q. And can you explain to the jury what the nature of
21 that response was?

22 A. The night was going pretty well. And, I mean,
23 well, not a lot of calls for services at Five Points. And
24 then several of my units stated they were getting flagged
25 down in reference to a stabbing at the Group Therapy, I

MATTHEW BUCK - DIRECT BY GARFIELD

1 believe it was.

2 And at that time dispatch was also dispatching the
3 call. So we were on the scene moments after it happened.

4 Q. And Group Therapy, is that in the Five Points area?

5 A. Yes, ma'am.

6 Q. On the corner of Green and Harden or on Green
7 Street?

8 A. Yes.

9 Q. Is that in the City of Columbia?

10 A. Yes.

11 Q. Also the County of Richland?

12 A. Yes.

13 Q. You went to that location?

14 A. Yes.

15 Q. And upon arriving -- were you the first officer?

16 A. No, I was probably the third or fourth officer on
17 the scene.

18 Q. Did you go inside Group Therapy?

19 A. I did.

20 Q. And when you went inside, tell the jury what you
21 observed.

22 A. I observed then a male subject laying on the
23 ground. He, his breathing was shallow. I could
24 definitely tell he was in a lot of pain. There was a lot
25 of blood at the immediate entrance of the door and where

MATTHEW BUCK - DIRECT BY GARFIELD.

1 he was laying. And he was receiving medical treatment
2 from employees of the business.

3 Q. And did you remain on scene?

4 A. I did for a short time.

5 Q. What did you do while you were there?

6 A. I took pictures of the scene. Other officers were
7 trying to talk to witnesses to get an idea of what the
8 suspects looked like so we could BOLO through the city and
9 the county to try to hopefully try to locate these
10 individuals.

11 Q. Were you able to provide a BOLO? And tell us what
12 a BOLO is.

13 A. A BOLO is be on the lookout. It's any pertinent
14 information that we can get out that may help identify
15 suspects or potential suspects. I contacted Carey Shealy
16 who's also in charge of all the cameras, the majority of
17 the cameras in Five Points. He's more than willing to
18 come down at any time of the day. And he actually did
19 respond. So we were able to get a clear identification on
20 a similar car or that car that was involved.

21 Q. And can you share with the jury the description the
22 of the BOLO that you put out?

23 A. Oh, we put out that it was several males involved,
24 one wearing a green shirt, bald headed with several
25 tattoos on both arms. And another individual was wearing

MATTHEW BUCK - DIRECT BY GARFIELD

1 a red shirt with, I believe, red shorts that was also
2 involved. And they left in a maroon or red-in-color
3 SUV-type style what we were given at first.

4 Q. Backing up to when you first arrived. Did you
5 actually make any contact with the victim?

6 A. I made contact with Mr. Fleming who was outside. I
7 could definitely see his injuries to his extremity and his
8 body. He was kind of obviously visibly upset. I knew he
9 needed medical treatment but then they said there was
10 somebody else inside who also had more severe injuries.

11 Q. And that's when you went inside?

12 A. Yes, ma'am.

13 Q. And were you able to identify the victim inside?

14 A. At the time I didn't know his name, I didn't know
15 who he was, but I could definitely tell he also was a
16 victim of an assault.

17 Q. Did you stay until the emergency -- the ambulance
18 arrived?

19 A. I did. Again, we made sure EMS was coming through
20 our dispatch even though they were already dispatched to
21 the scene.

22 Q. And did you remain on scene after the ambulance
23 left?

24 A. I did, when I started taking pictures and securing
25 the scene as well.

MATTHEW BUCK - DIRECT BY GARFIELD

1 Q. After you took the photographs at Group Therapy,
2 where did you go next?

3 A. I went to the hospital to check on the injuries or
4 potential injuries of the suspect -- or the victims. So I
5 went down and was able to photograph some of the injuries
6 also at the hospital.

7 Q. You made reference to Scott Flemming. Did you make
8 contact with Scott Flemming?

9 A. I did.

10 Q. At the hospital?

11 A. Yes, ma'am.

12 Q. And share with the jury your contact, the nature of
13 that contact.

14 A. My contact with Mr. Flemming was when I got down to
15 the ER he was already in the emergency bay where they
16 started doing their assessment of injuries. I could
17 definitely see a puncture wound to his left chest area and
18 an injury to his left arm. His eye was beginning to swell
19 and bruise. And he stated that he had been hit and
20 obviously been stabbed twice.

21 Q. Did you take photographs of Mr. Flemming?

22 A. I did.

23 Q. Did you make any contact at that time with the
24 second victim, Jesse Patterson?

25 A. No. I was able to see what was going on in the

MATTHEW BUCK - DIRECT BY GARFIELD

1 other trauma bay because they're right next to each other,
2 and I could definitely tell that he was getting immediate
3 medical attention.

4 Q. I'm going to show you what's been marked for
5 identification purposes as State's Exhibits Number One,
6 Six, Seven, Nine, 10 and 11. Can you just flip through
7 these photographs and tell me if you recognize them.

8 A. (Complying.) I do.

9 Q. What are those photographs of?

10 A. The first photograph here is blood that's been
11 pooled up on the floor of the establishment. And where
12 Mr., or where Jesse had been laying receiving medical
13 treatment.

14 And then there's some blood on the outside of the
15 sidewalk, outside of the establishment, which indicated to
16 me that the attack had occurred somewhere in that area.

17 And then these last two photos are injuries that
18 Mr. Flemming sustained.

19 Q. And those photographs were taken by you?

20 A. Yes, ma'am.

21 MS. GARFIELD: Your Honor, at this time I'd like to
22 introduce these exhibits into evidence.

23 MS. ZMROCZEK: Subject to my previous objection,
24 Your Honor.

25 THE COURT: All right. So admitted.

MATTHEW BUCK - CROSS BY ZMROCZEK

1 Exhibit Nos. 1, 6, 7, 9, 10, 11, photographs,
2 received into evidence.)

3 MS. GARFIELD: Your Honor, at this time may I
4 publish the photographs to the jury?

5 THE COURT: You may.

6 MS. GARFIELD: Corporal Buck, please answer any
7 questions defense counsel may have.

8 THE COURT: Ms. Zmroczek, let's wait a minute to
9 let the jurors...

10 (Jurors viewing exhibits.)

11 THE COURT: All right.

12 MS. ZMROCZEK: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. Good afternoon, Corporal Buck. You -- did you
16 look at the videos with Carey Shealy or did you just ask
17 him to pull some things for you?

18 A. There was other officers on the scene. I know the
19 supervisor was on the scene. So at the time, no, I didn't
20 look at the video. I can only go off of what was given
21 at the time.

22 Q. Oh, sure. And you would agree, though, that
23 having -- for example, if there is a break-in in a
24 restaurant, you would like the video from the whole night
25 to see what happened, everybody's actions, right?

MATTHEW BUCK - CROSS BY ZMROCZEK

1 A. Yes, ma'am.

2 Q. Okay. You wrote a report or you at least approved
3 a report in this case at the end of -- after everybody was
4 arrested, correct?

5 A. Correct.

6 Q. And in that report, didn't you write "Mr. Flemming
7 received non life-threatening injuries"?

8 A. That was in the report. Yes, ma'am.

9 Q. And then additionally also in the report was,
10 "Mr. Patterson received a puncture wound to the left side
11 of his torso, causing a collapsed lung at a minimum."
12 According to medical staff they were unable to determine
13 any other internal injuries.

14 But according to medical staff, Mr. Patterson's
15 injuries were also going to be non life threatening. Is
16 that your report as well?

17 A. Were you saying with Mr. Flemming's injuries or
18 Mr. Patterson's injuries?

19 Q. Both.

20 A. Ma'am, I can only, you know, tell you what was told
21 to me during my speaking to medical staff. I mean, at
22 the minimum they're receiving medical treatments at the
23 time. It may appear not to be life threatening. I don't
24 know. I'm not a medical personnel.

25 Q. Of course you're not. You don't write the report

MATTHEW BUCK - REDIRECT BY GARFIELD

1 that night, do you?

2 A. Ma'am, I didn't write the report. The other
3 officer did.

4 Q. Did you approve it?

5 A. I did.

6 Q. So it would be one that information in here would
7 be correct, or it would have been corrected; isn't that --

8 A. Should be, ma'am.

9 MS. ZMROCZEK: Thank you. I have no questions.

10 THE COURT: Anything further?

11 REDIRECT EXAMINATION

12 BY MS. GARFIELD:

13 Q. Corporal Buck, life threatening or non life
14 threatening means they're going to survive, right?

15 A. Yes, ma'am.

16 MS. GARFIELD: Nothing further.

17 THE COURT: All right. Thank you, sir. You may
18 step down.

19 MS. GARFIELD: Your Honor, may Corporal Buck be
20 excused?

21 THE COURT: You may. Yes, ma'am.

22 MS. CAMPBELL: The State calls Amethyst Ganaway.

23 AMETHYST GANAWAY, having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat. State your full

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 name.

2 THE WITNESS: Amethyst Ganaway.

3 DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q. Ms. Ganaway, how old are you?

6 A. I'll be 24 August, in August.

7 Q. And do you currently live in Columbia?

8 A. No. I live in Aiken.

9 Q. Aiken, South Carolina?

10 A. Yes.

11 Q. How long have you been living in Aiken?

12 A. Since December.

13 Q. What do you do in Aiken?

14 A. I'm a waitress.

15 Q. And where are you a waitress down there?

16 A. Longhorn Steak House.

17 Q. How did you end up going to Aiken from Columbia?

18 A. I used to work at the Longhorn here on Gervais
19 Street, and I transferred.

20 Q. How long did you live in the Columbia Area?

21 A. About five years.

22 Q. And what were you doing here in Columbia?

23 A. I went to school and I worked in Five Points as
24 well.

25 Q. And did you graduate from school?

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 A. I did.

2 Q. And when did you graduate?

3 A. I graduated in December.

4 Q. In December?

5 A. Yes, ma'am.

6 Q. Of this last year?

7 A. Uh-huh.

8 Q. And what was your major?

9 A. Religious studies.

10 Q. During the time that you were in school, did you

11 also work?

12 A. Yes.

13 Q. And where did you work, ma'am?

14 A. I worked at a Longhorn and I worked at Grill

15 Teriyaki.

16 Q. At Grill Teriyaki?

17 A. Yes.

18 Q. As well as Longhorn?

19 A. Uh-huh.

20 Q. Where is Grill Teriyaki located?

21 A. On the corner of Green and Harden.

22 Q. And are you familiar with some of the bars or

23 restaurants located across the street from Grill

24 Teriyaki?

25 A. Yes.

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 Q. And what are those bars?

2 A. Group Therapy is directly across from us as well as
3 Pour House.

4 Q. The Pour House?

5 A. Uh-huh.

6 Q. And Group Therapy?

7 A. Uh-huh.

8 THE COURT: Ma'am, you need to say yes or no,
9 please.

10 THE WITNESS: Yes.

11 MS. CAMPBELL: Thank you, Your Honor.

12 Q. I want to turn your attention back to the evening
13 of July 27th, early morning hours of July 28th. Were you
14 working that night?

15 A. I was.

16 Q. And which restaurant were you working at?

17 A. Grill Teriyaki.

18 Q. You talk faster than I do. Okay? And on that
19 night, what were your duties at Grill Teriyaki?

20 A. I was waitressing that night.

21 Q. At some point around midnight or shortly
22 thereafter, did you go outside?

23 A. I did.

24 Q. Why was that, ma'am?

25 A. I went outside for a smoke break.

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 Q. And where -- in relation to Grill Teriyaki, where
2 were you outside that night?

3 A. On the corner of Green and Harden directly on the
4 corner. Not directly in front, but to the side, closer to
5 Group Therapy.

6 Q. And how late did Grill Teriyaki stay open?

7 A. Fridays and Saturdays we stayed open till four and
8 three in the morning at least.

9 Q. So you still had several hours to go on your
10 shift?

11 A. Yes, ma'am.

12 Q. And during that time period, do you remember
13 exactly what time it was you were outside?

14 A. It had to be after -- I know it was after
15 midnight. That's when our shift started.

16 Q. Okay. When you went outside, did you come in
17 contact with a group of men?

18 A. I did not personally come in contact with them but
19 I did see them, yes.

20 Q. And explain to the jury what you saw.

21 A. I was standing, like I said, on the corner and it
22 was a group of three or four guys walking past me clearly,
23 clearly drunk. And one guy, tall, thin guy, bald, short
24 haircut, green shirt, he was acting, like, kind of
25 erratic, really loud and saying things like, "No, fuck

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 that, we're going to go back. They kicked us out for
2 something stupid. They want a problem, we're going to
3 give them a problem."

4 There was a shorter gentleman with a red hat on
5 actually trying to pull him away telling him, like, "It's
6 not worth it, let's just leave them alone." Then they
7 walked past me, walked past me again and at that point I
8 actually walked back into work.

9 Q. And at that point did you think anything about it?

10 A. Not necessarily. No, ma'am.

11 Q. Shortly thereafter, what came to your attention?

12 A. There's a window that directly faces Group Therapy
13 from where I work at, huge window. So I looked out there
14 and I see at Group there's a bunch of cop cars, bunch of
15 ambulances.

16 So at that point I walk outside because if there's
17 something at Group we're so close, I actually know
18 Mr. Scott and we seen Jesse a lot. So I go out there and
19 say, "Hey, you know, what's going on." "Scott and Jesse
20 got stabbed." "That's real weird."

21 So I just went back inside at that point and told
22 my boss about it.

23 Q. And later on did you see some videos?

24 A. I did. Grill Teriyaki has cameras placed out there
25 as well. So I think it's the gentleman that Officer Buck

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 was talking about, I think. He comes in there often,
2 Comes in often to use our video cameras, our videos. And
3 I just happened to be back there reviewing it and I said,
4 "Well these are the guys I heard walking past," saying
5 what I heard them say at the time.

6 Q. And you actually, you saw them on the videos --

7 A. Uh-huh.

8 Q. -- when he was reviewing everything to see if
9 anything from the Teriyaki cameras would be helpful?

10 A. Yes, ma'am.

11 Q. And have you had an opportunity to review that
12 video?

13 A. I have.

14 Q. And does it fairly and accurately depict basically
15 those gentlemen saying the things that you overheard?

16 A. Yes, ma'am.

17 MS. CAMPBELL: Your Honor, at this time we'd ask
18 permission to publish that video and for the witness to
19 step down?

20 THE COURT: All right.

21 MS. CAMPBELL: Thank you.

22 Q. If you'll come over to this side.

23 A. (Complying.)

24 Q. Where is Grill Teriyaki?

25 A. This is Grill Teriyaki. These are our front steps.

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 right here. These people are walking to Grill Teriyaki.
2 This is Grill Teriyaki. This is the corner of Green and
3 Harden. And I'm standing, like, right here. Directly
4 right next to this trash can.

5 Q. Just off of where you can see it?

6 A. Uh-huh.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yes. I'm sorry.

9 So at this point I'm standing over there and I
10 hear, like, a lot of yelling. So I'm not really thinking
11 anything of it, really, because it's Five Points.

12 And then when they were over there just now,
13 standing next to the trash can, that's when this guy here
14 told him, like, "It's not worth it, let's walk away." He
15 tried to pull him away.

16 BY MS. CAMPBELL:

17 Q. Back it up one more time, just quickly.

18 And at this point do you see them walking up?

19 A. Yeah. The guy in hat and then the taller guy.

20 Q. And there's four of them?

21 A. Three or four.

22 Q. Okay. And then they go over to where you are?

23 A. I'm like, literally, right here where they stop
24 at. This is when he's telling the taller guy that he
25 keeps pulling away from, "It's not worth it. Let's leave,

AMETHYST GANAWAY - DIRECT BY CAMPBELL

1 leave it alone."

2 Q. And which one is the taller guy you said you heard

3 saying things earlier?

4 A. I guess, Mr. Ard.

5 Q. And where is he? Right there?

6 A. This guy.

7 Q. Okay. Thank you.

8 A. You're welcome.

9 Q. At this point you see them actually coming back

10 into the scene?

11 A. Uh-huh. Yes.

12 Q. And at some point did you realize that these were

13 the guys that may have been involved?

14 A. Yes, ma'am.

15 Q. And did you actually give this information to the

16 police?

17 A. I did. That same night at Grill Teriyaki. He came

18 in and asked to use the video.

19 Q. And then later you made contact with Investigator

20 McCoy as well?

21 A. Yes, ma'am.

22 Q. The person that you saw, what did you hear him say?

23 A. He said, "Fuck that. They kicked us out for

24 something stupid, so if they want a problem we're going to

25 go back and give them a problem," you know. Just general

1 obscenities and yelling.

2 Q. Do you see him here in the courtroom?

3 A. Ma'am?

4 Q. Do you see him here in the courtroom?

5 A. Yes, ma'am.

6 Q. Can you point him out for the jury?

7 A. This gentleman here (indicating). Blue shirt,
8 curly hair.

9 Q. Has his appearance changed since the night you saw
10 him?

11 A. Yes, ma'am.

12 Q. What's changed?

13 A. His hair.

14 Q. Is that it?

15 A. Yes, ma'am.

16 MS. CAMPBELL: Thank you, Your Honor.

17 THE COURT: She's identified the Defendant. All
18 right.

19 MS. ZMROCZEK: I have no question, Your Honor.

20 THE COURT: Counsel, no questions?

21 MS. ZMROCZEK: None.

22 THE COURT: All right. Thank you, ma'am. You may
23 step down.

24 MS. CAMPBELL: The State would call Investigator
25 McCoy.

MATTHEW McCOY - DIRECT BY CAMPBELL

1 MATTHEW D. McCOY, having been duly sworn, was
2 examined and testified as follows:

3 THE CLERK: Please have a seat. State your full
4 name for the record.

5 THE WITNESS: I'm Investigator Matthew D. McCoy,
6 Columbia Police Department.

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q. Where are you employed?

10 A. Columbia Police Department.

11 Q. And what do you do there, sir?

12 A. I'm a criminal investigator in the crimes against
13 persons unit.

14 Q. And as an investigator in that unit, what do your
15 duties include?

16 A. Well, I mainly investigate criminal activity. I
17 handle homicides, kidnappings, major assault and
18 batteries, attempted murders, armed robberies.

19 Q. I want to turn your attention back to July the 28th
20 of last year. Did you become involved in the
21 investigation of this case?

22 A. I did.

23 Q. And when did you actually become involved, what
24 day?

25 A. It was the following morning. I believe it was on

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 the 28th, that morning after the incident occurred.

2 Q. And when you first became involved, you can't say
3 what was said to you, but were you briefed on information
4 the police had at that point?

5 A. I was. I actually was the on-call investigator at
6 that time. And I got a phone call from our on-call
7 investigator sergeant who briefed me about what happened
8 and I also seen an article on WIS about what had occurred
9 that night at Five Points.

10 Q. That afternoon, did you make contact with a man
11 named Carey Shealy?

12 A. I did. I called him.

13 Q. And what was the purpose of you calling him?

14 A. I know he runs video down in Five Points, most of
15 it anyway. And called him to get a copy of that. He said
16 the officers on the scene had already spoken to him, he'd
17 already begun pulling the video and he would have it to me
18 shortly.

19 Q. And at that same afternoon, did you also request
20 some 9-1-1 tapes as well?

21 A. I did via e-mail. That's standard.

22 Q. That day, did you try to make contact with any of
23 the victims involved in this case?

24 A. I did. I spoke with Mr. Flemming on the phone.

25 And I actually went and saw Mr. Patterson. Mr. Flemming,

MATTHEW McCOY - DIRECT BY CAMPBELL

1 I believe, had been released from the hospital.

2 Mr. Patterson, Jesse Patterson was still at the hospital.

3 Q. And you can't say what Mr. Flemming told you, but
4 was he able to give you some information that became
5 useful in your investigation?

6 A. He did.

7 Q. That day, I believe that evening you actually went
8 over and made contact with the other victim, Mr. Jesse
9 Patterson?

10 A. That's correct.

11 Q. And where did you come in contact with him?

12 A. It was in a hospital room. The number's in my
13 notes but it was at the hospital. Palmetto Health
14 Richland is where he had been transported that night.

15 Q. And at that point were you able to get certain
16 information including the nature of his injuries and what
17 he recalled happening?

18 A. That's correct, I was.

19 Q. That same evening, did you make contact with Brett
20 Babcock?

21 A. I did.

22 Q. And was he also, without saying what he said to
23 you, able to give you some information?

24 A. He did.

25 Q. Later that evening also did you make contact again

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 with Carey Shealy?

2 A. I did.

3 Q. And what was the purpose of that contact, sir?

4 A. He actually delivered the video at the time.

5 Q. The video that he delivered initially, was that all
6 the video you ended up getting in this case?

7 A. No, it was not.

8 Q. And at a later date pursuant to your request, did
9 you retrieve additional videos in this case?

10 A. Yes. It was actually the previous day. I want to
11 say around three o'clock, according to my notes, I got
12 additional video. It was actually the interior cameras of
13 Group Therapy.

14 Q. And in getting the cameras from Group Therapy did
15 you get every camera in Group Therapy or just those
16 relevant to this case?

17 A. Just the ones relevant to the case.

18 Q. That day, did you also create what's called a BOLO?

19 A. I did.

20 Q. And what's a BOLO?

21 A. It's be on the lookout for. Investigations --
22 normally if we have a photograph or a video of an
23 individual, we'll put that together on a form that's
24 standard. And we'll e-mail it to the entire department to
25 be on the lookout for this individual.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 We'll also send it to surrounding agencies in case
2 they live in other parts of the state. And also with this
3 particular crime because of the heinous nature of it, we
4 -- I sent stills to our public information officer,
5 Jennifer Timmons. She's responsible for releasing images
6 to the news to help the public aid in identifying the
7 individual on the video.

8 Q. And in the video that had been provided to you,
9 just the video you got initially not the additional video
10 you went back and got, were there some pretty good shots
11 of the person who actually did the stabbing?

12 A. Yes, there were.

13 Q. And those are the stills that you were actually
14 able to provide to Jennifer Timmons as well as putting on
15 the BOLO?

