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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

RANDALL PRICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001037

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

3 The State,)

4 TRANSCRIPT OF RECORD
2007-GS-42-2836, -2837

5 -vs-)

6 Randall Price,)

June 8, 9 and 10, 2011
Spartanburg, South Carolina

7 Defendant.)

8
9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

13
14 A P P E A R A N C E S:

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16 Attorney for the State

17 RICHARD H. WHELCHER, ESQ.
18 Attorney for the Defendant

19
20
21
22 Margaret A. Woods
23 Circuit Court Reporter

24 ORIGINAL
25

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MOTIONS AND MATTERS

1 (Proceedings June 8, 2011)

2 (State's Exhibit Nos. 1 through 4, photographs, marked
3 for identification.)

4 MR. WHELCHEL: Your Honor, before we pick the jury in
5 this case I contacted Mr. Price over the lunch hour, he was up
6 in Campobello and I told him to get here as soon as he could.
7 Mr. Price is under the influence at this time of medication
8 that has been prescribed to him. He believes that he's not
9 capable of assisting in picking the jury. Some of the
10 medication is I know one of them is OxyCoton. Mr. Price
11 several months ago, correct me if I'm wrong, ---

12 THE DEFENDANT: Three, about three months.

13 MR. WHELCHEL: Three months ago had a fall, broke ribs
14 and punctured a kidney. He's been under the med -- under
15 the -- he's been a patient, excuse me, of Dr. Kerfoot since
16 that time and is still being seen by Dr. Kerfoot. He's taking
17 at this moment and takes his medication -- how many times a
18 day?

19 THE DEFENDANT: Every four hours the ---

20 MR. WHELCHEL: Every four hours, Your Honor. At this
21 point he's under the influence of OxyCoton -- stand up and
22 tell the Court what all your taking, Mr. Price.

23 THE DEFENDANT: OxyCoton and Lortab and Soma.

24 THE COURT: Are you supposed to be taking those all at
25 the same time?

MOTIONS AND MATTERS

1 THE DEFENDANT: Yeah, I take one is for OxyCoton, I take
2 it eight, every eight hours and then every four hours Lortab
3 and then the Soma is a relaxer, it relaxes my kidneys and
4 muscles.

5 THE COURT: And and you're tellin' me you don't think you
6 can pick a jury? You don't -- you -- you're not capable of,
7 mentally capable of picking a jury this afternoon?

8 THE DEFENDANT: I I don't never been in trouble and I
9 don't know what the process of picking a jury is.

10 THE COURT: Well that's why Mr. Whelchel's here, he's
11 your lawyer. I -- my question is: Can you have him pick a
12 jury? You're not gonna have to pick it, he's gonna pick it,
13 he's just gonna ask your input.

14 THE DEFENDANT: If Your Honor thinks that that I can do
15 that, yes.

16 THE COURT: I wouldn't have the slightest idea whether
17 you could do it or not, you're gonna have to tell me that.

18 THE DEFENDANT: I I ---

19 THE COURT: Well let me ask ya this: How you get down
20 here?

21 THE DEFENDANT: My grandmother from Campobello drove me.

22 THE COURT: Where is she?

23 THE DEFENDANT: She's went back and I was gonna call her
24 after we finish.

25 THE COURT: Alright. Well I think -- you -- you've been

MOTIONS AND MATTERS

1 talkin' to Mr. Whelchel and you don't think you're capable of
2 pickin' a jury?

3 THE DEFENDANT: I'm -- I I would be happy to sit here and
4 do what he tells me to do, sir. I --- I'm not -- nevertheless
5 I've never done it before, I don't know what the process
6 of ---

7 THE COURT: No, you you admit you're you're not
8 understanding me I guess. I mean, and maybe you didn't
9 understand Mr. Whelchel. You're not gonna to be expected to
10 do -- you're not gonna be expected to actually pick the jury
11 yourself, you're just supposed to give your input to
12 Mr. Whelchel. In other words, if you see somebody and you
13 say, I don't like -- I don't want them, I don't like them as a
14 juror, you tell him. If you like 'em you can tell him, Well
15 I'm I'm satisfied with that juror. You don't actually have to
16 pick it yourself, you don't need to know the process.
17 Mr. Whelchel knows the process and matter of fact he just got
18 through tryin' a case so he picked a jury yesterday.

19 THE DEFENDANT: Yes.

20 THE COURT: He knows how to do it.

21 THE DEFENDANT: Yes.

22 THE COURT: My question is can you help him with it?

23 THE DEFENDANT: I can sit here, yes.

24 THE COURT: Okay. Mr. Whelchel, you've talked to him; is
25 there any reason why you think he can't pick a jury?

MOTIONS--AND--MATTERS

1 MR. WHELCHER: No, sir. I don't think he's incapable of
2 assisting in picking a jury at this point.

3 THE COURT: Okay. Well so we're gonna pick the jury.
4 We're not -- he's not gonna have to testify or anything.
5 We're not gonna try the case this afternoon we're just picking
6 a jury.

7 MR. WHELCHER: Thank you, Your Honor.

8 THE COURT: Okay, but if ya'll telling me you don't think
9 that can be done then we'll -- I'll re-evaluate it but he
10 appears to me to be able to pick a jury and he says he can.
11 Now if you -- you know, you've talked to him longer than I
12 have.

13 MR. WHELCHER: Excuse me, Your Honor.

14 (Attorney/client discussion held off the record.)

15 MR. WHELCHER: We can pick the jury, Your Honor.

16 THE COURT: Okay. Alright bring the panel around,
17 please.

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Ms. Massey is a resident of Spartanburg?

20 MR. MCCARTY: Ms. Henson -- or I'm sorry, Ms. Massey's a
21 resident of Spartanburg County, Your Honor, yes, sir.
22 Ms. Henson I think I'm not sure if she's back. She was living
23 in North Carolina just in Tryon for a period of time, but I
24 don't know if she's officially moved back or not but she was
25 at the time of offense and was for a while, that she moved

JURY QUALIFICATION

1 just briefly but I contacted both of 'em, Your Honor.

2 (The following takes place in the presence of the jury
3 panel.)

4 THE COURT: Good afternoon.

5 JURY PANEL: Good afternoon.

6 THE COURT: I've not met you folks yet but my name is
7 Derham Cole and I'm a resident judge here in the Seventh
8 Circuit and I wasn't here on Monday when you were qualified
9 but I will be presiding over jury trials in this courtroom for
10 the rest of this week. The next case that we have that's
11 going to require some of your participation is the case of the
12 State vs. Randall Price. Mr. Price has been charged in two
13 separate indictments with the crime of assault and battery
14 with intent to kill. The State alleges that on or about
15 January the 13th of 2007 Mr. Price did here in Spartanburg
16 County and with malice aforethought commit an assault and
17 battery upon Dawn Henson and upon Pamela Massey by stabbing
18 each in the neck with the intent to kill each of them. There
19 two separate indictments because there two separate persons
20 who are alleged to be the victims but the allegations that are
21 supporting the charge arise out of one event or a course of
22 events which as I indicated the State claims occurred on
23 January the 13th of 2007 but they're two separate offenses
24 because there two separate persons alleged to have been
25 victims even though they arise out of one particular event.

JURY QUALIFICATION

1 Before we actually begin with jury selection in the case
2 I'm going to be asking some questions of you and the purpose
3 of the questions is to find out if there's some reason why any
4 one of you jurors should not be selected to participate in the
5 trial of this particular case and so as these questions are
6 asked should you need to respond to them I would simply ask
7 that you please stand and I'll address those matters with you
8 individually should the need arise but again, the purpose of
9 course is to find out if there's a reason why you should not
10 serve in the case and the first thing I'll do is I'll
11 introduce some people to ya, I will recite a list of potential
12 witnesses and the reason I'm making these introductions and
13 reciting these lists of witnesses is bec -- is because I wanna
14 find out if you are in any way connected with any of the
15 people involved in the case. In other words, are you related
16 to them by blood or marriage, do you go to church with 'em, do
17 ya go to school with 'em, do you work with 'em, do ya
18 socialize with 'em, do you know them in any capacity or in any
19 fashion whatsoever so as these people are introduced or the
20 witness list is recited, if you know the person as that name
21 is called if you'll just please stand when I finish
22 introducing everybody and reciting the list then I'll talk to
23 those who are standing and we'll find out what your connection
24 is with whom and whether or not it would affect your judgment
25 in the case. Now some of these people are not present at the

JURY QUALIFICATION

1 moment and so when their name is called you may not know if
2 you know that person because you might know somebody that has
3 a name, the same name, but you don't know if it's the same
4 person so if you hear a name and you know somebody by that
5 name but you're not sure whether that's the same person, you
6 just stand and we'll narrow down the identification of that
7 person for your benefit if we can in order to make that
8 determination.

9 Now first of all, as I've told you the defendant, the
10 person who is accused of having committed these two criminal
11 offenses, is Randall Price. Mr. Price, if you'll just stand
12 and face the jury panel for a moment so that they can see who
13 you are.

14 (Whereupon, the defendant complied.)

15 THE COURT: Seated with Mr. Price at the defense table is
16 Dick Whelchel.

17 (Whereupon, defense counsel stood.)

18 THE COURT: He -- that's Mr. Price's lawyer, he'll be
19 assisting him in the trial of the case. The two persons
20 alleged to have been the victims of this event are Dawn Henson
21 and Pamela Massey, they're both residents of Spartanburg,
22 Ms. Henson may be a resident of Tryon but she is a former
23 resident of Spartanburg. They're not present at the moment
24 but if you know somebody by the name of Dawn Henson or Pamela
25 Massey just stand and we'll try to narrow down that

JURY QUALIFICATION

1 Identification for ya.

2 (No response.)

3 THE COURT: Presenting the case on behalf of the State is
4 Ryan McCarty, he's an assistant circuit solicitor for the
5 Seventh Judicial Circuit.

6 (Whereupon, the assistant solicitor stood.)

7 THE COURT: Potential witnesses to be called during the
8 trial of the case in addition to any of tho -- any of those
9 that I've ju -- already introduced include the following: the
10 first dozen are all employed at the Spartanburg County
11 Sheriff's Department so the first twelve I recite you don't
12 need to count 'em, I'm gonna tell you when I'm through but the
13 first twelve I recite are employed at the sheriff's
14 department, they include Dave Evett, Travis McJunkin, Kevin
15 Price, Clayton Bradley, Travis Barnett, Robert Talanges,
16 Dominick Baird, David Hogsed, Deanna Burgess, Robert
17 Rosenberg, Jack Westmoreland and Dan Piggins so if you know
18 any of those, please stand.

19 JUROR NUMBER 174: I know Dominick Braig.

20 THE COURT: You know Dominick Baird?

21 JUROR NUMBER 174: Yes.

22 THE COURT: And how do you know Mr. Baird?

23 JUROR NUMBER 174: I actually lived beside him in
24 Campebello ---

25 THE COURT: Okay.

JURY QUALIFICATION

1 JUROR NUMBER 174: --- about six years ago.

2 THE COURT: Alright, is that the only connection that ya
3 have?

4 JUROR NUMBER 174: Yes, sir.

5 THE COURT: Would that have any bearing upon your
6 decision in this case if you were called upon to serve as a a
7 juror?

8 JUROR NUMBER 174: No, sir.

9 THE COURT: And what is your name and number, please,
10 ma'am?

11 JUROR NUMBER 174: Annette Wyatt, 174.

12 THE COURT: One seventy-four (174). Thank you, ma'am,
13 you may be seated. Anyone else? Yes, ma'am?

14 JUROR NUMBER 142: I taught Travis Barnett many years
15 ago, but no, it would not ---

16 THE COURT: You taught Travis Barnett? And what grade
17 would he have been in?

18 JUROR NUMBER 142: Twelfth.

19 THE COURT: Twelfth?

20 JUROR NUMBER 142: Um-hum.

21 THE COURT: And is there anything about that fact and
22 that connection would effect your judgment in the case?

23 JUROR NUMBER 142: No.

24 THE COURT: And your name and number please, ma'am?

25 JUROR NUMBER 142: One forty-two (142) Sue Shuping.

JURY QUALIFICATION

1 THE COURT: Thank you, ma'am. You may be seated. Anyone
2 else?

3 (No response.)

4 THE COURT: Alright, the following witnesses are either
5 employed at SLED, State Law Enforcement Division, or have or
6 was previously employed at SLED, they include Amy Stephens,
7 Betty Butler, Theresa Hines, Selena Kinard and Jasper Humbert
8 and the remaining witness who's not employed at the sheriff's
9 department or SLED is Isaac Brewington, Isaac Brewington. Are
10 there any other potential witnesses on behalf of the State?

11 MR. MCCARTY: No, Your Honor.

12 THE COURT: From the defense?

13 MR. WHELCHER: Yes, sir, Your Honor. I have a ---

14 THE COURT: Did you give ---

15 MR. WHELCHER: --- list ---

16 THE COURT: --- me a list?

17 MR. WHELCHER: Yes, sir.

18 THE COURT: Okay. Alright.

19 MR. WHELCHER: Your Honor, beg the Court's indulgence.

20 May I approach, Your Honor?

21 THE COURT: Okay, and what's yours?

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Alright, additional potential witnesses are
24 Donald Blakely, Ted Beaty, Randy Gault, Doug Bishop and Kevin
25 Smith. Any juror know any of those persons?

JURY QUALIFICATION

1 (No response.)

2 THE COURT: Okay. And does any juror know either of the
3 lawyers involved in the case and/or do you know any person
4 employed in the Seventh Judicial Circuit Solicitor's Office
5 and/or the Seventh Judicial Circuit Public Defender's Office?
6 If you know either lawyer or any employee in the solicitor's
7 office or the public defender's office please stand. Yes,
8 ma'am.

9 JUROR NUMBER 125: Elizabeth Phelps 125.

10 THE COURT: Who you know?

11 JUROR NUMBER 125: Dick Whelchel.

12 THE COURT: How do you know him?

13 JUROR NUMBER 125: I work for Turnipseed and Brannon law
14 firm.

15 THE COURT: Alright, and, uh, is there anything about
16 your connection with Mr. Whelchel that would affect your
17 judgment in the case?

18 JUROR NUMBER 125: No.

19 THE COURT: No?

20 JUROR NUMBER 125: No, sir.

21 THE COURT: Thank you may be seated. Yes?

22 JUROR NUMBER 55: Yes, my name is Toris Giles, I'm Juror
23 No. 55. I'm acquainted with Cat -- Travis Moore, the
24 assistant solicitor.

25 THE COURT: Alright. And would that have any bearing

JURY QUALIFICATION

1. upon your decision if you were selected?

2. JUROR NUMBER 55: No, sir.

3. THE COURT: Thank you, be seated. Anyone else?

4. (No response.)

5. THE COURT: Alright, does any member of the jury panel
6. think you've heard, seen or read something about this case?

7. Where is it alleged to have occurred?

8. MR. MCCARTY: [REDACTED] Road, Your Honor, or [REDACTED]

9. [REDACTED] Road off of out here offa New Cut Road.

10. THE COURT: It's Wingo Heights Road. It's alleged to
11. have occurred back in January of 2007 on Wingo Heights Road.
12. Is there anyone who thinks you might be familiar with the
13. facts that relate to the case, you've heard something about it
14. from some source or seen or read somethin' about it in the
15. event it appeared in the media? Anyone think ya already know
16. something about the case, if so please stand?

17. (No response.)

18. THE COURT: Is there anything about the nature of the
19. charge itself, I've I've read the allegations in the
20. indictment to ya so you know basically what the State is
21. claiming and I just wanna find out if there's anything about
22. those types of allegations or the nature of this charge that
23. would prevent any juror from being able to be fair and
24. impartial to either side, if so please stand.

25. (No response.)

JURY QUALIFICATION

1 THE COURT: Has any member of the jury panel ever been
2 called to testify as a witness in a criminal trial whether you
3 were called by the prosecution or called by a defense lawyer?
4 Has anyone ever been called to testify as a witness in a
5 criminal case?

6 JUROR NUMBER 13: Uh, Betty Bohmer, Juror No. 13. It was
7 the -- at the sense -- sentencing phase of the case. Does
8 that count?

9 THE COURT: Okay. Well is there anything about that
10 experience that you've had that would affect your judgment in
11 this case?

12 JUROR NUMBER 13: No, sir.

13 THE COURT: You're saying that someone wh -- you came
14 after someone had been found guilty you came and talked to
15 the ---

16 JUROR NUMBER 13: I ---

17 THE COURT: --- judge about what the appropriate sentence
18 oughta be?

19 JUROR NUMBER 13: Yes.

20 THE COURT: Okay. And would it have any bearing upon
21 your decision here?

22 JUROR NUMBER 13: No.

23 THE COURT: Okay, thank you, be seated. Yes, ma'am?

24 JUROR NUMBER 92: I think it was a criminal case. I was
25 16-years-old so it's been a while.

JURY QUALIFICATION

1 THE COURT: And what's your name and number, please?

2 JUROR NUMBER 92: Jessica Lamb, 92.

3 THE COURT: And you were a witness?

4 JUROR NUMBER 92: Yes, sir.

5 THE COURT: Okay, and did you testify in the ---

6 JUROR NUMBER 92: I did.

7 THE COURT: Was it in this courthouse?

8 JUROR NUMBER 92: I believe so yes, sir.

9 THE COURT: Alright, and do -- were you called by the
10 State or by the defense?

11 JUROR NUMBER 92: Um, I think it was the State.

12 THE COURT: Alright. And is there anything about that
13 experience that would affect your judgment in this case?

14 JUROR NUMBER 92: No, sir.

15 THE COURT: Okay. Thank you, ma'am. Has any member of
16 the jury panel or any members of your immediate family, and
17 I'm gonna confine the term "immediate" family and define it as
18 a parent, a spouse, a child or a sibling, a parent, a spouse,
19 child or sibling have you or any members of your immediate
20 family as I just defined it ever been the victim of any type
21 of criminal offense that might be characterized as a violent
22 crime and that might include murder, manslaughter, assault and
23 battery in any degree, criminal sexual conduct or rape,
24 criminal domestic violence of a high and aggravated nature or
25 any type of criminal offense that might be characterized as a

JURY QUALIFICATION

1 violent offense? I need to know if you've been a victim of
2 such or a family member has and I also need to know if you or
3 some family member has ever been accused of having committed
4 such an offense so I need to know if you you or the family
5 member have been the victim of such or ever been accused of
6 having committed such, if so please stand. I've got one juror
7 standing. I have two. Uh, if you don't feel comfortable for
8 any reason in answering the question where you are, you don't
9 have to, you can step down here. If you don't mind answering
10 the question where you are then I'll just hear from ya where
11 you stand. I'll start with you, ma'am.

12 JUROR NUMBER 174: I have. I have been at, uh, ---

13 THE COURT: Tell me your name and number again, please.

14 JUROR NUMBER 174: Annette, 174.

15 THE COURT: Seventy-four or one seventy-four (174).

16 Alright, hows that question relate to you?

17 JUROR NUMBER 174: Criminal sexual conduct with my
18 daughter. We was the victim.

19 THE COURT: Okay, and and was somebody charged with
20 that?

21 JUROR NUMBER 174: Yes, sir.

22 THE COURT: Was the case disposed of in court?

23 JUROR NUMBER 174: Yes.

24 THE COURT: Alright, and was -- is there anything about
25 that experience that would affect your judgment in this

JURY QUALIFICATION

1 case?

2 JUROR NUMBER 174: No, sir.

3 THE COURT: Alright. Thank you, ma'am, you may be
4 seated. Yes, ma'am?

5 JUROR NUMBER 151: Debra Suddeth, 151. My brother was
6 shot and killed back in 1983.

7 THE COURT: And was someone charged?

8 JUROR NUMBER 151: Yes.

9 THE COURT: And was it disposed of in court?

10 JUROR NUMBER 151: Um-hum, yes.

11 THE COURT: And is there anything about that experience
12 that would affect your ability to be fair and impartial in
13 this case?

14 JUROR NUMBER 151: No, sir.

15 THE COURT: Okay, thank you. You may be seated.

16 Is any member of the jury panel or has any member of the
17 jury panel ever been employed in law enforcement, civilian or
18 military, have you ever been employed for any -- in any law
19 enforcement agency and also have any of your family members
20 ever been employed as any type of law enforcement officer?
21 Now that doesn't mean it just has to be a deputy sheriff or
22 somethin' like that or city police officer, it means in any
23 capacity; it could be working for a county detention facility,
24 it could be workin' for probation and parole, it could be
25 working for FBI, SLED, town municipal law enforcement.

JURY QUALIFICATION

1 agencies, department of corrections, any such? Alright. What
2 I'll do is I'll -- I'm I'm gonna start on the first row to my
3 right with you, sir, and you give me name and your number and
4 tell me how the question relates to ya. I'll work myself --
5 work my way back, I'll jump the aisle, start in the front row,
6 go across and then keep goin' back row by row, ---

7 JUROR NUMBER 131: Uh, ---

8 THE COURT: --- alright?

9 JUROR NUMBER 131: --- Rodney Rice, 131. I have a cousin
10 is a police chief and another cousin that's workin' with SLED.

11 THE COURT: Where?

12 JUROR NUMBER 131: At Woodruff and one of 'em works here
13 in Columbia.

14 THE COURT: Okay, and would would either of those facts
15 affect your judgment ---

16 JUROR NUMBER 131: No.

17 THE COURT: --- in the case? Thank you, be seated. Yes,
18 ma'am?

19 JUROR NUMBER 41: My husband -- I'm sorry, Page Dixon
20 No. 41. My husband was in the U.S. Marine Corp. and I had an
21 uncle that was a correctional officer in Columbia.

22 THE COURT: Would that have any bearing on your decision?

23 JUROR NUMBER 41: No, sir

24 THE COURT: Thank you, be seated. Yes, ma'am?

25 MR. WHELCHER: Excuse me, Your Honor. I I wasn't sure I

JURY QUALIFICATION

1 heard was that 41 or ---

2 THE COURT: Forty-one (41).

3 MR. WHELCHEL: Thank you, sir.

4 THE COURT: Yes, ma'am.

5 JUROR NUMBER 110: Mary Miller, No. 110. My cousin is a
6 correctional officer at Northside.

7 THE COURT: Would it have any bearing on your decision?

8 JUROR NUMBER 110: No, sir.

9 THE COURT: Thank you, be seated. Yes, ma'am?

10 JUROR NUMBER 39: Cher Demeza, No. 39. My brother was a
11 policeman with Bristol, Tennessee.

12 THE COURT: Would it have any bearing upon your decision?

13 JUROR NUMBER 39: No, sir.

14 THE COURT: Thank you, be seated. Let's do this so I
15 don't have to ask everybody that same question: I want you to
16 tell me what the connection is and then tell me if you think
17 it would have any bearing upon your decision. Alright, yes,
18 ma'am?

19 JUROR NUMBER 87: Mary Jones, 87. My father's deceased
20 but he was a federal agent for the DEA and it would not have
21 any bearing on that.

22 THE COURT: Thank you, be seated. Yes, ma'am?

23 JUROR NUMBER 47: Georgia Ellison, 47. My brother worked
24 in the sheriff department here in Spartanburg but I don't
25 think it would have any bearing on what I'm doing.

JURY QUALIFICATION

1 THE COURT: Thank you, be seated. Yes, ma'am?

2 JUROR NUMBER 54: Mandy Gass, 54. My father worked for
3 the police department North Carolina and it wouldn't have any
4 bearing.

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

6 JUROR NUMBER 151: Debra Suddeth, 151. I have a cousin
7 that was a police officer, I don't know for which department,
8 I'm not sure, and it wouldn't have any bearing at all.

9 THE COURT: You're not sure which department?

10 JUROR NUMBER 151: I don't know if he worked for Inman or
11 if he was just a police officer and I don't know if it was
12 Spartanburg, Inman ---

13 THE COURT: Okay.

14 JUROR NUMBER 151: --- but it wouldn't have any bearing.

15 THE COURT: Was he a Suddeth?

16 JUROR NUMBER 151: No, it was Carroll Emory.

17 THE COURT: Carroll Emory, he worked for the sheriff's
18 department.

19 (Laughter.)

20 JUROR NUMBER 151: It's been a while.

21 THE COURT: It goes back a ways too by the way but I was
22 here. Would that have any bearing upon your decision?

23 JUROR NUMBER 151: No, sir.

24 THE COURT: Thank you, be seated. Yes?

25 JUROR NUMBER 55: Yes, my name's Toris Giles, I'm Juror

JURY QUALIFICATION

1 55. I'm currently employed with the Uni. -- United States
2 Army. It wouldn't have any bearing on my decision.

3 THE COURT: Thank you, be seated. Yes?

4 JUROR NUMBER 161: Marion Vernon, 161. My brother and my
5 cousin were a detention officer and I was in the military.

6 THE COURT: Detention officer here or somewhere else?

7 JUROR NUMBER 161: Here.

8 THE COURT: Okay.

9 JUROR NUMBER 161: My brother's working here somewhere.

10 THE COURT: Well what -- what's the relation to you?

11 JUROR NUMBER 161: It's my brother. My brother ---

12 THE COURT: Your brother?

13 JUROR NUMBER 161: --- works here.

14 THE COURT: What's his name?

15 JUROR NUMBER 161: Paul Vernon.

16 THE COURT: Okay. Would it have any bearing upon your
17 decision?

18 JUROR NUMBER 161: Uh, no, sir.

19 THE COURT: Thank you, be seated. Anyone else need to
20 respond to that question?

21 (No response.)

22 THE COURT: Is any member of the panel a member of, or do
23 you contribute time and money to any type of organization that
24 might be characterized as law enforcement support or victims'
25 rights or victims' advocate-type organization and some of

JURY QUALIFICATION

1 those might include Mother's Against Drunk Driver's or
2 Citizens Against Violent Crime or the Fraternal Order of
3 Police, the Honorary Sheriff's Association, the Trooper's
4 Association or any other similar type of organization? Do you
5 belong to any or do you contribute your time or your money to
6 any of those organizations, if so please stand?

7 (No response.)

8 THE COURT: Nobody had to give to the Trooper's
9 Association?

10 (Laughter.)

11 THE COURT: Usually usually we get a lotta those.
12 Alright, has any member of the panel already made up your mind
13 or formed an opinion as to how you think the case oughta be
14 decided based upon what you've heard up to this point or based
15 upon any other consideration; do you think you've already
16 decided the case, if so please stand?

17 (No response.)

18 THE COURT: Does any juror know of any reason whatsoever
19 why you think you could not be fair and impartial if you were
20 called upon to serve as a juror in this particular case, if so
21 please stand?

22 (No response.)

23 THE COURT: Any other question requested by the State?

24 MR. MCCARTY: None, Your Honor. Thank you.

25 THE COURT: By the defendant?

JURY QUALIFICATION

1 MR. WHELCHER: No, sir, Your Honor.

2 THE COURT: Alright, draw us a jury please, ma'am. And
3 everybody's participated in jury selection on Monday you know
4 how to do it? Just come forward when your name is called,
5 you'll be instructed if you're to be seated or excused.

6 (Pause.)

7 THE CLERK: Ladies and gentlemen of the jury, at this
8 time I'll be calling your name and jury numbers of the jurors
9 that have been selected for this service and when you are
10 called by your number if you'll come forward and stand. Juror
11 No. 157, Danuta Toney.

12 JUROR NUMBER 157: Just call me Donna.

13 (Danuta Toney, a white female, came forward.)

14 THE CLERK: What says the State?

15 MR. MCCARTY: Please present this juror.

16 THE CLERK: What says the defendant?

17 MR. WHELCHER: Please seat Ms. Toney.

18 THE CLERK: Juror No. 22, Benjamin Brune.

19 (Benjamin Brune, a white male, came forward.)

20 THE CLERK: What says the State?

21 MR. MCCARTY: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. WHELCHER: Please seat Mr. Brune.

24 THE CLERK: Juror No. 146, Dianne Smith.

25 (Dianne Smith, a white female, came forward.)

JURY QUALIFICATION

1 THE CLERK: What says the State?

2 MR. MCCARTY: Please present the juror.

3 THE CLERK: What says what says defendant?

4 MR. WHELCHER: Please seat Ms. Smith.

5 THE CLERK: Juror No. 161, Marion Vernon.

6 (Marion Vernon, a black male, came forward.)

7 THE CLERK: What says the State?

8 MR. MCCARTY: Please excuse this juror.

9 THE CLERK: Juror No. 65, Courtney Gregory.

10 (Courtney Gregory, a white female, came forward.)

11 THE CLERK: What says the State?

12 MR. MCCARTY: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. WHELCHER: Please seat Ms. Gregory.

15 THE CLERK: Juror No. 113, Windy Stripling.

16 (Windy Stripling, a black female, came forward.)

17 THE CLERK: What says the State?

18 MR. MCCARTY: Could you repeat the number, please, one
19 time.

20 THE CLERK: It's 113.

21 MR. MCCARTY: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. WHELCHER: Please seat Ms. Stripling.

24 THE CLERK: Juror No. 7, Frances Bass.

25 (Frances Bass, a white female, came forward.)

JURY QUALIFICATION

1 THE CLERK: What says the State?

2 MR. MCCARTY: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. WHELCHER: Please excuse Ms. Bass from the trial of
5 this case.

6 THE CLERK: Juror No. 55, Toris Giles.

7 (Toris Giles, a white male, came forward.)

8 THE CLERK: What says the State?

9 MR. MCCARTY: Please present Mr. Giles.

10 THE CLERK: What says the defendant?

11 MR. WHELCHER: Please excuse Mr. Giles from the trial of
12 this case.

13 THE CLERK: Juror 133, Mr. Richardson.

14 (Riyadh Richardson, a black male, came forward.)

15 THE CLERK: What says the State?

16 MR. MCCARTY: Please excuse Mr. Richardson.

17 THE CLERK: Juror 72, Barry Harvey.

18 (Barry Harvey, a white male, came forward.)

19 THE CLERK: What says the State?

20 MR. MCCARTY: Please excuse Mr. Harvey.

21 THE CLERK: Juror 122, Lauren Patterson.

22 (Lauren Patterson, a white female, came forward.)

23 THE CLERK: What says the State?

24 MR. MCCARTY: Please present the juror.

25 THE CLERK: What says the defendant?

JURY QUALIFICATION

1 MR. WHELCHER: Please seat Ms. Patterson.
2 THE CLERK: Juror 162, James Vinson.
3 (James Vinson, a white male, came forward.)
4 THE CLERK: What says the State?
5 MR. MCCARTY: Please excuse this juror.
6 THE CLERK: Juror 174, Annette Wyatt.
7 (Annette Wyatt, a white female, came forward.)
8 THE CLERK: What says the State?
9 MR. MCCARTY: Please present the juror.
10 THE CLERK: What says the defendant?
11 MR. WHELCHER: Please excuse Ms. Wyatt from the trial of
12 this case.
13 THE CLERK: Juror 54, Amanda Gass.
14 (Amanda Gass, a white female, came forward.)
15 THE CLERK: What says the State?
16 MR. MCCARTY: Please present the juror.
17 THE CLERK: What says the defendant?
18 MR. WHELCHER: Please seat the lady.
19 THE CLERK: Juror 163, Caitlin Walsh.
20 (Caitlin Walsh, a white female, came forward.)
21 THE CLERK: What says the State?
22 MR. MCCARTY: Please present the juror.
23 THE CLERK: What says the defendant?
24 MR. WHELCHER: Please seat Ms. Walsh.
25 THE CLERK: Juror No. 92, Jessica Lamb.

JURY QUALIFICATION

1 (Jessica Lamb, a white female, came forward.)
2 THE CLERK: What says the State?
3 MR. MCCARTY: Please present this juror.
4 THE CLERK: What says the defendant?
5 MR. WHELCHER: Please seat Ms. Lamb.
6 THE CLERK: Juror 130, Bryan Rice.
7 (Bryan Rice, a white male, came forward.)
8 THE CLERK: What says the State?
9 MR. MCCARTY: Please present the juror.
10 THE CLERK: What says the defendant?
11 MR. WHELCHER: Seat Mr. Rice.
12 THE CLERK: Juror 15, Callie Bray.
13 (Callie Bray, a white female, came forward.)
14 THE CLERK: What says the State?
15 MR. MCCARTY: Please present the juror.
16 THE CLERK: What says the defendant?
17 MR. WHELCHER: Please excuse Ms. Bray from the trial of
18 this case.
19 THE CLERK: Juror 134, Khristy Riggins.
20 (Khristy Riggins, a white female, came forward)
21 THE CLERK: What says the State?
22 MR. MCCARTY: Please excuse this juror.
23 THE CLERK: Juror 126, Sarah ---
24 JUROR NUMBER 126: Prioletti.
25 THE CLERK: --- Prioletti.

JURY QUALIFICATION

1 (Sarah Prioletti, a white female, came forward.)
2 THE CLERK: What says the State?
3 MR. MCCARTY: Please present the juror.
4 THE CLERK: What says the defendant?
5 MR. WHELCHER: Please excuse the juror from the trial of
6 this case.
7 THE CLERK: Juror 147, Lawrence Smith.
8 (Lawrence Smith, a black male, came forward.)
9 THE CLERK: What says the State?
10 MR. MCCARTY: Please present the juror.
11 THE CLERK: What says the defendant?
12 MR. WHELCHER: Please seat Mr. Smith.
13 THE CLERK: Juror No. 13, Betty Bohmer.
14 (Betty Bohmer, a white female, came forward.)
15 THE CLERK: What says the State?
16 MR. MCCARTY: Please present this juror.
17 THE CLERK: What says defendant?
18 MR. WHELCHER: Please seat Ms. Bohmer.
19 THE CLERK: Your Honor, this is for the alternate:
20 THE COURT: Okay.
21 THE CLERK: Number 175, Andrew Youngblood.
22 (Andrew Youngblood, a white male, came forward.)
23 THE CLERK: What says the State?
24 MR. MCCARTY: Please present the juror.
25 THE CLERK: What says defendant?

JURY QUALIFICATION

1 MR. WHELCHER: Please excuse Mr. Youngblood from the
2 trial of this case.

3 THE CLERK: Juror 151, Debra Suddeth.

4 (Debra Suddeth, a white female, came forward.)

5 THE CLERK: What says the State?

6 MR. MCCARTY: Please present Ms. Suddeth.

7 THE CLERK: What says the defendant?

8 MR. WHELCHER: Please excuse the juror from the trial of
9 this case.

10 THE CLERK: Juror No. 47, Georgia Ellison.

11 (Georgia Ellison, a black female, came forward.)

12 THE CLERK: What says the State?

13 MR. MCCARTY: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. WHELCHER: Please seat the lady.

16 THE COURT: Your Honor, the jury has been polled and
17 selected.

18 THE COURT: Thank you. Those jurors who have been
19 selected I'll ask you to please go with the bailiff to a jury
20 room and I'll bring you back in just a few minutes.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Are there any matters that need to be
24 addressed regarding jury selection by the State?

25 MR. MCCARTY: None from the State, Your Honor.

JURY QUALIFICATION

1 THE COURT: By the defendant?

2 MR. WHELCHER: No, sir, Your Honor.

3 THE COURT: Alright, those not selected you're excused
4 for the balance of the afternoon. Please call back after six
5 o'clock this evening to the number that ya have on your juror
6 information pamphlet; call that number after six this evening
7 to receive further recording information. I thank you for
8 your participation, have a good afternoon.

9 (Whereupon, the remaining jurors were excused.)

10 THE COURT: Alright we got some matters we need to
11 address before ---

12 MR. MCCARTY: Just one matter from the State, Your Honor.

13 THE COURT: Alright, well let me let this jury go, then
14 we'll deal with it. Mr. Hipp, can you get my jury for me.
15 I'm gonna excuse the jury for the afternoon.

16 THE BAILIFF: Dismiss, dismiss the jury?

17 COURT REPORTER: Get the jury.

18 THE COURT: Bring 'em back. Bring 'em back.

19 (The following takes place in the presence of the jury.)

20 THE COURT: Ladies and gentlemen, I've got some other
21 matters I've got to address this afternoon but we wanted to go
22 ahead and pick the jury so that everybody didn't have to come
23 back tomorrow other than those selected. So you are gonna be
24 excused now for the balance of the afternoon but as you leave
25 keep in mind during the overnight recess you can't talk about

JURY QUALIFICATION

1 the case with anybody, you can't discuss it with anybody. I
2 know you don't know much about it but still can't talk about
3 it with anybody because any decision you reach in any case has
4 to be based upon what you see and hear during the trial and
5 you can't be influenced by any outside or extraneous
6 information so that's why you can't talk about the case in any
7 fashion at all. Don't conduct your own research, don't do
8 your own investigation into any issue that might arise should
9 you think of something during the overnight recess. When ya
10 come back in the mornin', don't talk about it among
11 yourselves, you can't do that until you're involved in in
12 deliberations and that of course is not until the end of the
13 trial after all the evidence has been received and I've
14 instructed you on the law that's applicable in the case. So
15 with that do have a good evening and please report directly to
16 your jury room, that's the room that you were just shown to.
17 Please report to that jury room at 9:30 in the morning and if
18 you're not sure how to get back there talk to the bailiff,
19 they'll assist you with those instructions and directions.
20 Have a good evening, we'll see ya at 9:30 in the mornin'.
21 Yeah, please follow the bailiff. He'll take you back by the
22 jury room then you'll see where you'll leave and how ya get
23 back.