16 A. Yes, ma'am. That's correct.

17 Q. Once the information had been put out over the
18 media the next day, did Stewart Ard and his lawyer make
19 contact with you?

20 A. She actually made contact with me prior to the news
21 release.

22 Q. Okay. Let me back up on that. When you say she
23 actually made contact with you, who are you talking about?

24 A. Ms. Zmroczek, the attorney for the Defendant.

25 Q. The attorney for the Defendant?

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 A. Yes, ma'am.

2 Q. And when did she make contact with you?

3 A. It was before 11 P.M. on the 28th. I was actually
4 home and she called me on my cell phone, work cell phone,
5 advised that she had a client who wanted to turn himself
6 in.

7 Q. And at that point did you know it was in
8 conjunction with this incident?

9 A. She advised me that it was.

10 Q. And at that point had the information been
11 publicized over the, broadcast over WIS?

12 A. Yeah, there had been an article that there had been
13 a stabbing. However, the photographs, the photographs
14 that I had made up from the video, no, had not been put on
15 the news. Not that I was aware of anyway.

16 Q. That day did you make contact with Mr. Ard and his
17 lawyer?

18 A. Yeah. The next day, the 29th, is when he did, he
19 came in with he's attorney, Ms. Zmroczek, to headquarters,
20 and turned himself in.

21 Q. At that point was he placed under arrest?

22 A. He was.

23 Q. That next day did you receive the additional video
24 that you had requested from Mr. Shealy?

25 A. It was actually the afternoon. Right after -- I

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 believe it was right after he was transported. Mr. Shealy
2 brought it to headquarters and dropped it off downstairs
3 while I was up there with them. I went down after he was
4 transported and retrieved it from our front desk.

5 Q. That same day did you also become aware of a knife
6 that may have been used in this crime?

7 A. Yes.

8 Q. And how did you become aware of that?

9 A. I asked Ms. Zmroczek where the knife was that
10 Mr. Ard had used. And she stated she had it in her
11 possession at her office.

12 Q. I'm going to show you what's been marked as State's
13 Exhibit Number 25. Did the knife end up in y'all's
14 custody?

15 A. It did.

16 Q. How did that happen?

17 A. I requested -- after speaking with her on the
18 phone, I requested Officers Czeladko with the Metro Region
19 since their office is nearby to go down to that office and
20 retrieve the knife and bring it in and enter it into
21 evidence.

22 Q. State's Exhibit 25, is that the knife that was
23 retrieved?

24 A. That is. He showed it to me as well when he
25 brought it back.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 Q. The officer did?

2 A. The officer, Officer Czeladko.

3 MS. CAMPBELL: Your Honor, at this time I would
4 offer State's Exhibit 25 into evidence.

5 MS. ZMROCZEK: Without objection.

6 THE COURT: So admitted.

7 (State's Exhibit No. 25, knife, received into
8 evidence.)

9 BY MS. CAMPBELL:

10 Q. And you had reviewed the video at that point?

11 A. Yes, ma'am.

12 Q. And State's Exhibit 25, is that consistent with
13 what you saw?

14 A. Yes, ma'am.

15 Q. What type of knife is this? Can you pull it out
16 for me?

17 A. It's a folding knife. A black handle, silver
18 blade. I couldn't tell you the inches without measuring
19 it.

20 Q. Can you pull the blade up for me?

21 A. I can. (Complying.)

22 Q. And this is a folding knife; is that correct?

23 A. That's correct.

24 Q. But it can be, say if it were going to be
25 transported, put in like that (demonstrating).

MATTHEW McCOY - DIRECT BY CAMPBELL

1 A. That's correct. That's typically how you transport
2 a knife like that.

3 Q. In reviewing the video we saw, all the videos in
4 this case, when Stewart Ard showed up right before the
5 stabbing, what position was this knife in?

6 A. When he initially stabbed -- when he walked down
7 the sidewalk with Mr. Benjamin Geno, as he approached
8 Mr. Patterson he pulled the knife from his right pocket on
9 the video.

10 Q. His right pocket?

11 A. That's correct. The knife --

12 Q. Was it folded?

13 A. I'm sorry?

14 Q. Was it folded?

15 A. No, ma'am. The knife was open just like that in
16 his right pocket, when he pulled it from his pocket.

17 Q. During the course of your investigation did you
18 also become aware of the identities of the other people
19 that were with Mr. Ard that night?

20 A. Yes.

21 Q. And what were their names?

22 A. Benjamin Geno, Jason Skaggs, and his last name was
23 Richardson. I can't remember his first name.

24 Q. Mr. Richardson?

25 A. Yes, Mr. Richardson.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 Q. And subsequently were additional people charged in
2 this case including Mr. Ard?

3 A. That's correct. Benjamin Geno and Jason Skaggs
4 were both charged.

5 Q. And their charges are still pending and they'll
6 have their day?

7 A. That's correct. They're still pending charges,
8 yes.

9 Q. The next day on July the 30th, did -- what's his
10 name -- Mr. Geno and Mr. Skaggs turn themselves in also?

11 A. They did, the following day. Yes.

12 Q. During the course of this, did you also follow up
13 with other witnesses in the case?

14 A. I did.

15 Q. Were formal statements taken from every witness in
16 this case?

17 A. Not from every witness, no.

18 Q. Is that unusual?

19 A. It's not. Typically what we try to do is we'll try
20 to get a written statement if we can. Of course with the
21 victim, Jesse Patterson, he was in so much pain at the
22 hospital. He told me he couldn't write, so I got his oral
23 statement from him.

24 Q. Okay. Later on in September, did you also prepare
25 search warrants for medical records?

MATTHEW McCOY - DIRECT BY CAMPBELL

- 1 A. I did.
- 2 Q. And what was the purpose of you getting medical
3 records in this case?
- 4 A. Determine the severity of the injuries and what the
5 proper charge for it would be.
- 6 Q. You've also heard reference to these being non
7 life-threatening injuries?
- 8 A. That's correct.
- 9 Q. What does that mean to you?
- 10 A. Well, typically when they say non life threatening
11 at least in our police world, if you will, that means he's
12 in no danger of dying. Once he's under medical care at
13 that particular point in time there's no reason to start
14 calling the homicide team out.
- 15 Q. And that information was gotten after they received
16 treatment?
- 17 A. I'm sorry?
- 18 Q. That was after they had received treatment?
- 19 A. That's correct. That's correct. My
20 understanding -- I didn't write the report but my
21 understanding, they finished the report after they was in
22 the care of the hospital.
- 23 Q. When you made contact with Ms. Zmroczek and her
24 client from the 29th, were they -- was she made aware that
25 there was a video?

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 A. Yes.

2 Q. At any point did she contact you about getting
3 additional video?

4 A. She never contacted me after that point, not that I
5 can recall.

6 Q. And if she had contacted you wanting additional
7 videos, would you have gotten those for her?

8 A. Yes.

9 Q. I want to show you State's Exhibits 14 and 17.
10 These are stills from two of the different videos that
11 were retrieved.

12 A. Okay.

13 Q. And do those fairly and accurately depict still
14 shots of what's on the video?

15 A. They do.

16 MS. CAMPBELL: Your Honor, at this time we would
17 offer these two into evidence.

18 MS. ZMROCZEK: Subject to my previous objection.

19 THE COURT: So admitted.

20 (State's Exhibit Nos. 14 and 17, photographs,
21 received into evidence.)

22 BY MS. CAMPBELL:

23 Q. State's Exhibit Number 17, who does that show?

24 A. That's Benjamin Geno at the top there with the
25 writing on the shirt. That's Stewart Ard's tattoo.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 Q. Okay.

2 A. Benjamin Geno is there.

3 Q. And Stewart Ard is here?

4 A. Stewart Ard is the one below, closer to the camera

5 with the colored shirt, tattoos on his arm, bald headed.

6 Q. And where is Stewart Ard's hand at that point?

7 A. In his right pocket.

8 Q. And, again, this is on video?

9 A. That's correct. Yes, ma'am. That's a still from

10 the video.

11 Q. You're also aware of a confrontation between two of

12 the bouncers from the bar next door?

13 A. Yes, ma'am.

14 Q. The Pour House?

15 A. Yes, ma'am.

16 Q. And I show you State's Exhibit 14. Who does that

17 show?

18 A. That's Stewart Ard in the green shirt, bald head in

19 the corner.

20 Q. And this car?

21 A. That car belongs to Jason Skaggs. That's the car

22 they arrived in in front of the tanning salon, and they

23 also fled in that car after the incident.

24 Q. What -- here up in the corner you can just barely

25 see the shirt of somebody that he's reaching for.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 A. That's one of the victims that testified earlier.
2 I believe that's even a Pour House emblem on the shirt
3 there.

4 Q. I want to talk about the Five Points Area a little
5 bit. There's been reference to several different places.
6 I'm going to show you -- let me mark this real quick.

7 (State's Exhibit Nos. 28 and 29, charts, marked for
8 identification.)

9 MS. CAMPBELL: I want to show you -- Your Honor, at
10 this time I offer State's 28 and 29 into evidence?

11 MS. ZMROCZEK: Without objection, Your Honor.

12 THE COURT: I'm sorry?

13 MS. ZMROCZEK: 28 and 29. Yes, just those two.

14 (State's Exhibit Nos. 28 and 29, charts, received
15 into evidence.)

16 BY MS. CAMPBELL:

17 Q. Have you also had an opportunity to review all the
18 video in this case?

19 A. I have.

20 Q. And specifically I think all that's been shown to
21 the jury except for -- is there a portion of the video
22 showing the Defendant and his three friends in the bar?

23 A. Yes, there is.

24 MS. CAMPBELL: Your Honor, at this time I'd ask
25 permission to just publish that final video.

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 THE COURT: All right.

2 BY MS. CAMPBELL:

3 Q. Investigator, if you don't mind stepping down
4 here. I want to show you some evidence too.

5 A. (Complying.)

6 Q. What area of Group Therapy does this show?

7 A. This is the bar. The front door would be over
8 here. The front area at the top. And this is the bar.

9 Q. And that would be the front door on Green Street?

10 A. That's correct.

11 Q. And do you see -- can we go ahead and blow it up?

12 MR. SHALABI: (Nods head.)

13 BY MS. CAMPBELL:

14 Q. Do we see the individuals that were involved in
15 this?

16 A. This is Stewart Ard here. Stephen Richardson,
17 that's this individual. This would be Jason Skaggs and
18 Benjamin Geno is down here at the bottom.

19 Q. And this is, generally shows the group as a whole?

20 A. That's correct. This individual's not involved in
21 the group that I'm aware of. The other, the fourth one,
22 Mr. Richardson, behind Mr. Ard.

23 Q. Do you know who's who on this video?

24 A. Benjamin Geno and Jason Skaggs is here. Stewart
25 Ard is over here with the bald head sitting at the bar and

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 Stephen Richardson has stepped off camera. He was there.
2 He's in a baseball cap.

3 Q. Okay. And is this before or after any of the
4 altercations have taken place?

5 A. This is prior to any of the altercations. This is
6 when they initially walked into the bar according to the
7 time stamps.

8 Q. And that goes on for awhile. It basically just
9 shows their general demeanor?

10 A. That's correct. They'll stand there for, I
11 believe, a few more minutes. And then they'll walk back
12 toward the dance floor area where the first --

13 Q. Where the first, the initial altercation inside
14 took place?

15 A. That's correct.

16 Q. You can stop this. But stay here for a second
17 because I want to show these diagrams.

18 If you can step over here.

19 A. (Complying.)

20 Q. We've heard reference to the Teriyaki Grill as well
21 as the Pour House, the Rite-Aid.

22 I'm showing you State's Exhibit Number 28. Does
23 that show an overview of the general area of Five Points?

24 A. It does. That's around the seven-, 600 block of
25 Harden Street.

MATTHEW McCOY - DIRECT BY CAMPBELL

1 Q. And where is Group Therapy on this? Can you tell?

2 A. Group Therapy. This is -- Green Street's right
3 over here.

4 Q. Right here?

5 A. That's correct.

6 Q. That would be the actual front door of Group
7 Therapy right there?

8 A. That's correct.

9 Q. And then the Pour House, where is it shown on
10 here?

11 A. Right next door.

12 Q. Right about here?

13 A. That's correct.

14 Q. And then there's also, you just mentioned that
15 still shot where you saw the car pull in and the alley?

16 A. That's a tanning salon, and it's right here next to
17 Group Therapy.

18 Q. Is that beside the tanning salon. Are these
19 parking places?

20 A. Yes, I believe it was in the first or second
21 parking spot. I believe the first one he pulled in.

22 Q. And the Teriyaki Grill --

23 A. Grill Teriyaki is right -- excuse me. Teriyaki
24 Grill is right here.

25 Q. Right here?

MATTHEW MCCOY - DIRECT BY CAMPBELL

1 A. Yes. Right in front of the Post Office is here.
2 Grill Teriyaki would be here.

3 Q. And it actually faces onto Harden Street?

4 A. That's correct. The front door is on Harden Street
5 and they have windows that face the bar there.

6 Q. And then the Rite-Aid, the drugstore that's been
7 referred to is where?

8 A. It's behind it here, this brick building.

9 Q. And it's actually facing Harden Street as well?

10 A. That's correct.

11 Q. And this is the general area we're talking about?

12 A. Yes, ma'am.

13 Q. And then just to put in perspective, an overview on
14 State's Exhibit Number 29, does that show the entire Five
15 Points area?

16 A. Yes, ma'am. That's the Five Points area.

17 Q. And if you're coming from downtown, would you come
18 down Harden Street?

19 A. If you're coming from downtown you would come up
20 Harden Street towards Blossom Street. This would be
21 coming from Rosewood.

22 Q. Rosewood?

23 A. And this would be from coming from Gervais Street
24 this way.

25 Q. And where is the bar on this?

MATTHEW McCOY - DIRECT BY CAMPBELL

1 A. The bar is here. Here's Harden and Green Street
2 here. The bar is right there.

3 Q. Right there?

4 A. Yes, ma'am. Right there.

5 Q. And the Chick-fil-A is actually down the street?

6 A. It's over here, yeah, on the right-hand side of
7 Harden.

8 Q. Okay. Thank you.

9 A. You're welcome.

10 Q. You can take the stand.

11 A. (Complying.)

12 Q. Mr. Ard, he turned himself in with his lawyer. Has
13 his appearance changed today?

14 A. It has.

15 Q. And what's different about his appearance?

16 A. Mr. Ard has grown hair. He was bald at the time he
17 was arrested.

18 Q. And I'm going to show you this photograph. Does
19 this fairly and accurately depict how he looked at the
20 time?

21 A. That's a booking photo.

22 Q. You made contact with him the next day?

23 A. That's exactly how he looked. That's a booking
24 photo from Alvin S. Glenn.

25 MS. CAMPBELL: Your Honor, at this time we would

MATTHEW McCOY - CROSS BY ZMROCZEK

1 offer State's Exhibit Number 30 into evidence.

2 MS. ZMROCZEK: Object, Your Honor.

3 MS. CAMPBELL: It just shows a change in his
4 appearance.

5 MS. ZMROCZEK: Your Honor.

6 THE COURT: Overruled.

7 MS. CAMPBELL: Thank you.

8 (State's Exhibit No. 30, photograph, received into
9 evidence.)

10 BY MS. CAMPBELL:

11 Q. And State's Exhibit 30, that's how he appeared when
12 you made contact with him?

13 A. Yes. When he turned himself in the following day
14 that's how he appeared

15 MS. CAMPBELL: Thank you, sir. I don't have
16 anything further.

17 THE COURT: Ms. Zmroczek?

18 MS. ZMROCZEK: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. This is the picture that he turned himself and that
22 you took -- or that they took the day he turned himself
23 in; right?

24 A. That's what he looked like. Yes, ma'am.

25 Q. Before it went on the news?

MATTHEW MCCOY - CROSS BY ZMROCZEK

1 A. You asked me if he turned himself in before it was
2 on the news or --

3 Q. Uh-huh.

4 A. It was on the news but you'd notified me prior to
5 going on the news. Yes, ma'am.

6 Q. Right. And in that picture his eyes are all red
7 because he'd been crying, right?

8 A. I'm not sure what he had been doing.

9 Q. You don't recall him crying?

10 A. I recall him crying during -- when he turned
11 himself in?

12 Q. Uh-huh.

13 A. I do recall he did shed some tears. Yes, ma'am.

14 Q. Okay. And, you recall, without telling me what was
15 made in the statement or what was said in the statement,
16 you recall --

17 MS. CAMPBELL: Objection, Your Honor. May we
18 approach?

19 (Off-the-record discussion.)

20 BY MS. ZMROCZEK:

21 Q. During the course of your investigation that
22 started the day that you were called in, were you able to
23 arrest and identify other individuals?

24 A. Yes, I was.

25 Q. And through the course of your investigation, were

MATTHEW MCCOY - CROSS BY ZMROCZEK

1 you able to learn why all of those individuals returned
2 to --

3 MS. CAMPBELL: Objection, Your Honor, as to
4 hearsay.

5 THE COURT: I don't know what he was -- overruled.

6 BY MS. ZMROCZEK:

7 Q. Why they returned to Group Therapy?

8 A. I had been told something, yes.

9 Q. Okay. And through the course of your
10 investigation, did you learn that there was a watch
11 missing from one of the defendants?

12 MS. CAMPBELL: Objection, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, I had been given that
15 information.

16 BY MS. ZMROCZEK:

17 Q. Okay. Had that watch been recovered?

18 A. No.

19 Q. You said that you took an oral statement from Jesse
20 Patterson. Did you record that or did you write down some
21 notes from that?

22 A. I did write down some notes. Yes, ma'am.

23 Q. And you turned everything over to the State?

24 A. That's correct. It would be in my typed notes,
25 yes.

MATTHEW McCOY - CROSS BY ZMROCZEK

1 Q. And you're familiar that there are cameras across
2 the street, directly across the front door from Group
3 Therapy, correct?

4 A. You say directly across, on the other side of
5 Harden Street?

6 Q. On the other side of Green Street.

7 A. Near the Grill Teriyaki?

8 Q. Correct.

9 A. Yes. I'm aware there's cameras by Grill Teriyaki.

10 Q. And I'm showing you what's marked as, or it's in
11 evidence as State's Exhibit 23.

12 A. Uh-huh.

13 Q. In fact, that picture is taken from that Grill
14 Teriyaki camera, isn't it?

15 A. I'm not sure where that photograph was taken. I
16 didn't make those photographs.

17 Q. Okay. Are you familiar with the videos because
18 you've seen the one that Mr. Shealy provided, correct?

19 A. Yes. I've seen the ones we requested Mr. Shealy to
20 provide, yes.

21 Q. Okay. And this would be similar to the ones that
22 he provides to you?

23 A. It could be. I don't know. I don't normally watch
24 it in video form but, sure.

25 Q. And you say you don't recall being questioned about

MATTHEW MCCOY - CROSS BY ZMROCZEK

1 access to all the videos, or is it something you just
2 don't recall?

3 A. When you say questioned about, you're talking about
4 you questioning me about asking for more?

5 Q. Uh-huh.

6 A. I don't recall you asking me to obtain additional
7 video. I did request Carey Shealy to provide all videos
8 he had relevant in that area, which when he turned them
9 over I took him at his word those were all the cameras we
10 had.

11 Q. And who got to decide the relevance of that?

12 A. When, when I request video from Carey Shealy I call
13 him and ask, I say, "What cameras do you have in this
14 area, this block range? Here's the time frame I'm looking
15 at. Please provide it."

16 And he will, he'll provide it.

17 Q. So the time frame that you would be looking at
18 would be the time frame from which the defendants entered
19 the bar or at least entered one of the cameras to enter
20 the bar to the time that they, that the incident was
21 complete? Would you agree with me, that would be a
22 relevant time period?

23 A. That's right. In talking with the witnesses trying
24 to figure out when the whole incident took place and what
25 happened.

MATTHEW MCCOY - CROSS BY ZMROCZEK

1 Q. But you would agree that the 28 minutes of video
2 that's entered into evidence does not reflect that?

3 A. Reflect the incident or the reflect the entire
4 time?

5 Q. Reflect the entire time.

6 A. I don't know. The only thing that I've seen is
7 what I was provided.

8 Q. So you didn't edit it?

9 A. I never edited it, no. Everything that I provided
10 to the State was the way it was presented to me by Carey
11 Shealy.

12 Q. Thank you. You talked a little bit about police
13 talk and non life-threatening injuries?

14 A. Uh-huh.

15 Q. Do you use the words serious injuries in your
16 reports?

17 A. I have, yes.

18 Q. Did you use that word in this report?

19 A. I didn't type this report, the incident report. I
20 typed supplemental reports after that. I'd have to look
21 at them to tell you if I did or not. I don't know.

22 Q. And you did a case summary as well?

23 A. Correct.

24 Q. And I can show that to you, or would you agree with
25 me that the word serious life -- the word serious, life

MATTHEW MCCOY - CROSS BY ZMROCZEK

1 threatening, dangerous, none of those appear in there?

2 A. Without looking at them, I couldn't tell whether I
3 did or not. If you say they weren't --

4 Q. But you would agree that non threatening appears in
5 there?

6 A. Appears in which report?

7 Q. In your case summary.

8 A. In the case summary, I'd have to look at it. If
9 you have it.

10 Q. I have it.

11 While I'm looking for it -- actually I'll move on.

12 A. Okay.

13 Q. You said that you use that information to
14 effectuate arrest; is that correct?

15 A. That's correct. We would look at the statute and
16 the severity of the injuries and see what fits.

17 Q. Did you arrest Mr. Ard for attempted murder?

18 A. I did not.

19 Q. Did he go to jail on other charges for turning
20 himself in that day?

21 A. He did.

22 Q. And that's where that mug shot was taken?

23 A. That's correct.

24 Q. And he has not been out of jail since that day, has
25 he?

MATTHEW MCCOY - REDIRECT BY CAMPBELL

1 A. I don't believe so. I believe he's been in there
2 on bond, yes.

3 MS. ZMROCZEK: Thank you. That's all I have.

4 THE WITNESS: Thank you.

5 MS. CAMPBELL: Your Honor, a couple questions.

6 REDIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q. Do you decide if he stays in jail or who decides
9 that?

10 A. That's a bond judge decides if he stays in jail or
11 not.

12 Q. And initially you charged him with assault charges?

13 A. I charged him with assault and battery by a mob in
14 the second degree which is -- mob by first degree would be
15 if death resulted. This would be a mob act with great
16 bodily injury.

17 Q. And is it unusual at all later on once you get more
18 information, as you did in this case, for charges to
19 change, to be upgraded or downgraded or whatever?

20 A. It's not unusual at all. Typically you have -- his
21 arrest came very early on in the investigation. It was
22 the next day. There was still a lot of witnesses to talk
23 to, additional co-defendants to capture. So of course
24 once all of the evidence is in and placed in the packet
25 for the solicitor's office, they'll review it and if they

MATTHEW MCCOY - REDIRECT BY CAMPBELL

1 feel like charges, a higher charge is necessary they'll
2 take that, of course, in front of the grand jury and try
3 to secure an indictment.

4 Q. And the grand jury determines if that's
5 appropriate?

6 A. That's correct. I give the facts of what I know
7 what happened truthfully, and they decide whether or not
8 it meets the elements of the charge.

9 Q. And in this case, when did you actually request the
10 medical records?

11 A. I could look at my notes to tell you the exact
12 date. It was toward the end of the investigation, I
13 believe.

14 Q. I have a copy of your notes.

15 A. I've got a copy here.

16 Q. You've got it?

17 A. I'll give you the exact date it occurred. I
18 requested via search warrant on September the 5th, 2013,
19 when they were requested. And I received them on October
20 24th, 2013.

21 Q. Thank you, sir. And she also asked you about the
22 video. Would you have expected Mr. Shealy to provide
23 videos that didn't show something?

24 A. No. There's multiple cameras at Five Points. I
25 wouldn't assume him to provide me every Five Points'

MATTHEW MCCOY - RECROSS BY ZMROCZEK

1 video. He provided -- again, I asked for a specific area,
2 "What cameras do you have? Please provide me with those
3 videos."

4 Q. And specifically was he able to provide you videos
5 that showed actual interaction and the actual assaults in
6 this case?

7 A. That's correct.

8 Q. And that's what you were trying to get?

9 A. That's correct.

10 Q. You don't have every moment that he was in Five
11 Points that night?

12 A. No.

13 MS. CAMPBELL: Thank you, Your Honor. I have
14 nothing further.

15 MS. ZMROCZEK: I have a few follow up.

16 RECROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Investigator McCoy, was it your -- is it your
19 statement that it was your decision to bring that charge
20 to the grand jury?

21 A. No, ma'am.

22 Q. Okay. And you were aware that there are three --
23 two co-defendants in this case?

24 A. That's correct. I arrested two additional people
25 besides Mr. Ard, yes.

1 Q. And you are aware that they were under subpoena to
2 be at this trial as well?

3 A. I'm not sure. I didn't see the subpoenas so I'm
4 not sure whether they were or not. I know I was.

5 Q. And -- you know they were?

6 A. I know I was under subpoena. Yes, ma'am.

7 Q. Okay. And, you received that information back
8 from the hospital on October 24th, correct?

9 A. Yes. That's what I testified to; yes, ma'am.

10 Q. And at that time, is that when you turned it over
11 to the solicitor's office?

12 A. Yes. Once I received it, it was turned over.

13 MS. ZMROCZEK: Thank you. I have no further
14 questions.

15 THE COURT: All right. Thank you, sir. You may
16 step down.

17 THE WITNESS: Thank you, Your Honor.

18 MS. CAMPBELL: Your Honor, may we approach?

19 THE COURT: I tell you what. Ladies and gentlemen,
20 let's go ahead and take a break. I'm going to let you go
21 back to the jury room. Please don't discuss the case
22 while you're back there, and we'll be with you
23 momentarily.

24 (Jury exits courtroom at 2:51 P.M.)

25 THE COURT: All right. What do you want to

1 approach about, Ms. Campbell?

2 MS. CAMPBELL: The only thing, I wanted to check
3 with the court reporter to make sure everything was in
4 that we were supposed to have in. I just wanted two
5 minutes to do that.

6 THE COURT: All right.

7 MS. CAMPBELL: And then we'll rest.

8 THE COURT: My understanding is we're going to
9 bring the jury back and the State's going to rest. Is
10 that correct?

11 MS. GARFIELD: Yes, sir.

12 THE COURT: My intentions are to argue and charge
13 in the morning. I'm going to have a little charge
14 conference with y'all before we do it, and I don't argue
15 and charge after four.

16 Do you want me to query your client today, and then
17 if he changes his mind we'll take it up in the morning?

18 MS. ZMROCZEK: Please, Your Honor. That way
19 they're not coming back and forth.

20 THE COURT: Mr. Ard, let me get you to stand and
21 raise your right hand if you would, please.

22 (Defendant placed under oath.)

23 THE COURT: All right. You can put your hand
24 down.

25 I'm going to ask you some questions. They're not

1 going to have anything to do with the case. It's going to
2 relate to your right to testify or tell your side of the
3 story and your right to not testify.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And your attorney has indicated that
7 you have determined that you do not want to testify in
8 this trial; is that correct?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Do you understand, of course, you have
11 that constitutional protection, and that I will in fact
12 instruct the jury that the fact that you did not testify,
13 you elected not to, can't be considered by the jury in
14 their deliberations? They can't discuss it and can't
15 consider the fact that you didn't testify.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: All right. But you also understand you
19 have the right to testify, to tell your side of the story,
20 get on the stand and tell the jury whatever you think is
21 important that's relevant in this case.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: Of course, if you elect not to testify,
25 you don't get to tell your side of the story.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And if you elected to testify you would
4 be subject to being cross-examined by the solicitor's
5 office and they could attempt to impeach you in any manner
6 they thought was appropriate so long as it complied with
7 our rules. That is to show that there may be some
8 credibility problem with what you're testifying to.

9 Do you understand that? Including any prior
10 record, do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You've had an opportunity to talk to
13 your attorney about this matter?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And y'all had have a thorough
16 discussion about your right to testify or not testify?

17 THE DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: And she's advised you and counseled you
19 about that; is that correct?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: But this is your decision?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: Now has anybody threatened you, coerced
24 you, forced you, or pressured you into making this
25 decision?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: You're doing so freely and
3 voluntarily?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: And you're doing so knowingly and
6 intelligently?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: You have not had any alcoholic
9 beverages in the last 24 hours, have you?

10 THE DEFENDANT: No, sir, Your Honor.

11 THE COURT: You haven't taken any drugs, had any
12 medication in the last 24 hours?

13 THE DEFENDANT: No, sir, Your Honor.

14 THE COURT: Are you under the influence of any kind
15 of substance here today?

16 THE DEFENDANT: No, sir, Your Honor.

17 THE COURT: Any decision you're making is being
18 made in a lucid manner; is that correct?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: Ms. Zmroczek, anything you want to ask
21 your client or say at this point, or anything you want me
22 to make further inquiry of your client?

23 MS. ZMROCZEK: Your Honor, simply that we
24 continually throughout the trial, I have continued to let
25 him know that he still had that opportunity to plead and

1 that he has chosen not to.

2 THE COURT: All right. With respect to his not
3 testifying, you've had an ample opportunity to talk to him
4 about it?

5 MS. ZMROCZEK: Yes.

6 THE COURT: And this is his decision?

7 MS. ZMROCZEK: It is.

8 THE COURT: Even though I'm sure you've advised him
9 and counseled him but ultimately it's his decision; is
10 that correct?

11 MS. ZMROCZEK: I have.

12 THE COURT: You don't know of anything that is
13 forcing him to make this decision, you think his decision
14 is being made freely and voluntarily?

15 MS. ZMROCZEK: I do, Your Honor.

16 THE COURT: All right. If you change your mind by
17 tomorrow morning when we come back in here, then let me
18 know and we'll revisit the issue, although I'm probably
19 going to ask your attorney when the jury comes back in is
20 there anything from the State -- I mean, from the
21 Defendant and she'll indicate we're not going to offer
22 anything. And that would foreclose your coming forward
23 with anything further in the case unless you plan on
24 calling other witnesses.

25 MS. ZMROCZEK: I do not, Your Honor.

1 THE COURT: All right. Thank you, sir.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Let's -- anything we need
4 to take up before we bring the jury back in?

5 MS. CAMPBELL: No, sir.

6 THE COURT: All right. Let's bring the jury back
7 in if we could, Mr. Talbert.

8 (Jury enters courtroom at 3:14 P.M.)

9 THE COURT: Thank you, sir. All right. Anything
10 further from the State?

11 MS. GARFIELD: Your Honor, at this time the State
12 of South Carolina rests its case.

13 THE COURT: All right. Ladies and gentlemen, that
14 means the State has concluded the presentation of the
15 State's evidence in their case in chief.

16 And is there anything from the Defendant?

17 MS. ZMROCZEK: Your Honor, the Defendant rests.

18 THE COURT: All right. As I indicated the other
19 day, ladies and gentlemen, the Defendant doesn't have any
20 burden in this case. And they don't have to testify,
21 don't have to put up anything. And they've elected to not
22 do so.

23 And so the next phase of the trial is going to be
24 the arguments and the charge which we are not going to do
25 today because we're under a little bit of a

1 get-out-of-court deadline every afternoon. And so we
2 might, by the time the arguments and the charge is ready,
3 it would be close to the time that y'all might want to be
4 in a position to leave.

5 So we're going to come in first thing in the
6 morning and we will go forward with the closing arguments
7 by the parties. And then I will charge you the law and
8 you will get the case and go back to the jury room and
9 begin your deliberations.

10 Now, I'm going to ask you a couple of things. I'm
11 going to ask you to be here tomorrow -- we're going to
12 start at 9:30, but I'm going to ask you to be here at 9:20
13 because I want you to select a foreperson for the jury, if
14 you would.

15 That foreperson, I will give some instructions as
16 to responsibilities of the foreperson. The foreperson
17 will occupy the seat that this young lady is seated in
18 right next to Mr. Talbert.

19 The other thing I'm going to ask you to do, again,
20 is to not discuss the case with each other or with anyone
21 else while we're gone and when you come in in the
22 morning. Y'all have invested two days. You don't want to
23 do anything to jeopardize your good work and your close
24 attention that you've paid in this case. Don't do any
25 investigation when you're gone again tonight. Don't get

1 on the computer or do anything else. You've heard the
2 evidence and now you're going to be in a position to bring
3 this matter to a close.

4 So, I'm going to let you to go. I ask you to be
5 here at 9:20 in the morning to select a foreperson. Write
6 that foreperson's name down, give the piece of paper to
7 one of the bailiffs and they'll give it to me and we will
8 go from there.

9 So y'all have a nice afternoon and I thank you for
10 your day's work today and we will turn you loose and see
11 you tomorrow morning. Thank y'all.

12 (Jury exits courtroom at 3:18 P.M.)

13 THE COURT: We will recess until 9:30 in the
14 morning and y'all have a nice afternoon. And if I could
15 see the attorneys, we'll take a few minutes to talk about
16 the charges.

17 END OF DAY: 3:19 P.M.

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1 ON WEDNESDAY, JUNE 25, 2014 AT 9:36 A.M.:

2 THE COURT: Did y'all get to see the verdict forms
3 yesterday?

4 MS. GARFIELD: No, sir.

5 (Attorneys reviewing verdict forms.)

6 THE COURT: Okay. Kara Setzer is the Forelady.

7 And she is a teacher. All right.

8 You indicated you have a motion you want to make?

9 MS. ZMROCZEK: I do, Your Honor.

10 At this time I'd move for a directed verdict on all
11 the charges. Like I said, he is -- in our opening
12 statement, like I said the whole time, as far as one of
13 the victims, he's charged with assault and battery
14 second. He's indicted for assault and battery second.

15 And, Your Honor, we had agreed that he is guilty of
16 assault and battery second. So I don't know if the jury
17 needs to consider that. They certainly can, but we would
18 ask that a directed verdict be granted on that.

19 And as far as the other two victims, we -- Joseph
20 Molino and Gabe, we had, Your Honor, indicated that we
21 believe that he was guilty of assault and battery third.
22 And under the definition and including their testimony,
23 Your Honor, we believe that the burden has been met for
24 Mr. Ard to be found guilty of assault and battery third on
25 those two victims.

1 And as far as the fourth victim, Mr. Jesse
2 Patterson, Your Honor, we would simply restate our
3 arguments that we made or statements that we made in
4 opening that we do believe that Mr. Ard is also guilty of
5 assault and battery second of those victims.

6 THE COURT: All right. Anything from the State?

7 MS. CAMPBELL: No.

8 MS. GARFIELD: No, sir.

9 THE COURT: All right. The standard in a directed
10 verdict in a criminal case is any direct evidence or any
11 substantial circumstantial evidence. The evidence is
12 almost -- it's admitted in some instances that the two
13 assault and battery seconds where there was not actual
14 injury, that there was an attempt to injure. And I think
15 there is some evidence that if successful it could have
16 resulted in moderate injury.

17 With respect to Mr. Flemming, he was cut. And so
18 I think there is some evidence that that would be for
19 him. And there's a number of options that the jury's
20 going to have on your client, but there is some evidence
21 with respect to each of the charges and all of the
22 elements in those charges that the jury could reach a
23 verdict.

24 And I don't know what they might do in terms of the
25 attempted murder, but I think there's some evidence. And

1 that's all there has to be.

2 Anything further?

3 MS. ZMROCZEK: That's all. Thank you, Your Honor.

4 THE COURT: All right. Y'all ready to go?

5 MS. CAMPBELL: State's ready, Your Honor.

6 THE COURT: Y'all ready to go?

7 MS. ZMROCZEK: Yes, Your Honor.

8 THE COURT: Jackie?

9 THE CLERK: Yes, Your Honor.

10 THE COURT: What I anticipate based on what I've
11 been told by the attorneys is that the closings are
12 probably going to take about an hour and a half. And then
13 I'll probably take a break and then give them the charge.

14 I guess we need to consider lunch.

15 Do you want to say something about --

16 MS. CAMPBELL: No, sir.

17 THE COURT: -- what I'm talking about?

18 So you might want to get some menus maybe when we
19 send them back after I charge, then we can give them the
20 -- or maybe we can give it to them when they take their
21 break and they can fill it out and decide what we want to
22 do.

23 THE CLERK: Okay.

24 THE COURT: All right. Let's bring the jury in if
25 we could.

1 THE BAILIFF: Yes, Your Honor.

2 MS. CAMPBELL: Your Honor, while they're bringing
3 them in, she was going to narrow down the number of stills
4 she's going to use.

5 MS. ZMROCZEK: I'm not going first, Your Honor.

6 (Jury enters courtroom at 9:41 A.M.)

7 THE COURT: Thank you, Mr. Dye. Good morning,
8 ladies and gentlemen.

9 THE JUROR: Good morning.

10 THE COURT: First I want to thank you very much for
11 coming in a little earlier and designating Ms. Setzer. I
12 see you didn't want to give up your seat, but I appreciate
13 your willingness to serve as Forelady and I'll explain to
14 you when we get into the charge what some of your
15 responsibilities will be in this matter.

16 Ladies and gentlemen, since we left yesterday has
17 anybody had any conversation about this case with each
18 other, or with anyone else, or have you been approached by
19 anyone to discuss the case?

20 THE JURY (COLLECTIVELY): No.

21 THE COURT: All right. Anybody do any
22 investigation, make any inquiry into anything involving
23 this case since we left yesterday?

24 THE JURY (COLLECTIVELY): No, sir.

25 THE COURT: All right. As you will recall, when

1 we concluded yesterday both parties had concluded the
2 presentation of any evidence they wished to offer in the
3 case.

4 And the next phase of the trial is what we call
5 closing arguments. And both the State and the Defendant
6 will have a right to make their closing argument. And as
7 I told you, the State will go first in this matter.

8 So, Ms. Campbell, are you ready to proceed?

9 MS. CAMPBELL: Thank you, Your Honor.

10 Good morning. The first thing I want to do on
11 behalf of the State of South Carolina, the citizens of
12 Richland County, is to thank you for your service in this
13 case.

14 I know when you showed up on Monday morning you may
15 have tried to anticipate what kind of case you might be
16 on, maybe a wreck case where liability was an issue,
17 damages might come up, or for something else. But as you
18 have seen, and I think each and every one of you paid
19 close attention over the last two days, this is a very
20 important case. It's important to the State of South
21 Carolina and it's important to Stewart Ard.

22 So thank you for your attention. It is very
23 important.

24 Now as the Judge has told you, you're going to hear
25 from me. First I'm going to talk to you a little bit

1 about the law in this case because in cases where assaults
2 or murders occur, typically there are what's called
3 lesser-included offenses. And I'm going to go over some
4 of those definitions with you.

5 And once I have finished talking to you about the
6 law, I'm going to talk to you a little bit about the facts
7 in this case. Then the defense will get up and I can only
8 try to anticipate what she may argue, I don't know, but
9 she will have the last word before you.

10 But all we ask is that as either side is talking
11 about the facts or the law, if I say something about the
12 law, and ultimately it's Judge Barber who tells you what
13 the law is you should apply in this case. If I say
14 anything different it's not intentional, but you take the
15 law as he gives it to you.

16 In that same vein, as each of us are up here before
17 you, if anyone misquotes the facts, you remember. Because
18 the roles in this courtroom are very well defined and
19 that's for a reason.

20 The State's role is to present credible evidence
21 before you about what happened back on July the 28th. The
22 defense's role is to defend her client. The Judge's role
23 is to decide what's actually admissible, what you're
24 allowed to hear. Because you're only allowed to base your
25 verdict on what's come before you in this courtroom.

1 But finally, ladies and gentlemen, no one will
2 argue any different than this, the most important role in
3 this courtroom is yours. Each of you individually, and
4 then once you go back to that jury room, collectively,
5 because you must come up with a unanimous verdict.

6 Verdict comes from a Latin phrase, veredicto. And
7 it simply means to speak the truth. And that is the only
8 thing the State asks for in this case is a verdict that
9 speaks the truth and seeks justice.

10 Now I want to apologize if we have done anything
11 over the last several days to offend anyone. At times our
12 questioning has been clumsy, unartful, things may be
13 admissible but they're not admissible, things of that
14 nature. Please don't hold that against the State if we
15 have done anything to offend anyone.

16 You have now heard all the evidence you can
17 consider. And as the Judge told you, what is the
18 evidence? It's what the witnesses got up here, swore an
19 oath, and they testified to. It is the video that has
20 been admitted, the physical evidence, the photos, the
21 knife. That is what you can base it on. Not on
22 speculation, innuendo, conjecture, or just plain wishful
23 thinking. That is not evidence.

24 And in that same vein, questions by the lawyers on
25 either side are not evidence. The answers of the

1 witnesses who swore an oath is what you may consider in
2 doing that.

3 Now, what witnesses came before you? In this case
4 when we opened -- we can only anticipate what the defense
5 will be. And the scope in this case has been narrowed
6 down very, very simply by the defense's opening argument.
7 That narrowed down the scope of what the case was because
8 there was no dispute that Stewart Ard is the person that
9 stabbed these people or attempted to stab people on that
10 night.

11 By her opening argument that is no longer in
12 dispute. So the State was able to narrow their case down
13 to witnesses, lay witnesses, victims who don't have
14 something to gain or lose, independent witnesses who don't
15 have a dog in this fight. Not the Defendant's cohorts.
16 Those are the witnesses the State brought before you
17 because the video actually is the reason the scope is
18 narrowed.

19 Now the Judge will tell you in this case in this
20 courtroom the burden is on the State of South Carolina to
21 prove this Defendant's guilt beyond a reasonable doubt,
22 just as it should be. And, ladies and gentlemen, I submit
23 in this courtroom in this case with this evidence, that is
24 a burden the State welcomes.

25 What is proof beyond a reasonable doubt? The

1 courts have defined it in various ways. And perhaps the
2 most simple way to define it is, a reasonable doubt is the
3 type of doubt that would cause a reasonable person -- and
4 listen to the Judge. Reasonable, it's key here. -- a
5 reasonable person to hesitate to act.

6 But the courts have gone a little bit further in
7 defining what is reasonable doubt. They have held that
8 proof beyond a reasonable doubt is proof that leaves you
9 firmly convinced of the Defendant's guilt.

10 There are very few things things in this world that
11 we know with absolute certainty. And in criminal cases
12 the law does not require proof that overcomes every
13 possible doubt. If, based on your consideration of the
14 evidence, you are firmly convinced of the Defendant's
15 guilt of the crime charged you must find the Defendant
16 guilty.

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

21 The law recognizes that we don't have to overcome
22 every possible doubt, although I submit with this evidence
23 there is no doubt about the stabbing that night. All we
24 have to prove is, give you proof that leaves you firmly
25 convinced of the Defendant's guilt.

1 Now as I alluded to earlier, in assault cases there
2 are various levels of assaults. You are going to hear
3 the Judge charge you as to what the charge was that the
4 indictment brought before you. And the indictment is just
5 the charging paper that puts us on notice on what we have
6 to prove and it puts the defense on notice of what they
7 have to prove.

8 There are different levels. Under murder is
9 attempted murder, when someone does die as a result. And
10 I'm going to go through the definitions of these but I
11 just wanted to show you how they line up.

12 Then under that, a lesser included, is assault and
13 battery of a high and aggravated nature. And then a
14 lesser included of that is assault and battery in the
15 first degree. A lesser included of that is assault and
16 battery in the second degree. And then assault and
17 battery in the third degree.

18 And the charges that have been brought before you
19 are the proper charges to charge this person as an
20 individual.

21 You heard Investigator McCoy talk about assault by
22 mob. They also have different degrees identifying whether
23 there's death or serious bodily injury.

24 Stewart Ard is charged as an individual in this
25 case. And he is charged in one indictment -- and when you

1 go back there, you're going to have five different verdict
2 forms. Five different verdicts to come up with because
3 there are five charges. That's not unusual that a person
4 may commit more than one charge during the course of
5 events in a single night.

6 So there are going to be five different charges.
7 One indictment for attempted murder. Three indictments
8 for assault and battery in the second degree. And one
9 indictment for carrying a concealed weapon that could be
10 used to cause personal injury.