24 (The following takes place outside the presence of the
25 jury.)

MOTIONS AND MATTERS

1 THE COURT: Alright, what's the motion?

2 MR. MCCARTY: Your Honor, the State premarked a couple
3 photographs, Your Honor. I'd just like to show Mr. Whelchel
4 the photographs but, Your Honor, the State would offer these,
5 prior to trial tomorrow offer these to be allowed to be
6 admitted into evidence or potentially be admitted into
7 evidence, tomorrow. Your Honor, I'm offering 'em ahead of
8 time just because of the nature of the photographs what they
9 depict. It is not the normal photograph that you would see
10 normally off a big trial. They are graphic in nature and
11 that's why I'm asking the Court to prior to offering them into
12 any testimony or through any witness tomorrow to -- for
13 admissibility purposes today. They are premarked 1 through 4.

14 MR. WHELCHER: Just wanna premark 'em?

15 MR. MCCARTY: They are premarked. They're premarked ---

16 MR. WHELCHER: Okay.

17 MR. MCCARTY: --- 1 through 4.

18 THE COURT: Alright, we got four photographs and these
19 are photographs of who?

20 MR. MCCARTY: Your Honor, they depict both both victims
21 in this case, Dawn -- Jennifer Dawn Henson and Pamela Massey.

22 THE COURT: Alright, and ---

23 MR. MCCARTY: It's ---

24 THE COURT: --- they're relevant to what?

25 MR. MCCARTY: Your Honor, they -- they're relevant to

MOTIONS AND MATTERS

1 corroborate the testimony that Ms. Henson and Ms. Massey would
2 offer in trial, they'll both be present. Your Honor, they
3 would go towards that. They would also in the State's opinion
4 be relevant towards offering proof in the case of one of the
5 elements of the offense being malice. Your Honor, if I can
6 I'll hand up a copy of the case of State vs. Kelley just for
7 reference in this.

8 (Whereupon, counsel handed the document to the Court.)

9 THE COURT: Alright, Mr. Wheelchel, do you have objections
10 to the photographs?

11 MR. WHELCHER: Yes, sir, Your Honor. My ---

12 THE COURT: What's the objection?

13 MR. WHELCHER: --- objection would be -- I'm sorry, I
14 didn't hear you.

15 THE COURT: I say what is it?

16 MR. WHELCHER: My objection would be that those
17 photographs as as shown would be used to inflate the juror
18 passions and I don't know if these people are gonna show up to
19 testify and admit these photographs. I think the proper time
20 to do this is if and when they actually show up to testify
21 concerning these photographs ---

22 THE COURT: Well ---

23 MR. WHELCHER: --- but they will be dupli -- the
24 photographs are duplicitous I'm assuming to what their
25 testimony would be.

MOTIONS AND MATTERS

1 THE COURT: Alright, well assuming that that they do show
2 up and they identify these photographs as being photographs of
3 them taken at or about the time that these or this event in
4 question occurred, is your sole objective is that they are
5 duplicitous?

6 MR. WHELCHER: They would inflame the jury, Your Honor,
7 based on the nature of the photographs. They're quite graphic
8 and quite bloody.

9 THE COURT: Yeah. Alright, and the need for the
10 photographs is what, Mr. McCarty?

11 MR. MCCARTY: Your Honor, one of the elements of the
12 offense of assault and battery with intent to kill is malice,
13 it'd be malice aforethought. Your Honor, they would go
14 towards proving the excessive nature of the injury. The
15 State's position would also be the probative value of offering
16 these doesn't necessarily negate the jury's decision basing or
17 decision-making process being based on passion rather than
18 fact and, Your Honor, and as Mr. Whelcher noted that I do
19 believe the the ladies who will be here to testify would offer
20 that these are taken contemporaneous to the event in question,
21 Your Honor.

22 THE COURT: And are the injuries and the manner of the
23 infliction of the injuries gonna be contested, Mr. Whelcher?

24 MR. WHELCHER: No, sir, other than whether or not those
25 injuries were inflicted as a result of an assault and battery

MOTIONS AND MATTERS

1 of an intent to kill or as a result of self-defense, Your
2 Honor.

3 THE COURT: Okay. Well, if the proper foundation's laid
4 they're likely going to come in ---

5 MR. MCCARTY: Thank Your Honor.

6 THE COURT: --- but we'll address that when the witness
7 testifies.

8 MR. MCCARTY: I just didn't wanna offer 'em ---

9 THE COURT: I understand.

10 MR. MCCARTY: --- tomorrow ---

11 THE COURT: I know what, I know what your objection is so
12 we'll address it when the witness testifies.

13 MR. WHELCHER: Yes.

14 MR. MCCARTY: Thank Your Honor.

15 THE COURT: Alright, any other matters we need to address
16 with respect to the Price case?

17 MR. MCCARTY: None from the State, Your Honor.

18 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

19 (Attorney/client discussion held off the record.)

20 MR. WHELCHER: Not at this time, Your Honor.

21 THE COURT: Alright. Mr. Price, ---

22 MR. WHELCHER: Stand up.

23 (Whereupon, the defendant complied.)

24 THE COURT: --- I understand that you -- you're taking
25 medication.

MOTIONS AND MATTERS

1 THE DEFENDANT: Yes.

2 THE COURT: Alright, you understand we're gonna start
3 this trial at 9:30 in the morning, you've got an obligation to
4 be here under the terms of your bond. Who who signed your
5 bond?

6 THE DEFENDANT: Giggins I think outta Greenville but I've
7 been in town for four and a half years and never missed a roll
8 call, sir.

9 THE COURT: Well that's good but you can't miss court
10 either.

11 THE DEFENDANT: No, sir.

12 THE COURT: We're gonna have court tomorrow.

13 THE DEFENDANT: Yes.

14 THE COURT: So and and you got to be in in -- you might
15 have to lay off some of your medication 'cuz, ya know, if you
16 wanna be able to ably assist your lawyer you're probly gonna
17 have to -- if your medication affects you to the extent that
18 you can't participate then you need to lay off of it.

19 THE DEFENDANT: Yes, sir, I'm going to Dr. Kerfoot when I
20 leave here today.

21 THE COURT: Okay. Alright, and you need need to be at 9,
22 not later than 9:30 tomorrow, ---

23 THE DEFENDANT: Yes.

24 THE COURT: --- in the morning, okay? Alright,
25 court's -- well this matter's in recess until 9:30 tomorrow.

MOTIONS AND MATTERS

1 MR. WHELCHEL: Thank you, Your Honor.

2 MR. MCCARTY: Thank you, Your Honor.

3 THE DEFENDANT: Thank you, sir.

4 (Proceedings June 9, 2011)

5 (State's Exhibit Nos. 5, 6, 7, 8, 9, 10 and 11,

6 photographs, and State's Exhibit No. 12, Google map, marked

7 for identification.)

8 THE COURT: Are there any matters to address before the
9 jury is brought in?

10 MR. WHELCHEL: None from the State, Your Honor.

11 (Whereupon, a discussion was held off the record.)

12 THE COURT: Bring the jury in, please.

13 MR. WHELCHEL: No, sir, Your Honor.

14 (The following takes place in the presence of the jury.)

15 THE COURT: Mr. Hipp, ask Ms. Bohmer to take the
16 foreperson seat.

17 THE BAILIFF: Ms. Ms. ---

18 THE COURT: Bohmer.

19 THE BAILIFF: --- Bohmer.

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: Good morning, ladies and gentlemen of the
22 jury panel. We are ready to begin with the trial of the case
23 for which you have been selected. Ms. Bohmer, I'm gonna ask
24 you to serve as the foreperson of the jury.

25 JUROR NUMBER 13: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: And as the foreperson you're gonna have three
2 specific duties that none of the other jurors will have.
3 First of all, you'll be asked to serve as the spokesperson for
4 the jury and that just means if something arises during the
5 trial that needs to be brought to my attention it will be you
6 who will relay that information to me on behalf of your fellow
7 jurors; secondly, you are gonna be called upon to preside over
8 jury deliberations when the time comes and that of course
9 won't be until the end of the trial after all of the evidence
10 has been received and I've instructed you on the law that's
11 applicable in the case but when the time does come for jury
12 deliberations you will preside over that process in the jury
13 room simply to ensure that those deliberations are carried out
14 in some orderly fashion; thirdly, you'll be asked to actually
15 write the verdict or the decision of the jury, you'll do that
16 on the verdict forms that I'll provide ya at the trial's
17 conclusion on which you will indicate the jury's unanimous
18 decision as it relates to each of the separate indictments.

19 Now the foreperson has those specific duties that I've
20 just indicated, that that does not however mean that she is
21 any more important than any of you other jurors because the
22 decision of a jury is the unanimous consensus opinion of all
23 twelve jurors and therefore each of you will have an equal say
24 and an equal voice in what the ultimate decision will be.
25 Someone simply has to be delegated those responsibilities that

MOTIONS AND MATTERS

1 I have just indicated and I have delegated those to Ms. Bohmer
2 in appointing her as the foreperson but all of you jurors are
3 equally important so far as the ultimate decisions in this
4 case are concerned because as I've told ya the verdicts have
5 to be unanimous, all of you must be in agreement.

6 Now, Ms. Ellison, you've been selected as an alternate
7 juror and the function of an alternate is to take the place of
8 of one of the original twelve in the event one of these
9 original twelve cannot continue to serve for some reason and
10 so if one is called away because of an illness or an emergency
11 or some other reason and they cannot continue to serve as a
12 juror, it would be you who would be called upon to take that
13 person's place, in that event you will become the twelfth
14 juror and if you become the twelfth juror then you participate
15 throughout the trial including the jury deliberations. Now
16 when the time does come for jury deliberations if the original
17 twelve jurors are able to perform that function then your
18 service ends and you don't participate any further and that's
19 because the decision of a jury is that of twelve and no more
20 than twelve are permitted to engage in that deliberation
21 process but it is important that you pay just as careful
22 attention as we ask of all of the jurors in the case because
23 it does occur from time to time for one reason or another one
24 of these twelve may be unable to continue, in that event you
25 become the twelfth so we do appreciate your participation as

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1 an alternate juror just as we appreciate the participation of
2 each of you jurors who have been selected for the purpose of
3 deciding the verdicts in this particular case. You may swear
4 the panel.

5 (Whereupon, the jury panel was sworn.)

6 THE COURT: Now as you are very well aware you've been
7 selected to decide the verdicts in the case of the State vs.
8 Randall Price. Mr. Price, as you were told, has been accused
9 by the prosecutor by way of these indictments with having
10 committed the crimes of assault and battery with intent to
11 kill. The State alleges that those offenses occurred back on
12 January the 13th of 2007, they allege that they occurred here
13 in Spartanburg County and they alleged that there were two
14 separate persons who were victims of these events. One
15 indictment relates to an assault and battery allegation
16 against -- committed against Dawn Henson, the other relates to
17 assault and battery allegation as against Pamela Massey being
18 the victims. The indictments are the charging papers, they
19 set forth what the State claims the defendant did but the
20 indictments are not evidence of anything, they don't prove
21 anything, they don't establish anything but they are the means
22 by which any person accused of a crime is brought into this
23 court and formally noticed as to what crime the State claims
24 they have committed. The indictments will be in the jury room
25 at the time of your deliberations but they're there solely to

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1 serve as the verdict forms. In other words, on the back of
2 each of the separate indictments, madam forelady, you're gonna
3 be indicating the jury's unanimous decision as it relates to
4 that specific charge but other than serving as the verdict
5 forms the indictments serve no purpose so far as you jurors
6 are concerned.

7 Now as to each of the indictments, the allegations
8 contained therein and the charges made, the defendant has
9 entered a plea of not guilty and as I've told ya that plea of
10 not guilty places upon the State the burden of proving the
11 allegations that they have set forth in each of those
12 indictments, the burden of proving each of the essential
13 elements that make up the crimes of assault and battery with
14 an intent to kill and therefore the burden is upon the State
15 to establish the defendant's guilt to the satisfaction of you
16 twelve jurors beyond a reasonable doubt before a verdict of
17 guilty could be returned as to either of the indictments.
18 Every person accused of a crime, and it doesn't matter how
19 serious the offense might be, every person accused of a crime
20 is always presumed innocent of the charge and that presumption
21 of innocence remains with any defendant, as it does with this
22 defendant, from the time that he is placed under arrest and
23 throughout the course of the criminal process and even
24 throughout the course of the actual trial in the case, that
25 presumption of innocence will be with Mr. Price even as you go

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1 back at this trial's conclusion to begin with your
2 deliberations in the case, that presumption of innocence will
3 be with him in that jury room and it'll be with him forever
4 unless you twelve jurors determine that he's no longer
5 entitled to the presumption of innocence. In other words,
6 after you have, after you have carefully considered all the
7 evidence in the case and from that evidence you decide the
8 facts and after deciding the facts you apply the law that I
9 will have provided ya, if you twelve jurors unanimously
10 determine that his guilt as to an indictment has been proven
11 beyond a reasonable doubt then he would no longer be entitled
12 to the presumption of innocence as it relates to that
13 particular indictment but it's only if, unless and until you
14 are satisfied of his guilt beyond a reasonable doubt that the
15 presumption of innocence would no longer be applicable.

16 Now the way the trial will proceed is that in a moment
17 the lawyers are going to address you in what are called
18 "opening statements." There are two occasions in the trial of
19 a case where lawyers are permitted to address the jury and
20 that is at the beginning of the trial before any evidence is
21 introduced then again at the conclusion of the trial after all
22 of the evidence has been received but understand and keep in
23 mind that the lawyers' statements are not evidence and you're
24 not permitted to consider their statements as evidence. Their
25 statements will not be the basis of any decision that you make

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1 and that's because the lawyers aren't witnesses to anything,
2 they don't know anything about this case of their own personal
3 knowledge or perception like witnesses will be testifying to.
4 The lawyers will not be testifying under oath, they won't take
5 the witness stand, they won't be subjected to direct and
6 cross-examination like each of the witnesses will be and so
7 whatever they tell ya is not to be considered by you as
8 evidence in the case but you should listen to what the lawyers
9 have to say because their statements do serve a purpose. The
10 opening statements will serve to provide you with a basic
11 understanding as to what this case is about from both the
12 perspective of the State as well as from the defense so that
13 you'll have some context in which to place the evidence that
14 we will be receiving shortly thereafter.

15 The closing statements occur after all of the evidence
16 has been received and again, while those statements are not
17 evidence it does afford the lawyers an opportunity to discuss
18 with you the evidence that you have seen and heard during the
19 trial and through that discussion each will have an
20 opportunity to try to persuade you or to convince you that the
21 evidence in the case does or does not support a particular
22 decision and as I've stated it's in between the opening and
23 the closing statements of the lawyers that we actually receive
24 the evidence in the case upon which you will base your
25 decision.

MOTIONS AND MATTERS

1 The State, as you've been told, has the burden of proof
2 and therefore the State has an obligation to present evidence
3 because if they don't present any evidence there's nothin' for
4 you to base a conviction upon and you'd have to return a
5 verdict of not guilty so the State has a burden of presenting
6 evidence and therefore they go first in that presentation.
7 Once the State has concluded in that presentation of evidence,
8 a defendant has the same opportunity to testify and to present
9 evidence in the case if he or she wishes to do so but a
10 defendant is never under any obligation to testify or present
11 evidence. The burden is never upon a person accused of a
12 crime to prove that they are not not guilty or to prove that
13 they are innocent because in some cases that might not even be
14 a possibility. The burden's always upon the State because
15 they've brought the accusation to prove a defendant's guilt
16 beyond a reasonable doubt so the State does have an obligation
17 to present evidence, a defendant has no obligation to prove
18 anything. And in a case where a defendant doesn't testify or
19 doesn't call any witnesses or doesn't produce any evidence,
20 you can't hold that against him or her, you can't consider it
21 any way, you've got to base your decision upon the evidence
22 that is presented during the trial. So after both, if they
23 wish to, present evidence and you hear the final summations of
24 the lawyers I'll then give you a detailed instruction on the
25 criminal law generally and on these specific crimes

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1 particularly, after that you'll be asked to go back and begin
2 with your deliberations and through that process, through the
3 exercise of good judgment and common sense conscientiously
4 apply it to the evidence in the case, you're gonna be called
5 upon to decide the facts. In other words, you'll determine
6 what you believe, if anything, happened back on January the
7 13th of 2007 as it relates to these allegations in this case
8 and then once you decide those facts in your exercise of good
9 judgment and and common sense you'll then apply the law that I
10 will have given you and you will determine whether or not the
11 defendant has been proven guilty beyond a reasonable doubt and
12 if he has then your verdict is guilty, if he has not then your
13 verdict is not guilty.

14 Now all you're gonna be asked to do is to pay careful
15 attention throughout the course of the trial. There may be a
16 number of witnesses that are called to testify. Sometimes
17 there's a conflict in testimony, sometimes that conflict
18 relates to a material fact that has to be determined in order
19 for you to arrive at a decision in a case and where there is a
20 conflict in testimony as it relates to material facts that
21 have to be determined that's your prerogative, you have to
22 decide what's the most credible testimony and evidence as it
23 relates to that fact that's how you determine the facts and
24 therefore you can believe everything that a witness testified
25 to, you may choose to believe none of it or you may believe a

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1 portion of one witness's testimony and reject some other
2 portion of that same witness's testimony, you can believe one
3 as opposed to several or several as opposed to one but you
4 have to pay careful attention while the witnesses are
5 testifying so that at the trial's conclusion you'll be in a
6 proper position to be able to fairly and competently evaluate
7 and assess the witness's testimony in light of not just each
8 of the witness's testimony but in light of all the testimony
9 and all of the evidence in the case. And of course it's
10 important that you keep an open mind throughout the course of
11 the trial and that just means that you are not to begin making
12 up your minds or formulating your opinions as to what you
13 think the ultimate decisions in the case ought to be until all
14 all of the evidence has been received, until I've instructed
15 you on the law that's applicable and until you've been asked
16 to then go back and begin with your deliberations because
17 that's the process that has been designed over two hundred
18 plus years to allow you to arrive at a fair and just decision
19 in a case so I do wanna thank you in advance for your
20 participation as well as for your careful attention. I would
21 ask that you please give give the lawyers your attention now
22 as they give you their opening statements. Mr. McCarty.

23 MR. MCCARTY: If it may it please the Court, Your Honor.
24 January 13th 2007 if you're like most of us, you don't even
25 recall what happened that day, you have to think really hard

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1 what was I doing on January 13th 2007, what even happened to
2 me on January 13th 2007 but January 13th 2007 these two ladies
3 that are seated right here behind me at this (indicating)
4 table, Dawn Henson, Pamela Massey, was the most important day
5 of their lives. This day they got into a fight for their
6 lives, a day they will never forget despite how hard they want
7 to, how much they try to, it will live with them from that day
8 forward. On that day they were attacked, they were cut, they
9 were stabbed, they were slashed by that man sitting right here
10 at this (indicating) table, Randall Price, the defendant in
11 this case. Pam and Dawn are coming here this morning, they're
12 gonna offer to ya their testimony about what happened, their
13 version of the story, what happened that night when they were
14 attacked by that man. They're gonna tell you what was going
15 on, what was going on prior to the attack at the time of the
16 attack, what happened after the attack. They're gonna talk to
17 you about things that probly most of you have never been
18 disposed to and there's no beating around the bush about it
19 but they're gonna talk about drugs, they're gonna talk about
20 partying that night, but we're not here to judge that, we're
21 not here to make a a finding of fact regarding that lifestyle
22 or what they were choosing to do that night, you're here
23 because the facts of this case that we're presenting is
24 against that (indicating) man for attacking them, for cutting
25 them, for slashing them and stabbing.

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1 Pam and Dawn or if I can when the judge a moment ago was
2 giving you his opening remarks and telling you about what was
3 gonna happen in the trial, he mentioned that the defendant in
4 this case is presumed innocent, innocent until proven guilty
5 and that's guaranteed by the Constitution, it's guaranteed to
6 me, to you, to anyone in this courtroom that when you're
7 charged with a crime you're innocent until proven guilty but
8 ya know there's another thing that we live with here in
9 America and and we say it right in the Pledge of Allegiance
10 and it's, And justice for all, it's not and justice for people
11 we like, it's not and justice for the rich, for the poor, for
12 the black, the white, the men, the women, it's and justice for
13 all that's who it is and that's what we're seeking in this
14 trial is justice for Pam, for Dawn for being attacked by the
15 defendant.

16 Now prior to coming in here today or yesterday actually
17 when you were selected as jury, you may have had some
18 preconceived notions about a trial, I'm assuming that most of
19 you have never sat on a trial, either a civil trial or
20 especially a criminal trial in general sessions. Ya know
21 there's some differences between what happens here and what
22 happens on television, what happens in the movies, this is
23 real life. This has affected two real people, not actors or
24 actresses that are coming forward, these are real folks, real
25 victims and this is a terribly important case to them and also

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1 unlike the movies,, unlike TV, I'm gonna mess up while I'm
2 talking to you, I'm gonna stumble over my words, I don't have
3 a director standing behind me yelling "Cut" or somebody to
4 feed me a line, I'm sure at points Mr. Wheelchel's gonna object
5 to what I'm asking or saying but that's what makes this real
6 and un -- unlike TV, unlike the movies, it's not gonna fit
7 into an hour with commercial breaks. This tri -- this trial's
8 gonna last a little while, I don't think it'll last as long as
9 maybe the O.J. Simpson trial, I expect we'll either be done
10 today or maybe even in tomorrow, but it will come to an end so
11 it does have that in common with what you see in TV and the
12 movies and at the end just like the judge told ya we'll have
13 the opportunity to come back up before you one more time and
14 speak with you about what we feel was proven to you in this
15 case.

16 The judge has told you that the charge of this case is
17 assault and battery with the intent to kill and it's against
18 both of those ladies sittin' over there (indicating), one
19 count for each one of them. Assault and battery with the
20 intent to kill you may or may not know what the difference is
21 and the judge will explain the law to you again but I just
22 kinda wanna give you a simple explanation. An assault is,
23 best example I can kinda give you immediately, is if you draw
24 your hand back like you're gonna punch somebody and you're
25 standing close to them it causes that person to be in fear

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1 that they're about to get punched, that's an assault. The
2 battery (demonstrating) is when you connect. It's that making
3 of physical contact and so it's really two parts: an assault
4 and a battery. A lotta people say assault and have it play
5 out for what it means to being a battery as well but there's
6 kinda two prongs to that an assault and a battery, last part
7 of that is with the intent to kill. I don't think I need to
8 explain that to you; common sense should probably tell you
9 what that is and that's the most important thing that you as
10 jurors have is common sense, it's your every day experiences,
11 your education, your work experience, who ya live with, who
12 you're friends with, your family, it's all those things that
13 make you who you are, make you able to determine things, make
14 you able to judge things in life, common sense, and that's
15 what you'll have to use when you apply the testimony you may
16 hear, any evidence or exhibits that may enter -- be
17 introduced, apply those to this case to reach your verdict and
18 like I said at the end we'll have one more opportunity to come
19 up before you and at that time I will ask you what I'm gonna
20 tell you now is that I believe that once you've heard all the
21 testimony, you see all the evidence that we presented to you
22 that you'll be able to find that the State will have proven to
23 you beyond a reasonable doubt that that man (indicating),
24 Randall Price, attacked, stabbed, cut those two women over
25 there (indicating) on the night of January 13th 2007 beyond a

OPENING STATEMENTS

1 reasonable doubt. Thank you.

2 THE COURT: Mr. Whelchel.

3 MR. WHELCHER: May it please the Court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. WHELCHER: Madam forelady, ladies and gentlemen of
6 the jury, my name is Dick Whelchel. I represent, stand up
7 Randall; represent my client Randall Price. Never ceases to
8 amaze me that the government stands here and tells you that
9 the preliminary charge the judge gave ya goes over some of the
10 facts that and then at the end of their statement or opening
11 statements to you they ask you to convict my client after the
12 judge has already told you that everybody that sits at that
13 table is presumed innocent. Now the reason they're presumed
14 innocent is, as he's told ya already, we don't require in this
15 country as other countries do people to prove their innocence,
16 what we require, and have for a couple hundred years now, what
17 we require from this country and this state is that the people
18 who bring the charge against you, the people who level the
19 charge against you we require them to prove you are guilty.
20 May I, Your Honor?

21 (Whereupon, the defense attorney approached the bench and
22 was handed the indictments.)

23 MR. WHELCHER: These are the indictments and basically
24 all that is is much like the umpires play ball at the
25 beginning of a baseball game; without indictments there is no

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1 trial, they have no evidentiary value whatsoever, they let my
2 client know, as if he didn't already once he was arrested,
3 what they claim he did and they're just like each other except
4 the alleged victims' names are changed but they claim January,
5 on January 13th of 2007, four plus years ago, with malice
6 aforethought my client committed an assault and battery
7 against these two ladies by stabbing them with the intent to
8 kill 'em and as the judge has told you my client enters a plea
9 of not guilty which simply means, I did not do that, when that
10 happens or actually always they have to prove that the crime
11 happened, they have prove it to you, individual members of the
12 jury and a collective body of twelve, beyond a reasonable
13 doubt, they have to prove to you that this stabbing that took
14 place was an intentional act, was an act taking place with the
15 intent of that man to kill those women. Not guilty. It's not
16 until today in the process of this trial does Randall Price
17 get to say what happened. When that indictment's handed down,
18 it goes to the grand jury, you don't get to go, I don't get to
19 go. All that happens with the grand jury is they tell the
20 grand jury what evidence they got, the grand jury decides
21 whether or not there should be a trial but they're claimin' he
22 tried to kill two women, he says he didn't, of course there
23 should be a trial and here we are. It is imperative in this
24 case for you to remain objective, for you to listen carefully
25 and for you to ask yourself one simple question, well a couple

OPENING STATEMENTS

1 of questions: Why? Why?

2 You're gonna hear from the prosecution witnesses that
3 they were all there together partyin', drugs were involved, no
4 question about that, according to them my client tries to kill
5 the two women involved. You're probly asking yourselves why
6 already but you gotta remember something in this situation and
7 in every situation there's no burden whatsoever on the
8 defendant, no burden whatsoever on the person seated at this
9 (indicating) desk. The burden of proving to you beyond a
10 reasonable doubt that this happened the way they say it
11 happened lies with this (indicating) table, with the
12 government, it's the way it was when I was a prosecutor, it's
13 the way it's always been.

14 When Randall Price arrived at the party and the party's
15 goin' on and everything's fine, great, but when the people at
16 the party decide you're not leavin' with that money and we're
17 taking it from ya, the party has stopped; and when people come
18 at you with weapons, you have the right to defend yourself,
19 doesn't matter if they're men or women, you have the right to
20 defend yourself. Thank you.

21 THE COURT: Mr. McCarty.

22 MR. MCCARTY: Thank you, Your Honor. May it please the
23 Court. The State would call Dawn Henson to the stand.

24 JENNIFER DAWN HENSON,
25 having been first duly sworn, testified as follows:

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: May we approach?

2 THE COURT: (No verbal response.)

3 (Whereupon, a bench conference was held off the record.)

4 DIRECT EXAMINATION BY MR. MCCARTY:

5 Q. Dawn, if you will, I need you to speak up loud enough so
6 that I can hear you way back here, okay, that way these folks
7 over here (indicating) will be able to hear what you're
8 saying. Can you hear me fine?

9 A. Um-hum. Yes, sir.

10 Q. Alright. Alright, if you will, what's your full name?

11 A. Jennifer Dawn Henson.

12 Q. But you go by Dawn, is that correct?

13 A. Yes, sir.

14 Q. Okay. Dawn, where do you live at right now? Where are
15 you currently living at? Are you living in Spartanburg
16 County, I'll put it to you that way?

17 A. No, sir.

18 Q. Have you moved out of the state?

19 A. Yes, sir.

20 Q. How long have you lived out of the state?

21 A. Three or four years.

22 Q. Okay. Back in 2007 though were you livin' in Spartanburg
23 County?

24 A. Yes, sir.

25 Q. Where were you living at at that time?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. 110 New Cut Road.

2 Q. Was was it off of Wingo Heights?

3 A. Wingo Heights Road yes, sir.

4 Q. Okay. And that's off of New Cut Road, am I right?

5 A. Yes, sir.

6 Q. I'm gonna turn this (indicating) on; while I'm doing this
7 I'll ask you a few more questions.

8 (Whereupon, defense counsel examined the exhibit.)

9 MR. MCCARTY: If I may approach the witness, Your Honor.

10 THE COURT: (No audible response.)

11 BY MR. MCCARTY:

12 Q. Dawn, I'm showing you what's marked as State's Exhibit
13 No. 12. Can you tell the jury what it is I just handed ya?

14 A. It's a map of the street where I was currently livin'.

15 Q. Back in 2007?

16 A. Yes, sir.

17 Q. And that was Wingo Heights Road?

18 A. Yes, sir.

19 MR. MCCARTY: Your Honor, at this time the State would
20 ask to admit admit State's Exhibit No. 12.

21 MR. WHELCHER: No objection, Your Honor.

22 MR. MCCARTY: Thank you.

23 THE COURT: Admitted.

24 (State's Exhibit No. 12, Google Map, admitted into
25 evidence.)

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: May I publish this to the jury?

2 THE COURT: (No audible response.)

3 (Whereupon, the exhibit was published to the jury on the
4 overhead projector.)

5 BY MR. MCCARTY:

6 Q. Dawn, I'm doing this so really the jury can get a feel
7 for where we're talking about, zoom in here a little bit.

8 THE COURT: Wait just a minute before ya do that. Let
9 let's move that rope over there (indicating).

10 THE BAILIFF: This way?

11 THE COURT: Yeah, let's move that and ya'll can move down
12 one that'll help ya a little bit better to see.

13 (Whereupon, the jury panel changes seats in the jury
14 box.)

15 BY MR. MCCARTY:

16 Q. This is a just a map from Google Maps, right, and you can
17 see at the top there it said Wingo Heights Road and we'll zoom
18 in just so we can see where we're talking about a little bit.

19 THE COURT: Ms. Henson, let me ask if you'll move that
20 chair up close to that microphone because so far I haven't
21 heard anything and use that microphone to speak into.

22 MS. HENSON: Okay.

23 BY MR. MCCARTY:

24 Q. Dawn, can you see the map behind you?

25 A. Yes, sir.

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MRS. MCCARTY

1 Q. We're talkin' this is Wingo Heights Road here

2 (indicating), am I correct?

3 A. Yes, sir.

4 Q. This (indicating) is New Cut Road?

5 A. Yes, sir.

6 Q. And the property where you lived at was it closer up to
7 the intersection of New Cut Road and Wingo Heights Road?

8 A. Yes, sir.

9 Q. Alright. How long did you live there, do you recall?

10 A. I have lived there for I'd say about fifteen years
11 maybe.

12 Q. Do you remember the address you lived at?

13 A. It's [REDACTED] Road.

14 Q. Back in 2007 were you neighbors, either immediate
15 neighbors or neighbors down the street from the defendant?

16 A. Yes, sir.

17 Q. How far away from you did Mr. Price live?

18 A. I think it was like 65 yards.

19 Q. Okay. So relatively close there, am I right?

20 A. Right.

21 Q. The houses where we're talking about out on Wingo Heights
22 Road is that farm country out there where the houses are
23 spread far apart?

24 A. No, sir.

25 Q. Is it a relatively close spacing of houses?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Yes, sir.

2 Q. Dawn, let me ask ya this and it's gonna be just an odd
3 question but that house that you lived at at [REDACTED]
4 Road is that -- it's in the City of Spartanburg, is it also in
5 Spartanburg County?

6 A. I'm thinkin' it is.

7 Q. Okay. How long had you known the defendant prior to the
8 night of January 13th 2007?

9 A. Really not very long at all but I'm not sure.

10 Q. You don't remember an exact time?

11 A. No, sir.

12 Q. Okay. Dawn, you were married at the time, am I right?

13 A. Yes, sir.

14 Q. What was the guy's name you were married to?

15 A. Dewayne Henson.

16 Q. And Dewayne lived with ya there at that house?

17 A. Yes, sir.

18 Q. Had you ever hung out with the defendant either at his
19 house or him at your house prior to the night of January
20 13th?

21 A. Yes, sir.

22 Q. So you had known him? Did you -- would you have at that
23 time considered Mr. Price a friend or a friend of your
24 family's?

25 A. Yes, sir.

JENNIFER DAWN HENSON DIRECT EXAMINATION BY MR. MCCARTY

1 Q. I wanna talk about the incident on the night of January
2 13th, the night when you were attacked. Were you with the
3 defendants?

4 A. Yes, sir.

5 Q. Tell the jury, if you will, what you were doing that
6 evening that led up to the attack and we don't have to go into
7 two days ahead a time or anything like that but just what was
8 going on that evening.

9 A. We had, me and my husband was sittin' around, we had
10 already started doin' what we was doin'.

11 Q. And what is it that you were doin'?

12 A. We was partyin'.

13 Q. Okay, and we talk about partyin', we talkin' about
14 drinking?

15 A. Well a little bitta drinkin' but mostly drugs.

16 Q. What type of drugs are you talkin' about?

17 A. Crack.

18 Q. So you're saying that in January 13th 2007 you, yourself,
19 were doin' crack?

20 A. Yes, sir.

21 Q. Alright. You were doing it at your home on Wingo Heights
22 Road?

23 A. Yes, sir.

24 Q. So you had started to party, what else kinda happened
25 throughout the evening there?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Well it was just me and him to begin with.

2 Q. When you say you and him, are you talking your husband,
3 Dewayne?

4 A. Yes, sir.

5 Q. So you and Dewayne were there just havin' a party. Did
6 anybody come over to your house?

7 A. The defendant come over with two other people.

8 Q. Do you know about or approximately what time that was
9 when they came over?

10 A. No, sir.

11 Q. It was dark outside?

12 A. Seems like it was dark outside.

13 Q. So they hadn't been there since lunch the nex -- the day
14 before or anything like that?

15 A. No, sir.

16 Q. So it was up in nighttime when they came over. Do you
17 recall Pam Massey coming over to your house?

18 A. Prior?

19 Q. Well that night. Do you recall when she came over?

20 A. She came over that night too.

21 Q. Had you ever met Pam before that night?

22 A. No, sir.

23 Q. Who did Pam come with, do you recall?

24 A. Yes, sir, but I don't remember his name.

25 Q. Okay. How long where's it where you were there, Pam was

JENNIFER DAWN HENSON -- DIRECT EXAMINATION BY MR. MCCARTY

1 there; and the defendant was there? How long were you all
2 together at your home?

3 A. A pretty good while.

4 Q. A couple hours you think?

5 A. Or or more.

6 Q. Alright. During the course of that night, did you,
7 yourself, ever get into an argument with the defendants?

8 A. Nobody argued.

9 Q. Was there -- what was everybody doin' there?

10 A. Playin' cards, partyin' ---

11 Q. Alright.

12 A. --- laughin', talkin'.

13 Q. So it was a good environment.

14 A. Good environment.

15 Q. No one -- no no tense emotions with anybody?

16 A. No, sir.

17 Q. Nobody had a chip on their shoulder, nobody was ---

18 MR. WHELCHEL: Objection, Your Honor. Let him ask the
19 question; he's leading the witness, Your Honor.

20 THE COURT: Well don't lead her.

21 BY MR. MCCARTY:

22 Q. Dawn, when the -- when this attack occurred, let me get
23 to that, where were you at?

24 A. Sittin' at the table playin' cards.

25 Q. And that's at your house still?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. Yes, sir.
- 2 Q. Who was there when the attack occurred?
- 3 A. It was me, it was Pam Massey and it was the defendant.
- 4 Q. When was Dewayne gone and the other folks that may have
5 arrived earlier in the evening?
- 6 A. To get more drugs.
- 7 Q. So they left the house.
- 8 A. Right.
- 9 Q. So the three of you: you, Pam and the defendant were
10 there by yourselves?
- 11 A. Right.
- 12 Q. Approximately how long were you together before this
13 happened?
- 14 A. I don't recall really the the time. I'd say about maybe
15 they were gone for about, they'd left for about forty-five
16 minutes I guess when the attack occurred.
- 17 Q. So not a terribly long amounta time.
- 18 A. No.
- 19 Q. During that period of time when you were left there with
20 just the defendant and Pam, did you get in a -- was there any
21 argument that you witnessed?
- 22 A. None.
- 23 Q. Did you hear anyone yelling?
- 24 A. No.
- 25 Q. If I may just one second here.

JENNIFER DAWN HENSON DIRECT EXAMINATION BY MR. MCCARTY

1 (Whereupon, defense counsel examined the exhibits.)

2 MR. MCCARTY: If I may approach, Your Honor.

3 THE COURT: (Nodded in the affirmative.)

4 BY MR. MCCARTY:

5 Q. Dawn, I'm gonna show you what's marked here State's
6 Exhibit Number 5. Do you recognize that?

7 A. That is my back door to my mobile home.

8 Q. And your mobile home that's the house we're talking about
9 at [REDACTED]?

10 A. Yes, sir.

11 Q. And, Dawn, there's a back door and is there a door on the
12 other side of the trailer as well?

13 A. Yes, sir.

14 Q. You, and you call one front door and one the back door,
15 am I right?

16 A. Yes, sir.

17 Q. Show you what's marked as State's Exhibit No. 6. Do you
18 recognize that?

19 A. Yes, sir, that's my kitchen.

20 Q. Inside of the home there?

21 A. Inside of the home.

22 Q. Dawn, I'm gonna show you State's Exhibit Number 7.
23 What's that?

24 A. That is my table where we were sittin' at partyin'.

25 Q. And then this is just State's Exhibit No. 8.

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. That's the cards, the drug paraphernalia.