11 Those are the charges generally I want to start
12 with. And I want to start with the first one, attempted
13 murder. Because very simply, ladies and gentlemen,
14 attempted murder is defined by our code of laws as a
15 person who with intent to kill attempts to kill another
16 person with malice aforethought either express or implied,
17 then would be guilty of the crime of attempted murder.
18 And what do some of those terms mean? And the Judge will
19 instruct you further and using some of these terms, called
20 legal terms of art.

21 What is an attempt to kill with malice
22 aforethought? And very simply, ladies and gentlemen,
23 when considering attempted murder if you think of it this
24 way, with common sense. If the person had to die as a
25 result, and luckily in this case for Jesse Patterson he

1 got help immediately. Even though his blood pressure went
2 away, he got help immediately and he was able to be
3 saved. But if he had died as a result of the Defendant's
4 actions, would that be murder? I submit, yes.

5 We must prove that it is the attempt to kill or
6 attempt to injure another with malice aforethought. And
7 very simply, the Judge will instruct you, malice typically
8 is hatred, ill will, or hostility towards another person.
9 It is the intentional doing of a wrongful act without just
10 cause or excuse and with an intent to inflict an injury or
11 under circumstances that the law will even infer an evil
12 intent.

13 There is no dispute in this case. And I'm going to
14 show you the video one last time. You see him actually
15 dig Jesse Patterson. He inflicted that injury with an
16 evil intent. And, remember, malice under the law does not
17 require that malice exist for any particular time before
18 the act is committed, but malice must exist in the mind of
19 the Defendant just before and at the time the act is
20 committed. Therefore, a combination of the previous evil
21 intent and act.

22 Malice aforethought may be express or inferred, or
23 implied. These terms, express and inferred, do not means
24 different kinds of malice but merely the manner in which
25 the malice may be shown to exist, either by inference from

1 the fact -- either by direct evidence or by inference from
2 the facts and circumstances which are proved.

3 The law goes further in defining what malice is.

4 And, ladies and gentlemen, the word malice itself, if you
5 think of it, the base for the term malicious. Were his
6 acts malicious that night? I submit this case reeks of
7 malice.

8 Express malice is shown when a person speaks words
9 which express hatred or ill will for another. You heard
10 from the independent and, I submit, credible witnesses who
11 were corroborated by the video how this Defendant
12 repeatedly threatened the people involved with getting him
13 thrown out that night.

14 Threat after threat from inside the bar, out the
15 front door, across the street to Teriyaki Grill he was
16 still going after them and he made good. Is that express
17 malice? Prepared beforehand to do the act which was later
18 accomplished. The fact that he had the knife in his
19 pocket with the blade already open, is that malice?

20 There's been all this talk about somebody's watch
21 being lost. Well, not his watch. He didn't hesitate to
22 attack Jesse. For example, lying in wait for a person or
23 any other acts of preparation going to show the deed was
24 within the Defendant's mind would be express malice. We
25 don't even have to prove -- and I submit this case has

1 express malice all over it.

2 Because the law recognizes in most cases, not this
3 one, somebody may not go up and announce "I'm going to
4 come back and get you." We don't even have to prove that
5 although, I submit, we have. Malice may be inferred from
6 conduct showing a total disregard for human life.

7 That's it. And I submit when you walk up behind
8 someone who's just been cold cocked by your friend and
9 then stab them, not once but repeatedly to make sure you
10 got him good enough, that's malice. It doesn't get any
11 more malicious than this, ladies and gentlemen. Up close
12 and personal.

13 The Judge will also instruct you in considering the
14 charge of attempted murder, a specific intent to kill is
15 not an element of attempted murder. We don't have to
16 show that he actually meant to kill him although, I
17 submit, his actions were such in this case. But there
18 must be a general intent to commit serious bodily injury.
19 Intent means intending the result which actually occurs,
20 not accidentally or involuntary.

21 Look at his actions on that video.

22 Intent may be shown by acts and conduct of the
23 Defendant and other circumstances from which you may
24 naturally and reasonably infer intent. Intent may also be
25 inferred when it is demonstrated the Defendant voluntarily

1 and willfully commits an act, the natural tendency of
2 which is to destroy another's life.

3 Listen carefully to the Judge as he instructs you.
4 And listen also because he's going to tell you, we don't
5 have to show premeditation. Although in this case there's
6 a 20-minute span from when they're approached in that bar
7 to when the actual stabbing the first stabbing occurs. Is
8 that premeditation? In that 20 minutes, think back, how
9 many times does he tell them he's going to get them before
10 he carries through with it? Is that premeditation?

11 Listen to the Judge. We don't have to prove it.
12 We have it in this case. And motive. Listen. You won't
13 hear the Judge say that we have to prove motive to prove
14 attempted murder, but we have, because he was going to
15 show those punks that they weren't going to control him.
16 And he did.

17 Assault and battery of a high and aggravated nature
18 is also a lesser included. And, again, in the tier,
19 attempted murder, then assault and battery of a high and
20 aggravated nature. And the Judge will instruct you on
21 several lesser includeds as far as the attempted murder
22 charge.

23 So if you find, however if there is malice, then
24 you don't go to a lesser included. Listen to the Judge.
25 If you find the State didn't prove that his acts were

1 malicious, evil intent, intent on doing serious bodily
2 injury, then you may consider assault and battery of a
3 high and aggravated nature.

4 If a person unlawfully injures another person and
5 great bodily injury results or the act is accomplished by
6 means likely to produce great -- death or great bodily
7 injury. Great bodily injury means causes a substantial
8 risk of death which causes serious permanent disfigurement
9 or protracted loss or impairment of a function of a bodily
10 member or organ.

11 Even if you would go beyond the scope and find that
12 malice didn't exist, at the very least his actions are
13 assault and battery of a high and aggravated nature.

14 Jesse told you, it's not in dispute, he can't even
15 use his arm anymore. He can't train like he used to doing
16 the cross-fit. He has permanent loss of the use. With
17 great bodily injury, a very substantial risk of death.

18 The doctors got up here -- what dog do they have in
19 this fight? -- and told you about the serious nature of
20 his injuries, how he almost died that night, how his blood
21 pressure didn't exist. It was 70 over nothing.

22 At the very least, if you were to find for some
23 reason that his actions weren't malicious, it is assault
24 and battery of a high and aggravated nature.

25 But as the law requires, there are other lesser-

1 included offenses you can consider.

2 Assault and battery in the first degree. If a
3 person unlawfully injures another person and the act
4 either involves a non-consensual touching of the private
5 parts of a person, that part doesn't apply here, or it
6 occurred in the commission of a robbery, burglary,
7 kidnapping or theft, that doesn't apply here, or if the
8 person offers or attempts, this is the attempted part, to
9 injure another person with the present ability to do so
10 and the act is accomplished by means likely to produce
11 death or great bodily injury or occurred in the commission
12 of a robbery, burglary, kidnapping, or theft. The Judge
13 will charge you this, as he should. I submit it doesn't
14 apply in this case. You make that determination.

15 And finally as to the charge of attempted murder,
16 the last charge he will charge you with, is assault and
17 battery second degree. And this is also what the three
18 other indictments are.

19 This Defendant's charged with -- the ones involving
20 the owner of the bar, Scott Flemming, Joe, and Gabe, the
21 two that ran after from him the Pour House. These are
22 those charges. What is assault and battery in the second
23 degree?

24 And the defense is going to get up here and say
25 that the State is a bully. I submit the State has given

1 him the benefit of the doubt in these charges. A person
2 commits the offense of assault and battery in the second
3 degree if he unlawfully injures another person or offers
4 or attempts to injure another person when there is
5 moderate bodily injury to another person, or it could have
6 resulted in that and the acts involves non-consensual
7 touching. That will part doesn't apply. That's the
8 statute.

9 What is moderate bodily injury? Physical injury
10 requiring treatment to an organ, system of the body other
11 than the skin, muscles and connective tissues, except
12 where there is penetration of the skin or muscles or
13 connective tissue which requires surgical repair of a
14 complex nature, or when the treatment of the injuries
15 requires the use of regional or general anesthesia. The
16 definition alone takes it out as far as what happened to
17 Jesse of assault and battery second degree.

18 The defense got up here and she told you in the
19 beginning, that's what she wishes it was.

20 The minor charge. He is charged with three counts
21 of that. Yet the State was overreaching?

22 And finally is a lesser included on the assault and
23 battery second charges. You can consider the charge which
24 is similar to simple assault which is, a person commits
25 the offense of assault and battery in the third degree if

1 he unlawfully injures another person or offers or attempts
2 to injure another person.. This is way beyond the charges
3 we're talking about now.

4 That's what she wants you to find him guilty for
5 for what he did to Joe and Gabe.

6 The final charge that will be before you is the
7 fact of carrying a concealed weapon. And, I submit, this
8 is not in dispute. The Defendant possessed a deadly
9 weapon usually used for the infliction of personal
10 injury. It was used for the infliction of personal
11 injury. He carried the deadly weapon about his person and
12 it was concealed.

13 You will see it in two different spots on the
14 video. And I'm going to talk about the video a little
15 more. You will see it when he's inside the bar. If you
16 look when he's back there on the deck area where they
17 approached him to get them ejected because his little
18 friend was hitting the wall, you actually see his friend
19 hit the wall about 10 minutes before they're actually
20 ejected and then you can't see him until it's right
21 before.

22 He pulls the knife out at that point. You see him
23 flick it against his leg as if trying to open it, but he
24 thinks twice about it at that point. Is that a concealed
25 weapon? You don't see it in his pocket. Is this weapon

1 used for personal injury? That's not in dispute.

2 And the final part about the law that I want to
3 talk to you about, is there has been -- it's obvious on
4 the video -- there's drinking going on. The law
5 recognizes that voluntary intoxication is not an excuse or
6 a defense for a crime regardless of whether the crime is
7 one involving general or specific intent.

8 A person who voluntarily ingests alcohol and
9 thereby becomes intoxicated is no less responsible for his
10 acts while in such a condition. If one drinks --
11 voluntarily drinks intoxicating liquors, wine, or beer,
12 and becomes intoxicated to whatever degree, and that while
13 in this condition commits an act which would be a crime
14 that wouldn't have been committed by a sober person, the
15 fact of intoxication would not relieve the intoxicated
16 person from responsibility.

17 Just because he chose to go out and drink doesn't
18 give him a pass. It doesn't reduce it. It doesn't
19 mitigate it. It doesn't do anything because he's held to
20 the same standard, as he should be, under the law. And
21 don't let anyone argue differently.

22 Listen to what the Judge says.

23 Now, in every case as we're getting ready for trial
24 you try to anticipate a defense. In an assault case or a
25 murder cause typically the defense is kind of one of

1 three. First it may be, well, it was just a drug deal
2 gone bad, you know, everybody's at fault; or, we know the
3 offense happened but we just don't know who did it, it's
4 an ID case. The person was wearing a mask. We couldn't
5 see them. And in that case a lot of times DNA comes in.
6 This isn't a DNA case because there's no dispute about who
7 did this. And finally, typically, self-defense, more
8 commonly called the stand-your-ground case. Not here.
9 Not in this courtroom.

10 Listen to the Judge. He's not going to instruct
11 you on self-defense. He's not going to say anything.

12 And as I listened to opening statements, the video,
13 which we talked about, narrows the scope of what possible
14 defenses are here. Because typically in the majority of
15 crimes in this nation there's not a video that shows
16 exactly what happened. It's eyewitness testimony which
17 is relied on, as it should be. But in this case the
18 defense is hemmed in because there's no dispute it's him.
19 There's no dispute he did it.

20 So go to the oldest defense in the book; when the
21 evidence is overwhelming and the law is against you, go to
22 the art of confessing error. Just tell the jury ignore
23 the evidence, it's not really that bad. Just convict him
24 of a lesser included. That's all he did. Get up here and
25 put your hand up and talk about how that's half a hand --

1 MS. ZMROCZEK: Objection, Your Honor. Can we
2 approach?

3 (Off-the-record discussion.)

4 MS. CAMPBELL: Thank you.

5 -- a hand, and talk about how you haven't seen the
6 other side, as if we are hiding something.

7 Spending an inordinate amount of talking about how
8 there may have been a video camera across the street at
9 Teriyaki Grill which might have shown the same thing
10 that's already in evidence from a different angle. Try
11 to divert the attention from the overwhelming evidence in
12 this case.

13 Attack the victim, attack the police, and do
14 whatever it takes. Get up here and just say oh, oh, oh,
15 he might be guilty of these minor charges, but it's really
16 not that bad that Jesse almost died. Don't rely on the
17 video that's in evidence. Ignore his actions.

18 And, again, all the State is asking for is a
19 verdict that speaks the truth.

20 She talks about the video from across the street
21 that's supposed to look across a dark street through the
22 cars that are parked in front of Group that you can see
23 from the video and capture something that's already been
24 captured by the cameras that are pointed that way.

25 And the cameras that are on Teriyaki's are there

1 for the Teriyaki business. They show, just like the
2 cameras at Group Therapy, they don't show the Teriyaki,
3 they show the area right in front of it.

4 She even got up here and alluded, in State's
5 Exhibit Number 23, that, look, here's a picture taken from
6 that camera that's supposed to be, that she wishes was
7 across the street, that this indicates was manufactured by
8 a company called Microsoft on the Internet.

9 She then got up and talked about how Ryan Kinard
10 threw a punch, didn't he. Because you see him pull back
11 as he's shoving. There's no punch. Even if there were,
12 he doesn't have the right to come back and stab people and
13 try to kill them.

14 She talks about, hey, the bouncers, you know, they
15 were throwing people out. That was their job. And
16 somehow they're to blame? What about the victim? Oh,
17 yeah, he got fired six months later. Because his life --
18 you know, near-death experiences, they change you. His
19 life's altered forever. But he got fired because he
20 reacted badly. He went behind the counter when he wasn't
21 supposed to because he was afraid. Blame him for that.

22
23 And then there's been all of this talk about some
24 watch. She even tried to show in the video where he drops
25 pizza. Y'all look at it. He then picks it up later,

1 balls it up in the paper plate that the pizza was on, and
2 throws it out. And there's this allegation that he was
3 stealing watches from, I guess it's going to have to be
4 Geno because he's the only one that has a watch on at one
5 point but doesn't have it on later, so it's not even his,
6 I guess.

7 She talked about how somebody slapped a drink from
8 Geno's hands, even if that were true, which it's not.

9 Then there were all these questions about, hey, who
10 did the victim card that night. He didn't card Geno.
11 Look at Geno. He looks almost as old as me. He didn't
12 card him. And look at the other two. They showed up
13 because he was carding the young one, the little one that
14 looked little. He was doing his job and somehow he's at
15 fault for that? He deserved to get stabbed for that?
16 Does that even make sense? I don't know what she's going
17 to say.

18 Then, I mean, the Defendant, he turned himself in
19 before his photograph was actually on TV. But remember
20 Investigator McCoy, it wasn't that his photograph was on
21 TV but the event had already been broadcast on TV because
22 Investigator McCoy got there that day. He had already
23 seen it. And somehow that excuses him?

24 And then we have this whole colloquy on life
25 threatening. One of the responding officers said that the

1 wounds were not life threatening only because, as the
2 doctors told you, they saved him. So that's supposed to
3 reduce it to assault and battery second degree or assault
4 and battery first degree?

5 Basically just attack the evidence. There's an
6 old joke and I've used it before with certain defenses.
7 And it talks about what I learned in law school which has
8 been a long time ago. It talks about how a preacher and a
9 lawyer were walking down the street and it rained the day
10 before. And if you look down, the preacher looked down
11 and there was a puddle of water right by the sidewalk.
12 And in the bottom of the puddle of water you see a silver
13 dollar. And he looks at the lawyer and goes, look,
14 there's a silver dollar.

15 And the lawyer picks up a stick and he stirs up the
16 water and the mud and the silt that's sitting in it.
17 Obscures it. Can't see it. And he says, what silver
18 dollar.

19 Ladies and gentlemen, I want to take a few minutes
20 and talk about the facts. I don't want to belabor it.
21 You'll have the evidence. You've seen the evidence. It's
22 all on video.

23 And she's going to talk about how we don't have the
24 video from when they came back the second time and yelled
25 at them, that both Mr. Flemming and Jesse testified to. I

1 submit, we don't have that video, nor do we have to
2 produce it. What we have to produce is testimony. And
3 it can be from one person. It be from two people. In
4 this case it's from eight, nine, 10, however many, or it
5 can be from a single video. All we have to produce is
6 evidence that leaves you firmly convinced. And for anyone
7 to get up here and argue differently, it is wrong.

8 You heard from a number of witnesses. You heard
9 from Brett Babcock. He was one of the initial bouncers.
10 And let me be the first to tell you, you didn't hear from
11 every bouncer in the bar that night, just the ones that
12 had anything to add.

13 Brett Babcock. What did he tell you? He told you,
14 he was in there that night. They started causing a
15 commotion. By the way, he didn't say it was Stewart Ard
16 that was causing the commotion. It's not like we're out
17 to get Stewart Ard. It was his friend, the little one in
18 the video. He walks up to him, asked him to leave. They
19 get rowdy. They start putting their hands on him. Guess
20 what? You saw the video. You can see that. The only
21 part that you can't see is the last time the little one
22 hits the wall because he's back in the shadows.

23 And by the way, the cameras inside Group Therapy,
24 we didn't produce them all because the Defendants didn't
25 go in every part of Group Therapy. They didn't go in the

1 back where some of the cameras were. We produced the ones
2 that showed them either being there, because they're all
3 together, and then the ones showing the actions that led
4 to what happened that night.

5 You heard from Ryan Kinard. He was the one that
6 came up and helped Brett get him out of the bar. You
7 heard about the threats they made while in the bar. Look
8 at the video.. I'm not going to show it to you, you'll
9 have it if you want to see it again.

10 You even see Ard at that point reach into his
11 pocket while inside the bar in that back area on the deck
12 while being confronted by Brett and he pulls out the knife
13 and it's not open at that point like it was later. You
14 see he slapped the back of his leg thinking about opening
15 it, but then he puts it back up. The deed was already in
16 his mind.

17 You heard from Alex Cromer. You see him in the
18 video. He was able to tell you about what he observed.
19 The aid that was given to the victim in this case, what
20 the victim's condition was as he struggled to breathe, to
21 live.

22 You heard from Courtney Walker. She was right
23 there. She was inside. You saw what she did, her
24 concern. She ran outside. She immediately called 9-1-1,
25 trying to get help for Jesse. And thank God for these

1 people. For Jesse, that's why he's here today.

2 You heard from Jesse Patterson. What did he do to
3 deserve this? He was at the door doing his job, minding
4 his business, trying to protect the rest of the patrons in
5 that business..

6 And what did he get for that? Two stab wounds to
7 the back. One so deep it was within an inch of his heart.

8 Scott Flemming, he testified. And he got
9 emotional, because the last thing he wanted to see was
10 someone in his employ get hurt trying to protect his
11 business.

12 Joe Molino, Gabe McDaniel. They ran down there.
13 And, again, the video speaks volumes. Look at him. On
14 the video as he comes out he was in the car. All he had
15 to do was close the door and drive off. But, no, nobody
16 was getting it on him that night. Malice? Malicious?

17 What does he do? He gets out and brandishes the
18 weapon. Joe runs. Gabe almost gets stabbed. That's in
19 the video.

20 Amethyst Ganaway. She's across the street. Has
21 nothing to do with anybody. But what does she hear? And
22 she remembered it. And this is a woman that works in the
23 bar district every night. But it was significant enough
24 that she remembered that group of men because she thought
25 they could be involved because they were troublemakers,

1 led by Stewart Ard.

2 And the defense is going to get up here and go oh,
3 at one point Stewart Ard's trying to pull them away. And
4 that's true. That's in the video. That's what we brought
5 before you. Right outside, because he's getting away,
6 he's getting away to get his game plan together.

7 Malice. Malicious.

8 You heard from Gary Shealy. He got attacked
9 because he pulled video. He initially pulled some of the
10 video. At the request of police he went back and pulled
11 more. He would have pulled more for anybody else that
12 wanted it but he wasn't asked. And then to argue that
13 there's not enough.

14 Kaitlyn Griffin gets there. She treats both of
15 them primarily. And, remember, look at the video. I'm
16 going to talk about the times on the video in just a
17 second. EMS is there within four or five minutes. It's
18 quick. And luckily, luckily for Jesse, his friend, Brett
19 Babcock, had training as a medic and he knew what to do to
20 try to save his life. Luckily for Jesse, Brett Babcock
21 was there that night. EMS responded within five minutes.
22 The hospital is less than two miles away. The doctors
23 were ready, prepared, and did their job. That's why he's
24 here.

25 You heard from Stephen Tackett. Life threatening

1 injuries. Life threatening injuries. This was a 9-1-1
2 call, the highest level of trauma that enters the
3 emergency room, the Critical Care Center of Columbia.

4 You heard from Dr. David Ford, Dr. Jeremy Reeves.
5 Life threatening. The procedures, how long he had to stay
6 in the hospital. And the defense says, it's not attempted
7 murder because he didn't have to stay in the hospital more
8 than four or five days.

9 You heard from Officer Theodore MacLaughlin,
10 Corporal Matthew Buck, and Investigator Matthew McCoy.

11 In considering this case, look at the actions of
12 the Defendant who turned in this knife, which was pristine
13 when it came in. This is the knife he chose to give to
14 the police through his lawyer. This is the knife he chose
15 to carry. This is the knife he pulled out, like this,
16 not folded.

17 And this isn't like a pocketknife that's got like a
18 blind corkscrew or, you know, pliers. This is a hunting
19 knife. And on that night Stewart Ard was doing the
20 hunting.

21 Look at his actions in the video. And look at the
22 injuries that you have, I think, a photo of, because this
23 wasn't a simple in and out when it came to Jesse
24 Patterson. This one might have been in and out and maybe
25 a little twist. But this one, it was a jerk. Three

1 inches. Malice. Malicious.

2 On the back, he's out, everybody's drunk. He
3 didn't know about the bouncer. He counted on the fact
4 that even if the police investigated they'd never do
5 anything about it. He's just a bouncer.

6 He counted on the fact that even if the police did
7 do their job and found him, that nobody would really
8 care. It's not a big deal. He's just a bouncer. It
9 comes with the job.

10 He counted on the fact that even if police charged
11 him it'd just be minor charges, assault and battery first
12 or second.

13 And he counted on the fact that even if the
14 prosecution felt his life was worth prosecuting for that a
15 jury wouldn't care.

16 And he counted on the fact that even if his lawyer
17 would get up here and talk about stuff, try to confuse the
18 issue, Stewart Ard miscalculated. The video speaks
19 volumes. All we ask in this case, ladies and gentlemen,
20 is justice. Stewart Ard got mad. He got revenge. No
21 one could insult him. No one dare control him. He's
22 above the law. He treats it with disdain. You saw him.

23 Let Stewart Ard know that he might be different,
24 older, but he drinks from the same cup of justice as any
25 other defendant that comes before this Court and he is

1 held responsible in the same way. He's not above the law.

2 In the beginning in opening statements the defense
3 counsel told you that you would see who the true bully was
4 when you've seen all the evidence in this case. I don't
5 know if she was alluding to me, the State, to the victim,
6 to the police. I submit, ladies and gentlemen, she was
7 right because in that bully playground scenario she talks
8 about, who was the bully on July 28th who snuck up behind
9 Jesse Patterson and tried to gut him? Bully? I submit,
10 attempted murderer.

11 All we ask is that you reach a verdict that speaks
12 the truth. Hold him responsible. Don't let him win those
13 charges. Hold him responsible for what he did.

14 Finally, you will have back there the videos. If
15 you want to see them the Judge is going to send back a
16 computer, a laptop you can watch them on, or if you want
17 to see them out here in the courtroom he'll let you come
18 back and watch them.

19 Notice the time. You see what time they walk in
20 the bar, a group of them, 11:57 P.M. And there's a
21 difference in the time inside and out. The actual outside
22 times are right. The inside times are off by about 11 and
23 a half minutes but it doesn't matter, it's still the same
24 time frame.

25 You see them drinking at the bar at 12 A.M.,

1 walking towards the smoking area in the back at 12:07 A.M.
2 Richardson punches the wall the first time at 12:14 A.M.
3 At 12:25 A.M. on the inside -- these are the inside
4 cameras here, these are the outside cameras -- you see him
5 being asked to leave. You see Ard pull the knife from his
6 pocket at 12:25 and 30 seconds on the inside camera. At
7 12:27 A.M. they're escorted out of the bar. At 12:27
8 A.M., according to the inside camera, they are having the
9 first altercation, the shoving, in front of the bar.

10 Then you see them walk in front of Grill Teriyaki.
11 And you can see the corroboration because that says 12:38
12 on the outside camera. So that coordinates. In front of
13 Grill Teriyaki where the young lady overheard the threats
14 at 12:42 A.M. You see the car pulling up at the tanning
15 Salon, the red car, at 12:58 A.M. and in that same minute
16 you see the stabbings and the attempted stabbings at 12:58
17 on the outside view and 12:46 A.M. On the inside.

18 All we ask is that you consider the evidence and
19 hold him responsible for his choices, his actions, and
20 what he did that night.

21 Thank you.

22 THE COURT: All right. Ms. Zmroczek?

23 MS. ZMROCZEK: Thank you, Your Honor. May it
24 please the Court.

25 THE COURT: Yes, ma'am.

1 MS. ZMROCZEK: Good morning, ladies and gentlemen
2 of the jury. I too wanted to thank you for your
3 attention. And Stewart Ard wants to thank you.

4 It was Aristotle, not Reese Witherspoon, that said
5 "The law is reason free from passion." If you recall in
6 opening statements, I did set out exactly what we submit
7 Stewart Ard did. What you have now are the facts to apply
8 to the law, free from passion. There's no doubt, there's
9 never been a doubt that Stewart Ard was the Defendant who
10 committed these acts.

11 I submit that the passion and the emotion that's
12 trying to be stirred can be shown from every witness. He
13 turned himself in before his face was on the TV. He
14 called me. He called the investigator that night. Yet --
15 and that wasn't new. That wasn't something that came out
16 in opening statements. Every witness sat here and pointed
17 to Stewart Ard. The man in the blue shirt. And what's
18 different? He has hair.

19 There was one reason and one reason only everybody
20 did that; to make you angry at Stewart Ard, because if
21 you're angry at him you can find him guilty.

22 The Judge will give you the law and the law is
23 going to be your guidance to the facts. It will tell you
24 how to explain and apply the facts to the law free of
25 emotion.

1 The burden was on the State. We got up and we
2 admitted to it. We didn't have to do that. We didn't
3 have to question -- and this is my opportunity to explain
4 to you some of those questions, why those questions were
5 asked.

6 Maybe when you're sitting there and you've seen the
7 video and we're admitting guilt, why are we here. And
8 we're here to do what's just. Not to punish, not to be
9 angry but to do what's just.

10 Not one time has it ever been suggested that what
11 happened to Jesse Patterson was his fault. Stewart Ard
12 was wrong. He was wrong and he told, he told the officer
13 that. Turned himself in. The officer reviewed the
14 videos, saw the blood, made the appropriate charges. The
15 appropriate charges under the law.

16 Ms. Campbell went through the elements and the
17 Judge is going to go through the elements. And I'll
18 briefly explain to you how I think the facts apply to the
19 elements. How I've broken down my opening statement
20 (verbatim) is hopefully not going to be too long. I first
21 want to talk to you about my biggest fear. I want to tell
22 you what it is, get it out there, discuss it, tell you why
23 it is my fear.

24 Then I want to talk about the State's case because
25 as Ms. Campbell reminded you, it is about credibility and

1 evidence.

2 And then lastly I want to talk to you about the
3 facts and how they apply to the law, and why the just
4 thing to do is to find him guilty of the appropriate
5 charges.

6 There are lesser-included offenses. That is true.
7 But the legislature did that for a reason and a purpose.

8 I want to talk to you about the State's case. But
9 first I want to tell you my biggest fear. And my biggest
10 fear is that the emotion that was brought up in this case
11 and in this courtroom, calling somebody evil and malicious
12 and showing you bloody pictures, was done for one reason.
13 And that reason was to get you mad. And the fear is that
14 that anger is going to circumvent what the law tells you
15 to do.

16 Nobody's asking for any special favors, simply
17 asking the law to be followed.

18 In opening statements the State promised you that
19 you would hear from witnesses. And they listed all the
20 witnesses that you -- from whom you would hear. And they
21 said that changed when we admitted that Stewart was
22 guilty. But you didn't hear from the co-defendants.

23 The reason that the videos were so important and
24 that I was asking about an event or what was shown that
25 night, it wasn't to excuse or justify Stewart's behavior

1 but to explain, explain what happened. Brett Babcock sat
2 right here. And he was an amazing witness because, you
3 know what, he told the truth.

4 You recall -- and I believe y'all did it in your
5 oath too. When you take the witness stand, you raise your
6 right hand. Does anybody know why that is? I'll tell
7 you. It's because in the old days they used to brand a P
8 on the inside of someone's hand for perjury. And that
9 way when they raised their hand, you could see if someone
10 was convicted of perjury.

11 We don't do that anymore but what you do do is you
12 get to look at the witnesses and judge their credibility.
13 What biases do they have? What reason, what anger do they
14 have? Why would they be now saying that there's a second
15 assault that wasn't on the video? What reasons do they
16 have to testify the way they did?

17 But Brett got up here and he truthfully told you,
18 it was heated. It was heated. It was a fight, it was a
19 stupid fight and Stewart -- that doesn't mean that Stewart
20 should have stabbed Jesse, and he will be punished because
21 he is guilty, but that doesn't make him an attempted
22 murderer. It was heated.

23 Ms. Campbell asked you over and over to watch the
24 videos. I would ask the same thing. There are no better
25 witnesses than the videos. Brett told you, and Brett's

1 story is confirmed, the reason that I had a problem with
2 Stewart at all is he put his hand up -- and you watched
3 the video and it's true for point 02 (.02) seconds. He
4 does put his hand on him. And then he walks away. And
5 these are simply still shots that -- to show you.

6 Stewart walks away. Walks away. Walks away.

7 And here's Brett having the discussion. And then
8 Ryan gets up and Ryan says -- and remember Brett, "they
9 were threatening me." They -- "Was it Stewart?" "No, no,
10 no. It was mostly Geno and Skaggs."

11 But Ryan's like "No, no, no, it was Stewart," which
12 is why I made it a point to point out -- remember Ryan was
13 in the hat -- Stewart is not even there. Stewart's not
14 even there making those threats. Oh. "He had tattoos on
15 his arm." So did one of the other co-defendants.
16 Mr. Skaggs and Geno were the ones having the problem. And
17 Stewart was trying to get them out. He's pulling him
18 out. Right here.

19 The reason this picture is important is because
20 it's at 12:27. Right before that first altercation.
21 There's Geno, wearing his watch and they made such a big
22 deal about the watch. And the reason is is because that's
23 the reason they went back. They didn't go back to stab
24 anybody. They went back to get the watch. And Stewart
25 saw Geno get out of the car, and you saw it on the video.

1 His hand was already on the door getting out of the car.
2 And you know what, he was, like, this kid's not going to
3 stop. He's going to get his little behind beat.

4 Here he is, walking down the street, minutes --
5 right in front of the Grill Teriyaki -- minutes later. No
6 watch. It's not a story that was made up. It's the
7 evidence right there in front of you. And it's all how
8 you look at it.

9 And I submit and the Judge will tell you that you
10 need to look at it without anger. You need to look at it
11 for what it is. And what it is is an assault.

12 The EMS workers did their jobs. And, remember,
13 they sat right here. And, like she said, there's no dog
14 in the fight for them.

15 And there was always Scott Flemming and Jesse
16 Patterson's injuries are life threatening. Remember they
17 were both life threatening. But Scott Flemming? Stewart
18 Ard is charged with assault and battery second degree on
19 Scott Flemming appropriately. And you remember when I
20 asked EMS, "Do you assign trauma scores." "Yes."

21 Because they do an evaluation of the trauma. Zero to 12.

22 And they tell you in law school never to ask a question
23 you don't know the answer to. And I didn't know the
24 answer but I asked it anyway. "Well, what's zero?"

25 "Dead". Zero's the most traumatic.

1 Both of these victims, both of them, have 12
2 because they weren't hurt. And there's no doubt in that.
3 And there's no doubt that Stewart did it. But he did not
4 maliciously go to injure and kill. He did not. Because
5 if he would have, if that was his intent then how can you
6 make the argument that Scott Flemming is only assault and
7 battery second? They brought that charge, not us.

8 It doesn't make sense. It just doesn't make
9 sense.

10 What does make sense is this was a heated argument
11 that got out of control. And every time Stewart tried to
12 talk them out of it, Scott Flemming says that he talked to
13 Stewart, right there, right outside. And you'll see it on
14 the video. Then my question becomes: How does Scott have
15 this conversation with him while he's supposedly
16 threatening Jesse? It's not possible. You just watch the
17 video. And I'm not calling anybody a liar. What I'm
18 saying is, it's emotional, and people are angry. And they
19 have every right to be.

20 That doesn't make him an attempted murderer. It
21 doesn't even make it an assault and battery of a high and
22 aggravated nature. It makes him guilty of assault in the
23 first degree if it's going to be worse, if it's going to
24 be worse for Jesse.

25 Elements of assault and battery second degree.

1 She, she, she discussed with you. And this is what the
2 charge -- this is the charge they brought on Scott
3 Flemming. And I submit to you, making your job as easy as
4 possible, when the Judge gives you a form, he's going to
5 have five separate forms, and you all have to agree and
6 the Foreperson gets to check off which one it is.

7 And I'm making it easy. Scott Flemming, assault
8 and battery second degree. There's no lesser included.
9 It's an appropriate charge. And the reason it's an
10 appropriate charge is because it's moderate, moderate
11 bodily injury to another person that results or that could
12 have resulted -- the injury requires treatment to an
13 organ, the lung, other than the skin or muscles or
14 connective tissue, or if the injury penetrates the skin,
15 muscles, connective tissue and requires complex surgical
16 repair.

17 Who does that sound like? Jesse Patterson.

18 But if we need to make his worse under the law,
19 then he's guilty of first degree battery. We submit he's
20 guilty of second degree battery.

21 The doctors who have no dog in this fight agree.
22 And I said, as trauma surgeons of course they do their
23 job. And then he sends him to the CT and to the X-rays
24 and there was never a collapsed lung. It was punctured.
25 An organ requiring surgical repair using anesthesia. And

1 they talk about the lidocaine.

2 This is what this is. I'm not trying to minimize
3 the pain or the anger that Jesse Patterson feels because
4 it's appropriate in his person. It is not appropriate
5 under the law.

6 Great bodily injury which causes a substantial risk
7 of death. Substantial risk of death, or causes serious
8 or permanent disfigurement.

9 There's been no testimony to that. You recall the
10 testimony as you recall it. And if the evidence provided
11 to you is that Jesse Patterson can no longer use his arm,
12 then that's the evidence that you rely on. That also
13 goes to credibility. We know he can use his arm. We know
14 he was hurt. But we know what the doctors told you.
15 Lacerations, two of them.

16 The prosecution told you it was their job to
17 represent the citizens and the state (verbatim) of
18 Richland County, just as it's my job to represent the
19 constitution and people charged with crimes. We've
20 admitted to what this malicious person did.

21 He turned in the night -- he turned himself in
22 because he knew that he had done something wrong.

23 And when there's a serious question of fact that's
24 put to you, and you look at the facts free from emotion,
25 free from anger and hate, but just as you're supposed to,

1 you will find that he's guilty of assault and battery
2 second degree on Scott Flemming, and assault and battery
3 third degree on Joseph and Gabe.

4 Remember they did not -- at that point when they
5 were chasing after him, they didn't know what had
6 happened. What Stewart saw when he walked up, and
7 you'll -- watch the video because you can see exactly what
8 he saw was his stupid friend going back to get his stupid
9 watch. And to submit that nothing was said, you can watch
10 the video and you can see who's talking and who isn't, but
11 what Stewart Ard sees is him punching a big guy and his
12 friend falling on the ground.

13 They made a big deal about asking all the bouncers,
14 "you're not allowed to carry weapons, are you?" "No."
15 Why, why, why do they keep asking that? Is it because
16 maybe one of the bouncers or bartenders while they were
17 politely asking them to leave said, "Yeah, you come back
18 because I got a knife with your name on it." Is that
19 possible? Is it possible that that these boys --

20 (Phone goes off.)

21 THE COURT: Get that phone and stop that lady.
22 Ma'am, come back in this courtroom.

23 UNIDENTIFIED SPEAKER: I thought it broke and I --

24 THE COURT: Don't say another word.

25 UNIDENTIFIED SPEAKER: I'm sorry. God.

1 THE COURT: Sorry.

2 MS. ZMROCZEK: That's okay.

3 Is it possible? There's been a lot of firsts in
4 this trial with me. The first time I ever agreed with a
5 police officer because they did their job. And it's the
6 first time that I haven't argued reasonable doubt,
7 reasonable doubt, reasonable doubt, reasonable doubt.

8 But that is still the standard. And they have to
9 prove their attempted murder and their assault and battery
10 high and aggravated. They have to prove those beyond a
11 reasonable doubt, each and every element of those. They
12 have to prove the malice, the intent.

13 And when you watch the video, and you listen to the
14 credibility of the witnesses and then you watch the other
15 portions, the whole video, and you say, he did go back for
16 the watch. That's doubt.

17 We're not trying to ask you to do any favors or to
18 lessen anybody's crime. We're asking you to simply do
19 your job. And that is the factual truth and the legal
20 truth is to find Stewart Ard guilty of what he is
21 criminally and legally guilty of.

22 Assault and battery second degree, Scott Flemming.
23 Assault and battery second degree or first degree on Jesse
24 Patterson. And assault and battery third degree on Joe
25 Molino and Gabriel.

1 Thank you.

2 THE COURT: All right. Madam Forelady and ladies
3 and gentlemen of the jury, I think before I give you the
4 charge we'll take a little bit of a break. I'm going to
5 let you step back to the jury room for 10 minutes, 15
6 minutes or so.

7 Please do not discuss the case while you're back
8 there and we'll come back in just a few minutes and I'll
9 give you your charge.

10 (Jury exits courtroom at 10:53 A.M.)

11 THE COURT: Ma'am, what is your name?

12 UNIDENTIFIED SPEAKER: Helen Black.

13 THE COURT: Helen Black?

14 MS. BLACK: Yes. I did cut it off down there
15 before I came up under the thing where they put it
16 through. They were watching me and it messed up.

17 THE COURT: Well, apparently you didn't
18 successfully cut it off.

19 MS. BLACK: I know, but what I'm saying is a while
20 ago when I cut it off it came back on, so I cut it off
21 again and it broke it, kind of blew up. It's like a black
22 screen. And so when I was cutting it off down there again
23 it showed a black screen. So I assumed it shut off. And
24 I'm so sorry. Honestly. But they did see me cut it off.

25 THE COURT: Ma'am?

1 MS. BLACK: They did see me cut it off down there.

2 THE COURT: I don't know who they are.

3 MS. BLACK: Well, the officers.

4 THE COURT: Obviously it didn't get cut off.

5 MS. BLACK: I know and I'm sorry, but I didn't mean
6 to disturb you.

7 THE COURT: Well, that phone is mine right now.

8 MS. BLACK: That's okay since it broke on me, I was
9 going to have to --

10 THE COURT: Ma'am, I'll determine what I'll do with
11 it.

12 MS. BLACK: It's okay.

13 THE COURT: All right. We will take a break for a
14 few minutes and come back.

15 (Break taken at 10:56 A.M. At 11:05 A.M., the
16 trial resumed:)

17 THE COURT: All right. Let's -- everybody back?
18 Let's bring the jury in, Mr. Dye.

19 (Jury enters courtroom at 11:05 A.M.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: All right. Thank you.

22 Madam Forelady and members of the jury, the
23 indictments in this case charge the Defendant with the
24 offenses of attempted murder as to Jesse Patterson;
25 assault and battery in the second degree as to Joseph

1 Molino; assault and battery second degree as to Gabriel
2 McDaniel; assault and battery second degree as to Scott
3 Flemming; and carrying a concealed weapon.

4 Now, I remind you that the fact that the Defendant
5 was arrested, charged and indicted in this case is not
6 evidence in the case and cannot be considered by you as
7 evidence of guilt nor does it create any presumption or
8 inference of guilt.

9 The indictments are simply the formal written
10 instruments which contain the charges made against the
11 Defendant. They are the formal documents by which this
12 case is brought into this court.

13 As I told you, the indictments allege several
14 different offenses against the Defendant and those are:
15 Attempted murder; three counts of assault and battery
16 second degree; and carrying a concealed weapon.

17 Each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on
19 the evidence and the law applicable to it, uninfluenced by
20 your decision as to any other indictment. The Defendant
21 may be convicted or acquitted on any or all of the
22 offenses charged. You will be asked to write a separate
23 verdict of guilty or not guilty for each indictment.

24 Now, ladies and gentlemen, as to the indictment the
25 Defendant entered pleas of not guilty which places upon

1 the State the burden of proving the Defendant guilty. A
2 person charged with committing a criminal offense in South
3 Carolina is never required to prove himself innocent. I
4 charge you that it is a vital important rule of the law of
5 evidence that the defendant in a criminal trial, no matter
6 how great or serious may be the offense for which he is
7 charged, must always be presumed innocent until his guilt
8 has been proven beyond a reasonable doubt.

9 This presumption of innocence remains with the
10 Defendant at all times, from the moment of his appearance
11 in this court, throughout the trial, and until the jury
12 has, upon the testimony and evidence presented, reached a
13 verdict of guilty beyond a reasonable doubt. For it is
14 the solemn duty of the jury if not clearly convinced of
15 the Defendant's guilt beyond a reasonable doubt to acquit
16 the Defendant.

17 So the burden of proof is upon the State to
18 establish by evidence to your satisfaction the guilt
19 beyond a reasonable doubt as to this Defendant on trial
20 for each of the crimes for which he has been charged.

21 Now what is a reasonable doubt? A reasonable doubt
22 is the kind of doubt that would cause a reasonable person
23 to hesitate to act. If you have such a doubt as to the
24 guilt of the Defendant, then he would be entitled to a
25 verdict of not guilty. Proof beyond a reasonable doubt

1 is proof that leaves you firmly convinced of the
2 Defendant's guilt. Reasonable doubt may arise from
3 evidence which is in the case or from the absence or lack
4 of evidence in the case.

5 To think that the Defendant is probably guilty or
6 the circumstances are suspicious is not enough. You alone
7 must make the determination of whether or not reasonable
8 doubt exists as to the guilt of this Defendant.

9 Now, ladies and gentlemen, there are two types of
10 evidence which are generally presented during a trial,
11 direct evidence and circumstantial evidence. Direct
12 evidence directly proves the existence of a fact and does
13 not require deduction. Circumstantial evidence is proof
14 of a chain of facts and circumstances indicating the
15 existence of a fact.

16 Crimes may be proven by circumstantial evidence.
17 The law makes no distinction between the weight or value
18 to be given to either direct or circumstantial evidence.
19 However, to the extent the State relies on circumstantial
20 evidence, all the circumstances must be consistent with
21 each other and when taken together point conclusively to
22 the guilt of the accused beyond a reasonable doubt.

23 If the circumstances merely portray the Defendant's
24 behavior as suspicious, the proof has failed. The State
25 has the burden of proving the Defendant guilty beyond a

1 reasonable doubt. This burden rests with the State
2 regardless of whether the State relies on direct evidence,
3 circumstantial evidence, or some combination of the two.

4 Madam Forelady, members of the jury, under the
5 Constitution and laws of South Carolina, you are the
6 finders of the facts in this case. I do not have the
7 right to pass upon the facts or even to express any
8 opinion I might have as to them, nor may I intimate in any
9 way what I may think about the guilt or the innocence of
10 the Defendant.