2 Q. And the table as well?

3 A. The table.

4 Q. And, Dawn, are all these pictures do they fairly and
5 accurately describe how your home, your kitchen looked like
6 the night the attack occurred on January 13th 2007?

7 A. Yes, sir.

8 MR. MCCARTY: At this time, Your Honor, I'd ask that
9 State's Nos. 5, 6, 7 and 8 be admitted.

10 MR. WHELCHEL: No objection.

11 THE COURT: They're admitted.

12 (State's Exhibit Nos. 5, 6, 7 and 8, photographs,
13 admitted into evidence.)

14 MR. MCCARTY: May I publish these, Your Honor?

15 THE COURT: You may.

16 MR. MCCARTY: Thank you.

17 BY MR. MCCARTY:

18 Q. Dawn, this is State's Exhibit No. 5 I put up there for the
19 jury to view. This is what you said was the home that you
20 lived in on Wingo Heights Road, am I correct?

21 A. Yes, sir.

22 Q. And it's a trailer, am I right?

23 A. Yes, sir.

24 Q. Dawn, in State's Exhibit No. Sev -- or 6 rather, you
25 described this as the kitchen inside your home.

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Yes, sir.

2 Q. That's (indicating) a kitchen table, the countertop, I'm
3 gonna use a pointer, is this the extension of your kitchen
4 over in this area here (indicating)?

5 A. Yes, sir.

6 Q. Would you find your sink, your stove, anything like that
7 in this area over in here (indicating)?

8 A. Yes, sir.

9 Q. I show you what's marked and what you've identified as
10 State's Exhibit No. 7. You said that was itself kitchen
11 table, am I correct?

12 A. Yes, sir.

13 Q. And then this was just a close-up shot State's Exhibit
14 No. 8. Those were the items you said that you had that were
15 on the table that night.

16 A. Yes, sir.

17 Q. Are those (indicating) playing cards?

18 A. Yes, sir.

19 Q. Is that (indicating) a razor blade?

20 A. Yes, sir.

21 Q. What is this item over in here (indicating)? Do you
22 recognize what that is?

23 A. No, sir.

24 Q. Dawn, you admitted that you and your husband, others were
25 doin' crack, am I right?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Yes, sir.

2 Q. Alright. Dawn, when this occurred you said, you stated a
3 minute ago you were alone with Pam and the defendant, am I
4 right?

5 A. Yes, sir.

6 Q. Where were you at when all this was going on?

7 A. Me and Pam was sittin' at the table playin' cards and the
8 defendant was playin' with us too a little bit.

9 Q. So the three of you'd been playing cards.

10 A. When they had left. When my husband and the other guy
11 had left, we sat down and played cards.

12 Q. Were you playin' for money?

13 A. No.

14 Q. Were you playin' for drugs?

15 A. No.

16 Q. Were you playin' for car titles?

17 A. No.

18 Q. For anything?

19 A. Just for fun.

20 Q. Just for fun.

21 A. Just to wait on them to get back.

22 Q. Was there any argument over a hand in the card game?

23 A. No.

24 Q. When the attack first occurred, you stated you were
25 seated at the table; ---

JENNIFER DAWN HENSON -- DIRECT EXAMINATION BY MR. MCCARTY

1 A. Right.

2 Q. --- was the defendant seated at the table with you?

3 A. Yes.

4 Q. Did he ever get up or leave the table?

5 A. Yes.

6 Q. Tell the jury in your own words what happened from that
7 point on if you will.

8 A. Like I said, we was sittin' down playin' cards, he got
9 tired a playin' cards so he stood up and he stood behind Pam
10 and me and Pam continued to play cards ---

11 Q. Okay.

12 A. --- and next thing I know he cut Pam in (indicating
13 throat).

14 Q. Did you ever see him with a knife?

15 A. No.

16 Q. Did you, earlier in the evening did you see him with a
17 knife on his hip or in his pocket like a pocket knife maybe?

18 A. No.

19 Q. Did he walk over into your kitchen and pull a knife out
20 of one of the drawers?

21 A. No.

22 Q. When this ha -- happened did you provoke it in any way?

23 A. No.

24 Q. Did you say something inflammatory to him?

25 A. No. Mostly me and Pam carried on a conversation.

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 Q. So when he stood up and got behind Pam before the attack
2 occurred, short period a time, long period a time?

3 A. A short period a time.

4 Q. Okay. Do you recall who was attacked first, you or
5 Pam?

6 A. Pam.

7 Q. Do you remember seeing Pam be attacked?

8 A. Yes.

9 Q. When you were attacked, how did it happen? what did he
10 do?

11 A. Well Pam had -- I seen what he had done to Pam and I
12 can't remember what she had said to him but she grabbed her
13 throat and ran out the the front door.

14 Q. Now just 'cuz we're talkin' about a trailer just so
15 everybody understands a little bit would you have a door maybe
16 on this (indicating) side of the trailer and then one on this
17 (indicating) side of the trailer on opposite sides?

18 A. Yes, sir.

19 Q. So Pam ran out one door, ---

20 A. Yeah.

21 Q. --- the door on this, closest to this (indicating) side
22 of the picture?

23 A. Right.

24 Q. Okay. What happened with you and the defendant at that
25 point?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. When I seen what he did with her, and she had already ran
2 out the door, I looked up 'cuz I looked to see where she ran
3 and then I looked back and I looked up at him and he was
4 smilin' holdin' a knife.

5 Q. Is that the first time you saw the knife?

6 A. Yeah, because when he cut her it was quick.

7 Q. So you didn't know that he had somethin' in his hand,
8 didn't see it?

9 A. Right.

10 Q. How far away was you or how far away was he from you?

11 A. There was a table, my table in between us.

12 THE COURT: Ms. Henson, please be careful of that
13 microphone.

14 MS. HENSON: Okay.

15 BY MR. MCCARTY:

16 Q. So you had the table on opposite side of you ---

17 A. Yes.

18 Q. --- or in between the two of you.

19 A. Right.

20 Q. He had a knife in his hand that you could see, you stated
21 he was smiling.

22 A. Right. We was I guess playin' ring around the roses with
23 my table because I was tryin' to go this (indicating) way and
24 he would block me. He also picked up a a a candle, we had a
25 candle on the table also, I don't know if it's in the picture

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 or not, but we had a candle lit on the table and he had picked
2 it up, threw the candle at me and sprayed, tried to spray
3 potpourri at me to burn me before I'd got from the table. I
4 was still standin' on this (indicating) the back where the
5 wall is, I was still standin' there when he was tryin' to burn
6 me with a candle.

7 Q. Did he ever get to you, get up close to you?

8 A. Yes, while I was runnin' around the table goin' to my
9 back door.

10 Q. And is your back door on the the what I'm gonna call the
11 kitchen side of this picture?

12 A. Right.

13 Q. And so you're saying Pam had run out the front side which
14 is kind of on the table side of this picture.

15 A. Right.

16 Q. You were tryin' to make it to the door on the kitchen
17 side of this picture.

18 A. Right. I I felt like that was the closest door I could
19 go out to.

20 Q. Okay. So as you were tryin' to make out he got you?

21 A. Right, 'cuz my dead bolt was locked on my door and when I
22 went to unlock it he locked it back and as soon as he did that
23 he -- that's when he cut my, the backa my neck ---

24 Q. Alright.

25 A. --- and then I turned around and when I did he tried to

JENNIFER DAWN HENSON P. DIRECT EXAMINATION BY MR. MCCARTY

1 stab me in my rib and I grabbed the knife and I -- he cut me
2 on my two fingers and he punctured my left lu -- collapsed my
3 left lung 'cuz he tried to stab me in the back too but I had a
4 a bulky sweater on ---

5 Q. Um-hum.

6 A. --- and the knife got tangled up in the sweater.

7 Q. Do you recall was it -- do you recall seeing the knife?
8 Was it a large knife like a big Bowie knife?

9 A. No, sir.

10 Q. Nothin' like a sword-style.

11 A. No, sir.

12 Q. A smaller knife?

13 A. Yes, sir.

14 Q. You mentioned that had he cut you across the back of your
15 neck, ---

16 A. Yes, sir.

17 Q. --- stabbed you in the ribs; ---

18 A. Yes, sir.

19 Q. --- did you get cut or stabbed anywhere else?

20 A. Just a little bit on my neck right here (indicating).

21 Q. So you were cut by him on the side of your neck as
22 well, ---

23 A. Right.

24 Q. --- is that correct?

25 (Whereupon, defense counsel examined the exhibits.)

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: If I may approach, Your Honor.

2 THE COURT: (No verbal response.)

3 BY MR. MCCARTY:

4 Q. Dawn, I'm gonna need you to look at these. I'm gonna
5 show you State's Exhibits No. 3 and 4.

6 A. Um-hum.

7 Q. Do you recognize those pictures?

8 A. Um-hum.

9 Q. I need to you stay yes or no, please, ---

10 A. Yes.

11 Q. Is that you in those pictures?

12 A. Yes.

13 Q. Dawn, do they depict an injury?

14 A. Yes, sir.

15 Q. Is that the injury which you've just described to the
16 jury?

17 A. Yes, sir.

18 Q. Dawn, were those pictures taken the night of your
19 attack?

20 A. Yes, sir.

21 Q. And they fairly and accurately depict the nature of the
22 wound of your attack ---

23 A. Yes, sir.

24 Q. --- as tho -- especially with relating to the one on the
25 back of your neck?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Yes, sir.

2 Q. And you stated you were cut on the side of your neck over
3 here (indicating) as well, is that correct, ---

4 A. Yes, sir.

5 Q. --- and stabbed lower down in your body.

6 A. Um-hum. Yes, sir.

7 MR. MCCARTY: Your Honor, the State would ask that
8 State's, what's marked as State's Exhibits No. 3 and 4 be
9 admitted into evidence.

10 MR. WHELCHEL: I didn't hear where they were taken, Your
11 Honor.

12 BY MR. MCCARTY:

13 Q. They were -- Dawn, were these taken that night?

14 A. Yes, sir.

15 Q. Were they taken while you were receiving treatment from
16 the EMTs or prior to that?

17 A. Uh, I'm not sure.

18 Q. Do do you recall were these taken across the street at
19 Mr. Brewington's house?

20 A. From the EMTs ---

21 Q. Where ---

22 A. --- or ---

23 Q. --- where these pic ---

24 A. --- anybody else?

25 Q. Where these pictures were taken did -- were these taken

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 maybe at Mr. Brewington's house or your house that night?

2 A. They wasn't taken at Mr. Brewington's house, no.

3 Q. So may -- they were probly taken at your house or back on
4 your property?

5 A. Yes, sir.

6 Q. Okay.

7 MR. WHELCHER: No objection.

8 THE COURT: They're admitted.

9 (State's Exhibit Nos. 3 and 4, photographs, admitted into
10 evidence.)

11 MR. MCCARTY: Your Honor, if I may publish these to the
12 jury.

13 THE COURT: You may.

14 BY MR. MCCARTY:

15 Q. I'm gonna show you what's marked as State's Exhibit No. 3
16 and you don't have to look at it, you can just -- this is what
17 you told me when we were up there, picture of the wound to the
18 back of your neck and the side of your neck, am I correct?

19 A. Yes, sir.

20 Q. Show you State's Exhibit No. 4, different shot, it's the
21 back of your neck where you -- the defendant cut you, is that
22 correct?

23 A. Yes, sir.

24 Q. Dawn, after he, turn them on Mr. Hipp, Dawn after you
25 were attacked were you able to get out of your house?

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. Finally I was 'yes,' sir.
- 2 Q. Where did you go?
- 3 A. Across the street to my neighbor's.
- 4 Q. Who is your neighbor?
- 5 A. Isaac.
- 6 Q. Mr. Brewington?
- 7 A. Yes, sir.
- 8 Q. Was Mr. Brewington at home?
- 9 A. Yes, sir.
- 10 Q. Where was he at?
- 11 A. He was in his little buildin'.
- 12 Q. So he had a building outside?
- 13 A. Yes, sir.
- 14 Q. Did you run to him?
- 15 A. Yes, sir, and as I was runnin' down my steps I I was
- 16 hearin' Pam already over there hollerin' for help.
- 17 Q. So you saw -- that's the direction you went towards.
- 18 A. Right.
- 19 Q. When you got to Mr. Brewington's, what happened?
- 20 A. Pam was already talkin' to him I think and me and her ran
- 21 and and him went went into the -- his building and, uh, shut
- 22 the door ---
- 23 Q. Okay.
- 24 A. --- to his, to his building.
- 25 Q. When you locked yourself into that building, what was

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 going on?

2 A. Pam had -- he he would -- he had, he had already come
3 across the street after us.

4 Q. And who is "he"?

5 A. The defendant.

6 Q. So he followed you over there?

7 A. Yes, sir.

8 Q. When you were in that building, do you recall seeing him
9 out through a window or through a door?

10 A. Yes, we seen him comin' to the window.

11 Q. Okay. When he got over there, did he ---

12 A. He tried to get in; he busted a window ---

13 Q. Busted a window tryin' ---

14 A. ---outta the ---

15 Q. --- to get in.

16 A. Right, and Pam had moved a little refrigerator to block
17 the door so he couldn't get in.

18 Q. What stopped the defendant from getting into
19 Mr. Brewington's?

20 A. I think he had seen a gun that Mr. Brewington had had.
21 He ---

22 Q. Okay. And, Dawn, at that point was 911 called?

23 A. Yes, sir, by me.

24 Q. And the police came out there?

25 A. Yes, sir.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Okay. Dawn, I believe that's all the questions I have
2 for me right now. If you will, Mr. Whelchel will have some
3 questions just please answer those.

4 A. Okay.

5 CROSS-EXAMINATION BY MR. WHELCHER:

6 Q. The telephone call to the police was that made from a
7 cell phone or regular house phone?

8 A. I think it was made from Mr. Brewington's landline
9 phone.

10 Q. Okay. You didn't have a landline phone in the trailer.

11 A. In my mobile home?

12 Q. Yeah.

13 A. No, sir, we wasn't in my mobile home.

14 Q. I'm sorry, I didn't hear you.

15 A. We wasn't in my mobile home at that time.

16 Q. This place here (indicating).

17 A. Right.

18 Q. Was there a phone in there?

19 A. No.

20 Q. Okay. And you didn't have a mobile phone, ---

21 A. No.

22 Q. --- correct?

23 A. Correct.

24 Q. Okay. Do you recall about what time it was when this
25 attack took place?

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

- 1 A. No, sir.
- 2 Q. Okay. How long had you been doin' crack that day?
- 3 A. Maybe four hours.
- 4 Q. Okay. Were you doing crack that day before Mr. Price
- 5 came to your home?
- 6 A. That same day?
- 7 Q. Yeah.
- 8 A. Yes, sir.
- 9 Q. Okay. And and Dewayne and you were, Dewayne and you were
- 10 doin' crack that day?
- 11 A. Yes, sir.
- 12 Q. Okay, for at least four hours.
- 13 A. At least, yes.
- 14 Q. Okay.
- 15 A. In the privacy of our own home.
- 16 Q. Well I understand that. Do you recall or have any
- 17 recollection how it was that Mr. Price came to be in the
- 18 privacy of your own mobile home?
- 19 A. He came over.
- 20 Q. Was he invited?
- 21 A. We told him he was always invited.
- 22 Q. Okay. Was there a specific invite for that night, if you
- 23 recall?
- 24 A. I don't recall.
- 25 Q. Okay. How long have you and Dewayne -- are ya'll still

JENNIFER, DAWN HENSON, CROSS-EXAMINATION BY MR. WHELCHEL

1 together?

2 A. No, sir.

3 Q. Okay. How long were you and Dewayne together before this
4 incident took place?

5 A. I don't understand the question. That day or for like
6 years?

7 Q. Yeah, how long were ya'll married or seeing each other?
8 What is your relationship?

9 A. We was married for twelve years.

10 Q. Okay, and you're divorced now or ---

11 A. In the process.

12 Q. Okay. Where is Mr. Henson?

13 A. Where is he?

14 Q. Yeah.

15 A. I have no idea.

16 Q. Okay. How big is Mr. Henson?

17 A. How big is he?

18 Q. How tall is he? How much does he weigh?

19 A. He's short. I'd say me and him go eye to eye.

20 Q. Okay, ---

21 A. Um, maybe ---

22 Q. --- how tall are you, ma'am?

23 A. Five four and a half.

24 Q. Okay, so he's the same height as you.

25 A. Right.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Okay. How much does he weigh?

2 A. Maybe about a hundred and forty.

3 Q. Okay. How 'bout this other fellow that came over with
4 Pamela Massey, what was his name?

5 A. I have no idea.

6 Q. First time he'd ever been to your house?

7 A. First time.

8 Q. And he came with who?

9 A. Pam.

10 Q. Okay. Did you know he was coming?

11 A. No.

12 Q. Did you know Pam was comin'?

13 A. No.

14 Q. Okay. Who showed up first Mr. Price or Pam and her
15 friend?

16 A. It seems like they showed up together but I'm not sure,
17 all together, but I'm not sure.

18 Q. Well do you know if Mr. Price knew Pam?

19 A. I don't know.

20 Q. Okay. Do you know if Mr. Price knew the fella that Pam
21 was with?

22 A. I do not know.

23 Q. The fella that Pam was with you don't know his name?

24 A. No.

25 Q. Met him that night for the first time.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHEL

- 1 A. For the first time.
- 2 Q. Can you describe him?
- 3 A. No, 'cuz it's been so long ago. I I can't remember what
- 4 he looks like.
- 5 Q. Okay, well let me ask ya some basic questions. Was he
- 6 taller than you?
- 7 A. Taller than me.
- 8 Q. Okay. Heavier than you?
- 9 A. No, ---
- 10 Q. Okay.
- 11 A. --- slender build ---
- 12 Q. Okay.
- 13 A. --- seems like.
- 14 Q. Was he a black man or a white man?
- 15 A. Black man.
- 16 Q. Okay. You were introduced to him I assume ---
- 17 A. Right.
- 18 Q. --- but you don't recall the name.
- 19 A. No.
- 20 Q. How long after you and Dewayne have been smoking crack is
- 21 it that Mr. Price shows up?
- 22 A. Like I said we'd been smoking for a while that day.
- 23 Q. You just don't know.
- 24 A. Just don't know, not really, no.
- 25 Q. Okay. Did they arrive at approximately the same time?

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 When I say that I mean Dewayne -- I mean Mr. Price and then
2 the other couple; they come in the door together?

3 A. Seems like they came in the door together.

4 Q. But you don't have any recollection whether ---

5 A. Who came first no, sir.

6 Q. Okay, but do you know if Mr. Price knew Pamela Massey?

7 A. I don't know that either.

8 Q. Okay. Had you ever introduced Pamela Massey to
9 Mr. Price?

10 A. No, 'cuz I didn't know Pamela.

11 Q. You didn't know Pamela before that night?

12 A. No.

13 Q. Okay.

14 A. The only person I knew was the defendant.

15 Q. And Dewayne.

16 A. And Dewayne.

17 Q. Okay. Did Dewayne know Pamela Massey and this black
18 fella?

19 A. I don't recall.

20 Q. Okay. Do you remember what day of the week this was,
21 ma'am?

22 A. No, sir. It's been four, five years ago, sir, I can't
23 remember every little detail.

24 Q. Okay. Had you worked any that day at your job?

25 A. I wasn't workin' at the time.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Excuse me?

2 A. I was not working at the time.

3 Q. Okay. How long when this happened had you been
4 unemployed?

5 A. I was a housewife.

6 Q. Okay. So you didn't have a job outside the home where
7 you made your own money.

8 A. Right.

9 Q. Okay. Alright. And whose home was this (indicating)?

10 A. That was mine and my husbands' home.

11 Q. Yours and Dewaynes'.

12 A. Um-hum.

13 Q. Okay. When Dewayne and the black man left to go get more
14 drugs, who was left in the home?

15 A. Me, Pam and the defendant.

16 Q. Okay. Who provided the money for the drugs that you and
17 Dewayne, the cocaine that ya'll were smokin' for that four
18 hours?

19 A. We did.

20 Q. Okay. Where'd Dewayne work?

21 A. He bounced around from job to job. I wanna say at that
22 time he worked for a company, company named Polydeck.

23 Q. The ones that make decks for houses?

24 A. No, this was sumtin' different.

25 Q. Okay. Alright. Did Pamela or the black fellow give you

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 any money towards the drugs or Dewayne any money towards the
2 drugs?

3 A. He didn't give me any. I don't know if he gave him any
4 or not.

5 Q. Excuse me?

6 A. I don't know if he give him any or not.

7 Q. When you say "him", you mean Dewayne?

8 A. Right.

9 Q. Okay. But at some point during the evening Dewayne left
10 with a man he'd never met before to go buy some more
11 drugs, ---

12 A. Correct.

13 Q. --- left you in the home with a woman you'd never met
14 before with Mr. Price who you did know.

15 A. Correct.

16 Q. Okay. And you don't have any idea how long you had been
17 doin' drugs before Mr. Price showed up.

18 A. Not exactly, no.

19 Q. Okay. And after the men left to go get more drugs ya'll
20 started playing cards or continued to play cards? Were you
21 playin' cards already?

22 A. I don't recall if we was playin' cards already. It seems
23 like we was because I think we was -- we continued to play
24 when they left.

25 Q. When you say "we", you mean you and Pamela or you and

JENNIFER DAWN HENSON, -- CROSS-EXAMINATION BY MR. WHELCHEL

1 Pamela and Randall Price?

2 A. Me, Pamela and the defendant.

3 Q. Okay. How long have you known Randall Price?

4 A. It wasn't too long. We was introduced by a girl named
5 Dana Price which is his -- is in his family and I know my
6 daughter and the defendant's daughter has went to school, they
7 used to go to school together and we met up somehow that
8 way.

9 Q. Okay. When you were playin' cards here, -- can you see
10 that (indicating), ma'am?

11 A. Um-hum.

12 Q. Would you cut some lights on over here.

13 (Whereupon, the bailiff complied.)

14 Oh that's better. Which one of these (indicating) two
15 chairs were you seated at, ma'am?

16 A. Well there were also there were four chairs around that
17 table ---

18 Q. Uh-huh (affirmative).

19 A. --- 'cuz I was sittin' against the wall.

20 Q. Uh-huh (affirmative).

21 A. Pam was sittin', she mighta been sittin' beside me where
22 the mirrors are and I think the defendant was sittin' in this
23 chair right here (indicating) and then she got up to exchange
24 chairs -- I mean, to move chair.

25 (Whereupon, a discussion was held off the record.)

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Who was seated in that (indicating) chair, ma'am?

2 A. I think it was Pam if I'm not mistaken because she got up
3 and sat in this chair closest to us, it's ---

4 Q. The chair that is not right there was there?

5 A. Or this one right here (indicating).

6 Q. That (indicating) one?

7 A. That one because she was sittin' -- he was behind her so
8 she had to have been sittin' in that chair.

9 Q. So she was seated in that (indicating) chair.

10 A. Right, and I was sittin' in a chair back against this
11 (indicating) wall that's no longer there.

12 Q. Okay. So you're where there is no chair, Pam's in this
13 (indicating) chair and who's there (indicating)?

14 A. Well see like I said I think it was me on this
15 (indicating) back wall and I think Pam was one time sittin' in
16 that chair closest to the hallway and I think the defendant
17 was sittin' here (indicating) because ---

18 Q. Okay.

19 A. --- when the defendant got up she moved chairs and then
20 me and her were facin' one another and the defendant was
21 standin' up behind Pam.

22 Q. Okay. Turn the lights on.

23 (Whereupon, the bailiff complied.)

24 When the attack Pam took place, you're facing her?

25 A. Um-hum. Yes, sir.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHEELER

1 Q: And Mr. Price according to you is behind her?

2 A. Standin' behind her yes, sir.

3 Q. Okay. And you say she got out and ran out the door.

4 A. Yes, sir.

5 Q. Okay. And then ya'll proceeded to dance around the
6 table.

7 A. Right.

8 Q. How long were you in the house when all that occurred?

9 A. When she ran out the door?

10 Q. How long did it take the two of you to do that dance as
11 you already described?

12 A. I don't recall how long; it goes so fast.

13 Q. Okay. When you ran out the door, you take anything with
14 you? You went out the same door she did?

15 A. No, sir.

16 Q. You went out a different door?

17 A. Yes, sir.

18 Q. Okay. Which door did you go out?

19 A. I went out the you see where those two double doors is
20 right there (indicating) with the glass, there's a little
21 hallway right there, I went out the back door.

22 Q. Okay. And then you went to the neighbor?

23 A. Yes, sir.

24 Q. Okay. You have no idea what kinda time frame there is
25 between Pamela leaving and you leaving.

JENNIFER DAWN HENSON - REDIRECT EXAMINATION BY MR. MCCARTY

1 A. No, sir. Like I said he picked up a candle that was lit,
2 threw it at me, sprayed potpourri at me, tried to burn me with
3 it and he was smilin' with a knife the whole time looking at
4 me smilin'.

5 Q. Okay. Did you take anything with you when you left the
6 house?

7 A. I don't recall taking anything.

8 Q. Okay. So just what you were wearing at the time.

9 A. Right.

10 Q. You have any money with you, ma'am?

11 A. I think Dewayne had money.

12 Q. You didn't have any money.

13 A. I don't think so, no.

14 Q. Okay. You would remember if you had money, correct?

15 A. Right.

16 Q. Do you recall havin' seven hundred (\$700) dollars?

17 A. No, sir.

18 Q. Okay. Thank you, ma'am.

19 A. You welcome.

20 MR. MCCARTY: Just a couple brief questions, Your Honor.

21 REDIRECT EXAMINATION BY MR. MCCARTY:

22 Q. Dawn, your husband Dewayne was working, am I right, ---

23 A. Yes.

24 Q. --- at this time, had a full-time job?

25 A. Yes, sir.

JENNIFER DAWN HENSON - REDIRECT EXAMINATION BY MR. MCCARTY

- 1 Q. Ya'll lived in a home.
- 2 A. Yes, sir.
- 3 Q. Ya had power?
- 4 A. Yes, sir.
- 5 Q. Ya'll had the water turned on?
- 6 A. Yes, sir.
- 7 Q. Do you remember if you had cable television or or direct
- 8 TV, sumtin' like that?
- 9 A. Never did get cable I don't think.
- 10 Q. Okay. You had a television in your house.
- 11 A. Right.
- 12 Q. You you admit to using drugs at that time. You and
- 13 Dewayne were able to buy drugs?
- 14 A. Correct.
- 15 Q. Able to provide food for your family?
- 16 A. Correct.
- 17 Q. Able to live where Dewayne worked without you working, am
- 18 I correct?
- 19 A. Correct.
- 20 Q. And, Dawn, Mr. Whelchel asked you about where you may
- 21 have been seated at the table. Do you remember a hundred
- 22 percent where everybody was seated? At this time today, do
- 23 you remember with a hundred percent clarity where everyone was
- 24 seated?
- 25 A. Not a hundred percent, no.

PAMELA ANN MASSEY -- DIRECT EXAMINATION BY MR. MCCARTY

1 Q. Are you a hundred percent sure though who were the only
2 three people in that house?

3 A. Yes, sir.

4 Q. Thank you. Nothing further.

5 (Whereupon, a bench conference was held off the record.)

6 THE COURT: You may step down.

7 (Whereupon, the witness left the stand.)

8 MR. MCCARTY: Your Honor, -- c'mon. Your Honor, the
9 State would next call Pamela Massey.

10 PAMELA ANN MASSEY, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. MCCARTY:

13 Q. Pam, couple things, speak up loudly so we can hear you.
14 That microphone's right in front of you, everybody needs to be
15 able to hear ya, be careful about it, don't hit it with your
16 hands, okay?

17 A. Okay.

18 Q. Alright.

19 A. Okay.

20 Q. Pam, if you will, just by startin' off what's your full
21 name?

22 A. Pamela Ann Massey.

23 Q. Pam, how old are you?

24 A. Forty-eight.

25 Q. Do you live in Spartanburg County?

PAMELA JANN MASSEY, DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. Yes, sir.
- 2 Q. Are you currently working?
- 3 A. No, sir.
- 4 Q. Are you goin' to school?
- 5 A. I just completed school, a culinary class.
- 6 Q. So you took a culinary class; where'd you take that at?
- 7 A. At the Butterfly Foundation here in Spartanburg.
- 8 Q. So they taught you a little about cookin' and stuff ---
- 9 A. Yeah, ---
- 10 Q. --- like that?
- 11 A. --- a little bit, yeah.
- 12 Q. Were you you tryin' to get a job maybe someplace and ---
- 13 A. Yes, yes. I'm on the waitin' list right now. I'm
- 14 supposed to start Vocational Rehabilitation Monday.
- 15 Q. Great. Back in 2007, Pam, were you living on Wingo
- 16 Heights Road?
- 17 A. No, sir.
- 18 Q. Do you have any connection to Wingo Heights Road?
- 19 A. No, sir.
- 20 Q. Did you know anybody on Wingo Heights Road ---
- 21 A. No.
- 22 Q. --- prior to January 13th 2007?
- 23 A. No, sir.
- 24 Q. Pamela, just cut to the chase here, that night of January
- 25 13th 2007 the testimony from Dawn is that you showed up at her

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 house, is that correct?

2 A. Yes, sir.

3 Q. And it seems that you arrived with another person, did
4 you?

5 A. Yes, sir, two, ---

6 Q. Do ---

7 A. --- of 'em.

8 Q. --- do you recall the names?

9 A. Ro -- the defendant and the guy's name was named Rodney
10 that we rode up there with. I don't know who the driver was.
11 He didn't get out, he just took us to Dawn's house.

12 Q. So you arrived with the defendant and a guy named Rodney.

13 A. Yes, sir.

14 Q. And you knew Rodney prior to that night or ---

15 A. Uh, I had met him, you know, out with other people before
16 several times.

17 Q. Did Rodney introduce you to the defendant or did you know
18 the defendant?

19 A. He introduced me to the defendant.

20 Q. So prior to the night of this attack you didn't know
21 Randall Price from Adam, did you?

22 A. No, sir.

23 Q. Had you -- so you'd only known him a few hours when this
24 attack occurred, am I correct?

25 A. Yes, sir.

PAMELA ANN MASSEY, DIRECT EXAMINATION BY MR. MCCARTY

1 Q. You went to Dawn Henson's house and Dewayne Henson's
2 house, am I correct?

3 A. Yes, sir.

4 Q. What were you doin' while you were there?

5 A. We was partyin' usin' drugs.

6 Q. Were you seated in this kitchen area here (indicating)?

7 A. Yes, sir.

8 Q. Dawn, when you talk or I'm sorry, Pam, when you were
9 talkin' about partyin' and doin' drugs, we're talkin' about
10 crack?

11 A. Yes, sir.

12 Q. How did you get your crack for that party?

13 A. I had my -- when when I -- we came back with the
14 defendant, we was at the place, we left the place where we got
15 our drugs at so I had my drug, I had just gotten my drugs,
16 purchased my drugs before we came back with the defendant.

17 Q. Were you invited into Dawn's house?

18 A. Yes, sir. Evidently, the defendant had met the gentleman
19 that I was with and he had said why don't ya'll come up
20 th -- come with me over to these peoples' house so that's when
21 we proceeded to do so.

22 Q. So you were just along for the ride.

23 A. Yes, sir.

24 Q. Brought your own drugs to the party.

25 A. Yes, sir, I did.

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

- 1 Q. Did you use anybody else's drugs while you were there?
- 2 A. No, sir, I was invited to but I did not.
- 3 Q. Did you steal any drugs from anybody?
- 4 A. No, sir.
- 5 Q. Take any money from anybody?
- 6 A. No, sir.
- 7 Q. Were there drugs being dealt that night in that house?
- 8 A. No, it was more every -- you know, everybody was just
- 9 using, ---
- 10 Q. Okay.
- 11 A. --- there weren't any being dealt there.
- 12 Q. Just a party.
- 13 A. Yes.
- 14 Q. Pam, at some point Dewayne Henson left. Did he leave
- 15 with Rodney?
- 16 A. Yes, sir.
- 17 Q. And he and Rodney went to get more drugs or somethin'
- 18 like that, am I correct, ---
- 19 A. Yes, sir.
- 20 Q. --- to your knowledge?
- 21 A. Yes, sir, from my knowledge.
- 22 Q. Who did that leave in that house that night with you?
- 23 A. Me and Dawn and the defendant.
- 24 Q. And about how long were the three of you together before
- 25 the attack occurred?

17 PAMELA ANN MASSEY DIRECT EXAMINATION BY MR. MCCARTY

1 A. Probly 30 to 45 minutes as Dawn stated.

2 Q. Alright. You don't recall it being a much longer period
3 than that, do you?

4 A. No, sir, it wasn't.

5 Q. During that period of time when it was just the three of
6 ya in the home, what were you doing?

7 A. We were playin' cards like she said to help time go by
8 till they got back. Uh, ---

9 Q. Pam, let me just interrupt ya and, you know, I know you
10 were in here when Dawn testified but tell me from what you
11 said, don't just say, you know, ---

12 A. Okay.

13 Q. --- like Dawn said. I need you to say this is what we
14 were doing, okay? Tell it from your point of view ---

15 A. Okay.

16 Q. --- so we'll do it that way, okay, so ---

17 A. Okay.

18 Q. --- what were you doing?

19 A. I was playin' cards with Dawn and the defendant.

20 Q. Were you seated at this (indicating) table in this
21 picture.

22 A. Yes, sir. Yes, sir.

23 Q. Do you recall with a hundred percent certainty today
24 where everyone was seated at that table the night of January
25 13th?

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Yes, but my version is a little bit different than
2 Dawn's. I mean, it's hard to -- it's been so long it's hard I
3 guess for ---

4 Q. Tell me how you remember it.

5 A. Okay, I'll I'll just start off with and we were playin'
6 cards, uh, he was settin' in the chair goin' down the hall and
7 she was behind the table and I was in the other chair.

8 Q. So you recall Dawn sitting on this (indicating) side of
9 the table?

10 A. She, yeah, she was against the wall.

11 Q. And you recall the defendant sitting in this chair here
12 (indicating)?

13 A. Yeah, to start with he was sitting in that (indicating)
14 one and I was sitting in the one ---

15 Q. Here (indicating)?

16 A. Yes, that one there (indicating), the third one. Okay,
17 he decided to quit playin' cards and he stood up and he
18 proceeded to go behind me.

19 Q. Walk from here (indicating) over into this area here
20 (indicating) ---

21 A. Well when he ---

22 Q. --- in the kitchen.

23 A. Yeah, yeah when he got up and was gonna go behind me in
24 that chair there (indicating) I jokingly said, You might tell
25 Dawn my hand because he was behind seein' my handa cards so I

PAMELA ANN MASSEY -- DIRECT EXAMINATION BY MR. MCCARTY,

1 changed seats over to the one goin' at the glass, at the
2 glass ---

3 Q. From here (indicating) ---

4 A. --- cabinets.

5 Q. --- to there (indicating).

6 A. Yes, sir.

7 Q. When you moved chairs and you said that to the defendant,
8 what happened?

9 A. No sooner than I had sat down he came out with a knife
10 and he said, I'm gonna get you first and he procee -- he had,
11 by the time he finished sayin' it he had already cut my
12 throat.

13 Q. You said he cut your throat.

14 A. Yes, sir.

15 Q. Do you have a scar there today?

16 A. Yes, sir, I do. It went in 2 inches on one side from
17 here (indicating) to here (indicating).

18 Q. He didn't stand behind you and do this (demonstrating),
19 did he?

20 A. No. I assu -- well assumptions don't matter, no. It was
21 a, it was across the table.

22 Q. Remember him comin' at ya like that (demonstrating)?

23 A. Yes, sir.

24 Q. Do you remember seeing him with a knife earlier in the
25 day ---

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. No, sir.
- 2 Q. --- or earlier in the evening?
- 3 A. No, sir.
- 4 Q. Other than that comment did you do anything to Mr. Price
- 5 to provoke an attack?
- 6 A. No, sir.
- 7 Q. Did you pull a knife on him right ---
- 8 A. It ---
- 9 Q. --- before that?
- 10 A. No, sir.
- 11 Q. Did you have a gun?
- 12 A. No, sir.
- 13 Q. Did you threaten him?
- 14 A. No, sir.
- 15 Q. Intimidate him?
- 16 A. No, sir.
- 17 Q. Had the mood in that house prior to that moment been a
- 18 lively mood?
- 19 A. Yes. Everyone had been laughin', havin' a good time.
- 20 There was no arguments, anything. You know, we was just, it
- 21 was just all a good, seemed to be a good environment.
- 22 Q. Just doin' drugs, ---
- 23 A. Yes.
- 24 Q. --- havin' a party.
- 25 A. Right.

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 Q. If I may just one moment.

2 A. Okay.

3 (Whereupon, defense counsel examined the exhibits.)

4 BY MR. MCCARTY:

5 Q. Pam, I'm gonna ask you to look at what's marked as State's
6 Exhibits No. 1 ---

7 A. Okay.

8 Q. --- and No. 2.

9 A. Okay.

10 Q. Pam, is that you in those pictures?

11 A. Yes.

12 Q. Need you to speak up, please.

13 A. Yes, sir.

14 Q. Pam, are these the injuries that you received the night
15 of January 13th 2007?

16 A. Yes, sir.

17 Q. These pictures fairly and accurately depict the wound ---

18 A. Yes.

19 Q. --- that you received?

20 A. Yes, sir.

21 Q. Pam, were these pictures taken that night?

22 A. Yes, sir.

23 Q. Do you recall were they taken either at Dawn's house or
24 over at Mr. Brewington's house?

25 A. They had to be at Mr. Brewington's house 'cuz I never

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 went back over to Dawn's house.

2 Q. Alright. EMT, the medics they were there tryin' to treat
3 you?

4 A. Yes, sir.

5 Q. Alright.

6 MR. MCCARTY: Your Honor, at this time I'd ask that
7 State's Exhibits No. 1 and 2 be admitted into evidence.

8 MR. WHELCHER: No no objection.

9 THE COURT: They're admitted.

10 (State's Exhibit Nos. 1 and 2, photographs, admitted into
11 evidence.)

12 MR. MCCARTY: May I publish them, Your Honor?

13 THE COURT: You may.

14 BY MR. MCCARTY:

15 Q. Dawn, I'm showin' -- or Pam, I'm sorry, if I keep saying
16 Dawn I apologize, but, Pam, ---

17 A. It's okay.

18 Q. --- Pam, I'm gonna put up there what's marked as State's
19 Exhibit No. 1, you don't have to turn around and look at it if
20 you don't want to, you identified it up there.

21 A. Okay.

22 Q. That's a picture of the wound you received from the
23 defendant, am I correct?

24 A. Yes, sir.

25 Q. Show you what's marked as State's Exhibit No. 2, again, a

PAMELA ANN MASSEY DIRECT EXAMINATION BY MR. MCCARTY

1 picture of the wound you received from the defendant, am I
2 correct?

3 A. Yes, sir.

4 Q. He attacked you with a knife?

5 A. Yes, sir.

6 Q. Did you receive any other wounds other than that?

7 A. No, sir.

8 Q. Pam, after he came at ya and as we saw there rip your
9 neck open, ---

10 A. Yeah.

11 Q. --- what did you do?

12 A. I immediately run for the door behind the glass doors
13 down the hall and tri -- just got out the back and I don't
14 know if that's the back or the front but I went out that door
15 there (indicating).

16 Q. So you went out a door.

17 A. Yeah.

18 Q. Once you got outside what were you doin'?

19 A. I ran as fast as I could, that I'm thinkin' please let me
20 be able to get somebody up to call an ambulance and I took my
21 sleeve to my sweatshirt and wrapped it around my neck.

22 Q. You didn't have a cell phone?

23 A. No, sir.

24 Q. Did you see Dawn's neighbor Mr. Brewington?

25 A. Yes, sir, I I seen a light on in there and I beat, I beat

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 on the building and he opened the door.

2 Q. So we're not talking about his house, we're talking about
3 a building outside on his property.

4 A. Yes, sir.

5 Q. When you got into Mr. Brewington, did he let you into the
6 building?

7 A. Yes, sir.

8 Q. Did you explain to him what was going on?

9 A. Yes, I was, I was a -- yes, I was very very ---

10 Q. Frantic is that a word?

11 A. Yes, that's the word.

12 Q. Were you scared?

13 A. Very.

14 Q. How long were you at Mr. Brewington's before Dawn got
15 there?

16 A. Probably it might es -- it might not have been even five
17 minutes.

18 Q. So just momentarily there afterwards.

19 A. Yes, sir.

20 Q. Was all of this goin' pretty fast in your mind?

21 A. Yes, sir. Yes.

22 Q. So you didn't have time to sit there and look at your
23 watch and say, Oh, it's been three minutes, ---

24 A. No, uh-huh (negative).

25 Q. --- it's been a minute and a half?

PAMELA ANN MASSEY DIRECT EXAMINATION BY MR. MCCARTY

1 A. No. As I come out the ba -- out the door that I came
2 out, I could hear them in the trailer, you know, just all
3 kindsa racket, stompin' and stuff broke over where they was
4 fighting, I guess tryin' to or scuffling.

5 Q. Mr. Brewington's buildin' did it have a light on it on
6 the outside of it on the exterior, do you recall?

7 A. I really don't remember. I know I knocked on the door of
8 the house next door to the exterior first and I think it's
9 possible he mighta cut that light on then.

10 Q. Okay. So you saw the light though, ---

11 A. I ---

12 Q. --- ran towards the light?

13 A. --- I think I did. I mighta just been randomly knockin',
14 I'm really not sure.

15 Q. Got lucky that Mr. Brewington was even there.

16 A. Very lucky.

17 Q. And you got lucky why?

18 A. Because if it hadn't been for him we would be dead
19 because I feel sure he woulda, he woulda killed us after,
20 especially after he came, you know.

21 Q. So you left the house that you were just in in Dawn's
22 house, came over to Mr. Brewington's house, am I correct?

23 A. That's exactly right.

24 Q. And I I asked Dawn this question earlier but out there
25 where those houses were it's not big farm country, it's not

PAMELA ANN MASSEY - DIRECT EXAMINATION BY MR. MCCARTY

1 spread out terribly far but is it across the street?

2 A. Yes. Where Mr. Brewington's at?

3 Q. Correct.

4 A. Yes, sir.

5 Q. So you had to run across the street, ---

6 A. Yes, sir.

7 Q. --- had to run to another piece of property ---

8 A. Yes, sir.

9 Q. --- to seek protection?

10 A. Yes, sir.

11 Q. Dawn, after you got in there with Mr. Brewington, you
12 said the defendant came across, you recall if he said or if he
13 did anything once he got over to Mr. Brewington's property?

14 A. I had pushed, it was like she said, a small frigerator
15 down in front the door 'cuz when she said he was comin' I
16 was -- got even more frantic and he put his -- proceeded to
17 put his hand through the window of the door

18 Q. Who's "he"?

19 A. The defendant.

20 Q. Okay. Did Mr. or rather did the defendant at some point
21 run away?

22 A. Yes, at that point he did run away after he did that.

23 Q. And 911 was called?

24 A. Yes, sir.

25 Q. Alright. Pam, if you will, answer any questions

PAMELA ANNE MASSEY: CROSS-EXAMINATION BY MR. WHELCHEL

1 Mr. Whelchel may have for ya, okay?

2 A. Okay. Thank you.

3 THE COURT: Mr. Whelchel.

4 CROSS-EXAMINATION BY MR. WHELCHEL:

5 Q. Who was it that picked you up from your home and took you
6 to this house, ma'am?

7 A. Uh, I wasn't picked up from my home and took to that
8 house.

9 Q. I'm sorry.

10 A. I I -- we had went to a place to get drugs and ---

11 Q. When when you say "we", I need to know who you
12 talking ---

13 A. The person, the guy named Rodney that I was with.

14 Q. That was the black fella that I was asking ---

15 A. Yes, sir.

16 Q. --- you about.

17 A. Yes, sir.

18 Q. What -- you know Rodney's last name?

19 A. I don't. I don't ---

20 Q. How long have you known Rodney before that night?

21 A. Uh, I had seen him off and on for about a year I -- but
22 I've never heard his last name.

23 Q. Did you ever ask him his last name?

24 A. No, sir, it was just in a partyin' environment, it's the
25 only times I'd ever seen him.

PAMELA ANN MASSEY - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Okay. So you and Rodney were where?

2 A. We were getting drugs.

3 Q. Where?

4 A. In Una. It was happened in Una. We met him in Una.

5 Q. Met who in Una?

6 A. The defendant.

7 Q. Okay. Was there anybody else there?

8 A. The driver of the car. I assume the defendant was with
9 the driver. The defendant had talked Rodney into lettin' me
10 and him comin' back to where he was partyin' at or goin' to
11 someone's house so we left with the defendant and the driver.
12 I have no idea who that is.

13 Q. You don't have any idea who the driver of the vehicle
14 was?

15 A. No, sir, I don't.

16 Q. You know what kinda vehicle it was?

17 A. No, sir, it's been so long and it was dark. I I don't
18 know.

19 Q. Okay. What did the driver of the vehicle do once he or
20 ya'll arrived at this trailer?

21 A. He let us out and we went in.

22 Q. Okay. Did he leave?

23 A. Yes, sir.

24 Q. Okay. Well, when you got to the trailer, who was
25 there?

RE: PAMELA ANN MASSEY - CROSS-EXAMINATION BY MR. WHEELER

1 A. Dawn and her husband.

2 Q. Di -- you didn't know him ---

3 A. No, I had never met Dawn or or her husband either.

4 Q. Okay. So the only person you knew prior to that evening
5 was ---

6 A. Rodney.

7 Q. --- Rodney.

8 A. Yes, sir.

9 Q. Okay. How long were you there before Rodney and Dewayne
10 left allegedly to go get more drugs?

11 A. Probably three or four hours.

12 Q. Okay. And what were you taking in that time span,
13 ma'am?

14 A. As for the drugs you're talkin' about, crack cocaine.

15 Q. Okay. How much in that three or four hours did you
16 take?

17 A. I had like, I had like -- well you buy it by the 20s. I
18 probly had three 20s on me when I got there.

19 Q. Okay.

20 A. Now I don't have no idea how much, how much the defendant
21 had.

22 Q. Okay. How 'bout Dawn?

23 A. I have no idea.

24 Q. But you saw ---

25 A. I never saw her drugs. It wasn't like we was settin' out

PAMELA ANN MASSEY - CROSS-EXAMINATION BY MR. WHELCHEL

1 in the open and doin' 'em in the open, ya know, we would go to
2 the restroom or sumtin'.

3 Q. Okay. Wasn't that drugs on the table?

4 A. That was paraphernalia.

5 Q. Oh, okay.

6 A. But I never seen any quantity a drugs or what anybody
7 else had is what I'm sayin'.

8 Q. You only knew what you had ---

9 A. Yes, sir.

10 Q. --- and what Rodney had.

11 A. I have no idea what Rod -- Rodney had. I got my own. Me
12 and Rodney was just traveling together that night.

13 Q. Okay. So after about three or four hours of partyin'
14 with drugs, Rodney and Dewayne decide to leave and go get
15 more.

16 A. Yes, sir.

17 Q. Okay. Was Rodney outta drugs?

18 A. I I assume. I don't know.

19 Q. Was Dewayne outta drugs?

20 A. I don't know that either.

21 Q. Okay. Do you know what day of the week this was,
22 ma'am?

23 A. I have no idea, it's been so long.

24 Q. Okay. Had you worked that day?

25 A. No, sir. I was taking care of a man offa -- over off

PAMELA ANN MASSEY - CROSS-EXAMINATION BY MR. WHEELER

1 Old Bethel Road, that was my employment. I took care of him
2 and I lived there. His mom, his mom and sister that was my
3 employment at the time.

4 Q. Okay. Did they pay you or they just give you a place to
5 live?

6 A. Yes, they gave me \$80 a week plus a place to food and
7 board too.

8 Q. And that \$80 is that what you use to buy your drugs?

9 A. Yes, sir.

10 Q. How much drugs did you buy that night in Una?

11 A. A 60.

12 Q. So you spent 60 of your \$80 ---

13 A. Yes, sir.

14 Q. --- from that week. Okay. So am I correct in assuming
15 ya had 20 left?

16 A. Yes. Yes, but I didn't have it with me, you know, I
17 probly done spent it.

18 Q. Okay. After Rodney and Dewayne leave, ya'll are sittin'
19 around playin' cards, ---

20 A. Yes, sir.

21 Q. --- right, and you did nothing to provoke Mr. Price?

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

23 Q. Nor did Dawn.

24 A. No, sir.

25 Q. And it's your testimony that he just got up, produced a

PAMELA ANN MASSEY - CROSS-EXAMINATION BY MR. WHELCHER

1 knife, cut you and then after you left chased you.

2 A. Yes, sir.

3 Q. Okay. And you didn't have any money on you after you
4 paid for the \$60 for the cocaine?

5 A. No, sir.

6 Q. Thank you, ma'am.

7 MR. MCCARTY: Nothing.

8 THE COURT: You may step down.

9 (Whereupon, the witness left the stand.)

10 THE COURT: Ladies and gentlemen, we're gonna take a
11 short recess. I'll ask you to please go to your jury room.
12 Do not discuss the case in any fashion. You can't discuss it
13 until you're involved in deliberations so please retire, we'll
14 bring you back shortly.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Court's in recess for fifteen minutes.

18 (Whereupon, a recess was taken.)

19 THE COURT: Bring the jury in, please.

20 (The following takes place in the presence of the jury.)

21 THE COURT: Alright, we'll continue with the State's
22 presentation of evidence.

23 MR. MCCARTY: Your Honor, the State would call Isaac
24 Brewington.

25 ISAAC BREWINGTON, having been

ISAAC BREWINGTON: DIRECT EXAMINATION BY MR. MCCARTY

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. MCCARTY:

3 Q. Mr. Brewington, speak up loud enough so I can hear ya
4 back here, try not to mess with the mic too much, okay?

5 A. Okay.

6 Q. Alright.

7 A. Okay.

8 Q. Alright, Mr. Brewington, what's your full name, please.

9 A. Isaac Brewington, no middle name.

10 Q. No middle name?

11 A. No.

12 Q. Mr. Brewington, where do you currently live?

13 A. [REDACTED] Road.

14 Q. And 111 Wingo Heights Road, throw back up State's Exhibit
15 12, that's out there where Dawn Henson used to live, am I
16 correct?

17 A. Yes, sir.

18 Q. Is it across the street from Dawn?

19 A. Straight across.

20 Q. How far across is your house from hers? Is it, let's
21 just use this courtroom as the size, maybe that far apart
22 (indicating)?

23 A. Far -- I'd measure about far as the doors there
24 (indicating), might be a little bit more, not much.

25 Q. Not much more than the length of this courtroom, the

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

1 distance.

2 A. Pretty close just just across the road.

3 Q. How long have you lived out there, Mr. Brewington?

4 A. Twenty years.

5 Q. So you were there on the night of November 13th 2007.

6 A. Yes.

7 Q. Or actually it was in kind of towards the morning that
8 morning, am I correct?

9 A. Yes.

10 Q. What were you doing that morning at at your house?

11 A. I was out back in the back in the building.

12 Q. So you have a building out beside your house?

13 A. Yeah. Yes, sir.

14 Q. What were you doin' out in your building?

15 A. I spent the time out there.

16 Q. Okay, you have a bed, sleep out there?

17 A. Well, yeah, yes, sir.

18 Q. Okay. Why would you sleep out there instead of in your
19 house?

20 A. Well I I do -- I don't all the time just maybe
21 sometimes.

22 Q. Was it hot out there or somethin' or I -- just
23 different ---

24 A. No, it was ---

25 Q. --- place to sleep?

ISAAC BREWINGTON DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. --- it was January.
- 2 Q. Okay, so not hot, so it's not ---
- 3 A. Not hot.
- 4 Q. --- not not better sleeping environment lets say for that
- 5 or anything was it?
- 6 A. It cold.
- 7 Q. Okay. Mr. Brewington, out there in your buildin' do you
- 8 have things somethin' like a refrigerator?
- 9 A. Yes, sir.
- 10 Q. You have a telephone?
- 11 A. I have a phone out there, it didn't work too good but I
- 12 had one at the time, yeah.
- 13 Q. Was it a cell phone or a landline phone? You know what I
- 14 mean?
- 15 A. Where?
- 16 Q. Well ---
- 17 A. You plugged it up.
- 18 Q. You plugged it into the wall?
- 19 A. Yeah.
- 20 Q. So it was the old kinda telephones, right, it's not a
- 21 cell phone like you might carry in your pockets.
- 22 A. No, no, ah, no, sir.
- 23 Q. You had a bed that you slept in out there?
- 24 A. At the time, yeah.
- 25 Q. Okay. Were you awake when Pam Massey came runnin' over

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

1 to your building?

2 A. I was still laid down five o'clock in the morning and my
3 light on the back porch in the house was on in the
4 backyard ---

5 Q. Okay.

6 A. --- and I hear her screamin', hollerin' and goin' on.

7 Q. And that kinda woke ya up a little bit?

8 A. Oh, oh, it woke me up, yeah, and I tan -- turned my light
9 on out there.

10 Q. What happened next?

11 A. If it --- and I I said, Hon, what what in the world's
12 wrong with you, and she ran to my building. She didn't know I
13 was out there. She thought I was in the house I guess.

14 Q. Are you talkin' about Pam?

15 A. Pam. Pam.

16 Q. Did you know Pam before that night?

17 A. Well I I I knew her, you know, pretty well, yeah.

18 Q. Okay. But Pam came over did you see or could you tell if
19 she'd been injured?

20 A. Well when I got up yes, sir, she was cut all to pieces.

21 Q. Blood all over the place?

22 A. Yeah, yeah. Yes.

23 Q. Mr. Brewington, I wanna show ya in just a second.

24 (Whereupon, defense counsel examined the exhibits.)

25 Mr. Brewington, these are State's Exhibits No. 9, 10 and

ISAAC BREWINGTON -- DIRECT EXAMINATION BY MR. MCCARTY

1 11. I'm gonna show you State's Exhibit No. 9. Can you tell
2 the jury what it is I'm showing ya there? It's kinda dark.

3 A. This my house.

4 Q. Is that the building outside of your house?

5 A. Yes, sir.

6 Q. Alright.

7 A. That's outside.

8 Q. Yes, sir, outside the hou -- outside -- your outside
9 building, correct, ---

10 A. Yes, sir.

11 Q. --- the one we're talking about in this case?

12 A. Yes, sir.

13 Q. Mr. Brewington, I'm gonna show you what State's Exhibit
14 No. 10. Is that (indicating) that little refrigerator?

15 A. Yes, sir.

16 Q. Mr. Brewington, State's Exhibit No. 11 could you tell the
17 jury what is it that you're lookin' at there.

18 A. That's the, that's the window brack -- broke out.

19 Q. Is that the door on the fronta your building?

20 A. Yes, sir.

21 Q. Mr. Brewington, is that picture there in State's No. 11,
22 State No. 10 and State's No. 9 is that how your property
23 looked the night or the early morning hours of January 13th
24 2007?

25 A. Yes, sir, ---

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: Your Honor, at this time I'd ask that these
2 exhibits be ---

3 MR. BREWINGTON: --- it's still dark.

4 MR. MCCARTY: Yes.

5 MR. WHELCHER: No objection, Your Honor.

6 THE COURT: What are the numbers?

7 MR. MCCARTY: Your Honor, they're State's Exhibits No. 9,
8 10 and 11.

9 THE COURT: Okay, they're admitted.

10 (State's exhibits Nos. 9, 10, 11, photographs, admitted
11 into evidence.)

12 MR. MCCARTY: Thank you. If I may publish 'em.

13 THE COURT: You may.

14 BY MR. MCCARTY:

15 Q. Mr. Brewington, I'm gonna put up here what we've got
16 marked on State's Exhibit No. 9. It's gonna be dark but maybe
17 we'll be able to see it a little bit. Back up just a little
18 bit. This (indicating) is the building outside on your
19 property as you've described it, am I correct?

20 A. Yes, sir.

21 Q. Can you see it, Mr. Brewington?

22 A. Yes, sir.

23 Q. I'm just gonna use a laser to ask you -- a pointer up
24 here. Is this (indicating) the front door area to your
25 building?

ISAAC BREWINGTON DIRECT EXAMINATION BY MR. MCCARTY

- 1 A: That's it.
- 2 Q. Where is your house in relation to this building?
- 3 A. Well the building's out in the backyard, the house is
- 4 facing the road up pretty close.
- 5 Q. Okay, so is the house off over in to this (indicating)
- 6 direction? As this picture looks, is the house off over here
- 7 (indicating) or over on this side?
- 8 A. No, the buildin's out in the backyard and the house is up
- 9 here (indicating).
- 10 Q. Okay, so it's on back behind the house, directly behind
- 11 it.
- 12 A. Yeah, my house is in front of the buildin' ---
- 13 Q. Okay.
- 14 A. --- facin' the road.
- 15 Q. There we go. Thank you. Mr. Brewington, this is State's
- 16 Exhibit No. 10. This (indicating) is that little refrigerator
- 17 you talked about havin' out in your building, am I correct?
- 18 A. Yes, sir.
- 19 Q. And then this is State's Exhibit No. 11, the door.
- 20 A. That's right.
- 21 Q. Now, Mr. Brewington, I'm gonna ask ya about this in a
- 22 second but I'm gonna get there so just hang on, okay? You
- 23 stated that Pam came there first and you could see injuries on
- 24 her, am I correct?
- 25 A. Pam Pam came first but she tried to get in the back.

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

1 She -- I have a light in my, in my house not the buildin', as
2 far as I can remember there's a light on the back porch and
3 she she wanted to go in the house, well she could have the
4 back door was unlocked.

5 Q. Okay.

6 A. Five o'clock in the mornin' back door was unlocked but
7 there's light and she wanted to go in there and she she was
8 goin' in there and I called her, you know, I said, What's
9 wrong with you and, uh, and she -- well she ran and got in the
10 building.

11 Q. She got in the building. Did she try to close the door
12 behind her?

13 A. She got in there and I don't know if Dawn has come or not
14 she she pushed that frigerator in front of the door, in front
15 of my door.

16 Q. But Dawn came there too, am I correct?

17 A. Yes, sir.

18 Q. Did anyone else other than Pam and Dawn come to your
19 house that night?

20 A. No, just the three of us.

21 Q. Okay, no -- nobody else except these two ladies. Was
22 Dawn injured from what you could tell?

23 A. Yes, sir.

24 Q. She have blood on her?

25 A. Pretty much. It cut pretty bad ---

ISAAC BREWINGTON DIRECT EXAMINATION BY MR. MCCARTY

1 Q. Alright.

2 A. --- inside the neck.

3 Q. Mr. Brewington, once they were at your house or inside
4 the building rather talked about them doing something with
5 this little refrigerator. What you say they did?

6 A. Pam she ran in the house and slammed the door to and put
7 the refrigerator in front of the buildin', in front of the door,
8 she didn't know I was gonna take up for her and she pushed it
9 front of the the door. She closed the door and pushed the
10 frigerator across right in front of the door where nobody
11 couldn't get in.

12 Q. So the three of you are now in this building barricaded
13 inside by that refrigerator and the door being ---

14 A. Yeah, ---

15 Q. --- closed.

16 A. --- as far as I know Dawn Dawn had done -- she'd already
17 came over there.

18 Q. She's in there too. What caused this glass in this
19 (indicating) window to be broken out? Well let me ask ya
20 this: Before they came over was that glass broken out in that
21 window?

22 A. No. No, sir.

23 Q. What caused it to be broken out?

24 A. Mr. Price kno -- knocked it out with his fists.

25 Q. When did he do that?

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

- 1 A. When he, when he came over there after the girls.
- 2 Q. So these two girls came over; you'd lock -- locked
- 3 themselves in your building with you in there, they're cut
- 4 up, ---
- 5 A. Yeah, ---
- 6 Q. --- and ---
- 7 A. ---- he was, he was gonna come in.
- 8 Q. So ---
- 9 A. He cut -- he run his fist through the glass, yeah.
- 10 Q. The defendant, Mr. Price, sittin' over
- 11 here (indicating) ---
- 12 A. Yes, sir.
- 13 Q. --- put his fist through there (indicating).
- 14 A. Yes, sir, and I ---
- 15 Q. What you do? What did you do?
- 16 A. I had a gun, got two or three of 'em, and, uh, it's been
- 17 layin' out for thirty years but the guns is out of 'em and,
- 18 uh, and he, when he knocked the glass out, I had to open the
- 19 door, you know, and I had the gun in my hand and he saw the
- 20 gun, he ran.
- 21 Q. He ran away from there at that point.
- 22 A. Yes.
- 23 Q. You point the gun at him while these two girls were cut
- 24 and in your building and he ran away.
- 25 A. (The witness nodded in the affirmative.)

ISAAC BREWINGTON - DIRECT EXAMINATION BY MR. MCCARTY

1 Q. Mr. Price lived out there near you, didn't he?

2 A. He lived down the street, yes, ---

3 Q. Okay, ---

4 A. --- on ---

5 Q. --- so you recognized him?

6 A. Did I recognize him?

7 Q. Yes, sir.

8 A. Yes.

9 Q. Did you know him before he put his fist through your
10 glass?

11 A. No, I I didn't know. I know his daddy, his father.

12 Q. Do you know who he was though?

13 A. Yeah, yes.

14 Q. Do you have any doubt that the guy sitting at this table
15 right here (indicating) is the same guy put his fist through
16 that glass window that night?

17 A. Oh there's no doubt.

18 Q. Mr. Brewington, you weren't over at the house earlier in
19 the evening were you, over at Dawn's house across the street,
20 were you?

21 A. No, sir.

22 Q. You don't have any idea what transpired in there, do
23 you?

24 A. No.

25 Q. Okay. Mr. Brewington, once you pointed the gun at the

ISAAC BREWINGTON - CROSS-EXAMINATION BY MR. WHELCHER

1 defendant he ran away, ---

2 A. Yes, sir.

3 Q. --- someone called the law.

4 A. Yeah. He he had ran away. He had, uh, yeah, he ran
5 away, you know, he ---

6 Q. Alright.

7 A. --- got scared and ---

8 Q. And ya'll called 911? Somebody called 911?

9 A. Oh well this lady in the house she called 'em, she called
10 'em.

11 Q. Okay.

12 A. And I had like I say I got a phone in the building too.
13 We both called.

14 Q. And the police arrived out there at that point.

15 A. It didn't take 'em long.

16 Q. Okay.

17 A. Just ---

18 Q. Mr. Brewington, if you will, answer any question --
19 Mr. Whelcher's gonna ask you some questions if you'll just
20 answer his, okay?

21 A. Okay.

22 Q. Thank you.

23 CROSS-EXAMINATION BY MR. WHELCHER:

24 Q. Mr. Brewington, excuse me, your outbuilding, I guess
25 that's what we'll call it, ---

ISAAC BREWINGTON - CROSS-EXAMINATION BY MR. WHELCHEL

1 A. Yes.

2 Q. --- how big is that, sir?

3 A. Well it's pretty good size you know.

4 Q. Is it as big as this (indicating) area ---

5 A. No, no, not as big this. I built onto it I believe but
6 that's after this.

7 Q. Is it about this (indicating) size?

8 A. No, no, it's a pretty good size.

9 Q. Tell me how big it is, if you know. Is it like 12 by
10 14, ---

11 A. Oh, it's ---

12 Q. --- 12 by 20?

13 A. --- it's probably 8 foot wide and pretty long you know.

14 Q. You've added onto it since you got it?

15 A. Yes, sir.

16 Q. Okay. And you were out there at five o'clock in the
17 morning?

18 A. Yes.

19 Q. Okay. Who was in the house, your house?

20 A. This lady live -- I stay with, yes.

21 Q. Okay. How long have -- I, you may have answered this, I
22 apologize if you did, ---

23 A. Sir?

24 Q. --- how long have you lived out there, sir?

25 A. Twenty years.

ISAAC BREWINGTON - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Twenty years?

2 A. Twenty, twenty-one years.

3 Q. Okay, and in that twenty years how long have you known
4 Dewayne Henson?

5 A. As long as I've been knowing Pam, that's -- she's been
6 married about twelve years, you know, but pretty well about
7 twelve years, ---

8 Q. Okay.

9 A. --- as long as I've been knowin' Pam. Well I know --
10 knew Pam longer than that -- Dawn longer than that, excuse
11 me.

12 Q. Okay, that's what I'm confused about. Do you know
13 Dewayne through Dawn or Dewayne through Pam?

14 A. Dawn.

15 Q. Okay.

16 A. Excuse me.

17 Q. That's okay, I understand. And you said you knew Pam
18 too, is that right?

19 A. Uh, yes.

20 Q. The first lady that came to your building that night you
21 knew her?

22 A. Well I knew her but she di -- she didn't live around
23 there. She ---

24 Q. Okay. How how did you know her, sir?

25 A. Well she used to live, you know, old Una over there at

ISAAC BREWINGTON -- CROSS-EXAMINATION BY MR. WHELCHEE

1 places, you know.

2 Q. And that's how you knew her?

3 A. Yeah. Yes, sir.

4 Q. Had you seen her with Dawn and them before?

5 A. No, sir, ---

6 Q. Alright.

7 A. --- except that night.

8 Q. Excuse me?

9 A. Just only that night, yeah.

10 Q. Okay.

11 A. First time she ever been there at Dawn's.

12 Q. Where did -- where was Dewayne working at this time, if
13 you know?

14 A. I don't know but he was workin' ---

15 Q. Okay. And Dawn ---

16 A. --- here.

17 Q. --- stays home at the house?

18 A. Yes, sir.

19 Q. Okay. Do you know anything about where Pam worked?

20 A. I, uh, no idea.

21 Q. Okay. This building is it directly behind your house or
22 is it offset?

23 A. Well it's kinda off a little. The house is right here
24 (indicating) and the buildin's kinda off a little bit behind
25 the back, you know.

ISAAC BREWINGTON - CROSS-EXAMINATION BY MR. WHELCHEL

- 1 Q. Okay.
- 2 A. It's not dead in front of the back.
- 3 Q. But the house itself that sits in front of this building
- 4 is directly across the street from the trailer ---
- 5 A. Yes, straight ---
- 6 Q. --- that Dewayne and Dawn live in.
- 7 A. Yeah, I see the front door looking out my front door.
- 8 Q. Just like we are ---
- 9 A. Yeah.
- 10 Q. --- except farther apart. And Mr. Price's father lives
- 11 farther down that same street, is that correct?
- 12 A. Yes, sir.
- 13 Q. If if I'm lookin' out the front door of your house,
- 14 Mr. Price and his father lived on the same side of the street
- 15 as ---
- 16 A. On on the other side ---
- 17 Q. Other side.
- 18 A. --- but it's way down the street.
- 19 Q. It's farther down the street.
- 20 A. Oh, yeah, yeah.
- 21 Q. Okay. Close enough to walk?
- 22 A. Well it's pretty good bit. Yeah, yeah, you can walk
- 23 there but ---
- 24 Q. Okay.
- 25 A. --- I I would drive.

ROBERT CHARLES TALANGES DIRECT EXAMINATION BY MR. MCCARTY

1 Q. I understand, sir.

2 MR. WHELCHER: That's all I have, Your Honor.

3 MR. MCCARTY: Nothing, Your Honor.

4 THE COURT: You may step down.

5 (Whereupon, the witness left the stand.)

6 MR. MCCARTY: Your Honor, may ask if Mr. Brewington can
7 be accused.

8 THE COURT: He may be.

9 MR. MCCARTY: Thank you, Your Honor. Your Honor, the
10 State would next call Robert Talanges.

11 ROBERT CHARLES TALANGES,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. MCCARTY:

14 Q. If you will, just introduce yourself to the jury by way
15 of giving who you are, where you work, what you do.

16 A. Robert Charles Talanges, work at Spartanburg County
17 Sheriff's Office. I work in the ID or otherwise known as
18 forensics division.

19 Q. It's kinda like what ya think of when ya think of CSI on
20 TV.?

21 A. That is correct.

22 Q. Go out and collect evidence at crime ---

23 A. Yes.

24 Q. --- scenes.

25 A. Yes, sir.

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 Q. How long you been doing that?

2 A. Started in about 1997 to the present day.

3 Q. Have you worked with the sheriff's office your whole
4 career?

5 A. No, sir, worked at the City of Spartanburg for 15 years,
6 2 months and 21 days and then transferred over to the
7 sheriff's office.

8 Q. Alright. And in that time you've been doing forensics
9 have you had other jobs within the sheriff's office or in the
10 city?

11 A. Started off as a patrol officer and went over to doing
12 AFIS which is fin -- latent fingerprints and then to crime
13 scene.

14 Q. How many crime scenes could you estimate have you
15 processed in your career? Can you guess?

16 A. A lot.

17 Q. A lot. Do one, at least one a day probably?

18 A. Well on a daily basis we respond to minimum of 7, maximum
19 I've had was like 15 in one day so that includes car
20 break-ins, burglaries or robberies, assaults, stuff of that
21 nature.

22 Q. All the way to, all the way up to murder and all the way
23 down to somebody gettin' sumtin' stolen outta their car?

24 A. Yeah, that's correct.

25 Q. When you're involved with a scene that's being processed,

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 could you tell the jury exactly what it is you do, what you're
2 lookin' for, what type of things you may or may not collect,
3 who makes that decision, how it works.

4 A. When we arrive at a scene, the first thing we do is meet
5 up with the lead investigator, basically do a survey of the
6 scene and see what we have. Different type scenes require
7 different type processing but everything starts out with photo
8 documentation. This scene we were at the location we have was
9 was two different areas.

10 Q. And why do you say there were two different areas?

11 A. We had [REDACTED] and then you had across the street which is
12 [REDACTED] The approximate distance was even about, uh, I'd say 30
13 yards between the residence which was a single-wide trailer to
14 the outbuilding you're in.

15 Q. Now is the crime scene area secured before you begin to
16 process it or do people just walk through it? How does that
17 work?

18 A. No, it's usually secured by the patrol officer so rope it
19 up with -- rope it off with crime scene tape.

20 Q. So like what people see maybe on the news or on TV when
21 somebody's reelin' out that big yellow plastic tape.

22 A. Yes, sir, that's it.

23 Q. Okay. So once you get in there what's your first step
24 when you begin to process a scene or a multiple area scene
25 like this?

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 A. Since we had victims there and they were gonna get
2 medical treatment my my first I guess step was to photo
3 document the the victims and their injuries prior to their
4 leaving for medical attention at the scene.

5 Q. If I could approach just quick. These are 1, 2, 3 and 4,
6 you can just look at 'em. Are those the photographs that you
7 took that night?

8 A. Yes, sir.

9 Q. Okay. Once the victims' injuries are photographed,
10 what's your next step in the process?

11 A. Is photo document the the scene which included the the
12 outbuilding as well as the residence.

13 Q. So you took the pictures that we've introduced into
14 evidence here that night of the interior of Dawn Henson's
15 home, the victim's home in this case, as well as the pictures
16 we have of Mr. Brewington's outbuilding, refrigerator, the
17 door, those were all you?

18 A. All the pictures at that scene I did take.

19 Q. Besides taking pictures is there anything you do
20 regarding if you were to find something that may be
21 potentially evidence in a case?

22 A. If evidence is found ,it's it's gonna be marked with
23 evidence numbers depending on what it is. At that scene
24 exterior-wise at the [REDACTED] I I marked claw hammer and some
25 shoes, other items there.

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: Your Honor, if I can have a minute, I don't
2 have these premarked. I apologize.

3 (Photographs marked State's Exhibit Nos. 13, 14, 15, 16
4 and 17 for identification.)

5 (Whereupon, defense counsel examined the exhibits.)

6 BY MR. MCCARTY:

7 Q. Show you what's marked as State's Exhibits Nos. 13, 14,
8 15, 16 and 17. Do you recognize those pictures?

9 A. Yes, I do.

10 Q. Are those pictures you took the night at or around the
11 scene of [REDACTED] Road?

12 A. Sixteen (16) and 17 are from 1 [REDACTED] [REDACTED] are Items No. 1 and
13 No. 2.

14 Q. Okay.

15 MR. MCCARTY: Your Honor, at this time I'd ask that
16 State's Exhibits No. 13 through 17 be admitted.

17 MR. WHELCHEL: No objection.

18 THE COURT: They're admitted.

19 (State's Exhibit Nos. 13, 14, 15, 16 and 17, photographs,
20 admitted into evidence.)

21 MR. MCCARTY: Thank you. If I may publish these, Your
22 Honor.

23 THE COURT: You may.

24 BY MR. MCCARTY:

25 Q. Investigator Talanges, you mentioned before when you were

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 talking about when you find an item that's a potential item of
2 evidence you mark it with a yellow card or yellow number to
3 identify it, is that correct?

4 A. Numbers and letters are both used but at that scene we
5 used numbers.

6 Q. Is there any rhyme or reason to putting a number? Do
7 you, do you assign any value to the number you assign to any
8 particular piece of evidence?

9 A. No, it's just what's ever located at that time and you
10 just give it an ID number, ---

11 Q. So howev ---

12 A. --- give it a number.

13 Q. --- however it's found is whatever number it gets.

14 A. That's correct.

15 Q. Alright. Put up here State's Exhibit No. 13 so the jury
16 can see that. In that one there we can see a yellow No. 1; is
17 that what you were talking about as far as a number's
18 concerned?

19 A. That's correct.

20 Q. And that item right there (indicating) appears to be a
21 pocket knife, am I correct?

22 A. Yes, sir, it is.

23 Q. What do you do as far as, it's obviously photographed
24 here and numbered here, what do you do when you see something
25 like that you think it may potentially be an item of evidence,

ROBERT CHARLES TALANGES -- DIRECT EXAMINATION BY MR. MCCARTY

1 what are the steps that you take?