11 You are also the judges of the credibility or the
12 believability of the witnesses who have testified in this
13 case. In passing upon their credibility you may take into
14 consideration many things such as the demeanor or manner
15 of testifying, whether the witness had reason to be biased
16 or prejudiced, whether a witness's testimony was
17 contradicted on the one hand or supported and corroborated
18 on the other hand.

19 You certainly do not determine the credibility or
20 believability by counting the number of witnesses who may
21 have testified for one side or the other.

22 You may believe a small portion of a witness's
23 testimony and disregard the larger, or vice versa. You
24 may believe one witness against many or many or all of the
25 witnesses.

1 You have heard the testimony of witnesses who have
2 special knowledge, skill, experience, training, or
3 education in a particular profession or occupation who
4 have given their opinions as experts as to matters in
5 which they are skilled. In determining the weight to be
6 given such opinion, you should consider the qualifications
7 and the credibility of the expert and the reasons given
8 for that opinion.

9 You are not bound by such opinion. Give it the
10 weight, if any, to which you deem it entitled. All these
11 things you will consider, bearing in mind that you should
12 give the Defendant the benefit of a reasonable doubt.

13 Now, ladies and gentlemen, I instruct you and
14 emphasize that the fact that the Defendant did not testify
15 is not a factor to be considered by you in any way in your
16 deliberations and in your consideration on the question of
17 the guilt or innocence of the Defendant. It must not be
18 considered by you in any manner whatsoever.

19 A defendant has the constitutional right to remain
20 silent and the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 your oath you are not to draw any conclusion whatsoever
23 from the fact that the Defendant in this case did not
24 testify. The fact that the Defendant did not testify
25 should not even be discussed by you in the jury room.

1 The burden of proof, as I stated to you, is on the
2 State. The Defendant is not required to prove his
3 innocence. The burden of proof remains on the State to
4 prove his guilt beyond a reasonable doubt.

5 Now the same constitution and laws which makes you
6 the finders of the facts and the evidence as I've
7 discussed with you, make me the sole and only instructor
8 of the law. You must accept as correct the law which I
9 charge and apply it to the evidence as you find it and
10 then reach your verdict.

11 And finally I charge you in this charge that you
12 should not be concerned about what you think the law ought
13 to be or what you wish the law were but only what I charge
14 you the law to be.

15 Ladies and gentlemen, in one indictment the
16 Defendant is charged with attempted murder. In order to
17 prove this crime the State must prove the Defendant
18 attempted to kill another person with malice aforethought,
19 either express or implied.

20 Malice is hatred, ill will, or hostility towards
21 another person. It is the intentional doing of a wrongful
22 act without just cause or excuse and with an intent to
23 inflict an injury or under circumstances that the law will
24 infer an evil intent.

25 Malice aforethought does not require that malice

1 exist for any particular time before the act is committed,
2 but malice must exist in the mind of the Defendant just
3 before and at the time the act is committed. Therefore,
4 there must be a combination of the previous evil intent
5 and the act.

6 Malice aforethought may be express or inferred.
7 These terms express and inferred do not mean different
8 kinds of malice but merely the manner in which malice may
9 be shown to exist. That is, either by direct evidence or
10 by inference from the facts and circumstances which are
11 proved.

12 Express malice is shown when a person speaks words
13 which express hatred or ill will for another or when a
14 person prepares beforehand to do the act which was later
15 accomplished. For example, lying in wait for a person or
16 any other act of preparation going to show that the deed
17 was within the Defendant's mind would be express malice.
18 Malice may be inferred from conduct showing a total
19 disregard of human life.

20 If facts are proved beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, this inference would be simply an
23 evidentiary fact to be considered by you, the jury, along
24 with the other evidence in the case and you may give it
25 the weight you decide it should receive. A specific

1 intent to kill is not an element of attempted murder but
2 there must be a general intent to commit serious bodily
3 injury.

4 Intent means intending the result which actually
5 occurs, not accidentally or involuntarily. Intent may be
6 shown by acts and conduct of the Defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent.

9 Evidence of the character of the act, the character
10 of the instrument used, the manner in which it was used,
11 the purpose to be accomplished, and the resulting wounds
12 or injuries may be considered in determining the intent
13 which the act was committed. Intent may also be inferred
14 when it is demonstrated that the Defendant voluntarily and
15 willfully commits an act, the natural tendency of which is
16 to destroy another's life.

17 Now, ladies and gentlemen, if you find that the
18 State has not proven that the Defendant is guilty of
19 assault and battery with intent to kill with respect to
20 that charge, the attempted murder, then -- if you find him
21 not guilty of attempted murder, then you would consider
22 the offense of assault and battery of a high and
23 aggravated nature which is a lesser-included offense.

24 A person commits the offense of assault and battery
25 of a high and aggravated nature if the person unlawfully

1 injures another person and great bodily injury to another
2 person results or the act is accomplished by means likely
3 to produce death or great bodily injury.

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

8 If you find that the State has not proven that the
9 Defendant is guilty of assault and battery of a high and
10 aggravated nature, then you would then consider the
11 offense of assault and battery first degree.

12 A person commits the offense of assault and battery
13 in the first degree if the person unlawfully injures
14 another person and the act either -- and offers or
15 attempts to injure another person with the present ability
16 to do so and the act is either accomplished by means
17 likely to produce death or great bodily injury.

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

22 If you determine that the State has failed to prove
23 the offense of assault and battery in the first degree,
24 then you would consider the lesser-included offense of
25 assault and battery second degree.

1 A person commits the offense of assault and battery
2 in the second degree if the person unlawfully injures
3 another person or offers or attempts to injure another
4 person with the present ability to do so and either
5 moderate bodily injury to another person results or
6 moderate bodily injury to another person could have
7 resulted.

8 Moderate bodily injury means physical injury
9 requiring the treatment to an organ system of the body
10 other than the skin, muscles, and connective tissues of
11 the body except when there is penetration of the skin,
12 muscles, and connective tissues that require surgical
13 repair of a complex nature, or when the treatment of the
14 injuries requires the use of regional or general
15 anesthesia.

16 Now, ladies and gentlemen, the Defendant has also
17 been charged with assault and battery second degree with
18 respect to Joseph Molino, Gabriel McDaniel, and Scott
19 Flemming.

20 As I told you, assault and battery in the second
21 degree occurs when a person commits the offense of assault
22 and battery in the second degree if that person unlawfully
23 injures another person or offers or attempts to injure
24 another person with the present ability to do so, and
25 either moderate bodily injury to another person results or

1 moderate bodily injury to another person could have
2 resulted.

3 Moderate bodily injury means physical injury
4 requiring the treatment to an organ system of the body
5 other than the skin, muscles, and connective tissue to the
6 body except when there is penetration of the skin,
7 muscles, and connective tissue that require surgical
8 repair of a complex nature or when the treatment of the
9 injury requires use of regional or general anesthesia.

10 If you find the State has failed to prove the
11 Defendant guilty on those three charges -- on any of those
12 three charges of assault and battery in the second degree,
13 then you would then consider the assault and battery in
14 the third degree.

15 Assault and battery in the third degree occurs when
16 a person commits an offense of assault and battery if the
17 person unlawfully injures another person or offers or
18 attempts to injure another person with the present ability
19 to do so.

20 The Defendant has also been charged with the
21 offense of carrying a concealed weapon. The State must
22 prove beyond a reasonable doubt that the Defendant carried
23 a concealed weapon on his person. A deadly weapon is
24 usually used for the infliction of person injury.

25 For the purpose of this crime a deadly weapon is a

1 firearm, a knife with a blade over two inches long, a
2 blackjack, a metal pipe or a pole, or any other type of
3 object which may be used to cause bodily injury or death.
4 However, a deadly weapon does not include a rifle or a
5 shotgun or a dirk, a slingshot, metal knuckles, or a
6 razor, unless it is used with the intent to commit a crime
7 or in furtherance of a crime.

8 Now, ladies and gentlemen, I charge you that
9 voluntary intoxication is never an excuse or a defense to
10 a crime, whether there is general intent or specific
11 intent. A person who voluntarily renders himself
12 intoxicated is no less responsible for his acts while in
13 such a condition. If a person voluntarily drinks
14 intoxicating liquors or ingests something that makes him
15 intoxicated and therefore becomes intoxicated and while in
16 that condition commits an act which would be a crime if it
17 had been committed by a sober person, the fact of the
18 drunkenness or intoxication would not relieve the
19 intoxicated person from responsibility. Voluntary
20 intoxication is not an excuse for or a defense to a
21 crime.

22 Madam Forelady and members of the jury, you have
23 been selected as fair and impartial jurors sworn to
24 impartially try and determine the facts of this case. And
25 when you comply with your oath to so then no one will have

1 a right to criticize your verdict and you will have fully
2 discharged your duty as a juror.

3 You are to decide this case according to the
4 testimony that you have heard from the lips of the sworn
5 witnesses along with other evidence which has been
6 introduced.

7 I charge you that as jurors you must decide the
8 issues in this proceeding without bias and without
9 prejudice to any party. You cannot allow yourself to be
10 governed by sympathy, by prejudice, by passion, or by
11 public opinion or any other arbitrary factor.

12 Both the State and the Defendant have a right to
13 expect that each of you will carefully and impartially
14 consider all of the evidence in this case and that you
15 will follow the law as I have explained it to you.

16 Now, Madam Forelady, I have prepared five verdict
17 forms here, one for each of the offenses for which he is
18 charged. Now some of these verdict forms include a number
19 of potential verdicts that you could reach.

20 As to Indictment 2014-GS-40-1777, the attempted
21 murder charge, the possible verdicts that you can reach
22 are: Attempted murder; or the lesser included offense of
23 assault and battery of a high and aggravated nature; or
24 the lesser-included offense of assault and battery in the
25 first degree; or the lesser-included offense of assault

1 and battery in the second degree; or not guilty.

2 Now you are going to have to consider, ladies and
3 gentlemen, what, if any, of these offenses you might
4 consider this Defendant guilty.

5 Your verdict has to be a unanimous verdict. It has
6 to be the unanimous verdict of all 12 jurors as to
7 whatever offense you believe the Defendant is guilty of,
8 or if you believe the Defendant is not guilty of that
9 specific offense.

10 Once you have determined what offense you believe
11 he may be guilty of or if he is not guilty, I'm going to
12 ask you, Madam Forelady, to initial the line right by that
13 verdict, and I'm going to ask you to circle that verdict,
14 the whole verdict, whatever it is.

15 I'm then going to ask you to sign the verdict form
16 as Foreperson and then date the verdict form. As I said,
17 your verdict has to be unanimous. It cannot be eleven-
18 one, or nine-three. It has to be the unanimous verdict of
19 all 12 jurors.

20 Now as to the three indictments for assault and
21 battery in the second degree, there are three possible
22 verdicts you can reach on each one of those as to each of
23 the individuals who was allegedly assaulted and battered.
24 Those are: We, the jury, unanimously find the Defendant
25 guilty of assault and battery in the second degree; or we,

1 the jury, unanimously find the Defendant guilty of the
2 lesser-included offense of assault and battery in the
3 third degree; or we, the jury, unanimously find the
4 Defendant not guilty.

5 Now with respect to each one of these indictments
6 you're going to have to decide it separately and then
7 you're going to have to make a decision. And your
8 verdict, again, has to be unanimous. Again, Madam
9 Forelady, when you have reached your verdict, I'm going
10 to, as to each one of the charges, ask you to initial the
11 line right by the verdict and then to circle the verdict
12 completely. Again, sign the verdict form, date the
13 verdict form.

14 And finally the last indictment, carrying a
15 concealed weapon, has two possible verdicts. And those
16 verdicts are: We, the jury, unanimously find the
17 Defendant guilty of carrying a concealed weapon; or we,
18 the jury, unanimously find the Defendant not guilty.

19 Again, your verdict has to be the unanimous verdict
20 of all 12 jurors. And I'm going to ask you to initial the
21 line right by the verdict and to circle the complete
22 verdict, to sign the verdict form and date the verdict
23 form.

24 Now, Madam Forelady, when you have reached a
25 verdict as to all of the five indictments and your verdict

1 form has been completed if you or someone else will knock
2 on the door, there will be a bailiff seated outside, if
3 you will advise the bailiff that you have reached a
4 verdict as to all of the indictments, we will then bring
5 you back in so that your verdicts can be published.

6 Now, there has been video played throughout the
7 course of this trial and that video we are going to make
8 accessible to you. We can do it one of two ways. I think
9 we made arrangements for a computer to be available to put
10 the -- is it a CD?

11 MR. SHALABI: Flash drive.

12 THE COURT: -- flash drive in. And maybe somebody
13 knows how to operate that. If not we'll get somebody to
14 show you, but with all of these teachers and professors I
15 know we're not going to have any problem in that regard
16 unless you taught in a law school. If you taught in a law
17 school you might not know how.

18 But we will make that available and if you then
19 want to see something on the big screen, we can make that
20 available to you. We can have you brought back into the
21 jury room (verbatim) and let that be played, that portion
22 or whatever it is that you want to see. All you need to
23 do is let us know.

24 In just a second I'm going to ask all of you but
25 the alternates, the alternates will stay with me here for

1 a few minutes, to step back to the jury room but do not
2 begin your deliberations.

3 And the reason I ask you to do that, I have to
4 review with these attorneys the instructions that I just
5 gave you. If they believe that I failed to instruct you
6 in some way or that additional instructions are necessary
7 and that I agree with them, then I will bring you back
8 immediately and give you those instructions.

9 If not, no further instructions are necessary and I
10 will have the bailiff bring to the jury room all of the
11 exhibits that have been introduced in this case as well as
12 all of the verdict forms and, I guess, the computer --
13 who's got the computer?

14 MR. SHALABI: It's down here, Judge.

15 THE COURT: All right. -- the computer and the
16 flash drive. And you can begin your deliberations at that
17 time.

18 As you know, we have ordered lunch and asked the
19 people to go get it. And I think I was told they were
20 going to leave about 20 till 12 and should be back
21 hopefully by 12. When you get your lunch, you can stop
22 and eat or you can eat and deliberate, whatever you're
23 most comfortable doing.

24 So, if you will step back in the jury room at this
25 time, my alternates to stay here. Do not begin your

1 deliberations.

2 (Jury exits courtroom at 11:31 A.M.)

3 THE COURT: All right. Mr. Grant and
4 Ms. Lambright, first I want to thank you for your service.

5 Apparently all your colleagues survived the process and
6 the ordeal and they're going to be able to go forward with
7 the deliberations.

8 Oftentimes when we have cases that go several days
9 and nights we lose a juror or two and that's why we took
10 the precautions of having two alternates in this case. So
11 I'm going to be able to turn you loose. Now you have
12 lunch that's coming as well and we would be happy for you
13 to wait and pick up your lunch. You can take it with you,
14 you can eat it here or whatever you need to do..

15 And when I say we're going to turn you loose, we're
16 going to turn you loose for the week as well. I don't
17 know how you feel about not being able to participate in
18 the process. Some jurors say, "Well, I spent all that
19 time, I'd like to make a decision." And some jurors are
20 so happy they don't have to make a decision.

21 But we do appreciate your willingness to make
22 yourself available this week and I hope you realize how
23 important you are to the whole process. And if you get an
24 opportunity in the future to come back that you certainly
25 will make yourself available.

1 So you if you need an excuse for work

2 Ms. Pendergrass, wherever she might be --

3 MS. ZMROCZEK: I think she was coordinating the
4 lunch, Your Honor.

5 THE COURT: We can get that for you. You will be
6 getting a small token of appreciation from the citizens of
7 Richland County for your services but do not plan a big
8 weekend on what you get but we do thank you very much.

9 If you want to wait for your lunch just let the
10 bailiff know and it should be here momentarily. You can
11 certainly leave and come back and get it. You don't have
12 to sit around and wait. If you want to stroll around and
13 do whatever and come back, we'll be happy to have you do
14 that.

15 Thank you again, and if you go with Mr. Dye. Y'all
16 have a nice remaining portion of the week.

17 (Alternates exit courtroom.)

18 THE COURT: All right. Anything from the State
19 with respect to the --

20 MS. CAMPBELL: Your Honor, as far as the charge the
21 only thing is I thought we were in chambers yesterday and
22 you said you would charge State versus Darby on reasonable
23 doubt.

24 THE COURT: I don't know what State versus Darby --

25 MS. CAMPBELL: It would just be this language and

1 that would be all we have..

2 THE COURT: Firmly convinced.

3 MS. CAMPBELL: Firmly convinced.

4 THE COURT: I charged that.

5 MS. CAMPBELL: I think all you said was that you
6 have to be firmly convinced. But you didn't charge that
7 there are very few things we know with absolute certainty.

8 THE COURT: Firmly convinced, what I thought you
9 asked me.

10 MS. ZMROCZEK: We object.

11 MS. CAMPBELL: Your Honor, I believe we got
12 instructions as far as the video the defense counsel has
13 seen with the Court's approval.

14 THE COURT: Those are instructions as to what?

15 MS. CAMPBELL: How to use the video.

16 THE COURT: All right.

17 MS. CAMPBELL: If you want to see it. She's seen
18 it.

19 THE COURT: Did you show that to defense counsel?

20 MS. ZMROCZEK: They e-mailed it to me last night.
21 I'm sure it's the same thing.

22 THE COURT: They probably changed it.

23 MS. ZMROCZEK: Yeah.

24 MS. CAMPBELL: Just because there is a program, an
25 installation program on there or something

1 THE COURT: Mr. Dye?

2 THE BAILIFF: Yes, sir.

3 THE COURT: We're going to give you this computer
4 and these instructions to go with it. If you will give it
5 to the Forelady and tell her these are the instructions.
6 If they have a problem to let the Court know and we will
7 rectify that problem.

8 THE BAILIFF: Yes, Your Honor.

9 THE COURT: And again if they want to see something
10 on the big video to let us know that as well.

11 THE BAILIFF: Yes, Your Honor.

12 THE COURT: All right. Anything from the defense
13 as to --

14 MS. ZMROCZEK: We have no exceptions.

15 THE COURT: -- the charge given?

16 MS. ZMROCZEK: No, none, Your Honor.

17 THE COURT: Let's gather it all up with Ms. Young.

18 (Off-the-record discussion. Attorneys reviewing
19 exhibits.)

20 (Jury deliberations commence 11:40 A.M.)

21 (The trial resumed at 11:58 A.M.:)

22 THE COURT: I want to put on the record that your
23 client understands this and you're doing this for
24 strategic reasons and you think it will be helpful to
25 clarify to the jury the differences between the respective

1 charges.

2 MS. ZMROCZEK: (Nods head.)

3 (Defendant enters courtroom).

4 THE COURT: All right. Mr. Ard, I have gotten a
5 note from the jury and I have spent a few minutes with the
6 lawyers letting them know what the note says. And they
7 have reached some sort of understanding and I want your
8 client -- I mean, your lawyer to discuss it. They want a
9 copy of the definitions of the charges. I normally don't
10 give them my charge.

11 They want to get a copy of all the closing argument
12 posters.

13 They want a list of the witnesses who testified.

14 It's my understanding that the lawyers are
15 agreeable to give them all the poster boards which include
16 the charges of the respective -- the elements of the
17 respective offenses. So it wouldn't -- they would not
18 get my charge.

19 They'll get, they're willing to give them the
20 closing posters with, I think, some pictures. I don't
21 know what Ms. Campbell had other than --

22 MS. CAMPBELL: I didn't have any pictures.

23 MS. ZMROCZEK: I believe the list of witnesses.

24 THE COURT: And a list of witnesses but I want you
25 to discuss this with your lawyer. And ultimately you're

1 going to have to decide on your behalf whether you're
2 agreeable to do that and I'm going to talk to you about
3 it.

4 So I'll give you a few minutes to talk to your
5 attorney. Okay?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 (Pause.)

8 MS. ZMROCZEK: Your Honor, we've had a chance to
9 discuss it.

10 THE COURT: All right. Mr. Ard, let me get you to
11 stand and raise your right hand.

12 (Defendant placed under oath.)

13 THE COURT: Kaitlyn, would you show this to Mr. Ard
14 and his attorney so he can see what the note is?

15 (Law clerk complies.)

16 MS. ZMROCZEK: Can we get a copy of the State's --
17 a definition of charge, can we get a copy of all the
18 closing argument posters, and a list of all those that
19 testified.

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Mr. Ard, normally in a trial the jury's
22 entitled to whatever's been introduced into evidence which
23 includes listening to any testimony, listening to my
24 charge again, seeing any photographs, documents, anything
25 like that that's been introduced.

1 Things that are used for demonstrative purposes in
2 closing arguments, a copy of the charge or poster boards
3 that were used in the closing arguments, any lists, that's
4 outside the -- any evidence introduced are not given to
5 the jury and not required to be given to the jury but my
6 position is that if all the parties agree to it, then we
7 will do it.

8 And so the State would have to agree. And you and
9 your attorney would have to agree and you've had a chance
10 to talk to your lawyer about these items; is that
11 correct?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Do you understand exactly what the jury
14 has asked for?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Are you in agreement with your attorney
17 that these matters can be turned over to the jury for
18 their use and review and in the course of their
19 deliberations?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: And this is a decision that you think
22 will assist the jury in understanding the various elements
23 of the different charges?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And this is a decision that y'all are

1 making, a strategic decision you're making in order to be
2 helpful to you in your presentation of the case; is that
3 correct?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: All right. And you're making this
6 decision freely and voluntarily and after you've had the
7 opportunity to consult with your attorney; is that
8 correct?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: All right. Do you concur with your
11 client?

12 MS. ZMROCZEK: I do agree with his decision and
13 I've provided advice, and I believe that it's --

14 THE COURT: Y'all have agreed on whatever it is
15 that's going to be submitted to the jury?

16 MS. CAMPBELL: Your Honor, the only concern I have
17 is on her board on one of them, the definition of moderate
18 injury is incorrect. I didn't get up and look at it
19 during the thing but I would be concerned sending it back
20 incorrectly.

21 THE COURT: I don't know what it says but the
22 definition that I charged as to moderate bodily injury is
23 the one that needs to -- if y'all have something that
24 differs from what I charged.

25 MS. CAMPBELL: This is the same as what you

1 charged.