2 A. Well a evidence numbers placard is placed next to it then
3 it is photographed, after photographing it's collected, placed
4 in an evidence envelope.

5 Q. Did you move that item, put it there, do anything like
6 that?

7 A. No, sir.

8 Q. Do you even know at the time when you take this
9 photograph and collect this piece of evidence whether or not
10 it's it's even linked to anything that went on in with this
11 incident here?

12 A. I I do not.

13 Q. So you don't have any way of -- if you just, I guess the
14 best way to do it is do you just err to the side of caution
15 and collect it anyway?

16 A. We -- anything that appeared to be evidence pertaining to
17 this case was collected.

18 Q. Okay. Like in this case here it's an attack. This is
19 the knife, it might be something potential evidence, am I
20 correct, ---

21 A. That's correct.

22 Q. --- versus maybe a cigarette butt laying on the ground?

23 A. Correct.

24 Q. I'm just gonna skip forward a little bit. This was
25 State's Exhibit No. 14. That's a picture of another pocket

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 knife, am I correct?

2 A. Yes, sir, it is.

3 Q. This is State's Exhibit No. 15 going over the top of it
4 that's just again another one of your yellow cards?

5 A. Yes, sir.

6 Q. This item was collected, am I correct?

7 A. That's correct.

8 Q. This is State's Exhibit No. 16 and here we can see a
9 couple different pieces of evidence that you marked and
10 collected. Do you have a report in front of you,
11 investigator?

12 A. Yes, sir.

13 Q. Can you tell the items what items 3, 4 and 5 are related
14 to?

15 A. Three is going to be a left shoe, 4 right shoe and there
16 was a -- some mail envelope that was also collected.

17 Q. Alright. And then the last picture I wanna show you
18 right here State's Exhibit No. 17 and that's just kind of
19 looking back across 3, 4, 5 then we have this item down here
20 No. 6, a hammer, am I correct?

21 A. That's correct.

22 Q. And again, those are items that you saw: knives, shoes,
23 hammer seem to be items that you thought may be items of
24 potential evidence for this case, am I correct?

25 A. That is correct.

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY.

1 Q. You don't have any clue as to whether or not they are or
2 they are not that am I correct?

3 A. I do not.

4 Q. Okay. If I can approach, Your Honor.

5 THE COURT You may.

6 (State's Exhibit Nos. 18, lock-blade knife, and State's
7 Exhibit No. 19, PUMA knife, marked for identification.)

8 (Whereupon, defense counsel examined the exhibits.)

9 MR. MCCARTY: If I may approach.

10 BY MR. MCCARTY:

11 Q. Mr. Talanges, I'm gonna show you what's marked as State's
12 Exhibits No. 18 and 19 if you can identify those, please, to
13 the jury. I have 'em listed as evi -- Inventory No. 1, it's a
14 lock-blade knife, black plastic handle was collected at 1390
15 New Cut Road, front yard of 1390 New Cut Road. And No. 18 is
16 gonna be Inventory No. 2 it's a one knife, PUMA No. 231385. I
17 I got in parenthesis blood obs -- blood observed, lock-blade
18 styled knife, it was also in the front yard of 1390 New Cut
19 Road.

20 Q. And I'm gonna just put these pictures back up here again,
21 they're State's Exhibits No. 13 and 15. The two items there
22 that you just testified in those bags are those two knives
23 that are there, am I correct?

24 A. That's correct.

25 Q. Alright, and they're located in each one of those bags

ROBERT CHARLES TALANGES - DIRECT EXAMINATION BY MR. MCCARTY

1 respectively?

2 A. Yes.

3 Q. Alright.

4 MR. MCCARTY: Your Honor, I would ask that State's
5 Exhibits No. 18 and 19 be admitted into evidence.

6 MR. WHELCHER: No objection.

7 THE COURT: They're admitted.

8 MR. MCCARTY: Thank you.

9 (State's Exhibit No. 18, lock-blade knife, and State's
10 Exhibit No. 19, PUMA knife, admitted into evidence.)

11 THE COURT: Please be careful with that microphone.

12 BY MR. MCCARTY:

13 Q. Investigator, do you recall when you were at the scene
14 whether or not Mr. Price was also at the scene when at the
15 time you went out there to process it?

16 A. Yes, he was.

17 Q. Was he in custody at that time?

18 A. Yes, sir.

19 Q. Alright. Once you collect these items and 0:12:59.8

20 (6)---

21 (Pair of Marten shoes marked State's Exhibit No. 20 and
22 rusty claw hammer marked State's Exhibit No. 21 for
23 identification.)

24 MR. MCCARTY: Thank you.

25 (Whereupon, defense counsel examined the exhibits.)

ROBERT CHARLES TALANGES -- DIRECT EXAMINATION BY MR. MCCARTY

1 BY MR. MCCARTY:

2 Q. Show you State's Exhibits No. 20 and 21. Can you just
3 tell what those two items are, please.

4 A. Number 20 is a Dr. Marten Size 9 black shoe -- shoes left
5 and right and No. 21 a rusty claw hammer with a green
6 handle.

7 Q. Those are the same items that were collected here in
8 Items 3, 4 and 6?

9 A. That's correct.

10 Q. Alright. Once you collect these items of potential
11 evidence in the case, what do you do with them?

12 A. Well as my report stated it was -- they were all
13 packaged, placed into evidence for further analysis.

14 Q. Okay, and where are they placed into evidence at just so
15 these folks understand, I know I know and Mr. Whelchel knows
16 but ---

17 A. We have a secure evidence room at the sheriff's office
18 that and once it goes in there it's -- anything if it has to
19 be signed out or anybody wants to view it is gonna have to
20 sign a chain of custody form.

21 Q. And you fill a chain of custody form out when you put it
22 in there as well ---

23 A. That's correct.

24 Q. --- and your name appears on all those items?

25 A. Yes, it does.

ROBERT CHARLES TALANGES - CROSS-EXAMINATION BY MR. WHELCHER

1 Q. Alright. Investigator, I don't have any other questions
2 but Mr. Whelchel may have any of you.

3 MR. MCCARTY: Oh, if I may, Your Honor, before I step
4 down if I can, if I didn't previously ask, I would ask that
5 State's 20, is it 20 and 21 the shoes and the hammer?

6 INVESTIGATOR TALANGES: 20, 20, that's correct.

7 MR. MCCARTY: State's Exhibits No. 20 and 21 to be
8 admitted.

9 MR. WHELCHER: Without objection.

10 MR. MCCARTY: Thank you.

11 THE COURT: They're admitted.

12 (State's Exhibit Nos. 20, pair of Marten shoes, and
13 State's Exhibit No. 21, rusty claw hammer, admitted into
14 evidence.)

15 CROSS-EXAMINATION BY MR. WHELCHER:

16 Q. Do you have a list of the photographs that you took with
17 you or do you need to get it?

18 A. I believe the prosecutor does have li ---

19 (Whereupon, a discussion was held off the record.)

20 Q. Apparently they don't have a list. Do you have a list
21 that indicates on the photographs that you took ---

22 A. No, I don't ---

23 Q. --- what what they were?

24 A. Pardon me?

25 Q. Do you have a list or anything that indicates what all

ROBERT CHARLES TALANGES -- CROSS EXAMINATION BY MR. WHELCHEL

1 the photographs were of that you took?

2 A. No, I do not.

3 Q. Okay. But you took, in addition to the photographs and
4 photographs of these items, you took a lotta pictures inside
5 the house, is that correct?

6 A. That is correct.

7 Q. Okay, and this is what's been provided to me in discovery
8 by by the prosecution, okay. Do you have all the photographs
9 that you took with you ---

10 A. No, I do not.

11 Q. --- here at the courthouse? Okay. Did you print all of
12 the photographs? I mean, is -- are they on a disk, are they
13 ac -- do you have actual photographs?

14 A. We have it's a evidence photo computer and everything is
15 downloaded onto a hard drive then placed on a disk. The disk
16 is stored as well as the hard drive retains the photos.

17 Q. Okay. And you took photographs of my client?

18 A. At the scene, yeah.

19 Q. Okay. Do you recall the cuts that he had on him when
20 you took those photographs, sir?

21 A. I think he just had a cut on his hand if I'm not
22 mistaken.

23 Q. Okay. Thank you.

24 (Whereupon, a discussion was held off the record.)

25 Let me let you look at those, Officer Talanges.

ROBERT CHARLES TALANGES - CROSS-EXAMINATION BY MR. WHELCHEL

1 (Whereupon, the witness examined the photographs.)

2 Have you seen those before, sir?

3 A. Yeah, I took these photos.

4 Q. Tho -- those are the photographs that you took out at the
5 scene?

6 A. That's correct.

7 Q. Okay.

8 (Photographs marked Defendant's Exhibit Nos. 1, 2 and 3,
9 for identification.)

10 MR. WHELCHEL: Thank you, ma'am.

11 COURT REPORTER: You're welcome.

12 BY MR. WHELCHEL:

13 Q. Now, Officer Talanges, I'm gonna hand these photographs
14 back to ya, they've been premarked as Defense potential
15 Exhibits No. 1, 2 and 3. Those are the photographs that you
16 took that night?

17 A. Yes, sir, they are.

18 Q. Okay. They fairly -- fairly and accurately portray what
19 you took the picture of the knives and the person laying
20 there?

21 A. That's correct.

22 Q. Alright, sir.

23 MR. WHELCHEL: We ask these be admitted into evidence,
24 Your Honor.

25 MR. MCCARTY: No objection.

ROBERT CHARLES TALANGES -- CROSS EXAMINATION BY MR. WHELCHER

1 THE COURT: They're admitted.

2 (Defendant's Exhibit Nos. 1, 2 and 3, photographs,
3 admitted into evidence.)

4 BY MR. WHELCHER:

5 Q. Did you take photographs, sir, inside the house?

6 A. Now which location? You talkin' the outbuildin' or
7 house?

8 Q. Not the outbuilding, the house itself.

9 A. Yes. Yes, I did.

10 Q. Okay. Do ya have those with you?

11 A. I have no photographs with me, they should be ---

12 Q. Okay.

13 A. --- with the State.

14 (Whereupon, a discussion was held off the record.)

15 (Whereupon, photographs were handed to the witness.)

16 BY MR. WHELCHER:

17 Q. I'd ask you to look at those please, sir.

18 (Whereupon, the witness complied.)

19 A. Yes.

20 Q. That set of photographs does it accurately portray the
21 location that night when you took the photographs?

22 A. Yes, it does.

23 Q. Alright, sir. All of these photographs accurately
24 portray the incident location, is that correct?

25 A. That was the -- every room inside the residence

ROBERT CHARLES TALANGES - CROSS-EXAMINATION BY MR. WHELCHER

1 photographed.

2 Q. Okay. Do your notes reflect where you took photographs
3 of blood inside this residence?

4 A. The photographs will stipulate it but my notes don't.

5 Q. Here, take these back with you so you can use those too.

6 A. Sure.

7 (Whereupon, the witness examined the photographs.)

8 Q. Oh, I'm sorry. Do the -- where do the photographs show
9 what you believe or suspected to be blood at that time?

10 A. Checked home.

11 Q. Excuse me?

12 A. Numbers that were marked inside the residence: 7 blood
13 drop back step at the back door then I had 8 -- 8(a) which is
14 a blood drop or a blood drop on back door, 8(b) blood drop on
15 light switch at back door, No. 10 blood drop off stereo, 11
16 blood drop at the front doors glass, 12 blood drop on the
17 front doorsteps, that's items that were marked. There was
18 also blood in the hallway leading out to the back door ---

19 Q. Uh-huh (affirmative).

20 A. --- as the pictures stipulate.

21 Q. Is that where all that trash and everything is on the
22 floor?

23 A. Yes, it is.

24 Q. Alright, sir. Did ya take any photographs or did you
25 find any money in that house?

ROBERT CHARLES TALANGES -- CROSS EXAMINATION BY MR. WHELCHEL

- 1 A. Yeah, one one coin.
- 2 Q. One coin.
- 3 A. One coin.
- 4 Q. Okay. What kinda coin was that, sir?
- 5 A. An old Morgan Dollar.
- 6 Q. Okay.
- 7 A. I forget what year it was, just a real ---
- 8 Q. Do you, ---
- 9 A. --- old silver dollar.
- 10 Q. --- do you remember where it was?
- 11 A. Kitchen table.
- 12 Q. Okay. Morgan dollar on the kitchen table. That's the
- 13 only money you found?
- 14 A. Yes, sir, 1895 to be exact.
- 15 Q. Okay. No other money in the house.
- 16 A. Uh-uh (negative).
- 17 Q. Okay. But when you took these photographs there was no
- 18 other person in the house other than uniformed officers and
- 19 investigators, is that correct?
- 20 A. When photos were taken yeah. When the photos were taken,
- 21 the house was secured ---
- 22 Q. Yes, sir.
- 23 A. --- and I was the only one inside there, that's
- 24 correct.
- 25 Q. Okay.

ROBERT CHARLES TALANGES - CROSS-EXAMINATION BY MR. WHELCHER

1 MR. WHELCHER: I would ask that that group of photographs
2 be introduced as evidence. We can mark them all as one
3 exhibit. You...

4 MR. MCCARTY: I I I have no objection to being admitted.
5 I don't know what's the best course to mark, Your Honor.

6 MR. WHELCHER: If we have a -- I would suggest we just
7 put 'em in an envelope, Your Honor.

8 THE COURT: You got one?

9 MR. WHELCHER: Not with me but I can get one.

10 THE COURT: Okay.

11 MR. WHELCHER: I think the clerk might have one.

12 COURT REPORTER: How many are there?

13 (Twenty sheets of photographs marked Defendant's Exhibit
14 No. 4 and admitted into evidence.)

15 MR. WHELCHER: Thank you, ma'am.

16 BY MR. WHELCHER:

17 Q. You found two knives and one claw hammer, correct, ---

18 A. Correct.

19 Q. --- all outside the house?

20 A. Knives were found [REDACTED] which had been the side of [REDACTED]
21 where the storage building is, there's a little field area, it
22 was found at that location and the claw hammer was found in
23 the driveway area of [REDACTED]

24 Q. Thank you, sir.

25 REDIRECT EXAMINATION BY MR. MCCARTY:

ROBERT CHARLES TALANGES, - REDIRECT EXAMINATION BY MR. MCCARTY

1 Q. Investigator Talanges, I just have a couple real brief
2 questions for ya. You brought your incident report with you
3 today, am I correct?

4 A. That's correct.

5 Q. You know every item of evidence that you collect, am I
6 correct?

7 A. Yes, it's all stipulated here.

8 Q. But not necessarily every item that you photograph.

9 A. Right.

10 Q. As the jury will see, what's been admitted into evidence
11 there's a lotta photographs taken.

12 A. That's correct.

13 Q. When you collect a piece of evidence like what's there
14 before you in the bags, those are marked, photographed and
15 taken into custody, am I correct?

16 A. Yes, sir.

17 Q. You'll bear with me just a moment. You stated the only
18 item you found moneywise or that you at least took in in
19 evidence was an 1895 Morgan silver dollar, am I correct?

20 A. That's correct.

21 Q. Earlier when on direct examination when I was asking you
22 about what you collect, what you don't collect, what you
23 decide to and what you don't, you were talking about items
24 that may relate to the offense itself, am I correct?

25 A. Yes, sir.

ROBERT CHARLES TALANGES - REDIRECT EXAMINATION BY MR. MCCARTY

1 Q. So as you process the scene and you go through this
2 victim's house and you're going into her bedrooms and
3 photographing it, are you looking for things like cash
4 necessarily?

5 A. If it's visible. We're we're not physically goin'
6 through each and every drawer searching for items.

7 Q. It's possible, totally hypothetical, they could have
8 money in shoe box in a, in a drawer someplace?

9 A. Yes, sir.

10 Q. And you would not have necessarily been looking for that.

11 A. No, sir.

12 Q. It's possible, hypothetically speaking, that there
13 was -- coulda been a purse in a cover or something like that
14 you may not have looked into it.

15 A. That's correct.

16 Q. But what you found odd the odd was was that Morgan silver
17 dollar just laying ---

18 A. Yeah, ---

19 Q. --- out.

20 A. --- very strange.

21 Q. Strange because there's drug paraphernalia all around the
22 house? That kinda strange?

23 A. Usually, if you find drug paraphernalia around a house
24 drug -- where drug activity is, you usually don't find
25 item ---

25 Q. That's (indicating) the picture, that's what we're

ROBERT CHARLES TALANGES - RECROSS-EXAMINATION BY MR. WHELCHEL

1 talking about here, am I correct?

2 A. Yes, sir.

3 Q. Is that getting pretty -- this is State's Exhi -- or I'm
4 sorry, Defendant's Exhibit No. 1. This is the photograph you
5 took of the defendant's wrist, am I correct, ---

6 A. Yes, sir.

7 Q. --- the laceration that you noted. You didn't notice any
8 other abrasions, cuts, scrapes, puncture wounds, knife wounds,
9 gashes?

10 A. None.

11 Q. Thank you.

12 MR. MCCARTY: Nothing further, Your Honor.

13 RECROSS-EXAMINATION BY MR. WHELCHEL:

14 Q. And the defendant was where when you took the photograph,
15 sir?

16 A. He was located in that field ---

17 Q. Okay.

18 A. --- on the side of the building, it -- I think 1390 or
19 the -- not too far from where these knives were located.

20 Q. And I think there's a photograph you actually had him
21 lying down.

22 A. Yes, sir.

23 Q. Okay. Where were the -- where was the knife in relation
24 to him?

25 A. Knives were located by the deputies who actually located

ROBERT CHARLES TALANGES -- RECROSS EXAMINATION BY MR. WHELCHER

1 him ---

2 Q. Uh-huh.

3 A. --- and they were in the vicinity where he was at.

4 Q. Okay. And and the claw hammer where was that?

5 A. The claw hammer's in -- was in the driveway area of [REDACTED]

6 [REDACTED]

7 Q. Okay. That's it.

8 THE COURT: You may step down.

9 (Whereupon, the witness left the stand.)

10 MR. MCCARTY: Your Honor, I'd ask that Deputy Talanges be
11 excused.

12 THE COURT: He may be.

13 MR. MCCARTY: Thank you, Your Honor. Your Honor, at this
14 time the State reserving any right to call rebuttal witness
15 would rest its case.

16 THE COURT: Alright, let me see ya'll just a minute.

17 (Whereupon, a bench conference was held off the record.)

18 THE COURT: Alright, ladies and gentlemen, the State has
19 rested in their presentation so this is a good opportunity
20 to -- for us also to break for lunch so we'll do that. Keep
21 in mind the caution I've previously given ya: Do not discuss
22 the case in any fashion whatsoever with any person whatsoever,
23 don't conduct any research or do your own investigation into
24 any issue that has arisen should you be thinking you need to
25 have some more knowledge. You've got to base your decision

MOTIONS AND MATTERS

1 upon the information you've received in during the course of
2 the trial. Do have a good lunch and please report to your
3 jury room at two o'clock, at two o'clock this afternoon. Have
4 a good lunch.

5 (The following takes place outside the presence of the
6 jury.)

7 (Whereupon, a discussion was held off the record.)

8 THE COURT: Any motions or other matters we need to
9 address?

10 MR. WHELCHEL: At this time I'd make a motion for a
11 directed verdict not guilty on behalf of the defendant, Your
12 Honor, based on the insufficiency of the evidence that is
13 presented.

14 THE COURT: Well it appears to me to be sufficient so I'm
15 gonna deny your motion.

16 MR. WHELCHEL: Yes, sir.

17 THE COURT: Anything else?

18 MR. WHELCHEL: No, sir.

19 MR. MCCARTY: Nothing from the State, Your Honor, I just
20 need to come back in.

21 THE COURT: Court's in recess until two o'clock. Okay,
22 let's be sure all the exhibits are on the evidence table.

23 MR. MCCARTY: Yes, sir.

24 (Whereupon, a recess was taken.)

25 THE COURT: You ready for the jury?

MOTIONS AND MATTERS

1 MR. WHELCHER: Yes, sir.

2 THE COURT: Alright, bring 'em in. Who's testifyin'
3 first? Mr. Whelchel, who's testifyin' first?

4 MR. WHELCHER: This (indicating) lady is, Your Honor. Do
5 you wanna go ahead and question my client about his testimony,
6 Your Honor?

7 THE COURT: I'll do that after you get through. How many
8 other witnesses you have?

9 MR. WHELCHER: That that may be it, Your Honor, just
10 those two.

11 MR. MCCARTY: Your Honor, I don't know exactly this
12 lady's name who's comin' here to testify and I I don't know
13 what she's gonna exactly testify to concerning the business
14 record but I may have an objection to make if I can make that
15 maybe outside the presence of the jury quickly.

16 THE COURT: Okay, if I can get the bailiff back in here.

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: I need ya to hold that jury up, ---

19 THE BAILIFF: Yes.

20 THE COURT: --- I got somethin' I need to address. Do we
21 have another bailiff besides you, Mr. Hipp?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Where are they?

24 THE BAILIFF: He's with the, he's with the jury.

25 THE COURT: Oh, both of ya'll with the jury.

MOTIONS AND MATTERS

1 THE BAILIFF: Yes, sir.

2 THE COURT: Well must be a rowdy jury. Alright,
3 Mr. McCarty.

4 MR. MCCARTY: Your Honor, the State's well I guess the
5 objection at this point is I I believe the lady's from
6 Spartanburg Regional Medical Center who's coming here to
7 testify, I I don't know to what capacity or what she's
8 planning to offer but, Your Honor, if she's planning on
9 offering some type of business record I haven't yet seen it
10 myself I don't believe unless Mr. Whelchel's gonna tell me
11 otherwise that it's something that I've had in my possession
12 with regard to one of these two ladies here. Do you know, can
13 you explain, Dick, what it is so I know what you're talkin'
14 about.

15 THE COURT: Well are you gonna introduce some documents?

16 MR. WHELCHER: She's here as the custodian of the medical
17 records, Your Honor.

18 THE COURT: Have they been shared?

19 MR. WHELCHER: Excuse me?

20 THE COURT: Have they been shared pursuant to discovery?

21 MR. WHELCHER: No, sir, Your Honor.

22 THE COURT: Well don't they -- don't ya have reciprocal
23 discovery here?

24 MR. WHELCHER: I don't think a business record has to be
25 shared reciprocal ---

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1 THE COURT: Documents that are being introduced have to
2 be ---

3 MR. WHELCHEL: I'm not ---

4 THE COURT: --- shared.

5 MR. WHELCHEL: --- planning on introducing the document,
6 Your Honor, ---

7 THE COURT: Oh, but what she gonna testify to?

8 MR. WHELCHEL: She's gonna testify about the records.

9 THE COURT: She can't testify from the records if they're
10 not introduced.

11 (Whereupon, a discussion was held off the record.)

12 THE COURT: Nobody wants to prepare this aheada time.

13 MR. WHELCHEL: Beg the court's indulgence, Your Honor.

14 THE COURT: Well we might have to start with Mr. Price.

15 Alright, Mr. Price, I got a question to ask you about your
16 right to testify or not. Ya understand when you're charged
17 with a crime you have an absolute right to remain silent, that
18 just means nobody can make you take the witness stand and
19 testify if you don't want to, you have that choice, it's up to
20 you. Have you talked to your lawyer about 'bout your right to
21 testify and not testify?

22 THE DEFENDANT: Yes..

23 THE COURT: And has he explained to you the advantages
24 and disadvantages of testifying as well as not testifying?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: And do you appreciate what those advantages
2 and disadvantages are?

3 THE DEFENDANT: Yes.

4 THE COURT: Do ya understand if you take the witness
5 stand you gonna have to answer all relevant questions, not
6 just those asked by your lawyer but those asked by the
7 prosecutor even if the responses tho -- to those questions
8 might tend to prove you guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: If you choose not to take the witness stand,
11 I'm gonna instruct the jury as I already have that they can't
12 hold that against ya. Now have you had plenty a time to
13 reflect upon your decision as to whether or not you will
14 testify?

15 THE DEFENDANT: He just told me about it a while ago that
16 two of our witnesses was not gonna be here and that I'd be
17 able to testify.

18 THE COURT: Well you -- are you telling me that you and
19 Mr. Whelchel up until this moment have not discussed your
20 right to testify and not testify?

21 THE DEFENDANT: I spent 45 minutes with him in 4 years,
22 sir.

23 THE COURT: Well did ya understand my question?

24 THE DEFENDANT: Um-hum.

25 THE COURT: Are you telling me that up until just this

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JAMES C. JAMES

1 moment you and Mr. Whelchel have not discussed your right to
2 testify and not testify?

3 THE DEFENDANT: Over in the room, sir, not just now.
4 Over in the room earlier today when we was takin' a recess we
5 talked about it, yes.

6 THE COURT: You did?

7 THE DEFENDANT: Yes.

8 THE COURT: Well have you reached a decision?

9 THE DEFENDANT: Yes.

10 THE COURT: And what is your decision?

11 THE DEFENDANT: I wanna testify.

12 THE COURT: You will?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And is that a decision that you reached of
15 your own free will and accord?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you're satisfied with it?

18 THE DEFENDANT: Um-hum.

19 THE COURT: Okay, bring the jury in.

20 (The following takes place in the presence of the jury.)

21 THE COURT: Good afternoon, ladies and gentlemen. As you
22 know when we recessed for lunch the State had concluded with
23 their presentation of evidence so we'll now proceed with any
24 to be offered by the defendant. Mr. Whelchel.

25 MR. WHELCHER: Thank you, Your Honor.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHEL

1 RANDALL PRICE, having been first
2 duly sworn, testified as follows:

3 THE COURT: You wanna ask him anything?

4 MR. WHELCHEL: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. WHELCHEL:

6 Q. State your name please for the record, sir.

7 A. Randall Price.

8 Q. How old are you?

9 A. Thirty-nine.

10 Q. Born and raised in Spartanburg?

11 A. Yes.

12 Q. Excuse me?

13 A. Yes, sir.

14 Q. Alright, you gotta speak up a little, Randy, get in my
15 face. Do you know Dewayne Henson?

16 A. Yes, sir.

17 Q. How long have you known Dewayne Henson?

18 A. I moved over to my dad's in 2007 due to a car accident
19 and I've known him since then.

20 Q. Okay. That's when you met him?

21 A. Yes, sir.

22 Q. How 'bout Dawn Henson?

23 A. Yes, sir, that's his wife.

24 Q. Did you meet her approximately the same time?

25 A. And the same day yes, sir.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHEELER

1 Q: Okay. Where in relation to where Dewayne and Dawn live
2 at [REDACTED] Road does your father live?

3 A. His physical address is [REDACTED] Road and it's
4 approximately three and a half acres between our property and
5 their property.

6 Q. How many driveways down the street is there?

7 A. Two driveways until you get to the -- to their -- where
8 their property begins.

9 Q. Okay. Close enough to walk?

10 A. Very, very close yes, sir, to walk, yes, to drive.

11 Q. And in fact on the day in question did you walk from your
12 house where you were livin' with your father ---

13 A. Yes, uh, ---

14 Q. --- over to Dewayne and Dawns' house?

15 A. Yes, they had came up and got me and said that they
16 wanted to share some some partyin' with me and we walked from
17 my dad's to their house.

18 Q. Wasn't the first time you'd been to their house is it,
19 sir?

20 A. I had been a couple other times.

21 Q. Okay. So it was close enough for them to walk from their
22 house to yours and back?

23 A. Yes, sir.

24 Q. And both Dewayne and Dawn came and got you that day?

25 A. Yes, sir.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. And the day I talk about that's the day all this took
2 place is that right, sir?

3 A. That's correct, sir.

4 Q. You remember what day of the week that was?

5 A. I think it was on a Friday.

6 Q. Okay. Now had you come into some money the day before?

7 A. Yes, sir. I -- like as indicated I was in an automobile
8 accident and it caused me to not be able to work for a while
9 so I was receivin' a settlement and that particular day
10 Mr. White's office, my attorney called and said they had a
11 check for me to pick up.

12 Q. John White?

13 A. Yes, sir, Mr. John White and, uh, ---

14 Q. Okay. And you picked up your check on the 12th of
15 January 2007, is that right?

16 A. That's correct, yes.

17 Q. Okay. Do you remember exactly how much that check was
18 for?

19 A. It's been a few years but I'm thinkin' it was close to
20 \$9,000.

21 Q. Eighty-eight hundred (8800) and some change sound right
22 to you?

23 A. Yes, sir.

24 Q. Okay. What you do with the check, sir?

25 A. My dad and I picked it up from his office and went

RANDALL PRICE'S DIRECT EXAMINATION BY MR. WHELCHEE

1 straight to Arthur State Bank where I deposited a partial
2 amount and took out about \$3,000 in cash.

3 Q. Okay. When you say you took out some cash, what were the
4 denominations of the bills?

5 A. It was 30 \$100 bills, sir.

6 Q. Okay. So ya had about \$3,000 dollars in cash on ya in
7 hundred dollar bills.

8 A. Yes, sir.

9 Q. Okay. Did ya have that money on ya when Dawn and Dewayne
10 showed up at your house?

11 A. Yes, sir. As I indicated I had just gotten home from
12 my -- with my dad and maybe thirty minutes had passed and they
13 were knockin' on the door indicatin' that they wanted to party
14 together and I told 'em that I would be able to come for a
15 little while but I had plans that evening.

16 Q. Did they know you reach -- you obtained this money?

17 A. Maybe in the course of our conversations throughout those
18 few weeks they might have known yes, sir.

19 Q. So you -- this wasn't an unusual thing for them to be
20 talkin' to you.

21 A. No, sir.

22 Q. Okay. And they knew you were gonna get this settlement.

23 A. Yes, sir.

24 Q. Okay. Prior to you receiving the settlement, had the two
25 of them ever shown up at your house and invited you to come

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 down to their house?

2 A. No, sir, they usually come to my dad's house.

3 Q. Okay. Excuse me, do you remember what time it was on the
4 13th of January when this happened, sir?

5 A. I think it was around -- when I went to their house, I
6 think it was around seven or somethin' in the evenin' and I
7 think the incident might have taken place around midnight,
8 somewhere in there.

9 Q. Okay. But you're not sure about what time.

10 A. No, sir, I'm not sure.

11 Q. Was it light or dark?

12 A. It was light when I went down there and it was I remember
13 when the incident happened it was in the mornin', it was like
14 when the police came it was morning time.

15 Q. Okay. So sometime between dark and six in the early
16 morning hours of the 7th is when all this transpired, is that
17 correct?

18 A. No, sir, it'd been the ---

19 Q. Oh, I'm ---

20 A. --- 12th ---

21 Q. --- sorry.

22 A. --- and 13th, yes.

23 Q. Twelfth and 13th.

24 A. Yes.

25 Q. Alright, sir, tell me what happened when you and Dewayne

RANDALL PRICE - DIRECT EXAMINATION BY MRS. WHEELER

1 and Dawn walked from your house to theirs.

2 A. We proceeded to go into their residence and when we got
3 there it was just us three and they had, as they indicated
4 they had some drugs and we did some drugs and as we were there
5 throughout the evening Dewayne said, Let's go and get some
6 more and so he and I left and Dawn stayed there and ---

7 Q. Let me stop you for a moment.

8 A. Um-hum.

9 Q. When you first started it was just you, Dewayne and Dawn,
10 is that correct?

11 A. Correct, sir.

12 Q. Pamela was not there.

13 A. No, sir.

14 Q. And the other fella that showed up with her later was not
15 there when you first got there.

16 A. No, sir, he wasn't.

17 Q. Okay. So go ahead.

18 A. So we we went ahead and did the drugs and then her
19 husband Dewayne said, Let's go and get some more drugs, and at
20 that point I had about \$3,000 so I said, Okay, I'll buy some
21 since they did the first time and we went on to a place called
22 Una, it's in Spartanburg County, and when we got down there it
23 was dark and he pulled into somewhere he knew, I remember it
24 was a trailer, I don't remember the residence but it was a
25 trailer and ---

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. When you say "he" who you talkin' ---

2 A. Dewayne pull ---

3 Q. Go ahead.

4 A. --- and he was driving yes, sir. I didn't have a license
5 at the time, my license was revoked so he was drivin' and we
6 pulled in and he began talking to the black guy that she
7 indicated his name was Rodney and Rodney ---

8 Q. You ever seen Rodney before?

9 A. I've never seen either one of those two individuals
10 before that night.

11 Q. Okay.

12 A. And he began speaking to him at the side and Rodney went
13 and got Ms. Massey and they two got in the car with us and the
14 four of us left and went back to Ms. Henson's residence.

15 Q. Okay well whose car was it?

16 A. The car was a friend of theirs, I think his name was Rick
17 Foster and it was a friend of theirs and Dewayne had dropped
18 him off and then continued, kept his car and told him that he
19 needed to use it.

20 Q. Well was Rick Foster there when you got over to their
21 house?

22 A. Not at that time no, sir, he had just told me that that
23 was whose car it was just in our course of conversations
24 during that 4-hour period.

25 Q. Dewayne told ya.

RANDALL PRICE'S DIRECT EXAMINATION BY MR. WHEELER

1 A. Yes.

2 Q. Okay. Alright. So once you go to Una and Dewayne
3 purchases the drugs ---

4 A. Yes, I gave him the money and he ---

5 Q. You gave him the money, he ---

6 A. Yes.

7 Q. --- purchased the drugs. When you gave him the money,
8 how did you do it, sir?

9 A. I just reached into my pocket and pulled out the money
10 and just handed it to him. We had been to the store one other
11 time prior ---

12 Q. "We" who?

13 A. Dawn and I and Dewayne walked to the store which is right
14 behind their residence or behind Wingo Heights Road there's a
15 store called Texaco.

16 Q. Oh, okay.

17 A. So we had walked so it wasn't like they didn't know I had
18 money. I mean, she got several items and so did I and I paid
19 for all it of.

20 Q. Okay. This Texaco, would that be the one close to
21 Sellers Seafood?

22 A. On the opposite side?

23 Q. Yes, sir.

24 A. Where it used to be now it's a Mexican restaurant.

25 Q. Alright, I understand. So you and Dewayne and Dawn go to

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 the store that ---

2 A. That's that's prior yes, sir.

3 Q. I understand that. They see the money that you have.

4 A. Yes, sir. Yes.

5 Q. And they knew, don't hit that, and they knew that you
6 were gettin' this settlement or had received the settlement,
7 is that right?

8 A. Yes, sir, from our conversations in the past they knew.

9 Q. Okay. When you left the Una location, who all's in the
10 car?

11 A. Dewayne and I are in the front seat, directly behind me
12 is the the bl -- man she indicated was Rodney and then she's
13 sittin' behind the driver seat Ms. Massey is.

14 Q. You talkin' Pamela Massey?

15 A. Yes, ma'am -- yes, sir.

16 Q. And Rodney was the black man that was with her?

17 A. Yes.

18 Q. Okay, and from Una you go back to?

19 A. The Henson residence at [REDACTED].

20 Q. Alright. Any idea what time of the night this was?

21 A. No, sir, I know it was probly an hour and a half later
22 than than when we first had arrived there when I first a
23 arrived.

24 Q. Okay. Once you get back to the trailer tell us what
25 happened.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHEL

1 A. We get back to the trailer, as they stated everything was
2 goin' good, we was all partyin' so to speak and I had
3 indicated earlier that night to Dewayne knowing that I had to
4 leave, that I had a prior engagement that I needed to be at
5 and I said, uh, I'm fixin' to have to leave because I have to
6 go with my brother somewhere and when I did the black dude
7 I ---

8 Q. Where were you goin' with your brother?

9 A. We were goin' to Greenville to our friends just I had
10 that money and we hadn't been outta town together in a while,
11 we were just gonna go as a family.

12 Q. Ya have any idea what time this was?

13 A. I think around nine maybe, somewhere around nine o'clock.

14 Q. Okay, go ahead, sir.

15 A. So I I said, I said to them, I said, I'm gonna go ahead
16 and leave and when I did the black dude grabbed my arm and
17 Dewayne said, You're not leaving with that GD money and I
18 said, Wait a minute, wait a minute, you know, I was real
19 scared and startled so I fought off those two and they got the
20 money but I grabbed ahold to it and was still strugglin' this
21 (demonstrating) away and I was holdin' the money and it tore,
22 it ripped most of the money in half so I'm thinkin' okay,
23 here's four people, how can I get rid of 'em so I just throw
24 the money across the room as hard as I can and pieces go
25 everywhere, well three of 'em went toward the money.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 Q. Well wait, let me, let me stop ya. Where were you in the
2 house?

3 A. I was standin' at the kit counter where they were showing
4 that earlier, there's a counter and then the table's here
5 (indicating), I had because of what had happened I backed
6 myself into that counter to kinda ---

7 Q. Uh-huh.

8 A. --- get my back away from everyone that was after me and
9 when he came at me he was on this (indicating) side.

10 Q. "He" who?

11 A. Rodney, the black person, and Dewayne was over here
12 (indicating) and then one of them was grabbin' at the money, I
13 don't remember which one, I do think it was Ms. Massey, and I
14 held the money and she tore it because we were strugglin'.
15 Like I said, I threw it across the room, three of 'em went to
16 it and Ms. Massey didn't. Ms. Massey said, I'm gonna kill you
17 MF, and when she did that she had a black knife and she came
18 toward me and I threw my arm up like this (demonstrating) and
19 I was able to take the knife from her and I started just
20 because all all of 'em came back on me I just started just
21 cutting every which way I could to try to get outta that house
22 because they just stole my money and they were gonna kill me.
23 There's no way that I woulda left that house alive had I not
24 fought, no way.

25 Q. How much money did ya have by that time, sir?

~~RANDALL PRICE~~ DIRECT EXAMINATION BY MR. WHELCHEL

- 1 A. At that time I had \$2800.
- 2 Q. Okay.
- 3 A. Twenty-eight (28) \$100 bills.
- 4 Q. Okay. Did you have a knife, sir?
- 5 A. Yes, I did. I had a pocket knife. Most of us carry
- 6 pocket knives over in that area 'cuz, you know, you're always
- 7 doin' wirin' work and stuff.
- 8 Q. What kinda work do you do?
- 9 A. Currently I'm tryin' -- I do heatin' and air.
- 10 Q. Excuse me?
- 11 A. Do heating and air.
- 12 Q. Okay. Where -- what about back then. I know you were
- 13 not working because of the auto accident; ---
- 14 A. Yeah, ba ---
- 15 Q. --- what did you do before then?
- 16 A. Just helped my daddy. He would scrap stuff out like get
- 17 metal and scrap it out and little motors and things.
- 18 Q. Okay. What happened to Rodney and Dewayne after all this
- 19 money went flyin'?
- 20 A. Okay the three of them like I said went toward the money
- 21 and then Ms. Massey came at me with a knife and I was able to
- 22 take her knife and I was able to get her offa me and when I
- 23 did cut her she took off runnin' toward them and I thought
- 24 they were all four comin' back so I went this (indicating)
- 25 away and I fell over a trash can, I don't know which way. I

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER.

1 know that Dewayne I think went out the door after her because
2 she was hollerin' and the -- Dawn and the the black dude came
3 back toward me and I had fell over the trash can tryin' to get
4 out the back door and that's all I can remember 'cuz my head
5 was down and this time I had two knives, not just one, I had
6 the one that she had and then I was able to get to mine
7 because hers had closed after the struggle it was like closed
8 down so I had mine and I was hollerin' and screamin' as the
9 the guy indicated he could hear people wrestlin' in there. We
10 were wrestlin' tryin' -- I was tryin' to make my way to the
11 back door and once I got to the back door the the black guy
12 and Dawn somehow we all three fell out the back door, I don't
13 know if it opened or if we pushed it out all three of us
14 struggling on it or what but we all three got out the door and
15 I do remember him running this (indicating) away and her ---
16 Q. Well now wait, wait a minute, wait a minute. When you
17 say "him", they don't know who you talkin' about.
18 A. Oh I'm sorry, the the black person, Rodney, that they
19 described as Rodney he ran toward New Cut Road and she ran
20 this (indicating) away and I ran toward a light that I saw and
21 it just so happened that Ms. Massey was at that house where
22 that light was on, it's the only light that was on and my only
23 thing was there's three of 'em out here, I'm by myself, I need
24 to get to the police so I was runnin' to the first light I saw
25 and the light that I saw was at the house, that building

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHEL

1- Mr. Massey was in so when I knocked. apparently the way I had
2 that -- the blade of the knife it hit the window and it
3 cracked it and when I seen they were in there I thought, Oh,
4 my Lord, he's with 'em too, they're gonna all get me so I took
5 off runnin' ---

6 Q. "He" who?

7 A. Mr. Brewington, their friend that he said he didn't know
8 'em but apparently he did know 'em because he -- they were all
9 in there together, three of 'em, and the black dude had left,
10 he he didn't want anything to do ---

11 Q. Where'd Dewayne go?

12 A. Dewayne was in there with them.

13 Q. Dewayne was in that ---

14 A. Yes, sir, he was in that building with them.

15 Q. Okay.

16 A. And I took off runnin' toward Abe's which is the Texaco
17 because I knew there is a cell, a a telephone there so when I
18 got to the the bushes I was runnin' as hard as I could and
19 when I did I hit the, uh, a little stump and when I did I went
20 forward, them two knives went like right out in front of me
21 and I was knocked out and I don't remember anything until the
22 police came. They were shinin' a light on me tellin' me,
23 Don't move, you're under arrest and I said, These people have
24 robbed me, they try to kill me, please help me. The man said,
25 Sir, you just need to be quiet, we'll take your statement

RANDALL PRICE -- DIRECT EXAMINATION BY MR. WHELCHER

1 later which they never never came and took my statement.

2 Q. You were in jail for a month?

3 A. Yes, sir.

4 Q. Anybody ever come to you to ask what your statement was?

5 A. No, sir.

6 Q. Okay.

7 A. This is the first chance I've had to tell the truth in
8 this courtroom.

9 Q. The shoes that you saw ---

10 A. Those those were my shoes. I ran so hard from them I ran
11 outta my shoes.

12 Q. Okay. And the two knives, the one knife they came at you
13 with ---

14 A. And the other ---

15 Q. --- and your own pocket knife?

16 A. Yes, sir, that's correct. I was able to take the other
17 knife from 'em.

18 Q. I'm handing you State's Exhibits 19 and 18. Look at
19 those, please, sir.

20 A. Supposed to look in 'em?

21 Q. Yeah, just look at 'em. Look inside the envelope.

22 A. Oh, they're wrapped in sumtin'.

23 Q. Is that knife yours?

24 A. This knife is mine.

25 Q. Okay. Alright. Alright, put it back in the envelope,

RANDALL PRICE - DIRECT EXAMINATION BY MRS. WHELCHEL

1 please. And that's State's Exhibit No. 18? . . .

2 A. That's what it says, sir.

3 Q. Okay.

4 A. I can't be sure if this one there's the -- I remember the
5 one that I took was a little longer than the other one so I
6 can't be sure 'cuz they're so much alike so I really can't ---

7 Q. Well you've heard 'em say they found 'em out in the yard.

8 A. They found on the side yes, sir, where I was -- I had
9 fallen down, yes, sir.

10 Q. Okay. Now let me be sure I understand, sir, that these
11 (indicating) two ladies robbed you or was it all four of
12 'em?

13 A. Exactly, sir, that's what they want you to believe those
14 two did it but it was four people there that did it: two men,
15 two women.

16 Q. Okay. When you got outta the jail and they returned the
17 property to ya, you know, your shoes, rings, watch, whatever
18 you had, they return any of that cash to ya?

19 A. No, sir, I had no money.

20 Q. So the \$2800 was gone.

21 A. All but a few maybe I think when I was in there that I
22 had like 20, \$20 on me when I -- when they took me in ---

23 Q. The hundred dollar bills all of those ---

24 A. All of those were gone yes, sir.

25 Q. Okay. Were you afraid, Mr. Price?

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Yes, sir. I was very frightened and I felt like that if
2 I gave 'em the money that maybe they would leave me alone so
3 that's why I just threw it and hoped they would leave me alone
4 but they didn't. Ms. Massey said, I'm gonna kill you MF, and
5 she came at me and that's how I received the cut on my wrist
6 and from that I just didn't really know what to do but fight,
7 I had no other choice.

8 Q. Were they between and you the door?

9 A. Yes, sir, they were.

10 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

11 (Whereupon, a discussion was held off the record.)

12 BY MR. WHELCHER:

13 Q. When you were slashing with that knife, were you trying
14 to kill these ladies?

15 A. No, sir, I was only trying to make my way home tryin' to
16 get outta the house.

17 Q. Who pulled the knife first?

18 A. Ms. Massey did.

19 Q. When did you get your knife out?

20 A. After we had struggled after there's -- there was two of
21 'em, when I was doing this (demonstrating), the the black guy
22 and her was on me tryin' to some way, I'm sorry, ---

23 Q. Leave the microphone ---

24 A. --- sorry, Your Honor, somehow I was able to to like I
25 said hers had closed so I was able to get at mine because he

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHEL

1 was still comin' at me and I received a mark on my face and
2 that's when I was able to just start doin' that with mine
3 because hers that I had grabbed and closed was closed and they
4 were still on me.

5 Q. Well how close were they to ya?

6 A. They were on me like within this (indicating) much
7 distance and then I would just keep doin' this to get 'em off
8 of me then they would just keep comin' back and then finally
9 when she took off runnin' she received a blow, she took off
10 runnin' to the door and ---

11 Q. Well when ---

12 A. --- Dewayne ---

13 Q. --- you say -- wait a minute.. Wait. When you say
14 "she", ---

15 A. Ms. Massey took off runnin' to the door and I believe
16 that Dewayne went after her to keep her from bein' I guess
17 excessively loud outside and causin' other people to come in
18 and know what was happenin' so that's when Dawn, I tried to
19 make my way to the back door and that's when Dawn and this
20 other person kind of dove on me and caused me to knock the
21 trash can over and we were all strugglin'. I'm sure he was
22 hurt that night, I'm pretty sure he got injured as well.

23 Q. He?

24 A. Mr. Rodney, Rodney the black guy.

25 Q. Okay.

RANDALL PRICE - DIRECT EXAMINATION BY MR. WHELCHER

1 A. I'm sure he was injured as well because I'd had no idea
2 what I was -- who -- where I was hitting, who I was hitting.
3 My only intention was to leave that house alive, that was my
4 only intention. I would not have hurt them on purpose. They
5 coulda had the money and I woulda left but when Ms. Massey
6 brought the knife out and said, I'm gonna kill ya, that's when
7 I knew that I wasn't leavin' and so I fought back.

8 Q. Had you ever met her before that night?

9 A. No, sir, I had not.

10 Q. You met her when Dewayne picked up her and ---

11 A. Her boyfriend ---

12 Q. --- Rodney ---

13 A. --- and friend yes, sir.

14 Q. Okay, but you knew Dewayne and Dawn.

15 A. Yes, sir. I, like I said I'd been acquainted with them
16 for several months before that, maybe six, seven months,
17 somethin' like that.

18 Q. Did you expect to get robbed that night?

19 A. No, sir, I did not.

20 Q. You expect anybody try to stab you?

21 A. No, sir, I did not.

22 Q. You don't deny that whatever injuries they have they got
23 because you were tryin' to defend yourself, is that right?

24 A. Yes, sir, I I was defending myself and...

25 Q. Answer any questions prosecutor might have, sir.

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 A. Yes, sir.

2 CROSS-EXAMINATION BY MR. MCCARTY:

3 Q. You admit that what I showed the jury, you were in here,
4 State's Exhibits 1, 2, 3 and 4 you caused those injuries to
5 Pam, to Dawn, you cut their throats open, cut the back of her
6 neck open, the side of Dawn's throat, stabbed her in the lung.

7 A. I, as I indicated I was just movin' my arms. I don't
8 know what it hit, sir.

9 Q. But you admit, you're the per -- you're the reason for
10 all of that?

11 A. I admit that I was movin' my arms back and forth. I
12 don't know if it caused that but I'm -- it probly did, sir.

13 Q. You stated this is the first time since this happened
14 four years that you've had a chance to tell your story, am I
15 right?

16 A. That's correct, sir.

17 Q. You spent a month in jail and when you got out or while
18 you were in jail nobody came to talk to you.

19 A. No, sir.

20 Q. Nobody came to talk to you the night of.

21 A. No, sir.

22 Q. And in three years and however many months that is since
23 you were released you never went up to the sheriff's office to
24 file a report against a guy named Rodney who robbed ya and
25 against a guy named Dewayne Henson who robbed you?

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 A. Sir, I didn't realize I could do that because you had
2 already charged me with it.

3 Q. You didn't realize that you can go to the police when
4 you've been a victim of a crime yourself as you tellin' us.

5 A. No, sir, because they filed a report first.

6 Q. Your testimony is you had a lotta cash in your hand.

7 A. I did, sir.

8 Q. And you're saying that you had about \$3,000 in hand, am I
9 right?

10 A. I did.

11 Q. All in hundred dollar bills ---

12 A. Yes.

13 Q. --- or for the most part all had been hundred dollar
14 bills?

15 A. Yes.

16 Q. I think you told Mr. Whelchel ya had \$2800 towards the
17 end of the night.

18 A. Yes, sir, I had spent my dollars.

19 Q. And you think the bulk of that was in hundred dollar
20 bills?

21 A. I know it was, yes, sir.

22 Q. Twenty-eight hundred dollars (\$2800), that's 28 \$100
23 bills. Pretty good stacka money, isn't it?

24 A. Twenty-eight hun -- 28 \$100 bills, yes, sir, it is a big
25 stack, um-hum.

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTHY

1 Q. You had it in your hand?--

2 A. Yes.

3 Q. And you're saying that they're grabbing at it, that
4 stacka money, they're able to rip it in half.

5 A. Not all of it sir. They ripped out the most part of it
6 like maybe ten or twelve and the rest of it I just threw it as
7 I indicated to you all I threw the rest of it.

8 Q. Okay, but you're able to say that when they hit that wada
9 cash in your hand, they were able to rip part of it, not all
10 of it but part of it.

11 A. Yes, sir.

12 Q. You didn't rip that money?

13 A. No, sir.

14 Q. You weren't flaunting that money around earlier in the
15 evening and tearing it apart, Money's no big deal to me,
16 I'm ---

17 A. No.

18 Q.. --- rich?

19 A. No, sir.

20 Q. You weren't doing anything ---

21 A. Not that ---

22 Q. --- like that?

23 A. --- no, sir.

24 Q. You weren't showboatin' for these folks who you were a
25 guest in their home?

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 A. No, sir, I wouldn't do anything like that. They knew
2 what I had, they've been to my home.

3 Q. You said that you'd gone to the Texaco station with
4 Rodney or I'm sorry with Dewayne and Dawn.

5 A. Yes, sir.

6 Q. You didn't volunteer to buy some stuff while you were
7 there.

8 A. Yes, sir.

9 Q. Well went back, you're smokin' crack at that house, am I
10 right?

11 A. Say that what now?

12 Q. After the Texaco did you go back to their house?

13 A. We had been smokin' prior to that as well.

14 Q. Okay, so prior to that. When you went back, did you
15 continue to smoke crack?

16 A. Yes, sir.

17 Q. Had you been smokin' crack earlier in the day?

18 A. No, sir, not till I went to their house.

19 Q. Had you been taking any other types of drugs earlier in
20 the day?

21 A. No, sir.

22 Q. Prior -- so prior to arrival there you were ---

23 A. I was ---

24 Q. --- clearheaded?

25 A. --- I was clean yes, sir.

RANDALL PRICE -- CROSS EXAMINATION BY MR. MCCARTY

1 Q. You hadn't been up for a couple days?

2 A. No, sir. I didn't have any money prior to that so I
3 wasn't able to do anything.

4 Q. When they got ya at the Texaco station you came back, how
5 long were you there before you and Dewayne left to go buy more
6 crack?

7 A. That's what I was tellin' earlier I think about a hour,
8 an hour and a half at the most.

9 Q. So hour, hour and a half it's at least you, Dawn and
10 Dewayne ---

11 A. Corr ---

12 Q. --- in that home.

13 A. Correct, sir.

14 Q. So two of the four people that you allege who attacked
15 you were there already with you by, with you by yourself.

16 A. Correct.

17 Q. And then you say you and Dewayne left to go to Una to buy
18 crack.

19 A. We left yes, sir.

20 Q. In a car that he borrowed.

21 A. Yes, sir.

22 Q. Just the two of you.

23 A. Yes.

24 Q. And according to go your story Dewayne, the guy who you
25 say robbed you knowing you had \$3,000 in cash in your

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 pocket, ---

2 A. He didn't -- I don't -- the black guy didn't know that
3 day.

4 Q. Well we're not at that point ---

5 A. Yeah.

6 Q. --- yet just you and Dewayne.

7 A. Um-hum.

8 Q. He knew you had a wada cash in your pocket. Did you tell
9 him how much it was?

10 A. Who are you asking me about?

11 Q. Dewayne.

12 A. Yes, sir, Dewayne knew, yes, sir.

13 Q. So you told Dewayne, I've got three \$3,000 in my pocket?

14 A. I didn't say \$3,000; I said I have some of my money.

15 Q. You went to that Texaco, paid for those ---

16 A. Yeah, ---

17 Q. --- drinks or whatever.

18 A. --- he saw it. Yes, sir, he saw it.

19 Q. Pull out that big wada cash?

20 A. Um-hum.

21 Q. Count it out?

22 A. No, I ---

23 Q. So when he ---

24 A. --- didn't count it out. It was a hundred dollar bill, I
25 just pulled it out.

RANDALL PRICE -- CROSS-EXAMINATION BY MR. MCCARTY

1 Q. So you're -- but you're saying Dewayne saw you with that.

2 A. Yes, sir.

3 Q. Went back to their house, Dewayne and Dawn alone with
4 you ---

5 A. Um-hum.

6 Q. --- for a hour, hour and a half ---

7 A. Um-hum.

8 Q. --- then you get in a car with Dewayne, you go to Una to
9 buy more crack and that whole time Dewayne and you alone in
10 that car, man-to-man, with you with all that cash on you, not
11 too far away from the point when you were saying you were
12 attacked by these four people and robbed and he didn't attack
13 you in the car?

14 A. I'm a lot bigger than him, sir.

15 Q. He didn't make you feel uncomfortable ---

16 A. No, sir, ---

17 Q. --- in the car?

18 A. --- not at all.

19 Q. So you're a bigger man than Dewayne.

20 A. Yes, I was.

21 Q. How tall are you, Mr. Price?

22 A. Five foot six.

23 Q. Five foot six? Are you roughly the same weight, body
24 composition you are when -- were in 2007?

25 A. No, sir, I was 230 pounds.

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 Q. So at today are you lighter or heavier?

2 A. I'm lighter.

3 Q. Okay, so you were a much bigger man than Dewayne even
4 back then.

5 A. I'm not gonna say I'm much bigger but I was a bigger man
6 than he was yes, sir, probly 40, 40 pounds, sumtin' like that.

7 Q. But you were alone with him that whole time?

8 A. Yes.

9 Q. Out in an area where you could buy crack cocaine?

10 A. In Una in the city of Spartanburg.

11 Q. Yeah, over in Una ---

12 A. Um, ---

13 Q. --- out in the dangerous area a town.

14 A. Okay.

15 Q. You pick up -- well you say you just met Pam and that guy
16 named Rodney, am I right?

17 A. Dewayne picked him up, sir, yes.

18 Q. But you ---

19 A. Yes.

20 Q. --- were in the car with them though.

21 A. Yes, sir, correct, um-hum.

22 Q. The now four of you travel back to Dawn's house. You
23 told them at some point you had to leave for the evening, am I
24 right?

25 A. That's right.

RANDALL PRICE - CROSS EXAMINATION BY MR. MCCARTY

1 Q. In this time line of events that you've told us today for
2 the first time when you said you had to leave to go meet a
3 friend in Greenville.

4 A. No, sir, I said I was going with my brother. We were
5 going to Greenville.

6 Q. Okay, ---

7 A. Yes, sir.

8 Q. --- but were you meeting someone in Greenville?

9 A. No, sir, we were just gonna go to a club or somethin'.

10 Q. Okay. Was that before you went to the Texaco, was that
11 before you went to Una to buy crack or was that after all that
12 had ---

13 A. All that ---

14 Q. --- even occurred?

15 A. --- that happened. We had then done all that, yes,
16 sir.

17 Q. Then you told him you needed to go, am I right?

18 A. Yes, I felt very uncomfortable after we got inside the
19 house.

20 Q. Your brother's here to testify about your trip to
21 Greenville, your intended plans to go to Greenville that day?

22 A. No, sir, my brother doesn't live in Spartanburg.

23 Q. He couldn't come here for your trial to testify about
24 your intentions to go to Greenville ---

25 A. Well I ---

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 Q. --- that night, sir.

2 A. --- I don't know about that, sir. I couldn't ---

3 Q. Four year -- in four years he couldn't make it down here.
4 So you're tellin' us that you get up to go, goodnight, and
5 Rodney grabs ya, Dewayne grab ya, they say, You're not leaving
6 here with that money ---

7 A. Exactly.

8 Q. --- and that's when it's on?

9 A. That's right.

10 Q. In the course of this somehow, somewhere you managed to
11 get into your pockets as they've got your hands grabbed, you
12 pull out money and hold it in your hand.

13 A. I did not. No, sir. They gra -- grabbed it. When
14 you're strugglin', sir, you don't really think about it ---

15 Q. Oh, so so they grabbed for your money, they somehow get
16 into your pockets and are working their way with your
17 money ---

18 A. I had in it ---

19 Q. --- and and you're being held?

20 A. You're you're acting like I had it in this pocket
21 (indicating). I had a coat on, sir, it was ---

22 Q. Okay ---

23 A. --- cold.

24 Q. --- so you have jacket pockets.

25 A. Yes, sir.

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTHY

- 1 Q. So they're openin' your jacket pockets reachin' for it.
- 2 A. They ---
- 3 Q. They got ya with both arms?
- 4 A. No, sir.
- 5 Q. So who's holdin' ya?
- 6 A. This this (indicating) arm was bein' held by the bigger
- 7 guy Rodney. Dewayne has this arm (indicating) and the ladies
- 8 are tryin' to get at the money so there's four people, not
- 9 just two that I'm strugglin' with, okay.
- 10 Q. Yep.
- 11 A. So then you're holdin' me out like this (demonstrating),
- 12 they're not doing me like that. One of 'ems got me this way
- 13 (indicating) and the other one's this way (indicating) so when
- 14 she grabs my money I'm able to reach under here (indicating)
- 15 and grab it out of her hand so we both have it.
- 16 Q. You're gettin' robbed and you care about your money?
- 17 A. I'm I'm getting -- I don't know what they -- I mean, I'm
- 18 tryin' to ---
- 19 Q. You just said, ---
- 20 A. --- hold onto my money ---
- 21 Q. --- I threw the money and told 'em have it, I don't
- 22 care ---
- 23 A. I did, yeah, af ---
- 24 Q. --- but right now you're sayin', ---
- 25 MR. WHELCHER: Your Honor, ---

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 MR. MCCARTY: --- Let me keep ---

2 MR. WHELCHER: Your Hon ---

3 MR. MCCARTY: --- the money.

4 MR. WHELCHER: --- I would ask -- I would object. I
5 would ask if he's gonna ask him a question let him answer the
6 question before he starts on the next question if ---

7 THE COURT: Alright, ya'll take turns.

8 MR. WHELCHER: --- it is one.

9 THE COURT: Take turns.

10 MR. MCCARTY: Yes.

11 BY MR. MCCARTY:

12 Q. So you grabbed at your money.

13 A. Yes, sir, I was able to grab the money.

14 Q. You were able to hold onto it.

15 A. I held onto it yes, sir.

16 Q. Some guy's got your arm, other guy's got another one.

17 A. Nobody has this one at this point, no.

18 Q. So you're free with this other ---

19 A. They, I guess they assumed that they had the money and
20 they're -- this (indicating) one's the only one that's being
21 held.

22 Q. You've been told you're not leaving with that money, you
23 know you're getting robbed and you're tryin' to hold onto the
24 money?

25 A. Yes, I held onto my money.

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 Q. Four people against one as you have it played out..

2 A. Yes, sir.

3 Q. Concerned over cash?

4 A. I held onto the money 'cuz I knew if I let the money go
5 that I wouldn't get outta the house.

6 Q. Why?

7 A. Because I knew what their intentions was.

8 Q. How do you know?

9 A. Because they had already ---

10 Q. Sounds to me ---

11 A. --- tore up ---

12 Q. --- like ya'll were just smokin' crack and needed ---

13 MR. WHELCHEL: Objection, Your Honor. He asked him a
14 question and then he won't let him answer it.

15 THE COURT: Let him finish his response ---

16 MR. MCCARTY: Yes, sir, Your Honor.

17 THE COURT: --- before you ask the next question.

18 BY MR. MCCARTY:

19 Q. How do you know what their intentions were?

20 A. Because they had already jumped on me, physically abused
21 me and was holdin' me. I live less than here (indicating) to
22 the end of that (indicating) door probly from where their
23 first driveway is. All I could think of is how am I gonna get
24 outta here alive. All four of them have robbed me and beat me
25 up, they know I'm gonna tell, that's all I can think of in my

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 mind, they know I'm gonna tell on 'em, they're gonna get in
2 trouble so all I can do is fight my way out and try to get the
3 police be ---

4 Q. You just told me you didn't know you could go to the
5 police if you were the victim of a crime and say anything to
6 'em, ---

7 A. Sir, I ---

8 Q. --- that you ---

9 A. --- told you I ---

10 Q. --- could get down ---

11 A. --- didn't know after the fact that I could. I had told
12 the police that night, I told 'em what happened when I was
13 layin' there. I said, Sir, I have been robbed and they took,
14 they took my money and they tried to kill me. Police officer
15 said, Sir, we'll come and get a statement from you. That
16 never happened.

17 Q. But you knew when you were gettin' robbed you could go to
18 the police.

19 A. Of course I can go to the police, sir. This ---

20 Q. But you didn't know ---

21 A. --- happened right then.

22 Q. You didn't know in four years since then you couldn't go
23 up there and say, Wait a second, ---

24 A. No, sir, ---

25 Q. --- I'm the victim here.

RANDALL PRICE -- CROSS-EXAMINATION BY MR. MCCARTY

1 A. --- because they had already filed a report and you
2 charged me, sir.

3 Q. You had an attorney, Mr. Welchel, am I correct?

4 A. The Court appointed Mr. Welchel like six or eight months
5 after the fact yes, sir.

6 Q. Let me ask ya this: This money that's being torn and
7 thrown around, this money gets thrown down, ripped out of your
8 hands ---

9 A. Yes.

10 Q. --- and the only person who's not concerned with the
11 money is Pam Massey is what you're telling us.

12 A. That's exactly right. Three of 'em went to it and she
13 came to me and says that you gonna die MF.

14 Q. Pam pulls a knife on you.

15 A. Yes, sir.

16 Q. She comes at you and that's how you get that cut on your
17 hand.

18 A. She came at me like this (demonstrating) and I throwed my
19 arm up yes, sir.

20 Q. To block?

21 A. Yes, sir.

22 Q. And you're able to -- when do, when do you produce your
23 pocket knife in all of this?

24 A. During the struggle on the floor, I'm able to reach and
25 get it, it's just like right in here (indicating) and then

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 that's when I'm able to strike back and like I say, I don't
2 know who I'm hittin' or what I'm hittin', I know it's a person
3 but I didn't know who 'cuz there was two people on me at the
4 trash can.

5 Q. Hit the back of the neck all the way across with Dawn,
6 didn't you?

7 A. Sir, I don't know what I hit.

8 Q. So she was attacking when you got her back here
9 (indicating)?

10 A. Sir, as I indicated I don't know what I hit.

11 Q. But she was attacking you. Is that what you're telling
12 us?

13 A. I'm telling you there was two people on me on the floor
14 wouldn't let me up and I was tryin' to get to the door to
15 safety.

16 Q. The first time they grab hold of your one arm your other
17 arm and they're reaching for your money, you're instinct,
18 knowing you've got a knife 'cuz you produce it, is to grab for
19 your knife.

20 A. Because, sir, no knife had been produced against me at
21 that time. They were only tryin' to steal my money.

22 Q. But you told me you know what their intentions were.

23 A. I knew they were gonna hurt me yes, sir, but I
24 didn't -- I couldn't prove that at that point because nobody
25 had tried it but they just held me back and jumped on me but

RANDALL PRICE, ~~ELCROSS EXAMINATION BY MR. MCCARTY~~

1 they didn't pull a knife until Ms. Massey came at me.

2 Q. They had your arms? They had you pinned back? What do
3 ya mean you didn't know what was goin' on?

4 A. And you know...

5 Q. And you you know, Mr. Price, the biggest coincidence part
6 of this whole thing that you've told us today for the first
7 time in four years is when these two ladies ran across the
8 street to Isaac Brewington's house to that little outside shed
9 out there, they put a refrigerator in front the door, they
10 lock that door, they close it behind them, seeking help, cut
11 themselves back of the neck where somebody was attacking you,
12 slashed across the throat, cut on the vein over here
13 (indicating), stabbed in the side but they go to
14 Mr. Brewington's house in the course of their attack against
15 you and the only place you had to run for help was across the
16 street to Isaac Brewington's house.

17 A. That was the closest house yes, sir, and where the light
18 was on.

19 Q. Well why would it be the closet house? It's not an
20 unfamiliar neighborhood to you. You've stayed at -- Daw --
21 didn't your dad just live right over there (indicating)?

22 A. There's three driveways between us yes, sir, about three
23 acres but at that time there was two other -- three other
24 people outside ---

25 Q. But that's home ---

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 A. --- tryin' go get me.

2 Q. That's home ---

3 A. There was three other people tryin' to get me. I'm goin'
4 to the closest residence I could find, sir.

5 Q. Who were the three?

6 A. Rodney, Dewayne and Pamela 'cuz I had no idea where she
7 was at that time because like I said when we fell out the door
8 Rodney ran that way (indicating) and Dawn ran that way
9 (indicating). I did not know where Dawn, I did not know where
10 Dewayne or Pamela was.

11 Q. So you saw 'em run out and run away.

12 A. No, sir, I didn't say that. I said I saw Rodney and Dawn
13 who were on me, ---

14 Q. Uh-huh.

15 A. --- they ran and when we fell out the door as a unit, all
16 three of us on each other tryin' to get out.

17 Q. And Pam, you said Pam was one of the three.

18 A. She ran out the front door and Dewayne went after her so
19 I had no idea where they were at that point. As far as I
20 knew, they were standing outside that trailer waitin' to get
21 me again.

22 Q. But when ya got over to Mr. Brewington's house or that
23 little outbuilding ---

24 A. I knocked on the door 'cuz the light was on and when I
25 did the knife was in my hand and it broke the thing and I

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY.

1 looked in there and I saw 'em and I took off runnin'.

2 Q. Knockin' like that?

3 A. No, like like (demonstrating).

4 Q. Not like ---

5 A. Sorry, Your Honor.

6 Q. --- that.

7 A. No, sir.

8 Q. Show you State's Exhibit No. 11, it's Mr. Brewington's
9 door of his outbuilding as he testified to. Knockin' at the
10 door.

11 A. Like I said I had the closed knife that was hers in my
12 hand and I did like this (demonstrating) and said help help
13 help and when I did I heard them hollerin', I looked in and
14 saw 'em and I took off runnin' to Aid's Store.

15 Q. Why ya think they holler? 'cuz they were scared of ya?

16 A. Sir, I don't know. They were tellin' him to shoot me; I
17 remember that.

18 Q. Well he got -- he pulled a gun on ya, didn't he?

19 A. Yeah, well I guess he didn't wanna shoot me because he
20 knew I hadn't done what they said I'd done.

21 Q. He did?

22 A. Um.

23 Q. You just broke into his outbuilding where he was at.

24 A. No, sir, I didn't break in, I knocked.

25 Q. You just stabbed through the window with a knife in your

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 hand ---

2 A. I didn't have ---

3 Q. --- right there by the doorknob ---

4 A. You say she was stabbed, sir, I didn't have the knife
5 blade open, it was closed.

6 Q. That broke the window that's right over here (indicating)
7 by the door blade, am I right?

8 A. Yes, sir, but that wa -- I didn't stab at it I just had
9 it in my hand, the closed knife.

10 Q. It's not this window pane up here (indicating), it's this
11 one down here (indicating) by the door knob, isn't it?

12 A. Why wo --

13 Q. The gl -- the glass over here (indicating) on the back
14 side it's pretty in tact, isn't it?

15 A. I see that yes, sir.

16 Q. Cryin' for help. You were tryin' to get in after 'em
17 screaming because they're attacking you still because they're
18 scared to death of you.

19 A. No, sir, they wasn't scared of me. They they done
20 exactly what I said they done. They were not scared of me.
21 There was four of them. Ya'll making it sound like there were
22 two, there was not, there was four attackers.

23 Q. But the only two people who were in there with
24 Mr. Brewington who ran across the road ---

25 A. No, sir.

RANDALL PRICE - CROSS EXAMINATION BY MR. MCCARTY

1 Q. --- and got in that doorway was ---

2 A. No, sir.

3 Q. --- Pam and Dawn.

4 A. Dawn, Dewayne and Ms. Massey was in there. Rodney ran to
5 New Cut Road back toward Una. There was three people in
6 there. That man was their good friend.

7 Q. So Dwayne's in there.

8 A. Yes, sir.

9 Q. So Mr. Brewington testified about Dawn and Pam being
10 there, he omitted Dewayne on purpose?

11 A. Just like Ms. Massey said she didn't know him and then he
12 said I'd be knowin' her for years. I guess he made a mistake.

13 Q. I think he was confused about Dawn. He corrected himself
14 later in his testimony if you recall. Talk about your shoes.
15 You were tryin' to run so hard toward or were you running at
16 'em ---

17 A. Runnin' away, sir, runnin' away.

18 Q. Runnin' away?

19 A. Yes.

20 Q. Was it runnin' away from 'em after you broke through the
21 window and you heard 'em scream and Mr. Brewington ---

22 A. When I ---

23 Q. --- pointed a gun at ya?

24 A. No, when I looked in, I was seein' was anybody in there.
25 I didn't even know if anybody was in there 'cuz it was not

RANDALL PRICE - CROSS-EXAMINATION BY MR. MCCARTY

1 real loud or anything. I looked in and saw 'em all three and
2 then I saw him and I said, Oh, Lord, and I thought he was with
3 them as well so I took off runnin' to the store which is Aids
4 Store.

5 Q. Couldn't have taken off too fast 'cuz you broke through
6 his window and ---

7 A. Sir, ---

8 Q. --- he pull -- had time to pull a gun on ya.

9 A. Sir, all that was already -- when I knocked on the door
10 and I looked, that was what took place and as soon as I saw it
11 I took off runnin' to the store to use the phone because that
12 was the next closest place Abe's store.

13 Q. So the only time that Pam and Dawn had the chance to rob
14 you was when Rand -- or Rodney and Dewayne when they were all
15 together, right?

16 A. That's the only time those two had a chance ---

17 Q. Dewayne and Dawn you said there were two on one earlier
18 in the evening when you were goin' to the Texaco, you and
19 Dewayne together ---

20 MR. WHELCHER: Is there a question here or are you just
21 gonna testify. I'm objecting.

22 THE COURT: Well ---

23 MR. WHELCHER: Ask him ---

24 THE COURT: --- over ---

25 MR. WHELCHER: --- the question.

~~RANDALL PRICE~~ REDIRECT EXAMINATION BY MR. WHELCHEL

1 THE COURT: --- overrule the objection.

2 THE DEFENDANT: Is there a time that those two ---

3 BY MR. MCCARTY:

4 Q. What I'm asking is you're stating the only time that you
5 got robbed was when the four of them were together.

6 A. Correct.

7 Q. And Dawn Henson was one of the people involved in it,

8 A. Yes, sir.

9 Q. And yet you've testified to two other times or rather
10 really one time where she had the opportunity with her husband
11 who you're also alleging to have robbed you to do that earlier
12 in the evening.

13 A. That's correct, sir. There was two of them at that time;
14 at the time that it took place, there was four of 'em.

15 Q. And then her husband who you go alone with in a car who
16 was also as you're alleging to have robbed you he didn't do it
17 then either, did he?

18 A. No, sir, it was one-on-one.

19 MR. MCCARTY: Your Honor, may I have just one moment,
20 please?

21 THE COURT: (No verbal response.)

22 MR. MCCARTY: I have nothing further, Your Honor. Thank
23 you.

24 REDIRECT EXAMINATION BY MR. WHELCHEL:

25 Q. Who was drivin' when you went to get the drugs?

ELIZABETH VAUGHN - DIRECT EXAMINATION BY MR. WHELCHER

1 A. Dewayne Henson.

2 Q. Where were you seated?

3 A. To the passenger side.

4 Q. Okay. All I have.

5 THE COURT: You may step down.

6 (Whereupon, the defendant left the stand.)

7 MR. WHELCHER: Call Elizabeth Vaughn, Your Honor.

8 ELIZABETH VAUGHN, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. WHELCHER:

11 Q. You state your name, please, for the record, ma'am.

12 A. Elizabeth Vaughn.

13 Q. What is your job, ma'am?

14 A. I'm health and formatics technician at Spartanburg
15 Regional.

16 Q. Is that also known as a custodian of medical records?

17 A. Yes.

18 Q. And at my request did you bring the medical records today
19 of Jennifer Dawn Henson?

20 A. Yes.

21 Q. Okay, do ya have those with you?

22 A. Yes.

23 Q. Are those records made as a result of her hospitalization
24 in January of 2007?

25 A. Yes.

ELIZABETH VAUGHN - DIRECT EXAMINATION BY MR. WHELCHEE

1 Q. Okay. Those are the complete records from the time she
2 was admitted to the hospital ---

3 A. Yes.

4 Q. --- until she was released?

5 A. Yes.

6 Q. Okay, ma'am. Those records include a patient valuables
7 form?

8 A. Yes, it does.

9 Q. That's the record of property that was on Ms. Dawn Henson
10 when she came into the hospital and what was returned to her,
11 is that correct?