2 THE COURT: Moderate bodily injury means physical
3 injury requiring the treatment to an organ system of the
4 body other than the skin, muscles, and connective tissues
5 of the body except when there is penetration of the skin,
6 muscles, and connective tissues that require surgical
7 repair of a complex nature or when treatment of the injury
8 requires the use of regional or general anesthesia.

9 Do you have something different from that?

10 MS. ZMROCZEK: It looks like the word except is not
11 in there. I can either take this off or add it or.

12 THE COURT: That would be up to you.

13 MS. ZMROCZEK: I mean --

14 MS. CAMPBELL: Just take it off.

15 MS. ZMROCZEK: I can do that.

16 MS. CAMPBELL: Thank you, Your Honor. That's all
17 Your Honor.

18 THE COURT: I'm going to bring the jury in and tell
19 them that we're giving them these items that normally
20 they're not part of the record and they wouldn't be
21 entitled to them but with the consent of the parties and
22 the Court we will give them to them.

23 And I'm going to tell them that I have not reviewed
24 each of the charges that you have but if they're contrary
25 to what I have charged them prior, then they need to

1 follow what I charged them.

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: All right. Let's bring the jury in, if
4 you will..

5 THE BAILIFF: Yes, sir.

6 (Jury enters courtroom at 12:07 P.M.)

7 (Court's Exhibit No. 3, note from jury, received
8 into evidence.)

9 THE BAILIFF: Jury's seated, Your Honor.

10 THE COURT: All right. Madam Forelady, I've
11 received your note. I assume it's your note. It's not
12 signed --

13 THE FOREPERSON OF THE JURY: Oh.

14 THE COURT: -- but it's your note. And you asked
15 three things: One, can we get a copy of the definitions
16 of the charges; can we get all the closing argument
17 posters; and can we get a list of all those that
18 testified.

19 THE FOREPERSON OF THE JURY: Uh-huh.

20 THE COURT: Normally that would not be permitted
21 because none of those things, they're not evidence in the
22 case.

23 THE FOREPERSON OF THE JURY: Okay.

24 THE COURT: But in this instance after conferring
25 with the attorneys and with their consent and with the

1 consent of the Court, we are going to give you these
2 items. The poster boards, some of the poster boards
3 contain some of the various offenses for which you are
4 considering.

5 But I want to tell you this: I have not personally
6 reviewed all those poster boards. I've been assured by
7 counsel for the State and for the Defendant that they
8 comply with what I charged you, but if there's something
9 there that is different from what I charged you then you
10 are to take the law as I charged you and not as the poster
11 board says.

12 Do y'all understand that?

13 THE JURY (COLLECTIVELY): Yes.

14 THE COURT: The other thing is these photographs
15 and things like that which were used for demonstrative
16 purposes, they're not in evidence but they have agreed
17 that those can go back. The list is not something that's
18 in evidence but you saw everybody that testified.

19 Of course if you want to hear my charge we can play
20 it again on the tape recorder. If you want to hear any
21 evidence we can play that as well.

22 But you are getting that with the consent of the
23 attorneys. It's a little unusual that that occurs. But
24 there are a number of things and I can see where it would
25 be helpful to you in trying to distinguish the various

1 charges that exist with respect to each of the
2 indictments.

3 So, if y'all will step back to the jury room. We
4 will have the bailiff bring all of those poster boards and
5 y'all can resume your deliberations as soon as you get
6 back there.

7 Y'all gotten your lunch yet?

8 THE FOREPERSON OF THE JURY: No, sir.

9 THE COURT: Are y'all hungry?

10 THE FOREPERSON OF THE JURY: Oh, yeah.

11 (Jury exits courtroom at 12:11 P.M.)

12 THE COURT: I'm going to mark this as Court's
13 Exhibit Number Three -- or it's already been marked.

14 And, Mr. Bailiff, if you will get these poster
15 boards, these poster boards. What else? Who's got the
16 list?

17 MS. ZMROCZEK: The list.

18 MS. CAMPBELL: It's on the boards.

19 THE COURT: All right. If you'll give them to
20 Mr. Dye, he will ...

21 I want all of them to go in together, Mr. Dye. I
22 want all of them to go in together. If you take those
23 back, one of these folks will carry it back. We'll stand
24 in recess until anything further happens.

25 (Deliberations resumed at 12:12 P.M. At 1:06 P.M.,

1 the trial resumed:)

2 THE COURT: Do we have everybody here? All right.

3 As I have told the attorneys outside the courtroom,
4 I received a note from the jury. And the first note
5 said: "We would like to hear your recording of the charge
6 to the jury. Is this possible?" Signed by Ms. Setzer.

7 Because y'all were at lunch and lunch had been
8 delivered almost contemporaneously with my getting a note,
9 I went to the jury and said, "Look, if you want to hear
10 the charge it's going to take a little bit of time to find
11 it and it's going to take time to hear it and lunch is
12 here. So what I'm going to do is let y'all eat your lunch
13 and then we'll bring in." Plus the lawyers had just
14 left. Y'all -- I assume y'all had gone to get something
15 to eat.

16 And they said okay and then one of them said,
17 "Well, can we ask you a question?" And I said, "no, you
18 can't do that." She said, "Well, we may not want to hear
19 the whole thing." And I said, "well, if you know what you
20 want to hear if you will write it down, then I will give
21 it to the court reporter and we'll see if we can find it."

22 I then, after they had an opportunity to eat, I
23 asked y'all to come down and as I think as the solicitors
24 were walking up, they brought a second note to me. And it
25 said: "Please re-read the attempted murder charge and

1 assault and battery of a high and aggravated nature."

2 So they have reduced what they -- the whole charge.
3 So, I'm going to bring them out, Ms. Young has located on
4 her equipment where those charges are, and confirm with
5 them again that that's what they want to hear and we'll
6 play that charge. And if that's sufficient for them,
7 then we'll allow them to retire to the jury room again.
8 If they want more we'll play whatever they want.

9 So, anything from the State with respect to the
10 notes and what I did up to this point?

11 MS. CAMPBELL: No, sir.

12 THE COURT: Anything from the Defendant?

13 MS. ZMROCZEK: No, Your Honor.

14 THE COURT: All right. I will make these Court
15 Exhibits Number Four and Number Five.

16 (Court's Exhibit Nos. 4 and 5, notes from jury,
17 received into evidence.)

18 THE COURT: All right. Mr. Dye, if we can bring
19 the jury in.

20 (Jury enters courtroom at 1:09 P.M.)

21 THE COURT: All right. Thank you, Madam Forelady.
22 I have received both of your notes, and I have reviewed
23 them with the attorneys and I just informed them a little
24 bit that when I got your first note I went into the jury
25 room because they weren't here and told y'all we were

1 going to wait until you had an opportunity to eat because
2 the food had just gotten here and they had gone to lunch
3 and it would take a little bit of time to hear the
4 charge.

5 And somebody indicated, well, maybe you could
6 reduce what you wanted to hear. And I asked you to write
7 down whatever it is you wanted to hear. And your note,
8 the second note came just as the attorneys got here.

9 So, we have located it. It says: "Please re-read
10 the attempted murder charge and assault and battery of a
11 high and aggravated nature charge."

12 What I'm going to do is replay what my charge was
13 before. And Ms. Young has located that on her computer,
14 and we will play that. If you want to hear something
15 after that, let me know that and we'll play whatever it is
16 you want to hear.

17 So Madam Court Reporter, if you can.

18 (Portion of Judge's charge, page 414 line 15
19 through page 417 line 7 played for the jury.)

20 THE COURT: The next one would be assault and
21 battery first degree. Did y'all want to hear that?

22 THE FOREPERSON OF THE JURY: (Shakes head.)

23 THE COURT: Okay.

24 I'm going to let y'all retire back to your jury
25 room and resume your deliberations.

1 (Jury exits courtroom at 1:15 P.M.)

2 THE COURT: Anything from the State with respect to
3 replaying the instructions?

4 MS. GARFIELD: No, sir.

5 THE COURT: Anything from the Defendant?

6 MS. ZMROCZEK: No, sir.

7 THE COURT: All right. We'll continue to wait.

8 (At 2:33 P.M., the trial resumed:)

9 THE COURT: All right. I just found out. I didn't
10 know they had a verdict. Nobody told me that. So, we're
11 waiting on Ms. Campbell; is that right?

12 MS. GARFIELD: I thought she was walking out of the
13 door the same time I did.

14 (Pause.)

15 THE COURT: It's been reported that the jury's
16 reached a verdict. Is the State ready to receive the
17 verdict?

18 MS. GARFIELD: Yes, sir.

19 THE COURT: Defendant ready?

20 MS. ZMROCZEK: We're ready, Your Honor.

21 THE COURT: All right. Mr. Dye, if you can bring
22 the jury in, please, sir.

23 THE BAILIFF: Yes, Your Honor.

24 (Jury enters courtroom at 2:40 P.M.)

25 THE COURT: All right. Madam Forelady, it's been

1 reported that the jury has reached a verdict.

2 THE FOREPERSON OF THE JURY: Yes, sir.

3 THE COURT: Is that a unanimous verdict with
4 respect to all five indictments; is that correct? .

5 THE FOREPERSON OF THE JURY: Yes, sir.

6 THE COURT: If you would turn the verdict form over
7 to the bailiff.

8 THE FOREPERSON OF THE JURY: (Complying.)

9 THE COURT: All right. Madam Clerk?

10 THE CLERK: The State of South Carolina, County of
11 Richland versus Stewart Randall Ard, Indictment 2014-GS-
12 40-1777, we, the jury, unanimously find the Defendant
13 guilty of attempted murder. Signed by the Foreperson,
14 Number 244, on June 25th, 2014.

15 Indictment 2014-GS-40-1766, we, the jury,
16 unanimously find the Defendant guilty of assault and
17 battery in the second degree. Signed by the Foreperson,
18 Number 244, on June 25th, 2014.

19 Indictment 2014-GS-40-1767, we, the jury,
20 unanimously find the Defendant guilty of assault and
21 battery in the second degree. Signed by the Foreperson,
22 Juror Number 244, on June 25th, 2014.

23 2014-GS-40-175, we, the jury, unanimously find the
24 Defendant guilty of the lesser-included offense of assault
25 and battery in the third degree. Signed by the

1 Foreperson, Number 244, June 25th, 2014.

2 And 2014-GS-40-1771, we, the jury, unanimously find
3 the Defendant guilty of carrying a concealed weapon.

4 Signed by the Foreperson, Number 244, on June 25th, 2014.

5 Madam Forelady, is this your verdict and the
6 verdict of the entire jury?

7 THE FOREPERSON OF THE JURY: Yes, ma'am.

8 THE COURT: Thank you.

9 All right. Anything from the State with respect to
10 the verdict from the jury?

11 MS. GARFIELD: No, sir.

12 THE COURT: Anything from the Defendant?

13 MS. ZMROCZEK: Your Honor, we would ask to poll the
14 jury, please.

15 THE COURT: All right. Madam Clerk?

16 THE CLERK: Ladies and gentlemen of the jury, I'm
17 going to call your number and ask you two questions
18 related to your verdict. When I call your number just
19 answer yes or no to both questions, please.

20 Number 244, was this your verdict?

21 THE FOREPERSON OF THE JURY: Yes.

22 THE CLERK: Is it still your verdict?

23 THE FOREPERSON OF THE JURY: Yes.

24 THE CLERK: 262, was this your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes.
3 THE CLERK: 184, was this your verdict?
4 THE JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 THE JUROR: Yes.
7 THE CLERK: 201, was this your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 THE JUROR: Yes.
11 THE CLERK: 296, was this your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 THE JUROR: Yes.
15 THE CLERK: 97, was this your verdict?
16 THE JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 THE JUROR: Yes.
19 THE CLERK: 88, was this your verdict?
20 THE JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 THE JUROR: Yes.
23 THE CLERK: 305, was this your verdict?
24 THE JUROR: Yes.
25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: 198, was this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: 140, was this your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: 109, was this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: 251, was this your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: The jury's been polled, Your Honor.

19 THE COURT: All right. Anything further with

20 respect to the jury?

21 MS. ZMROCZEK: Not with respect to the jury.

22 THE COURT: All right. Ladies and gentlemen of the

23 jury, I thank you very much for your service in this

24 case. These are tough cases and they require tough

25 decisions by members of our community. But I certainly

1 was appreciative of your attentiveness.

2 I'm going to ask you to step back to your jury
3 room. If you need an excuse for work the clerk will -- do
4 you have them with you now?

5 THE CLERK: Yes, sir.

6 THE COURT: We will give you those. If you'll wait
7 just a minute, I want to come back and speak to you before
8 you leave. That won't be but just a few minutes.

9 But I do hope you realize how important you are to
10 the process having had a chance to sit on the jury this
11 week. And, again, I thank you very much.

12 You are excused for the remaining portion of the
13 week. And the good thing, you don't have to do it this
14 year and actually you wouldn't have to do it again in '15
15 or '16 if you didn't want to, but if you get the
16 opportunity I hope you will make yourself available.

17 So if you'll step back there, I'll see you in just
18 a few minutes and thank you again.

19 (Jury exits courtroom at 2:45 P.M.)

20 THE COURT: All right. I guess you got to get some
21 sentence sheets done and I would like to see the statute,
22 that life-without-parole statute --

23 MS. GARFIELD: Yes, sir.

24 THE COURT: -- before we sentence. We will do any
25 post-trial motions after I turn this jury loose, okay, and

1 before we sentence.

2 MS. ZMROCZEK: Okay.

3 THE COURT: All right. I want to go back to speak
4 to them before they leave. I'll come -- y'all --

5 MS. CAMPBELL: You just want us to pull the
6 life-without-parole statute?

7 THE COURT: Yeah, I want to look at it.

8 I'm going to have a motion that she filed, a motion
9 that we have to deal with.

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: And then I'm going to look at it. I'm
12 not sure where -- I've got her motion right here. So all
13 right.

14 MS. CAMPBELL: I'll go look that up, Judge.

15 THE COURT: Thank you. We'll stand in recess for
16 just a few minutes.

17 (Pause from 2:47 P.M. until 2:53 P.M., and the
18 trial resumed:)

19 THE COURT: Anything from the State?

20 MS. GARFIELD: (Shakes head.)

21 THE COURT: Anything from the Defendant?

22 MS. ZMROCZEK: Thank you, Your Honor.

23 Your Honor, first I'd like to make sure that I
24 preserved my previous motions on the record including the
25 one regarding the camera.

1 THE COURT: The one regarding what?

2 MS. ZMROCZEK: The one regarding the cameras and the
3 admissibility --

4 THE COURT: The camera.

5 MS. ZMROCZEK: -- of the cameras, the video.

6 THE COURT: Oh. The video.

7 MS. ZMROCZEK: Sorry. It's hard to hear me in
8 here.

9 And, Your Honor, the other motion that we made
10 is -- and you have a copy of it, I believe, in front of
11 you is the motion to exclude --

12 THE COURT: I assume you're renewing all your
13 motions that you had made previously --

14 MS. ZMROCZEK: Previously, yes.

15 THE COURT: -- that dealt with either pretrial,
16 in-trial --

17 MS. ZMROCZEK: Yes, and pretrial.

18 THE COURT: -- renewing them based on the same
19 arguments you made earlier?

20 MS. ZMROCZEK: (Nods head.)

21 THE COURT: I'm going to deny those based on the
22 reasons I enumerated when I denied those motions.

23 MS. ZMROCZEK: Thank you.

24 THE COURT: Now you want to deal with your --

25 MS. ZMROCZEK: Deal with the motion that we filed.

1 Yes, Your Honor.

2 THE COURT: Motion on the life without parole.

3 MS. ZMROCZEK: Right. It's the Defendant's motion
4 to exclude the penalty of life without parole on account
5 of arbitrary use of prosecutorial discretion in the plea
6 bargaining system.

7 Your Honor, there is no -- and the motion speaks
8 for itself and I would like to make it a Court Exhibit for
9 the record.

10 But basically, Your Honor, we feel like that
11 it's -- the sentence is one that's used arbitrarily. And
12 recently in the last year in the United States Supreme
13 Court, State V Miller, the discussion of the arbitrariness
14 and the wide discretion given to prosecutors especially
15 when such severe penalties, Your Honor, I would argue
16 makes it a violation of the Eighth Amendment. We would
17 ask that that penalty be excluded for this case and he be
18 sentenced on what the charge actually carries.

19 THE COURT: Anything further?

20 MS. ZMROCZEK: Nothing, Your Honor. I wanted to
21 make sure I made that a Court Exhibit.

22 Thank you.

23 (Court's Exhibit No. 6, Defendant's motion,
24 received into evidence.)

25 THE COURT: Anything from the State?

1 MS. GARFIELD: Judge, the State did exercise its
2 discretion in seeking life without parole against
3 Mr. Ard. This was a made -- a decision made if we went to
4 trial. Mr. Ard was given several options to plead.

5 Judge, I would like to make part of the Court's
6 Exhibit the notice that we provided to Mr. Ard informing
7 him we'd be seeking life without parole as well as three
8 prior certified convictions that make it where we can
9 impose such sentence. One being an indictment from the
10 County of Aiken, Indictment Number 95-GS-02-1089 for a
11 conviction of armed robbery. Another in the County of
12 Lexington, Indictment Number 94-GS-32-2745, again for an
13 armed robbery conviction. And lastly 94-GS-32-2745,
14 again, a conviction for armed robbery out of Lexington
15 County.

16 THE COURT: So he's got three armed robberies?

17 MS. GARFIELD: Yes, sir.

18 THE COURT: Anything else that would qualify? Just
19 those three?

20 MS. GARFIELD: No, sir. He had a prior assault and
21 battery with intent to kill that was pled down to common
22 law ABHAN. He does have other convictions but nothing
23 that triggers life without parole.

24 THE COURT: The armed robberies are most serious;
25 right?

1 MS. GARFIELD: Yes, sir.

2 THE COURT: And under the statute it's two or more
3 most serious?

4 MS. CAMPBELL: One.

5 MS. GARFIELD: One, just one.

6 THE COURT: One. All right.

7 (Court's Exhibit No. 7, State's notice to seek LWOP
8 and supporting certified convictions, received into
9 evidence.)

10 THE COURT: You don't have anything to say about
11 her motion?

12 MS. GARFIELD: No, sir. I mean, we don't believe
13 it was arbitrary. It's what the law provides. We believe
14 he's a career criminal. We believe it's correct.

15 THE COURT: I have read your motion. I read it
16 pretrial, Counselor, and I knew that the possibility
17 existed that your client could conceivably be convicted of
18 one of these offenses.

19 I'm going to deny your motion. I think the law
20 clearly provides that the State has the ability to seek
21 life without parole so long as it gives appropriate
22 notice. I've not seen the notice other than what you've
23 just told me, but apparently there's no issue with that
24 or you would have raised that.

25 And I don't know of any basis that I would have to

1 say that that's not an appropriate statute, can't be
2 enforced and in violation of the Eighth Amendment. I'm
3 going to deny your motion.

4 MS. ZMROCZEK: Thank you, Your Honor.

5 THE COURT: That does not speak to how I think
6 about the law, but. All right.

7 Are we ready to go?

8 MS. GARFIELD: Yes, sir. I did provide you Court's
9 Exhibits up there, the prior convictions and the notice.

10 THE COURT: Is that this?

11 MS. ZMROCZEK: And, sir. We didn't have issues
12 with those, Your Honor.

13 MS. GARFIELD: And copies --

14 THE COURT: I didn't know you put them up there.

15 MS. GARFIELD: Oh, I'm sorry. Yes, sir. And
16 copies were provided to Ms. Zmroczek previously.

17 THE COURT: All right. Well, she's not raising
18 that. She's not raising the fact that he had prior
19 convictions.

20 MS. ZMROCZEK: No, I'm not contesting that.

21 THE COURT: She doesn't like the law and thinks
22 there's a constitutional basis that it should not be
23 enforceable. We'll let another court review that issue if
24 that happens.

25 All right. Did y'all have a chance to look at that

1 concealed weapon charge of --

2 MS. GARFIELD: Ninety days, Your Honor.

3 THE COURT: Ninety days? Do y'all know which one
4 of the indictments was the assault and battery third?

5 MS. GARFIELD: The one against Joe Molino.

6 THE COURT: Mr. Molino was third. And that's 90
7 days as well.

8 MS. CAMPBELL: Your Honor, can I hand up the verdict
9 forms?

10 MS. ZMROCZEK: It carries 30 days.

11 THE COURT: I'm sorry. All right.

12 Y'all ready to -- step up here.

13 (Off-the-record discussion.)

14 THE COURT: Okay. Is the State ready?

15 MS. GARFIELD: Yes, sir. And just in addition to
16 the prior three armed robbery convictions, Mr. Ard also
17 has a conviction from 1993 for simple possession of
18 marijuana; 1993, unlawful possession of a pistol,
19 disorderly conduct, disobeying a police officer.

20 In 1995, in addition to his armed robbery
21 conviction, he was also convicted of four counts of
22 criminal conspiracy. It appears to be three counts of
23 burglary in the second degree.

24 In 2005, he pled to assault and battery of a high
25 and aggravated nature reduced from assault and battery

1 with intent to kill.

2 That's the extent of his record, Your Honor.

3 The victims in this case have elected -- since they
4 know the sentences will be imposed, they do not wish to
5 address the Court.

6 THE COURT: Nobody wants to say anything?

7 MS. GARFIELD: That's correct.

8 THE COURT: All right. Yes, ma'am?

9 MS. ZMROCZEK: Thank you, Your Honor.

10 Mr. Ard stands before you and I understand that you
11 denied my LWOP motion, Your Honor, but he has completed
12 two major programs while he's been in for a year over in
13 Alvin S. Glenn. One of those was Turning Leaf. They had
14 a big graduation. It's a very intensive program, Your
15 Honor, where they address issues of anger and dealing with
16 appropriate situations especially with people who grew up
17 in broken homes, Your Honor.

18 And, of course, Your Honor, none of his behavior is
19 an excuse. And he, again, turned himself in. He
20 mitigated everything that he could do after his very poor
21 choice.

22 Your Honor, he has a wife who is here today and she
23 does not wish to speak. He has a daughter and a son who
24 he has not met. He's actually seen one time, just because
25 he's been locked up since the child was born.

1 And, Your Honor, we would -- we understand that the
2 Court's bound by what the statute is, but we'd, again,
3 just reiterate how he is a good candidate for
4 rehabilitation. We would ask that he receive some sort of
5 psychological treatment or some sort of ordered mental
6 health treatment while he's in since he's going to be
7 there.

8 THE COURT: I don't know what authority I have to
9 order that, unless he's determined to have some sort of
10 mental-health issues.

11 Anything you want to say, Mr. Ard?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Apparently you've had a troubled adult
14 life. You've gotten yourself in trouble for the last
15 20-plus years.

16 THE DEFENDANT: Well, not the last seven years two
17 months.

18 THE COURT: Well since 1993 you've had a difficult
19 time. For some reason you went out that night and did
20 something that could have really taken the life of one or
21 more people. And, I don't know what possessed you to do
22 that.

23 One thing to go out and get angry but to pull out a
24 knife and take it and start sticking people, just
25 absolutely no reason that something like that happens

1 especially -- how old you are?

2 THE DEFENDANT: Thirty-nine.

3 THE COURT: All right.

4 Mr. Ard, AS TO INDICTMENT 2014-GS-40-1777, the
5 attempted murder, THE SENTENCE OF THIS COURT: YOU BE
6 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
7 LIFE WITHOUT PAROLE PER 17-25-40 OF THE CODE OF LAWS OF
8 SOUTH CAROLINA, PLUS COSTS AND ASSESSMENTS.

9 AS TO 2014-GS-40-1776, this relates to
10 Mr. Flemming, THE SENTENCE OF THE COURT: YOU BE COMMITTED
11 TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF THREE YEARS
12 PLUS COSTS AND ASSESSMENTS AS APPLICABLE. THAT'S TO RUN
13 CONSECUTIVE TO THE SENTENCE ON YOUR ATTEMPTED MURDER.

14 ON 2014-GS-40-1767, ASSAULT AND BATTERY SECOND,
15 with Mr. Garfield, (verbatim) SENTENCE OF THIS COURT: YOU
16 BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM
17 OF THREE YEARS PLUS COSTS AND ASSESSMENTS AS APPLICABLE.
18 THAT WILL RUN CONCURRENT TO YOUR OTHER SENTENCES.

19 ON 2014-GS-40-1771, CARRYING A CONCEALED WEAPON,
20 SENTENCE OF THIS COURT: YOU BE COMMITTED TO THE COUNTY
21 DETENTION CENTER FOR A TERM OF 90 DAYS, GIVING YOU CREDIT
22 FOR THE TIME SERVED. THAT SENTENCE IS COMPLETED.

23 ON 2014-GS-40-1756, ASSAULT AND BATTERY THIRD, THE
24 SENTENCE OF THIS COURT: YOU BE COMMITTED TO THE COUNTY
25 DETENTION CENTER FOR A TERM OF 30 DAYS PLUS COSTS AND

1 ASSESSMENTS AS APPLICABLE. I'LL GIVE YOU CREDIT FOR TIME
2 SERVED ON THAT. Good luck to you.

3 END OF CASE: 3:14 P.M.

4 CERTIFICATE OF REPORTER

5 STATE OF SOUTH CAROLINA)

6 COUNTY OF AIKEN)

7 I, Cheri L. Young, Registered Professional Reporter
8 and Official Court Reporter for the State of South
9 Carolina, Second Circuit-At Large, do hereby certify that
10 the foregoing proceedings were written stenographically by
11 me using computer-aided translation; further, that the
12 foregoing is a true, accurate and complete record, to the
13 best of my skill and ability, of all the proceedings had
14 and evidence introduced in the hearing of the captioned
15 case, relative to appeal, in the Court of General Sessions
16 for Richland County, on the 23rd, 24th and 25th days of
17 June, 2014.

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

20 I have hereunder set my hand this Friday, the 7th day
21 of November, 2014.

22
23 

24 Cheri L. Young, RPR
25 Official Court Reporter

WITNESSES

(S) Matthew David Mccoy
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021602618

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 10 2014

VERDICT

Guilty

50

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4001767

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

87

THE STATE

vs.

Stewart Randall Ard

**Indictment for
Assault and Battery 2nd Degree**

SC Code: 16-03-600(d)(1)

CDR Code: 3413

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

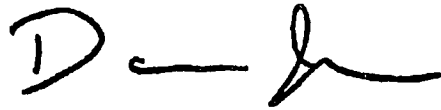
INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY 2nd DEGREE

That Stewart Randall Ard did in Richland County on or about July 28, 2013, commit an assault and battery in the second degree upon the victim, Gabriel Mcdaniel, which resulted or could have resulted in serious bodily injury. All in violation of S.C. Code of Laws, §16-03-0600(D), SC Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021602617

ACTION OF GRAND JURY

TRUE BILL

K. D. Wivach
Foreperson of Grand Jury
Date:

APR 10 2014

VERDICT

Guilty

60
Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4001766

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

87

THE STATE
vs.

Stewart Randall Ard

Indictment for
Assault & Battery 2nd Degree

SC Code: 16-03-0600(d)1
CDR Code: 3413

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

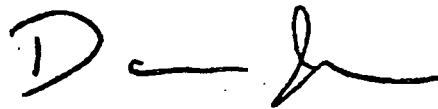
INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY SECOND DEGREE

That Stewart Randall Ard did in Richland County on or
about July 28, 2013, commit an assault and battery in the
second degree upon the victim, Scott Fleming, which
resulted or could have resulted in moderate bodily injury.
All in violation of Section 16-3-600(D), SC Code of Laws
(1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021602615

ACTION OF GRAND JURY

TRUE BILL

Ken D. Howard
Foreperson of Grand Jury
Date:

APR 10 2014

VERDICT

62

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS4001756

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

87

THE STATE
vs.

Stewart Randall Ard

Indictment for
ASSAULT AND BATTERY 2ND
DEGREE

SC Code: 16-03-0600(d)1
CDR Code: 3413

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

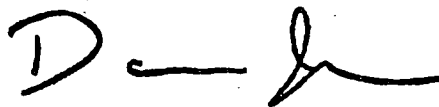
INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

ASSAULT & BATTERY SECOND DEGREE

That Stewart Randall Ard did in Richland County on or about July 28, 2013, commit an assault and battery in the second degree upon the victim, Joseph Molino, which resulted or could have resulted in serious bodily injury. All in violation of Section 16-3-600(D), SC Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021602619

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date

APR 10 2014

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4001771

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

87

THE STATE

vs.

Stewart Randall Ard

**Indictment for
Carrying a Concealed Weapon**

SC Code: 16-23-0460

CDR Code: 0043

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

CARRYING CONCEALED WEAPON

That Stewart Randall Ard did in Richland County, on or about July 28, 2013 unlawfully carry a deadly
weapon usually used for the infliction of personal injury, to wit: Knife, concealed about his/her person, in
violation of Section 16-23-0460, S. C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

DP14048

ACTION OF GRAND JURY

TRUE BILL

Ken D. W. W. W.
Foreperson of Grand Jury

Date:

APR 10 2014

VERDICT

Guilty

466
Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS4001777

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

87

THE STATE
vs.

Stewart Randall Ard

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

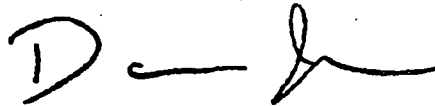
INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Stewart Randall Ard did in Richland County on or about July 28, 2013, did
with the intent to kill, attempt to kill Jesse Paterson with malice aforethought,
either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976,
as amended)

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



DAN JOHNSON, SOLICITOR

ARREST WARRANT

2013A4021602615

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

THE STATE

1323700

against

Stewart Randall Ard

Address: Road

Leeville, SC -

Phone: SSN:

Sex: M Race: W Height: 6 5 Weight: 210

DL State: DL #:

DOB: Agency ORI #: 04001

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Matthew David McCoy - 22066

Offense: Assault / Assault & Battery by Mob, 2nd degree
(Serious bodily injury results)

Offense Code: 3432

Code/Ordinance Sec: 16-03-0210(C)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Personally appeared before me the affiant Matthew David McCoy who

being duly sworn deposes and says that defendant Stewart Randall Ard

did within this county and state on or about 7/28/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia)

in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/28/2013 at 0058 hrs., while at 2107 Green St., City of Columbia, County of Richland, the def and 2 co-defs returned to the location after being removed from the bar, Group Therapy. Upon arriving, co-def Geno struck victim #1 (Paterson) in the head with his fist. The def then took a knife from his right pants pocket and stabbed victim #1 (Paterson) twice in the back, he then stabbed victim #2 (Fleming) twice (left chest & arm). Co-def Geno then struck victim #2 (Fleming) in the head & face. All defs fled the scene. As the def was fleeing, he offered and attempted to stab 2 additional victims (Molimo & McDaniel) with his knife. Those victims escaped without injury. The incident was captured on surveillance video. A witness overheard the defs talking about coming back to the location and doing harm.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Affiant's Address #1 Justice Square

Columbia, SC 29201-

Affiant's Telephone (803)545-3500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2013 defendant Stewart Randall Ard

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on 7/29/2013Signature of Issuing Judge
Shirley J Daniels
Judge Code: 6353

(L.S.)

Judge's Address City Of Columbia Municipal Court

Columbia, SC 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 510

ARREST WARRANT

2013A4021602616

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

THE STATE

1323700

against

Stewart Randall Ard

Address: Road

Leeville, SC -

Phone: SSN:

Sex: M Race: W Height: 6 5 Weight: 210

DL State: DL #:

DOB: Agency ORI #: 04001

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Matthew David McCoy - 22066

Offense: Assault / Assault & Battery by Mob, 2nd degree

(Serious bodily injury results)

Offense Code: 3432

Code/Ordinance Sec: 16-03-0210(C)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

AFFIDAVIT

AUDIT COPY

Form Approved by
S.C. Attorney General
April 21, 2000
SCCA 616

Personally appeared before me the affiant Matthew David McCoy who

being duly sworn deposes and says that defendant Stewart Randall Ard

did within this county and state on or about 7/28/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia)

In the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/28/2013 at 0058 hrs., while at 2107 Green St., City of Columbia, County of Richland, the def and 2 co-defs returned to the location after being removed from the bar, Group Therapy. Upon arriving, co-def Geno struck victim #1 (Paterson) in the head with his fist. The def then took a knife from his right pants pocket and stabbed victim #1 (Paterson) twice in the back, he then stabbed victim #2 (Fleming) twice (left chest & arm). Co-def Geno then struck victim #2 (Fleming) in the head & face. All defs fled the scene. As the def was fleeing, he offered and attempted to stab 2 additional victims (Molmo & McDaniel) with his knife. Those victims escaped without injury. The incident was captured on surveillance video. A witness overheard the defs talking about coming back to the location and doing harm.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Affiant's Address #1 Justice Square
Columbia, SC 29201-
Affiant's Telephone (803)545-3500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2013 defendant Stewart Randall Ard

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 2nd degree (Serious bodily injury results)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me
on 7/28/2013

Signature of Issuing Judge

Shirley J Daniels

Judge Code: 6353

(L.S.)

Judge's Address City Of Columbia Municipal Court
Columbia, SC 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

ARREST WARRANT

2013A4021602617

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

THE STATE
against

Stewart Randall Ard

Address: Road

Leeville, SC -

Phone: SSN: Sex: M Race: W Height: 6 5 Weight: 210

DL State: DL #: DOB: 5 Agency ORI #: 04001

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Matthew David McCoy - 22066

Offense: Assault / Assault & Battery 1st degree

Offense Code: 3412

Code/Ordinance Sec: 16-03-0600(C)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P.O. Box 192
Columbia, SC 29202

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Personally appeared before me the affiant Matthew David McCoy who

being duly sworn deposes and says that defendant Stewart Randall Ard

did within this county and state on or about 7/28/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia)

in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 1st degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/28/2013 at 0058 hrs., while at 2107 Green St., City of Columbia, County of Richland, the def and 2 co-defs returned to the location after being removed from the bar, Group Therapy. Upon arriving, co-def Geno struck victim #1 (Paterson) in the head with his fist. The def then took a knife from his right pants pocket and stabbed victim #1 (Paterson) twice in the back, he then stabbed victim #2 (Fleming) twice (left chest & arm). Co-def Geno then struck victim #2 (Fleming) in the head & face. All defs fled the scene. As the def was fleeing, he offered and attempted to stab 2 additional victims (Molino & McDaniel) with his knife. Those victims escaped without injury. The incident was captured on surveillance video. A witness overheard the defs talking about coming back to the location and doing harm.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Affiant's Address #1 Justice Square

Columbia, SC 29201-

Affiant's Telephone (803)545-3500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2013 defendant Stewart Randall Ard

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 1st degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 7/29/2013

Signature of Issuing Judge

City Of Columbia Municipal Court

Judge Code: 500

(L.S.)

Judge's Address 811 Washington St

Columbia, SC 29201-

Judge's Telephone (803)545-3150

Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ARREST WARRANT

2013A4021602618

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

THE STATE

132J700

against

Stewart Randall Ard

Address: Road

Leeville, SC -

Phone: SSN:

Sex: M Race: W Height: 6 5 Weight: 210

DL State: DL #:

DOB: 5 Agency ORI #: 04001

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Matthew David McCoy - 22066

Offense: Assault / Assault & Battery 1st degree

Offense Code: 3412

Code/Ordinance Sec: 16-03-0600(C)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
City of Columbia)

AFFIDAVIT

AUDIT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant Matthew David McCoy who
being duly sworn deposes and says that defendant Stewart Randall Ard
did within this county and state on or about 7/28/2013 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia)
in the following particulars:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 1st degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On 07/28/2013 at 0058 hrs., while at 2107 Green St., City of Columbia, County of Richland, the def and 2 co-defs returned to the
location after being removed from the bar, Group Therapy. Upon arriving, co-def Geno struck victim #1 (Paterson) in the head with
his fist. The def then took a knife from his right pants pocket and stabbed victim #1 (Paterson) twice in the back, he then stabbed
victim #2 (Fleming) twice (left chest & arm). Co-def Geno then struck victim #2 (Fleming) in the head & face. All defs fled the
scene. As the def was fleeing, he offered and attempted to stab 2 additional victims (Molino & McDaniel) with his knife. Those
victims escaped without injury. The incident was captured on surveillance video. A witness overheard the defs talking about
coming back to the location and doing harm

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
City of Columbia)Affiant's Address #1 Justice Square
Columbia, SC 29201-
Affiant's Telephone (803)545-3500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2013 defendant Stewart Randall Ard
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery 1st degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 7/28/2013Signature of Judge
Shirley J Daniels

Judge Code: 6353

(L.S.)

Judge's Address City Of Columbia Municipal Court
Columbia, SC 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

ARREST WARRANT

2013A4021602619

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

THE STATE

1323700

against

Stewart Randall Ard

Address: Road

Leeville, SC -

Phone: SSN:

Sex: M Race: W Height: 6 5 Weight: 210

DL State: DL #:

DOB: 5 Agency ORI #: 04001

Prosecuting Agency: Columbia Police Department

Prosecuting Officer: Matthew David McCoy - 22066

Offense: Weapons / Carry concealed weapon, not a pistol,
e.g. dirk, metal knuckles, etc. (see 0044 if pistol)

Offense Code: 0043

Code/Ordinance Sec: 16-23-0460

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Columbia Municipal Court
811 Washington Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Personally appeared before me the affiant Matthew David McCoy who

being duly sworn deposes and says that defendant Stewart Randall Ard

did within this county and state on or about 7/28/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of City of Columbia)

In the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Carry concealed weapon, not a pistol, e.g. dirk, metal knuckles, etc. (see 0044 if pistol)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/28/2013 at 0058 hrs., while at 2107 Green St., City of Columbia, County of Richland, the def and 2 co-defs returned to the location after being removed from the bar, Group Therapy. Upon arriving, co-def Geno struck victim #1 (Paterson) in the head with his fist. The def then took a knife from his right pants pocket and stabbed victim #1 (Paterson) twice in the back, he then stabbed victim #2 (Fleming) twice (left chest & arm). Co-def Geno then struck victim #2 (Fleming) in the head & face. All defs fled the scene. As the def was fleeing, he offered and attempted to stab 2 additional victims (Molino & McDaniel) with his knife. Those victims escaped without injury. The incident was captured on surveillance video. A witness overheard the defs talking about coming back to the location and doing harm.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

City of Columbia

Affiant's Address #1 Justice Square

Columbia, SC 29201-

Affiant's Telephone (803)545-3500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2013 defendant Stewart Randall Ard

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of City of Columbia) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Carry concealed weapon, not a pistol, e.g. dirk, metal knuckles, etc. (see 0044 if pistol)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me
on 7/29/2013

Signature of Issuing Judge

Shirley J Daniels

Judge Code: 6353

Judge's Address City Of Columbia Municipal Court

Columbia, SC 29202

Judge's Telephone

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	Docket No.: 203A4021602615-19
STATE OF SOUTH CAROLINA,	)	
V.	)	DEFENDANT'S MOTION TO EXCLUDE THE
	)	PENALTY OF LIFE WITHOUT PAROLE ON
	)	ACCOUNT OF ARBITRARY USE OF
STEWART ARD,	)	PROSECUTORIAL DISCRETION IN THE
<u>Defendant.</u>	)	PLEA BARGAINING PROCESS

STEWART ARD, through undersigned counsel, respectfully moves this Court to exclude the penalty of life without parole (LWOP) on account of the arbitrary use of prosecutorial discretion in the plea bargaining process. This motion is predicated upon the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, §§, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of South Carolina, international treaties and customary international law, as well as statutory and jurisprudential authorities cited below.

In support, counsel states:

STEWART ARD is on trial for his life. The State has announced its intention to seek the imposition of a sentence of life imprisonment without parole. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). Furthermore, when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). Our system of justice must go "to extraordinary measures to ensure that the prisoner [facing the possibility of being] sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or

RICHLAND COUNTY
 FILED
 2014 JUN 23 AM 9:15
 JEANNETTE M. MERRITT
 C.C.P. & G.S.



mistake.” Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O’Connor, J., concurring) (emphasis added). These “extraordinary measures” must be taken at both stages of any capital trial. Beck v. Alabama, 447 U.S. 625, 638 (1980).

**THE ARBITRARY AND CAPRICIOUS USE OF PROSECUTORIAL DISCRETION IN
PLEA BARGAINING OFFENDS THE CONSTITUTION.**

STEWART ARD requests that the Court bar the State from seeking the imposition of a sentence of life imprisonment without parole this case due to the State’s arbitrary and capricious exercise discretion in plea bargaining decisions in prosecutions in this judicial circuit. In the alternative, Stuart Ard respectfully requests that this Court hold a hearing to permit the defense to present evidence that will demonstrate that the State’s refusal to plea bargain *in this case* is the result of an arbitrary, capricious and standardless exercise of discretion, in violation of Due Process and Equal Protection.

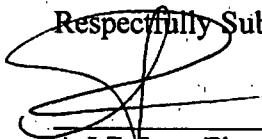
Nothing in the facts of this case distinguish it from the many cases in which the State has not sought the imposition of a sentence of life imprisonment without parole, or in which the State has agreed to a plea bargain to seeking a sentence imposition of a sentence of life imprisonment without parole. "Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Id. See also Gardner v. Florida, 430 U.S. 349, 357-58, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977); Lockette v. Ohio, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed2d 973 (1978); Beck v. Alabama, 447 U.S. 625, 637-38, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980); Eddings V. Oklahoma, 455 U.S. 104, 118, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)(O'Connor, J., concurring). Absent a rational distinction between this case and those where the death penalty has not been actively pursued, to impose a death sentence upon this defendant would constitute cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, § 1, ¶ 17 of the

South Carolina Constitution, and a deprivation of Equal Protection and Due Process in violation of the Fourteenth Amendment to the U.S. Constitution and Article I, § 1, ¶¶ 1 & 2 of the South Carolina Constitution.

Stewart Ard is prepared to present testimony and other evidence that the arbitrary and capricious exercise of discretion in the plea bargaining process in this case.

WHEREFORE, Stewart Ard moves this Court for an order precluding the imposition of a sentence of life imprisonment without parole as a possible sanction in this case or, in the alternative, granting a hearing on this issue so that he can present evidence in support of this motion.

Respectfully Submitted,



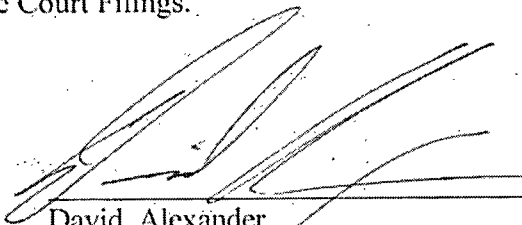
A.J.Z. Law Firm, LLC
Aimee J. Zmroczek (SC Bar No.: 77193)
M. Wade Downtin (SC Bar No.: 100359)
Attorneys for Defendant
2003 Lincoln Street
Columbia, SC 29201
Voice: 803-400-1918
Facsimile: 803-403-8005

Columbia, South Carolina
June 23, 2014.

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."

May 15th, 2015

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

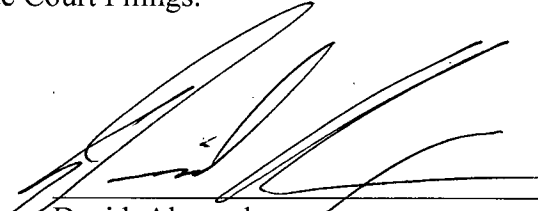
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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May 15th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Richland County
James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEWART RANDALL ARD,

APPELLANT

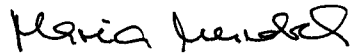
CERTIFICATE OF SERVICE

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, and Mr. Stewart Ard, #217645, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 15th day of May, 2015.



Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 15th day of May, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
James R. Barber, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

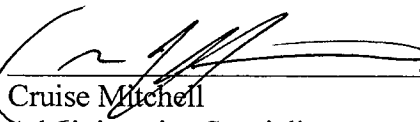
V.

STEWART RANDALL ARD,

APPELLANT

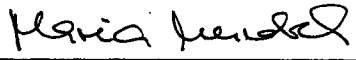
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