12 A. Yes, it is.

13 Q. And does that record reflect that money was returned to
14 her, ma'am?

15 A. Yes, it does.

16 Q. Seven \$100 bills?

17 A. Yes.

18 Q. Anything in addition to that?

19 A. Yes.

20 Q. Rings and watches and things of that nature.

21 A. Yes.

22 Q. Total amount of money returned to her was \$701?

23 A. Yes.

24 Q. Alright. Answer any questions prosecutor might have,
25 ma'am.

ELIZABETH VAUGHN - CROSS-EXAMINATION BY MR. MCCARTY

1 CROSS-EXAMINATION BY MR. MCCARTY:

2 Q. As the custodian of record, do you have any knowledge how
3 Ms. Henson may or may not have come into \$701, jewelry,
4 watches, anything like that?

5 A. No, I do not.

6 Q. Thank you. Nothing further, Your Honor.

7 MR. WHELCHER: Beg the Court's indulgence.

8 REDIRECT EXAMINATION BY MR. WHELCHER:

9 Q. Okay. Right here (indicating), ma'am, where it talks
10 where it lists the property, read what it says about with the
11 hundred dollar bills.

12 MR. MCCARTY: Your Honor, if I can I would object. I
13 believe this is beyond the scope of the cross-examination.

14 THE COURT: Well let let me see the document.

15 MR. WHELCHER: Excuse me?

16 THE COURT: Bring the document, please.

17 (Whereupon, a bench conference was held off the record.)

18 THE COURT: Overrule the objection.

19 BY MR. WHELCHER:

20 Q. Right here (indicating), the first line, ma'am, where it
21 says, \$100 bill, read that whole line, please.

22 A. Says, One hundred bills were cut up.

23 Q. One hundred dollar (\$100) bills were cut up, is that
24 right?

25 A. Yes.

ELIZABETH VAUGHN -- RECROSS EXAMINATION BY MR. MCCARTY

1 Q. Okay. And there were 7 \$100 bills?

2 A. Yes.

3 Q. Okay. And the total amount returned was \$701.

4 A. Yes.

5 Q. And jewelry and stuff like that.

6 A. Um-hum.

7 Q. Thank you, ma'am. Answer any questions the prosecutor
8 might have.

9 RECROSS-EXAMINATION BY MR. MCCARTY:

10 Q. Did you ever see that money? Was it ever physically in
11 your hands?

12 A. No, sir.

13 Q. There's also an item on there that describes a burnt bill
14 in certain denomination, am I correct?

15 A. Yes.

16 Q. What does it say?

17 A. Says, One burnt in half hundred dollar bill.

18 Q. Okay. And one of the bills that say they were cut does
19 it describe anything further how they were cut?

20 A. No, sir.

21 Q. It doesn't say if they're missing the edges, ---

22 A. No, sir.

23 Q. --- if they're cut vertically ---

24 A. No, sir.

25 Q. --- or horizontally, ---

JENNIFER DAWN HENSON - DIRECT EXAMINATION BY MR. MCCARTY

1 A. No, sir.

2 Q. --- just says cut as the description.

3 A. Correct.

4 Q. And you never saw this money at all, did you?

5 A. No, sir.

6 Q. Okay. Thank you.

7 MR. WHELCHEL: We'd ask that she be excused, Your Honor.

8 THE COURT: You may step down. You maybe excused at this
9 time.

10 (Whereupon, the witness left the stand.)

11 MR. WHELCHEL: Beg the Court's indulgence; Your Honor.

12 (Attorney/client discussion held off the record.)

13 MR. WHELCHEL: Defense rests, Your Honor.

14 THE COURT: Any reply?

15 MR. MCCARTY: Your Honor, I'd like to call Jennifer Dawn
16 Henson back to the stand if I could.

17 (Whereupon, Ms. Henson returned to the witness stand.)

18 THE COURT: Ms. Henson, you're still under oath having
19 been previously been placed under oath for the purpose of
20 these questions also.

21 DIRECT EXAMINATION BY MR. MCCARTY:

22 Q. Ms. Henson, when Mr. Price, the defendant, was at your
23 house, did you ever see him with a large sum of money?

24 A. Yes, sir.

25 Q. Did he ever explain to you how he came into possession of

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHER

1 that money?

2 A. Not me, sir.

3 Q. Did Mr. Price -- di -- did you witness Mr. Price handling
4 his money in any type of fashion other than what would
5 normally, how it would normally be handled, maybe put in your
6 pocket or in a wallet or a billfold.

7 A. Yes, he was standin' my -- in my kitchen rippin' it up
8 and burnin' it right in front of all of us.

9 Q. Thank you. Nothing further.

10 CROSS-EXAMINATION BY MR. WHELCHER:

11 Q. He stood in your kitchen, ---

12 A. Um-hum.

13 Q. --- ripped up the money and burned it in front of all of
14 ya.

15 A. Yes.

16 Q. All four of ya?

17 A. Yes.

18 Q. Okay. Do you remember when the prosecutor was asking you
19 in your direct examination what ya'll were playin' for?

20 A. You mean what we was playin' for.

21 Q. Cards, you were playing for -- was you playin' for
22 money?

23 A. No.

24 Q. Not playin' for drugs?

25 A. No.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHEL

1 Q. Not playin' for alcohol or anything like that?

2 A. No.

3 Q. Playin' for funzies.

4 A. Just for fun.

5 Q. And you told me when I asked you that you didn't have any
6 money, ---

7 A. I didn't, ---

8 Q. --- do you remember that?

9 A. --- yes, sir, but when he was rippin' up the money I was
10 tapin' back together his money right in front of him saying,
11 Don't rip your money, you need this money.

12 Q. And you never bothered to tell anybody that until after
13 he testified. You had chances to say, Let me tell you how
14 crazy he was.

15 A. You didn't ask me that.

16 Q. Neither did the State, did they?

17 A. Heck no.

18 Q. You didn't offer that, did ya?

19 A. No.

20 Q. Have you given a statement in the four years this has
21 happened?

22 A. I probly have.

23 Q. No, I mean a written statement where you signed your name
24 at the bottom of it.

25 A. I probably have.

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHEL

1 Q. Okay. Did you talk about in that statement that he was
2 rippin' his money up?

3 A. I probably did.

4 Q. Okay. But you don't know for sure, do ya?

5 A. For sure what?

6 Q. Whether or not you gave that statement, whether or not
7 you mentioned that money.

8 A. Well, sir, I was in so much trauma I don't know what I
9 said.

10 Q. Or you were under the influence of so much cocaine.

11 A. And that too yes, sir.

12 Q. Okay. So what you're tellin' us today could be the
13 influence of all that cocaine.

14 A. Not from four or five years ago no, sir.

15 Q. No, no. What you're tellin' us today could be your
16 recollection of what happened back then while you were under
17 the influence of cocaine, correct?

18 A. I don't understand that question.

19 Q. Well it's a real simple question, ma'am.

20 A. Well give it to me simply.

21 Q. I'll try. What happened to you and your memory of what
22 happened back then would be effected by the cocaine that you
23 took during that day.

24 A. From that long ago? Is ---

25 Q. Well memory's ---

JENNIFER DAWN HENSON - CROSS-EXAMINATION BY MR. WHELCHEL

- 1 A. --- it still, is it ---
- 2 Q. --- based on what happened then ---
- 3 A. Is it still ---
- 4 Q. --- that's what I'm asking.
- 5 A. --- messin' with me now? Is that what you're sayin'?
- 6 Q. No, ma'am. I'm asking you if the cocaine you were taking
- 7 that day affected how you perceived what happened that day?
- 8 A. No. No, sir.
- 9 Q. So you can clearly tell us what happened that day even
- 10 though you'd been smo -- co -- smokin' cocaine for hours.
- 11 A. Yes, sir.
- 12 Q. Okay.
- 13 A. I know what happened in in my own home yes, sir.
- 14 Q. Uh-huh. And it's your testimony that a man who had no
- 15 money and that just came into money the day before stood in
- 16 your kitchen and ripped it up.
- 17 A. Yes, sir, and was burnin' it.
- 18 Q. Uh-huh. That's how you came into be is it -- to be in
- 19 possession of the burnt money?
- 20 A. I was tapin' it back together right in front of him ---
- 21 Q. Uh-huh.
- 22 A. --- and he ---
- 23 Q. Kinda forgettin' that ya had \$700.
- 24 A. Forget that I had it?
- 25 Q. Yes, ma'am. I ---

JENNIFER DAWN HENSON: CROSS-EXAMINATION BY MR. WHELCHER

1 A. I did not have \$700.

2 Q. Excuse me?

3 A. He had the money.

4 Q. Yeah, when ---

5 A. --- I was tapin' it up.

6 Q. --- when you got outta the hospital, you had \$700.

7 A. I don't recall that ---

8 Q. Oh.

9 A. --- because that was after the fact of all that stuff
10 happenin'. I don't know, after that I don't know what
11 happened.

12 Q. Let me ask you if you can do this for me how much is one-
13 fourth of \$2800?

14 A. I have no idea.

15 Q. Would you surprise -- that it would surprise you to know
16 it's \$700?

17 A. Could be.

18 Q. Okay.

19 THE COURT: Anything else?

20 MR. MCCARTY: No.

21 THE COURT: You may step down.

22 (Whereupon, the microphone was hit.)

23 MS. HENSON: Uh-oh.

24 (Whereupon, the witness left the stand.)

25 MR. MCCARTY: Nothing further in rebuttal, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Alright, ladies and gentlemen, that is all
2 the testimony or evidence to be offered in the trial of this
3 case. What remains to be done are the lawyer's summations, my
4 instruction and your deliberations. I've got a couple of
5 matters I'll need to address first so I'll ask you to please
6 go to your jury room, do not yet discuss the case, I'll bring
7 you back shortly.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Motion.

11 MR. WHELCHER: I would renew my earlier motion for a
12 directed verdict, Your Honor.

13 THE COURT: Alright, it's denied. State have a request
14 for instruction?

15 MR. MCCARTY: No, Your Honor.

16 THE COURT: The defense?

17 MR. WHELCHER: Self-defense, Your Honor.

18 THE COURT: That all?

19 MR. WHELCHER: At this time yes, sir.

20 THE COURT: Well it's the only time you're gettin' asked.

21 MR. WHELCHER: That's what I was gonna ask, Your Honor.

22 Are we gonna argue a charge this afternoon?

23 THE COURT: We're gonna do that right now.

24 MR. WHELCHER: Yes. Self-defense would be it, Your
25 Honor.

CLOSING ARGUMENTS

1 THE COURT: Okay. Ya'll need any more time before we
2 conclude?

3 MR. MCCARTY: No, Your Honor, but I I would just object
4 to a self-defense charge. I I don't know that he satisfied
5 all the prongs with regards to self-defense with a duty to
6 retreat. He was in someone else's home, um, ---

7 THE COURT: He was an invited guest was he not?

8 MR. MCCARTY: Yes, he was.

9 THE COURT: You don't have a duty to retreat if you're an
10 invited guest.

11 MR. MCCARTY: Yes, Your Honor.

12 THE COURT: Alright, ya'll ready to conclude it?

13 MR. MCCARTY: Yes.

14 THE COURT: Okay. Bring the jury back.

15 (The following takes place in the presence of the
16 jurors.)

17 THE COURT: Alright, ladies and gentlemen, we're gonna
18 hear from the lawyers in their final summations after which
19 I'll instruct you on the law then you can begin deliberating
20 so please give the lawyers your attention now as they give you
21 their final summation. Mr. Whelchel.

22 MR. WHELCHER: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 MR. WHELCHER: I told you when we started at this
25 trial -- excuse me, told you when we started this trial that

CLOSING ARGUMENTS

1 the State had to prove to you individually and as a collective
2 body that all of this happened the way they say it happened --
3 do you have the indictments? Thank you, sir. Two indictments
4 that my client with malice aforethought committed an assault
5 and battery on Pamela Massey and Dawn Henson by stabbing them
6 with the intent to kill them; assault and battery with intent
7 to kill in a nutshell. The question you have to have, have to
8 ask yourself is this: Has it been proven to you beyond a
9 reasonable doubt that my client who is here today for the
10 first time to tell his side of this incident.

11 Now a lots been made about the fact that he could have or
12 should have told the police and he told 'em that night, Be
13 quiet, somebody will come and talk to you, but they never did
14 and about six months later as you heard him testify he gets a
15 lawyer appointed to him. Well by that time charges have
16 already been brought, and this is the vehicle to determine
17 whether or not my client is guilty of aggravated assault and
18 battery or excuse me assault and battery with intent to kill
19 or he's not guilty, this is the way it's done, you decide, not
20 the cops, not the prosecutor, the jury decides. Remember what
21 the judge told ya? He didn't have to testify, there's no
22 burden of proof on him whatsoever.

23 But let's talk about some of the common sense things that
24 you've heard. Mr. McCarty was just astounded by the fact that
25 Dewayne Henson, who hadn't darkened the door of this

CLOSING ARGUMENTS

1 courtroom, Dewayne Henson didn't take it upon himself after
2 seeing my client with all that cash to rob him when they were
3 going to Una. Well of course not, he's buyin' and here's the
4 other thing: If you rob somebody you know, if you set them up
5 and when you do that you do it with superior numbers. One of
6 the things you learn very quickly and they taught us when I
7 was in ROTC and when you learn to become an officer you, if
8 you're going to go into battle, you go in with superior
9 numbers so that's exactly what they did. They waited until
10 the night went on and they went in with superior numbers. Who
11 went to whose home and invited who to come on down, we gonna
12 party?

13 Now Mr. McCarty told ya at the very beginning you're
14 gonna hear about drugs, everybody was usin' drugs, I don't
15 think there's any question about that but the fact that you're
16 usin' drugs does not mean that well, you know, we gonna let
17 you rob somebody while ya at it, does not mean that we're
18 gonna let ya try to kill somebody while you're at it too but
19 you have to decide what happened, that's why you're here to
20 exercise your common sense. And Mr. McCarty talked to you
21 about in his opening I think about some of those cop shows and
22 stuff, NCIS and stuff like that, great television, great
23 movies but it doesn't happen here, it's very rare that you see
24 something turn on a piece of scientific evidence like that.
25 What does it turn on? it turns on who and what you believe.

CLOSING ARGUMENTS

1 Let's hearken back to my cross-examination of Dawn Henson.
2 When I pushed her for specifics, all we got was, I don't know,
3 I don't remember and both of them tell you that for no reason
4 whatsoever he was not provoked, was not acting wild and crazy,
5 for no reason whatsoever that gentleman gets up, takes a knife
6 and starts cutting 'em. Nobody told you he was acting wild
7 and crazy, he was saying crazy thing, he -- none of that, just
8 out of the blue. I don't necessarily believe in coincidences
9 but it is a huge coincidence that my client had \$2800 and some
10 change in \$100 bills and Dawn Henson had 7 \$100 bills in her
11 possession when she went into the hospital and came out of the
12 hospital. She got 'em back when she came out. Did you see
13 'em in evidence? Did she go to the police and say, Hey, this
14 money belonged to that guy, he was cuttin' it up, he was
15 burnin' it, he was crazy? no. One-fourth of \$2800 is \$700,
16 real easy to figure and when you start this assault that was
17 perpetrated on Randall Price, you do it as I told you before
18 with superior numbers. The problem is he threw the money,
19 divide and conquer, get them away from me, I'll throw the
20 money and three of 'em went after it. We don't know who got
21 what, we do know she (indicating Ms. Massey) got \$700, \$700
22 that she didn't remember gettin' until he testified. Not
23 until you hear from Rodney Price what actually happened that
24 night do you get the State offering, Oh, well yeah, he had
25 \$700, they called her up to reflect that. Let me ask you a

CLOSING ARGUMENTS

question, it's real simple: Do you believe her (indicating Ms. Massey), do you believe her when she tells you he was cuttin' up his money and that he started cuttin' them for no reason? I gave her every chance in the world to tell me if she had any money that night, No, remember she said, I'm a housewife, I don't work, I don't have any money, we were playin' for funzies, there's no money involved whatsoever. If you believe that she came in possession of that money legitimately, it's a huge coincidence that the money she happens to have is \$100 bills. When we ask you to use your common sense, that means you use your own situations. How many of you would forget 7 \$100 bills, not mention it to the police under these circumstances? How many of you would do that?

The State must prove to you that an assault and battery took place and that an assault and battery took place without legal legal provocation. You've heard him tell you that there were four on one. The judge will tell you he's an invited guest at that house, he does not have a duty to retreat. You heard him testify, They were between me and the door; you heard him testify his back is up against the wall. Two men, two women fightin' him, he's got the money, they don't. When the night is over, they got the money, he don't. How do we know that? \$700 mama. Do you remember how vague she was? Now they can tell you, I got cut here, I got cut here, there

CLOSING ARGUMENTS

1 ain't no question about that, it's obvious but when you start
2 asking specific questions about almost anything else, I don't
3 know and I don't remember and it's been four years, that ain't
4 his fault (indicating the defendant).

5 I cannot emphasize enough how it is -- how important it
6 is for ya'll to understand this: This is not you believe our
7 side or you believe our side, it's not a battle against each
8 other. Now the system that's set up it's set up that way and
9 we're adversaries but we've been doin' this a while and we're
10 friends too. I occasionally rag him about the Citadel and
11 Welford beatin' 'em for ten straight years now or ten straight
12 times but ya need to understand somethin': You don't have
13 sides. We represent the State, the government, the people
14 with the burden of proving to you beyond a reasonable doubt
15 that this happened the way they say it happened, that he beat
16 up on Rod -- I mean, Randall pretty good. He's good, it's his
17 job but none of that matters because of this: You determine
18 what you believe, not us, not even the judge. He's already
19 told ya his job is the law. He will tell you shortly what the
20 law is. You take that law, combine it with the facts as you
21 determine them to be and then you decide, come back with a
22 verdict. And here's what you must do: You must apply that
23 common sense that I've talked to you about and the judge has
24 talked to you about, I'm sure Mr. McCarty will talk to you
25 about it too, but you have to have before you evidence so

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1 strong and so convincing as to remove the presumption of
2 innocence that Randall Price has. Randall Price and everybody
3 that sits at that defense table (indicating) is presumed
4 innocent, not just now, he's been presumed innocent since the
5 day he was arrested. He will continue to be presumed innocent
6 when you go back to the jury room back here and deliberate.
7 Listen to what the judge tells you. You need to understand
8 exactly how strong the presumption of innocence is and the
9 reason we do it is quite simple: not everybody can prove
10 themselves to be innocent so the burden is on the people who
11 bring the charge. There have been other countries in the
12 history of this world where they just bring a charge against
13 ya and say, Well now you gotta prove you didn't do it, doesn't
14 work that way here and it hadn't worked that way here since
15 the very beginning of this country. You have the right to the
16 presumption of innocence. It is the only presumption that
17 exists in the law and it's very, very important.

18 In in addition to that presumption and in conjunction
19 working with that presumption, is what we refer to as the
20 "burden of proof" and it rests right here (indicating) at the
21 government's table because it is the government who says, We
22 think he committed an assault and battery with intent to kill,
23 we think this, this and this happened so they have to prove it
24 happened, prove it with evidence so strong and so convincing
25 as to remove the presumption of innocence that Randall Price

CLOSING ARGUMENTS

1 has and anybody charged with a criminal offense has who has to
2 defend themselves from the charges of the government.

3 In addition to the presumption of innocence and the
4 burden of proof with the State, there is a third prong that is
5 required by the State: they must prove that this happened the
6 way they say it happened beyond a reasonable doubt. Now the
7 judge will charge you about what the definition of a
8 reasonable doubt and it's not all doubt but it's a reasonable
9 doubt and I believe he'll charge you that a reasonable doubt
10 is just this: a doubt that would cause a person to hesitate to
11 act. Ladies and gentlemen, I'm here to tell you that in this
12 case there are 700 reasonable doubts at least. Do you believe
13 the coincidence of the one-quarter share just happened to even
14 show up in her possession when she goes to the hospital? When
15 she's taken to the hospital that night, they take, everybody
16 knows how it works if you've been to the hospital and they
17 admit you, they take your clothes and they give you those
18 god-awful gowns and then when you get out they give your stuff
19 back to ya, that's what they were reading. Who gave it to ya?
20 Where did ya have to hear about that from? We had to find it.
21 People with the burden of proving to you that this happened
22 the way they say it happened and the people who testified
23 earlier that they had no money all of a sudden after ya hear
24 my client's testimony, Oh, yes, he was cutting up his money.
25 Do you believe that testimony because the judge will tell you

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1 you can believe some of what a person tells ya but she's right
2 in some of the things she says; she's right in that they went
3 to get him and they went back to her house and everybody was
4 doin' cocaine and that Pamela obviously was there and I don't
5 think anybody's con -- contesting that Rodney and Dewayne were
6 there 'cuz Rodney and Dewayne gentlemen that they are cut and
7 run with their share. We don't know how much they got but
8 again, the coincidence of one-fourth of the party having the
9 \$700 which is an equal share is mighty large in my opinion but
10 it doesn't matter about my opinion, what matters is your
11 opinion, what you believe.

12 I asked Randall Price whom I've known for about four
13 years now did you cut, stab or hurt those ladies with the
14 intention of killing them?

15 No, sir, I was tryin' to get them off of me, that's it.

16 Now I am sure that you're going to hear that the ladies
17 went to the light or the first lady went and the light gets
18 turned on when she's banging and -- on the door or whatever
19 and then the second lady goes to the same light which makes
20 sense and it makes sense for them and it makes sense for him.
21 Regardless of where you live, if there's people out there
22 trying to harm you, do you run from here (indicating) to the
23 end of the rail go home or do ya run here (indicating) tryin'
24 to get help. He went to the same place they did. He went
25 outside, he saw a light and he told you, I didn't know who was

CLOSING ARGUMENTS

1 out there, I didn't know where Dewayne was, I didn't know
2 where Rodney was and I didn't know where Pamela was so, you
3 know, there's nothing wrong with running to the light.
4 They're beatin' on the door tryin' to get help, he beats on
5 the door and he got a knife in his hand and the man inside has
6 heard their story; he doesn't know, it's early in the mornin',
7 everybody's scared, he's scared too 'cuz when that gun gets
8 pointed on him what does he do, he runs away, he's assuming,
9 Oh, he's in too and I don't think that, I forget his name,
10 that gentleman he wasn't in on this, he's just over across the
11 street mindin' his own business and all of a sudden this woman
12 comes up there tryin' to get in his building, she tells him
13 this story real quick, the other one shows up and tells him
14 the story and then my client also runs to the light. Reminds
15 me of that Poltergeist move, Run to the light, but this isn't
16 funny because that (indicating) gentleman's future is in your
17 hands. Ask yourself these questions: The first question you
18 need to ask yourself is this: Do I believe Dawn? Do I
19 believe Pamela 'cuz when you put their testimony together
20 other than, We got cut or stabbed or whatever, there aint a
21 whole lotta meat there, nobody knows anything about the
22 substance about what went on that night who got where, you
23 know, I never seen this guy before, I've seen this guy before.
24 Can't, we cant even find out Rodney's name, just Rodney. Do
25 you believe what you've been told by the State? Do you

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1. believe what you've been provided as evidence? I mean, look
2 at it. There's pictures and all that kinda stuff and there's
3 no question that there was a scuffle inside this house,
4 there's no question that people got cut with knives, no
5 question these are my client's shoes; the question I submit to
6 you is this: Do you have evidence so strong and so convincing
7 as to remove the cloak of innocence, the presumption of
8 innocence that Randall Price has? You have evidence so strong
9 and so convincing that he cut and stabbed these women with the
10 intent to kill them, that he didn't do it in self-defense,
11 that he just did it 'cuz he could? And here's the kicker:
12 When you successfully rob somebody and there's four of ya,
13 it's four of yas word against one wherein he gave me the
14 money, hell, he gave me the money just like he cut the money
15 up waitin' all that time on a reward -- excuse me, an award
16 from an automobile accident, cashes his check the day before
17 and who's Johnny-on-the-spot at his house? You heard him
18 testify, Had they been up there before, was it unusual for
19 them to come to your house? yeah. Who's lookin' for the
20 money? Now I'm not tellin' ya that what he did was smart 'cuz
21 obviously it was not and but for his quick thinking in taking
22 that money and tossin' it, we might have a whole different
23 case.

24 You have the right the judge will charge you to act on
25 appearances and when four people take you and physically

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1 remove the money from you and then assault you and say they're
2 gonna kill you, you have a right to defend yourself by
3 whatever means necessary. That's exactly what happened on
4 this January morning four years ago. The bottom line is very
5 simple: On January 13th 2007 a robbery took place. My client
6 defended himself, tried to keep his money but decided he'd
7 give up the money to ensure that he didn't lose his life and
8 he didn't lose his life luckily and by the biggest coincidence
9 in the world, maybe in this courtroom, the lady who had
10 nothin' that night playin' for funzies goes into the hospital
11 with \$700, comes outta the hospital with \$700, nobody knows;
12 the hospital doesn't know where the money came from, they know
13 they came in with it, they know they came out with it but they
14 must prove to you that Randall Price with malice aforethought
15 and that doesn't take a whole lotta time you can, you know, if
16 I, bad example but if I pick up a knife right and now and
17 decide to stab Mr. McCarty which I won't do but that's -- that
18 much is malice aforethought, doesn't take a whole lot but ya
19 gotta do it without legal provocation such as being robbed and
20 being threatened. Having somebody tell ya they're gonna kill
21 ya, havin' four people hold ya down, you're gonna see in the
22 pictures that I put in, the house, pretty messy where this
23 altercation took place. Heard my client talk about his back
24 was up to the wall and they went down that little hallway and
25 you can see the trash can knocked over. Let me ask you a

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1 question: My client out of the blue comes up behind Pamela
2 and cuts her accordin' to them, remember Officer Talanges
3 talkin' about where he took the pictures of blood spots and
4 everything like that, there ain't any blood around that table,
5 she's seated at the table playin' some cards and she gets cut
6 like that and the blood drops are out on the steps, down the
7 hall and everything like that, there aint none at the table,
8 odd, that strike you as odd? It's about as odd as somebody
9 with no money having \$700 when she gets outta the hospital.
10 I've never been to the hospital where they pay me to be there.
11 I am at a loss to explain to you how important that this
12 is but what I can tell you is this: When you look at the
13 testimony as provided by the witnesses, and the interesting
14 thing is the judge will charge you momentarily after
15 Mr. McCarty speaks to you, he gets to go last 'cuz again, they
16 have the burden of proof, when the judge charges you he'll
17 tell you again and I think he may have said something about
18 this earlier about how you decide who you believe and what you
19 believe and you can believe all of a witness or none of a
20 witness or a little bit, whatever, you decide usin' that
21 common sense that God gave ya.

22 The combination of my client's innocence, the stellar
23 testimony of those two women, Rodney and Dewayne, ya know,
24 Mr. McCarty wanted to know why my client's brother wasn't here
25 to talk about they were goin' out later that night, well I

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1 can't find Rodney if I just don't know his name but I don't
2 have to find Rodney 'cuz my client doesn't have to do
3 anything, he has no burden yet he bared his soul. Should he
4 been smokin' crack? no. Should any of 'em been smokin' crack?
5 no, but this ain't about that, but it is about how that might
6 affect what you do. But the bottom line is really this: Do
7 you believe those women? Do you believe those women so much
8 so that you can say Randall Price is not innocent anymore,
9 Randall Price is guilty because the State of South Carolina
10 brought me so much convincing evidence as to remove the
11 presumption of innocence and prove to me beyond a reasonable
12 doubt that Randall Price did this the way they said he did
13 this, that Randall Price committed an assault and battery with
14 intent to kill with malice aforethought and assault and
15 battery with intent to kill, I was tryin' to get them off me,
16 I was tryin' to get them away from me, I threw the money. And
17 you heard who got one-fourth of the money, one-fourth of the
18 gainin's. She was admitted to the hospital, monies on her.
19 She didn't have any when I was talkin' to her. You got to
20 understand that reasonable doubt is not a glass that ya get
21 half full, that's reasonable doubt. Reasonable doubt could be
22 one \$100 bill when she testified that she didn't have any
23 money; reasonable doubt could be two or more, it's definitely
24 seven especially when ya get the coincidence of that being
25 one-quarter of \$2800. I submit to you this: The State has

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1 not given you evidence so strong and so convincing as to
2 remove the presumption of innocence from Randall Price. They
3 must do that, overcome the presumption of innocence with
4 evidence so strong and so convincing as to remove that
5 presumption and do it beyond a reasonable doubt, the same
6 doubt that's required in every criminal case, the doubt that
7 requires that you, if you believe what they say, that you
8 could return a verdict and you could overcome the reasonable
9 doubt standard, even if that were your brother or husband or
10 son, the doubt that must be overcome is a reasonable doubt,
11 it's that strong. And these, you know, these aren't defenses
12 that are put up by the defendant, these are the operation of
13 the law of the State of South Carolina and United States.
14 This is the Constitution stuff that we started this country
15 for, this is the very thing that my father and my brother took
16 an oath to defend and I invited myself too. These are the
17 bedrock of our society. They are not gimmicks, they are not
18 technicalities, they are the law of this state.

19 I am proud to be here in front of you to represent my
20 client and to talk to you about the way the law works and the
21 way this system is supposed to work. I've been doin' this for
22 twenty-nine years, used to be a prosecutor myself, probly look
23 at me and tell me I've been doing it a while, but it's oh so
24 important that you understand just how high that burden is for
25 the State 'cuz as you see it's me and Randall got some help

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1 and hired investigator, Mr. Stepp, against the power of the
2 State with all their resources; if this isn't a David and
3 Goliath, I haven't seen one. We believe that the evidence
4 such as it is, and the lack of evidence such as it is and the
5 coincidence coupled with my client is innocent and always has
6 been. We submit to you that the verdict today, the proper
7 verdict is a verdict of not guilty. Thank you.

8 THE COURT: Mr. McCarty.

9 MR. MCCARTY: May it please the Court. Mr. Whelchel kind
10 of ended with this and I just wanna take a moment to talk
11 about it: proof beyond a reasonable doubt. The judge is gonna
12 give you the law, that's what's important is here is listening
13 to him and listening how he tells you what the law is.
14 Mr. Whelchel makes it sound like proof beyond a reasonable
15 doubt that burden that the State has, the the Goliath that we
16 are against David, the evil empire, that we have some proof
17 that's never attained, that doubt has to be proven to you
18 beyond the horizon, beyond any chance of anything even
19 remotely happening beyond any question you may even have in
20 your mind and that's not it. The judge is gonna tell you what
21 proof beyond a reasonable doubt is and it's just what
22 Mr. Whelchel said that would cause you to hesitate to act.
23 It's not proof beyond all doubt, it's not proof beyond so much
24 doubt or in -- or even the slightest amount of doubt, it's
25 proof beyond a reasonable doubt.

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1 You know, I look at the clock right now and we're four
2 o'clock this afternoon. You came back a little bit after two
3 o'clock and the defendant took the stand and he gave his
4 story, something that he's had since January 13th 2007 to come
5 in here and tell, to work on, to get that ready not at, not
6 even quite two hours to try and figure out this \$2800. He
7 says he got a receipt from Mr. White, a check from Mr. White
8 and he says he went to Arthur State Bank. He says he kept
9 \$3,000 out of it and in the course of that day he spent
10 approximately \$200 giving us that nice round \$2800 figure
11 which I'm no math major, I did go to the Citadel, we had to
12 take some math but it wasn't my strong suit but Mr. Whelchel's
13 right, \$700 is a quarter of \$2800 would be -- it's what they
14 want you to believe and that would be okay except where's that
15 receipt from Arthur State Bank to say he did have that \$3,000
16 that day? His testimony is, it's his testimony that he was
17 robbed by four different people. He testifies as a matter of
18 convenience only because and again like I said, I haven't had
19 a lotta time to process about this but I thought about it
20 since then, in order for everybody to get that nice \$700 cut,
21 a couple things have to happen: Dawn and her husband at that
22 time, Dewayne, they had -- they got together, maybe they had
23 that planned but they had that opportunity, he was alone at
24 home in their home with them, that's superior numbers. I took
25 ROTC as well, I'm not a math major but two is more than one.

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1 They had Mr. Price in a situation in a vehicle in which he had
2 restricted movement, he had an inability to necessarily flee
3 on foot immediate, they didn't take advantage of that
4 situation there assuming Dawn and Dewayne had set him up to
5 robe -- to rob him. Then we introduce Pam and Rodney to the
6 mix. Now Randall's te -- or Mr. Price's testimony as well as
7 Pam's testimony is that Pam, Mr. Price met for the first time
8 that night, that Pam met Dw -- or Dawn Henson for the first
9 time that night. According to all that time, more than two
10 hours that Mr. Price has had for the story, he wants you to
11 believe that somehow these folks got together. I I haven't
12 heard any testimony about, Oh, you know at one point they left
13 me alone in the house, stepped outside, they all got together,
14 they huddled, they said, Guys, here's the plan, I know you
15 don't know me, Hey, how ya doin, I'm Dewayne, we're gonna rob
16 this guy, he's got 3,000 bucks in his pocket in his pocket,
17 actually he has 2800 bucks, it'll make a nice even \$700 split.
18 That's what he would have you believe that Pam Massey who
19 didn't know Randall Price prior to coming into that situation,
20 who didn't know Dawn Henson prior to coming in the situation.
21 She knew Rodney, Rodney knew Dewayne, that somehow the four of
22 them in a few short hours wortha time got together, got in
23 cahoots, made a game plan, said this is the way it's gonna go
24 down, everybody either spit in their hands, shook hands on it
25 or, you know, a wink and a nod, We're all good to go, and

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1 agreed to rob Randall Price of maybe \$2800? Who knows. And
2 then the notion that they each got their one-quarter share out
3 of all of this, that they all got their one-quarter share.
4 When? When did they have time? When did they get together
5 and divide up that money? They didn't do it the way Mr. Price
6 was sayin': they were tryin' to take it out of his pocket
7 ripping it in half, but that's not what the lady from the
8 Regional Medical Center said she saw it was cut in half and
9 that's what Dawn said had happened. High on crack, got a wada
10 cash and his money, I don't know how crack affected Randall
11 Price, I don't know what smoking crack does to him, I don't
12 know how he's gonna act. Maybe it makes ya do things that ya
13 don't do normally, maybe it makes ya do things that aren't
14 common sense kinda things to do but, ya know, that lady
15 testified, she also testified that some of the money was
16 burned and right there after I called Dawn as a rebuttal, we
17 didn't have a break, we didn't spend the night over night, I
18 just said, Your Honor, I wanna call Dawn Henson in rebuttal.
19 Dawn, did you see him do anything any money he had? She said,
20 Yeah, he was cuttin' up, he was burning it. So he wants you
21 to believe that he was attacked, that he ripped that money,
22 that big wada cash he had in his hand, threw the rest away.
23 Money's not described as ripped, money's described as, money's
24 described as burned. He didn't say anything about them
25 burning my money and if you're gonna rob somebody, why would

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1 ya burn the proceeds? You gonna rob somebody, divide it up
2 nicely and neatly into fours, it's seven hundred (700) bucks,
3 why ya wanna burn it? I don't burn my paycheck. If I get a
4 dollar scratch off lottery ticket, I don't burn a dollar. It
5 doesn't make sense. Randall Price wants you to believe he was
6 the good guy here, he had some money in his pocket, he's gonna
7 help his friends out, he knows Dewayne and Dawn Henson, takes
8 'em down to the Texaco station, buys 'em whatever they buy
9 there the drinks or whatever, he volunteers to come back to
10 the house, they smoke crack, he volunteers at another point to
11 go out, I'll get some more crack for ya, I'm the good guy
12 here, do that for ya. And again, you know, we, oh, we're
13 already in that superior number situation which existed at one
14 point that he gets in a car with a man, they go off someplace
15 into an area where they're obviously buyin' crack from a house
16 or a trailer, nothin' happens there so well why would you rob
17 the guy who's and I hate to use the term but your "sugar
18 daddy" so to speak? If he's buyin' all your dope, everybody's
19 gettin' high, why ya wanna knock him off? Things are good,
20 life's good, why rob him? But in August when we got our \$700
21 when and where did they have time to divide this money up?
22 When did they get together and say, We've got all 28 \$100, 28
23 \$100 bills here, here's 7 for you, here's 7 for you, here's 7
24 for you and well, Dawn, I notice some of these are ripped and
25 burned but here's that's seven for you? When did that happen?

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1 You recall it was the testimony of Mr. Brewington, Ms. Massey,
2 Ms. Henson is that when they came over to Mr. Brewington's
3 house banging on the door looking for someplace safe to hide
4 it wasn't and I notice they were doin' somethin' over in the
5 corner I thought they were countin' money, no it was, Geeze,
6 it was throat's ripped open, bleedin' all over the place and
7 the next thing ya know is him not running to the light tryin'
8 to finish the job. Why did Randall Price run across the
9 street to Isaac Brewington's house when he lived on Wingo
10 Heights Road? He said he didn't live but two driveways down I
11 think was the testimony, I could be wrong on that, I think he
12 said two driveways down. That's home, that's where we all
13 feel safe, I mean, at least I feel safe at home. That's your
14 castle. Why you gonna run across the street to a stranger's
15 house, beyond his house to the outbuilding in the back with
16 the light on and why are you goin' with a knife in hand, knock
17 well on the glass to begin with but why you gonna knock on the
18 glass with a knife in your hand? Ya see, Randall Price, and
19 this (indicating) is Mr. Whelchel's exhibit, this had been a
20 first exhibit, it's a picture of Randall Price that night once
21 he was detained by the Spartanburg County Sheriff's Office.
22 He would like you to believe that that cut that exists
23 somewhere around where that handcuff is was because Pam Massey
24 came at him said, I wanna kill you MF, I think is what he
25 said, that as he had been held, money had been pulled out of

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1 his pocket, that she came at him, he threw a hand up to defend
2 himself and that's the only cut, scrape, abrasion, anything
3 noted 'cuz I asked Investigator Talanges that, In your report
4 did ya note anything else, any place else on his body, I mean,
5 he described a horrific struggle that occurred in the house,
6 he described fighting tooth and nail to get free from his
7 conspirators against him who were gonna rob him and
8 Investigator Talanges said, No, the only thing I noted in my
9 report, the only photograph I took of the defendant of any
10 type of injury was on his wrist and we photographed him here,
11 show where we located him at: Picture of his face there is
12 red which you can see from these pictures, he's laying face
13 down, it's what the sheriff's office does, remain on the
14 ground. So the only injury is this (indicating). He didn't
15 get that from Pam Massey comin' at him with a knife, he got
16 that from busting out Isaac Brewington's window to his
17 building. Maybe he had a knife in his hand, that's what he
18 tells us he had he knife in his hand; he got that from chasing
19 after Dawn and Pam into that (indicating) building to finish
20 the job that he started earlier. So again like I said, I'm
21 dealin' with this in just about two hours at the time, I've
22 had three to four years to think about this division of money
23 but I believe there were a couple a questions that just kinda
24 sprang to my mind and those were the two that immediately
25 sprang to my mind, maybe you'll have some more when you

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1 deliberate but if they all got together, how come Pam, who's
2 introduced into this situation without having a connection to
3 Dawn, without having a connection to him, she got in on this
4 little plan real quick and said, Yeah, that sounds like a good
5 idea, I'll commit armed robbery, sounds alright to me? She
6 got together with Dawn, with Rodney, with Dewayne and the four
7 of 'em somehow had a meeting at some point during the time
8 while everybody's havin' a party, everybody's havin' a social
9 time, they all got together, huddled up, said, This is how
10 it's gonna happen. And again, like I said, the \$2800 when did
11 they have time to do it? When did they take all these
12 proceeds of all his money, this money that he's supposedly had
13 ripped from his hand and torn from his hand, thrown as he's
14 struggling to get outta the house, when they have time to
15 divide that out, count that out, make sure everybody got \$700?
16 Doesn't sound like a lottery-type situation, that sounds like,
17 Well, we got together back later on we made sure everybody go
18 their fair share of it because the testimony from Dawn and Pam
19 and Mr. Brewington was that after Mr. Brewington had pointed a
20 gun at Randall Price to stop him from coming into his building
21 that they called 911 and it wasn't very shortly thereafter
22 that the police arrived. And and see, Mr. Whelchel said that,
23 you know, he he thought, and that's his opinion I guess, that
24 Mr. Brewington wasn't in on it. I'm glad he thinks that
25 because he's not, he can't be in on this. but Mr. Price's

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1 story he has to be in on it 'cuz see Mr. Price told ya that
2 Mr. Brewington, the guy across the street, wasn't telling you
3 the truth, that Dewayne Henson was also in there. So it just
4 keeps growing. It's like a John Grisham novel or something,
5 he just keeps adding a little bit more and more to his plan.
6 So now we got the neighbor involved in this conspiracy, we got
7 the neighbor coming here to court under oath and omitting from
8 his testimony that her at that time husband was there. See,
9 ladies and gentlemen, that's not the way it happened. Randall
10 Price's story doesn't make sense. I don't know whether he had
11 \$2800. He says he had \$2800, that makes it nice and easy
12 because Dawn had \$700 at the hospital, money that was cut,
13 money that was burnt. Like I said, when we called her
14 immediately in rebuttal that's what she offered, not the next
15 day, not after lunch, but immediately thereafter, that's what
16 he did with it. And again, everybody's high on crack,
17 everybody admitted to smoking, Mr. Price did, they certainly
18 did. Not asking you to judge that lifestyle, to judge that
19 choice, you have to judge the actions of that man sitting at
20 that table (indicating the defendant). Does crack make ya do
21 weird things? I submit to you it probly does. Does it make
22 ya do things that you probly wouldn't otherwise do with a
23 hundred dollar bill? probably so but to end up with this nice
24 little equal division of \$700 a piece, I don't buy, I don't
25 get that. How do we know he had \$2800 is what he tells us, it

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1 makes it nice, it makes it good, makes it easy to understand.
2 I can say why she had \$700 because if I make it four of 'em
3 then I have \$2800. Why do ya rob somebody ya know? Why do ya
4 rob the guy who's payin' for your crack, who's been takin' ya
5 up to the Texaco and if you're gonna rob him Dawn and Pam or
6 Dawn and Dewayne sought him out, they knew he'd get that
7 settlement check, went over to his dad's house, they sought
8 him out, all that, why didn't they rob him earlier in the
9 evening? They had him alone, that's superior numbers. Why
10 didn't they, according to Mr. Price they had to all get
11 together, had to all come up with a game plan, they had to all
12 agree to it then they all had to execute it and once that plan
13 got executed then Mr. Price becomes the person who's defending
14 his his life according to him. The first two people to show
15 up over at Isaac Brewington's house are not him, it's those
16 (indicating the victims) two women, not Dewayne but those two
17 women but see, Mr. Price wants you to believe he got robbed.
18 Why didn't Dewayne then rob him as Pam and Dawn both go leave
19 that house to buy even more crack that night? If nobody had
20 any money, why would they have taken him, the guy who's buying
21 crack, with him?

22 Mr. Whelchel said, Do I believe Dawn, and that's the
23 question he wants you to ask yourself, do I believe Pamela.
24 I'm gonna ask you if you believe, do you believe Randall
25 Price's testimony 'cuz just like he went over you have the

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1 right to judge every witness's testimony. You have the right
2 to judge the credibility of every witness who has something to
3 gain, who has something to lose. Dawn and Pam Massey were
4 attacked that night. They weren't victims of a self-defense.
5 You can look at their cuts, you can look at the nature that
6 how they were slashed at. How did Dawn get a cut all the way
7 across the back of her neck? If she's attacking him, how'd
8 she get somethin' way back here (indicating) and that I'm
9 gonna have to turn my back to you to show it to ya, either
10 that or somethin', I, you know, I just don't know how to
11 explain it but she's got her back at least, it's on the
12 backside of her body. She's got another cut at her throat,
13 she's got a stab wound in her lungs. She said it collapsed
14 her lung. Pam we can all see in that picture a big gash. It
15 wasn't walk up behind it as I recall the testimony, it was
16 reach across the table and slash at it. That's what happened
17 that night. Crack makes you do weird things is what I'd
18 submit to you. Crack makes you make judgments that are
19 irrational: cutting up money, burning money, attacking two
20 women. Now you're gonna rob anybody that night, why wouldn't
21 Dwayne and Rodney left to go buy more quack and leave Pam and
22 Dawn to do the robbery if that's what he wants you to believe?
23 Dawn came into \$700, when did she have time to count it out
24 when they were locking themselves into Isaac Brewington's
25 outbuilding, when they were putting the refrigerator in front

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1 of the door, when they were screaming for help, is that when
2 they had time to count out the money, make sure they had equal
3 division 'cuz their testimony is only the two of them were
4 there. His testimony is the three of 'em were there including
5 Mr. or plus Mr. Brewington, that still leaves a fourth person
6 out. Where'd he get his share because he said was, We all
7 fell out the door, one of 'em ran one way, one of 'em ran the
8 other way, when they have time to count? They're the fastest
9 money counters in in makin' sure everybody had equal share
10 people I've ever seen in my life if that's the way it
11 happened. I guess when you run out the back door you run
12 around the front you got 700, I got 700, let's make sure we
13 got it. That's the way it had -- has to happen according to
14 his story that way 'cuz when else would they have had time to
15 put it together 'cuz he says, I threw it on the ground, says,
16 I got rid of it, got it out of my hands so they had an
17 inventory and a counting of all that money right there. Money
18 wasn't torn, it was described, it was catalogued, it was put
19 into that record at Spartanburg Regional as cut and burned,
20 that was her testimony. She has no affiliation with this
21 case, could care a less. She was called here to testify about
22 that record, that's what that record says. Immediately
23 thereafter Dawn said that's what he was doing with it. He
24 says it was torn from him, big stacka money torn in half.
25 It's a common sense kind of a question: Do you think you

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1 could take 28 hundred dollar bills, rip some of them in half,
2 seven of 'em in half while he's holding them in a group, in a
3 bunch? That was the way he had it and he's gettin' robbed, he
4 knows he's got a knife on him. Why is it when he says, and
5 his story just was back and forth. He says, I reached for my
6 money, once they go for my money, that's what I reached for.
7 I said, Well why? He says, Well I didn't what intentions were
8 at the time, that's why I reached for my knife. Well you
9 just, you knew what their intentions were she said, I'm gonna
10 kill you MF or whatever it was, ya know what their intentions
11 were. Two guys grab your arms, they're reachin' in your
12 pockets, your gettin' robbed what do you mean you don't know
13 what their intentions were? So witness credibility who do you
14 believe?

15 Mr. Whelchel made a lotta hey about Dawn comin' into some
16 money, havin' some money in her pocket, she's high on crack,
17 was high on crack. You know what his actions were, we know
18 how he was acting: cool, calm, levelheaded, no. Ladies and
19 gentlemen, Randall Price attacked Pam Massey and Dawn Henson
20 that night, it wasn't out of self-defense. It may have been
21 induced by crack, it may have been fueled by a wrong decision
22 that that drug makes you do but let it be known that he
23 attacked these (indicating the victims) two women. They were
24 not the initial aggressors, they did not try to rob him, they
25 certainly didn't do it with the help of Dewayne and Rodney,

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1 they weren't there, they had gone to buy more crack. Why rob
2 the guy who's buyin' crack for ya? Why rob the guy you know
3 and why, this was another part of his story, once you get
4 outside he said running towards the light, that's what those
5 (indicating) two people did, that's what the two people who
6 were scared did trying to find someone. Dawn was in her home.
7 When she gets outside of her castle, outside where it is safe
8 for her, she has to find someplace. She ran towards that
9 light. Pam's not even from there, she's looking for
10 something. In fact, Pam gets there first and it's Dawn that
11 comes up behind her who ends up over there. Randall Price
12 lives there. He lives on that street. Again, I think it was
13 two driveways down but he said, After I go over to Mr.
14 Brewington and to my surprise they're already in
15 Mr. Brewington's outbuilding and I gently rap upon the glass
16 with my knife in my hand and low and behold it accidentally
17 breaks, that I discover the two women who are trying to rob me
18 are there and instead of even at that point running back home
19 he said, I ran towards the Texaco station because I knew they
20 were open, they had their light on or something like that, but
21 I just recall him sayin', I ran towards the Texaco station.
22 Why, if ya live a stone's throw away why are you not runnin'
23 home, why are you not tryin' to get where you feel your heart
24 is safe, it's common sense kinda questions, that's what home
25 makes ya feel like, that's your safety and he runs across the

JURY CHARGE

1 street? What a coincidence there that those two ladies are
2 already barricaded in the door, that Mr. Brewington draws a
3 gun out on him and then afterwards accordin' to his own
4 testimony, Still I decided to run to the Texaco station. Who
5 and what you believe that's your choice as a jury, that's the
6 issues that you'll have to deal with as you begin your
7 deliberations. I submit to you though that the State's proven
8 to you though beyond a reasonable doubt that Pam Massey, that
9 Dawn Henson, that Isaac Brewington's testimony in regard to
10 the facts that occurred that night is the testimony which
11 occurred not the testimony Mr. Price offered, you can make
12 that decision who has, something to gain, who has something to
13 lose? They had everything to gain with Mr. Price's friendship
14 that night from his continuing to support that party that was
15 going on, didn't have anything to gain by robbing him and yet
16 for three years plus a man who was victim of a crime waiting
17 to come to court on the way to his trial to tell you that he's
18 the victim in this. I'm gonna end here in just a minute so
19 that the judge can begin his instructions to you but, ladies
20 and gentlemen, now is the time to remove that presumption of
21 innocence from Randall Price, to deliberate and to find him
22 guilty of assault and battery with intent to kill against
23 these two women. Thank you.

24 THE COURT: Madam forelady and ladies and gentlemen of
25 the jury, you of course have heard and seen all the evidence

JURY CHARGE

1 and now the final summations of the lawyers so I'm gonna
2 instruct you on the law that's applicable then you'll be asked
3 to go back and begin with your deliberations. It is your
4 exclusive duty to determine what the facts are, you do that
5 through your own common sense, examination and evaluation of
6 all the testimony and other evidence received during the trial
7 of the case. You twelve jurors alone will decide what weight,
8 value and effect to give to any particular witness's testimony
9 or other evidence in the case. Your sole objective is of
10 course to reach the truth in the matter; by doing that you
11 will have fulfilled your obligations as jurors and that is to
12 simply give both the State and the defendant a fair and
13 impartial trial.

14 Now as you know in this case the State through the
15 prosecutor has accused Randall Price of the crimes of assault
16 and battery with intent to kill. There are two separate
17 charges, two separate indictments, you'll be considering those
18 charges separately based upon the evidence presented and the
19 law that's applicable, the law or the same law is applicable
20 to both but obviously the facts are somewhat different and of
21 course that will depend upon your determination as to those
22 facts as to what your verdict will be, but you have two
23 separate charges, you have two separate indictments, you'll be
24 called upon to render two separate and distinct verdicts, they
25 could be the same, they could be different, that of course

JURY CHARGE

1 will depend upon your determination of the facts and then
2 application of the law.

3 As I've told you the indictments will be in the jury room,
4 with you, they're not evidence of anything, they don't prove
5 anything, they're simply going to be there for use as verdict
6 forms. It's on the back of each indictment, madam forelady,
7 in the lower left hand corner you'll see the word "verdict"
8 and it's beneath that word that you'll be indicating the
9 jury's decision as it relates to that particular indictment,
10 you'll then sign your name and place the appropriate date on
11 it.

12 Now as to the allegations and as to the charges contained
13 in each indictment, the defendant has entered a plea of not
14 guilty; as I've told ya that plea of not guilty has therefore
15 placed upon the State the burden of proving the allegations
16 set forth, the elements of each of the crimes alleged against
17 the defendant and therefore the burden is upon the State to
18 establish the defendant's guilt to the satisfaction of you
19 twelve jurors beyond a reasonable doubt before any verdict of
20 guilty could be returned. The burden is never upon a
21 defendant to prove that he or she is not guilty or to prove
22 that he or she is innocent because in some cases that might
23 not be possible. The burden is always upon the State because
24 they brought the charge against the defendant to establish his
25 guilt beyond a reasonable doubt and as I've told ya every

JURY CHARGE

1 person accused of a crime is presumed to be innocent and that
2 it -- that is a vital, important and cardinal rule of law that
3 every defendant in a trial no matter how serious the offense
4 might be that person shall always be presumed innocent and
5 that presumption of innocence remains with any defendant as it
6 does with Mr. Price from the time he's arrested, throughout
7 the trial and even as you go back to begin your deliberations
8 and that presumption of innocence will be with him there and
9 it'll be with him forever unless you twelve jurors unanimously
10 determine that he's no longer entitled to that presumption of
11 innocence. In other words, after you've considered all of the
12 evidence, you've decided the facts, you've applied the law, if
13 you unanimously determine that his guilt has been proven
14 beyond a reasonable doubt then he would no longer be entitled
15 to that presumption of innocence but it's only if, unless and
16 until you are satisfied of his guilt beyond a reasonable doubt
17 that the presumption of innocence would no longer be
18 applicable.

19 Now while the State does have the burden of establishing
20 the defendant's guilt beyond a reasonable doubt, that does not
21 mean that the State has to prove his guilt beyond all doubt or
22 beyond any possible doubt but it does require the State to
23 prove his guilt to your satisfaction beyond a reasonable doubt
24 and the term "reasonable doubt" should be given its plain and
25 ordinary meaning. A reasonable doubt is the kind of doubt

JURY CHARGE

1 that would cause a reasonable person to hesitate to act upon
2 the information provided and a defendant in a criminal trial
3 is entitled to any reasonable reasonable doubt that arises
4 from the evidence or lack of evidence in a case and if upon
5 any factual issue essential to a finding of a verdict of
6 guilty you have some reasonable doubt as to how that issue
7 should be resolved, it is your duty to resolve that reasonable
8 doubt in favor of the defendant and therefore, if upon your
9 consideration of the whole case you have a reasonable doubt as
10 to his guilt as it relates to a particular indictment, you
11 must resolve that doubt in his favor and return a verdict of
12 not guilty as it relates to that charge. And on the other
13 hand after you've considered all of the evidence and decided
14 the facts and applied the law, if you have no reasonable doubt
15 as to his guilt as it relates to a particular indictment then
16 it will be your corresponding duty to find him guilty of that
17 charge where you are convinced of that guilt beyond a
18 reasonable doubt.

19 Now the same law that provides that you are the judges of
20 the facts also provides that I am the judge of the law and
21 that simply means nobody's going to tell you how to arrive at
22 your determination of fact in the case, you do that, as I've
23 already stated, through the exercise of good judgment and
24 common sense, conscientiously apply it to the testimony and
25 evidence received during the trial. You must however under

JURY CHARGE

1 your oath as a juror accept the law as I provide it to ya as
2 being the law that you are to apply in this case. In other
3 words, you're not to concern yourself with what you thought
4 the law was before you came to serve as a juror this week or
5 what you think the law ought to be. You have to under your
6 oath accept the law as I provide it to you as being the law
7 that you are to apply in the case and then you simply take
8 that law and you apply it to the facts as you twelve jurors
9 have determined those facts to be after a careful
10 consideration of the evidence and the application of good
11 judgment and common sense.

12 Now because you are the sole judges of the facts, you are
13 therefore necessarily the sole judges of the credibility, that
14 just means the believability of each witness that has
15 testified during the trial. You twelve jurors alone will
16 decide what weight, value and effect to give to any particular
17 witness's testimony or other evidence in the case but in your
18 evaluation of the credibility of witness testimony there are
19 several factors which you should take into consideration and
20 I'm going to list those factors for you: You should consider
21 the demeanor other of the witness, that means how did the
22 witness appear to you when the witness testified from the
23 witness stand. Was the witness straightforward in responding
24 to questions or was the witness hesitant or evasive in
25 responding to questions that were asked of the witness?

JURY CHARGE

1 Simply put did the witness appear to you to be telling the
2 truth and to have knowledge of the facts to which that witness
3 has testified? You should also consider whether or not the
4 testimony of a witness is consistent or is it inconsistent
5 with that witness's own testimony or with other testimony or
6 other evidence received during the trial. You should consider
7 how the witness came to know the facts to which a witness has
8 testified. In other words, what was that witness's
9 opportunity and ability to perceive the existence of those
10 facts which they have testified by having previously used
11 their senses and then what is their ability to be able to come
12 into court and to accurately recollect to you as to what they
13 have previously perceived. You should also consider any bias
14 or prejudice or interest that a witness might have with
15 respect to a case. In other words, do you find some reason
16 that a particular witness would come into court and would
17 testify one way or another to help or to hurt one side or the
18 other and you should consider any interest that a witness
19 might have in the outcome of this case if you determine that a
20 witness does have such an interest and you find that that
21 interest would bear upon that particular witness's
22 believability and you may consider whether or not the
23 testimony of a witness is strengthened or is it weakened by
24 other testimony or other evidence received during the trial.
25 As the finders of the fact and as the judges of the

JURY CHARGE

1 credibility of each witness you are permitted to believe as
2 much or as little of what a witness has testified to as you
3 deem is appropriate and therefore you can believe everything
4 that a witness said, you can choose to believe none of it.
5 You may believe some portion of a witness's testimony and
6 reject some other portion of that same witness's testimony.
7 You may believe one as opposed to several or several as
8 opposed to one but whatever your good judgment and common
9 sense tells you is the most believable and credible testimony
10 is the testimony you should accept and you should reject any
11 testimony or other evidence that you find not to be credible
12 or believable. Again, your sole objective is to simply reach
13 the truth in the matter and by doing that you will have
14 fulfilled your obligations as jurors and that is to simply
15 give both the State and the defendant a fair trial.

16 Now while there are various forms of evidence such as
17 testimony, photographs, documents, charts and other types of
18 physical exhibits, there are really only two types of
19 evidence, either or both of those types of evidence may be
20 used to prove any fact and issue but the two types of evidence
21 are direct evidence and circumstantial evidence. Now direct
22 evidence is the testimony of a person who testifies from
23 actual knowledge of the fact, it is testimony by a person who
24 has perceived the existence of a fact by means of his or her
25 senses and then they come into court and they testify as to

JURY CHARGE

1 what they have previously perceived. Circumstantial evidence
2 on the other hand is the proof of some other fact or set of
3 facts which taken either singly or collectively may prove the
4 existence of a fact in question as a necessary consequence
5 that is through an inference and an inference is simply a
6 deduction of fact that may logically and reasonably be drawn
7 from the proof of some other fact or set of facts. In other
8 words, it's not a fact proven by the direct testimony of a
9 person based upon their personal perception but it is a
10 conclusion which might reasonably be drawn from the proof of
11 other facts. In other words, you may infer that a particular
12 event occurred or that a particular fact exists based upon the
13 proof of sufficient factual circumstances which would
14 reasonably warrant your arriving at a particular conclusion.
15 The law, however, makes absolutely no distinction between the
16 weight or the value to be given to direct evidence as opposed
17 to circumstantial evidence nor is a greater degree of
18 certainty required of circumstantial evidence as opposed to
19 direct evidence. Whatever the type of evidence used to prove
20 any fact and issue you should consider all of the evidence
21 presented during the trial of the case and after carefully
22 considering all of that evidence in your minds if you are not
23 convinced of the guilt of the defendant beyond a reasonable
24 doubt then you must resolve that doubt in his favor and return
25 a verdict of not guilty.

JURY CHARGE

1 Now in this case as you are well aware the defendant is
2 charged with assault and battery with intent to kill. He has
3 two separate charges because there are two separate persons
4 who are alleged to have been victims so this law will apply to
5 both of the indictments. Obviously, there are some
6 differences in the facts, specifically the persons alleged to
7 be the victims but the law is applicable to both.

8 There are generally three degrees of assault and battery.
9 The most serious degree of assault and battery is assault and
10 battery with intent to kill, the next most serious is assault
11 and battery of a high and aggravated nature and the least
12 serious is a simple assault and battery. In this case of
13 course the defendant is charged with assault and battery with
14 intent to kill. I'm going to define for you the term
15 "assault", the term "battery" and then the term or what
16 constitutes an "assault and battery" with intent to kill. An
17 assault is the unlawful attempt to do violence or injury to
18 the person of another where there is the present ability to
19 complete the attempt by way of a battery. A battery is the
20 unlawful and intentional touching or striking of the person of
21 another by the person committing the assault or by some object
22 put in motion by that person. In other words, it is the
23 completion of an act doing violence or injury to the person of
24 another. A battery may be further defined as the carrying
25 into effect an assault by using or applying force to the

JURY CHARGE

1 person of another however slight in a rude or angry or
2 resentful manner and without just cause or a legal excuse. An
3 assault and battery with intent to kill is defined as an
4 unlawful act or acts of a violent nature towards the person of
5 another constituting an assault and battery and the natural
6 tendency of which is to cause death or result in serious
7 bodily harm and the unlawful conduct constituting the assault
8 and battery is accompanied with malice aforethought either
9 expressed or implied and malice of course is a mental state.
10 Malice aforethought is an essential element of the crime of
11 assault and battery with intent to kill and it must be proven
12 beyond a reasonable doubt. So what is malice? well malice is
13 a term connoting an ill will and an intent to do harm, it is a
14 technical term importing wickedness and excluding just cause
15 or a legal excuse, it is something which springs from
16 depravity, from a heart devoid of social duty and fatally bent
17 on mischief and malice may be likewise defined as a state of
18 mind which indicates a formed purpose and design to do a
19 wrongful act under circumstances that exclude any legal right
20 to do it.

21 Now the word "expressed" or "implied" malice do not mean
22 different kinds of malice but merely the manner in which
23 malice may be shown to have existed, that is to say either by
24 direct evidence or by circumstantial evidence from which you
25 might infer the existence of malice. Malice may be expressed

JURY CHARGE

1 as where there is an expressed threat to kill or a lying in
2 wait or where the circumstances show directly that an intent
3 to kill was entertained by the person committing the assault
4 and battery. Malice may be inferred though no expressed
5 intent to kill is proven by direct evidence where the facts
6 and circumstances which have been proven by the evidence in
7 the case satisfy you beyond a reasonable doubt that malice was
8 present in the mind of the defendant at the time any assault
9 and battery was committed and the existence of malice may be
10 inferred from any circumstances shown to have existed at the
11 time of the event in question.

12 Now malice as an essential element of the crime of
13 assault and battery with an intent to kill does not
14 necessarily mean or require proof of an actual or specific
15 intent to take human life but rather it refers to a state of
16 mind accompanying an unlawful act signifying a general
17 malignant recklessness and an extreme disregard for or an
18 extreme indifference to human life, therefore proof of an
19 actual intent to take human life without justification or
20 legal excuse or proof of the intentional commission of the
21 acts which naturally tend to cause death or result in serious
22 bodily harm and exhibiting an extreme indifference to human
23 life without legal excuse or justification constitutes the
24 mental state of malice required under the law. The State is
25 required to prove malice just as it must prove any other

JURY CHARGE

1 essential element of a crime and that element must be proven
2 to your satisfaction beyond a reasonable doubt and you make
3 that determination based upon your consideration of all the
4 evidence in the case as well as any reasonable inferences that
5 might be drawn therefrom, it's also essential that there exist
6 not only malice but that it be malice aforethought. The law
7 does not however require that malice must exist for any
8 appreciable length of time before the commission of an act
9 constituting an assault and battery, indeed it might be
10 conceived at the very moment that the unlawful act is
11 committed, it is sufficient in the law so long as the State
12 has proven beyond a reasonable doubt both the existence of
13 malice and the commission of an act or acts by the defendant
14 constituting an assault and battery with intent to kill.

15 Now in this case the defendant has raised what is known
16 in the law as the "defense of self-defense". The law
17 recognizes the right of every person to defend himself or
18 herself from death or from sustaining serious bodily harm and
19 to do this a person may use such force as is reasonably
20 necessary even to the point of taking human life under the
21 appropriate circumstances. The right of self-defense is
22 founded upon necessity either actual or reasonably apparent
23 necessity and it is a complete defense to a charge of an
24 unlawful assault and battery. The existence of self-defense
25 entitles a person charged with the commission of an unlawful

JURY CHARGE

1 assault and battery to a verdict of not guilty. Now although
2 the defendant has raised the defense of self-defense, the
3 burden of proof is not on the defendant to prove the existence
4 of self-defense because as I've already told ya the burden is
5 always upon the State to prove the defendant's commission of
6 the crime that they have alleged against him beyond a
7 reasonable doubt and this burden would therefore necessarily
8 require that the State prove beyond a reasonable doubt the
9 absence of self-defense.

10 Now in your consideration of the existence or the absence
11 of self-defense, you are instructed that there are four basic
12 elements which must be present in order for self-defense to be
13 shown to exist in a particular case. First, it must be shown
14 that the defendant was without fault in bringing on the
15 immediate difficulty which necessitated the use of force
16 against another that resulted in the infliction of serious
17 bodily harm. In other words, a defendant cannot provoke,
18 initiate or otherwise through his own fault bring about a
19 difficulty and then claim the right of self-defense in the use
20 of force in repelling an attack caused by that provocation.

21 As to the second element, one is entitled to defend one's
22 self against the infliction of reasonably anticipated
23 unlawfully bodily harm so long as the response in that defense
24 is proportional to the anticipated harm. Where deadly force
25 is employed in response to an assault, it must be shown that

JURY CHARGE

1 at the time the force was employed the defendant actually
2 believed that he was in imminent danger of losing his life or
3 sustaining serious bodily harm or that the defendant actually
4 was in such imminent danger and the term "imminent" danger
5 means an immediate or present danger and not a past or future
6 danger and the term "deadly" force refers to violent actions
7 known to create a substantial risk of causing death or serious
8 bodily harm.

9 As to the third element, if the defense is based upon a
10 belief of imminent danger or harm then it must be shown that
11 the defendant's belief was reasonable. In other words, that a
12 reasonably prudent person of ordinary firmness and courage
13 would have entertained the same belief if that person had been
14 acting under the same or similar circumstances as established
15 by the evidence in this case. If the defendant actually was
16 in imminent danger then it must be shown that the
17 circumstances were such as would warrant a person of ordinary
18 reason and courage to act as the defendant acted in order to
19 save himself from suffering serious bodily injury. Deadly
20 force in repelling an assault is only appropriate when
21 necessary and may only be exercised where the defendant
22 entertains a reasonable belief that he is defi -- that that he
23 is about to sustain a loss of life or serious bodily harm.
24 The law of self-defense encompasses preventative action taken
25 to protect one's self from sustaining bodily injuries provided

JURY CHARGE

1 such action is taken in anticipation of imminent danger
2 of bodily injury and such action is in response to an
3 immediate threat. The defendant has the right to act upon
4 appearances, he may be mistaken. The law does not hold
5 someone to a refined assessment of the actual danger as might
6 be accomplished having an adequate time to properly reflect
7 provided, however, that the person claiming self-defense acted
8 as a person of ordinary reason and prudence would have acted
9 or should have acted in meeting the appearance of the danger.
10 In other words, he would not have to wait until his aggressor
11 got the advantage of him for one always has the right to act
12 under the law of self-preservation and to prevent another's
13 assailant from getting the advantage over him. There is,
14 however, a requirement of objectivity, that is his belief of
15 the necessity to act must be reasonable, that is it must be
16 such that a reasonable and prudent person acting under the
17 same or similar circumstances would have reasonably believed
18 and been warranted in acting similarly.

19 As to the fourth element, it must be shown that the
20 defendant had no other means of avoiding the danger of losing
21 his life or sustaining serious bodily injury other than to act
22 as he did because as I've stated self-defense is founded upon
23 necessity, it is therefore a person's duty to avoid the use of
24 deadly force where it is possible to avoid such action even to
25 the extent of retreating from one's adversary if such can be

JURY CHARGE

1 done without increasing the danger to one's self. In other
2 words, to avoid the necessity of using deadly force against
3 another, the person assaulted must retreat from the aggressor
4 unless it is shown that by retreating the defendant would
5 increase the danger of sustaining serious bodily injury or
6 loss of life to himself and while one does ordinarily have a
7 duty to retreat before employing the use of deadly force in
8 repelling an attack, there is no duty to retreat where one is
9 in one's own home or place of business or where one is an
10 invited guest upon the premises of another unless the
11 aggressor is the homeowner.

12 If you have a reasonable doubt as to the defendant's
13 guilt after considering all of the evidence received during
14 the trial of the case including any evidence relating to the
15 issue of self-defense then it would be your duty to resolve
16 that reasonable doubt in favor of the defendant and to find
17 him not guilty. If, on the other hand, you have no reasonable
18 doubt as to the defendant's guilt after considering all of the
19 evidence including any evidence relating to the issue of
20 self-defense then it would be your duty to find the defendant
21 guilty of any unlawful assault and battery that has been
22 proven to your satisfaction beyond a reasonable doubt based
23 upon the instruction I have already provided you as to the
24 offense which is alleged against the defendant.

25 Now madam forelady and ladies and gentlemen of the jury,

JURY CHARGE

JURY CHARGE

1 I am not in any way concerned with what your decisions are but
2 as I have told you your verdicts must be unanimous, all twelve
3 of you must be in agreement. Now in this case you have two
4 separate indictments, you have two decisions to return. As it
5 relates to each of the separate indictments, you have two
6 possible verdict forms, those two possible verdict forms are
7 guilty and not guilty so whatever that decision is as it
8 relates to a particular indictment, madam forelady, it's gonna
9 be your responsibility to write that verdict in the space
10 provided, sign your name as the foreperson, place the
11 appropriate date you'll see in the space provided.

12 During the course of your deliberations, there may come a
13 time when you have some question about the facts, you may have
14 a question about testimony, you might even wonder if there's
15 something in existence out there that may be somewhere but
16 it's not here that you would like to have in order to help you
17 resolve the case; no additional evidence can be received now
18 that you are going back to begin your deliberations so even if
19 something does exist you cannot have it now if it's not
20 already been introduced so do not inquire about any other
21 evidence that you might like to have should you think of
22 something because even if it exists you are not permitted to
23 have it. If at any time you have a question about the
24 testimony of a witness and you think that that question can be
25 answered by the jury rehearing that witness's testimony in

JURY CHARGE

1 whole or in part, you are permitted to come back into the
2 courtroom to have testimony replayed for your benefit, I don't
3 have transcripts of the witness's testimony to send back to
4 the jury room with you but if you wanna have a witness's
5 testimony replayed in its entirety or just some portion of it,
6 if you let me know through the bailiff then we'll make those
7 arrangements and we'll bring you back into the courtroom to
8 have that testimony replayed. If at any time you have a
9 question about the law that is applicable, I am always
10 permitted to instruct you again, to provide you another
11 explanation of any point of law or to clarify any point of law
12 should you need such an explanation, clarification or even a
13 re-instruction so while I can't talk about the facts or
14 provide you with any additional evidence, I can always answer
15 a question that you have about the law that you are to apply
16 in the case. So, madam forelady, if at any time you need to
17 address some matter to me, if you'll simply write it on a
18 piece of paper, give it to the bailiff, he'll provide it to me
19 and I'll respond accordingly to the question or inquiry. I
20 don't know if we have any smokers on the jury but if you wanna
21 smoke you can, you can't smoke in the jury room, you have to
22 go outside to accomplish that purpose so if anybody wants to
23 smoke let the bailiff know, they'll take those smokers outside
24 but you are instructed that deliberations may not be engaged
25 in unless all twelve jurors are present. Anyone's absent for

JURY CHARGE

1 an authorized purpose the deliberations have to stop, they can
2 only resume when all are present so that all may participate.
3 As you go back to begin deliberations, if for any reason you
4 need to make a phone call, if you'll let the bailiff know
5 they'll allow that and and make arrangements for you to make
6 any phone call that you deem you need to make but obviously
7 you can't talk about the case with anybody but if you need to
8 let somebody know what you're doing and the fact that you're
9 still involved up here or you need to make child care
10 arrangements or whatever it is, let the bailiff know and
11 they'll accompany you to the phone and and allow you to make
12 that phone call. I think that covers everything, we'll see in
13 a minute, but I'm gonna ask you to go back right now, I've
14 gotta talk to the lawyers about some things, if I don't need
15 to bring ya back, I'll send word by way of the bailiff that
16 you can begin your deliberations. In that event he will bring
17 to the jury room all of the exhibits which have been
18 introduced during the trial and to you, madam forelady, he'll
19 also bring the two indictments which will serve as the verdict
20 forms so please retire but don't begin talkin' about the case
21 until I send you word to do so. Ms. Ellison, you can stay in
22 the courtroom with me please, ma'am.

23 JUROR NUMBER 47: Sit out there?

24 THE COURT: Just wait right there.

25 JUROR NUMBER 47: Okay.

MOTIONS AND MATTERS

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Ms. Ellison, as you know you cannot
4 participate in deliberations because the original twelve are
5 able to do that so that's gonna conclude your service for this
6 case, it will also conclude your service for the week so I do
7 wanna thank you for your willingness to serve as a juror this
8 week and of course for your actual service in the trial of the
9 case. I do sincerely hope that that has been an educational
10 and a beneficial experience for ya, I do hope that it has not
11 been too much of a hardship or inconvenience on you. You will
12 be paid for your service this week. You will receive a check
13 or a voucher in the mail, it will be mailed to the address
14 that appears on your juror summons so if that address was not
15 correct and you have not already provided the clerk with a
16 current address, be sure you see the clerk before you leave
17 and provide her with that information, okay? Now the jury's
18 gonna be deliberating in a few minutes and if you're curious
19 about what they gonna decide you're welcome to stay but you
20 don't ---

21 JUROR NUMBER 47: I'd like to.

22 THE COURT: --- have to. Okay, well that's up to you.
23 You can just have a seat out there in the, in the audience if
24 you'd like and you can stay with us as long as you want to and
25 leave any time you feel like it and thank you again for your

MOTIONS AND MATTERS

1

help.

2

3

Are there any exceptions taken to the instruction or
request for additions to the instructions by the State?

4

MR. MCCARTY: No, Your Honor.

5

THE COURT: By the defendant?

6

MR. WHELCHEL: None, Your Honor.

7

8

THE COURT: Okay. Let me ask ya'll to verify the
exhibits, please.

9

(Whereupon, a discussion was held off the record.)

10

MR. MCCARTY: Good to go.

11

(Whereupon, a bench conference was held off the record.)

12

13

THE COURT: Go ahead and tell them to start deliberating,
let us know when they've concluded.

14

THE BAILIFF: Thank you very much.

15

(Whereupon, the jury began deliberating at 5:02 p.m.)

16

17

(Whereupon, at 7:05 p.m. notes were received from the
jury.)

18

(Whereupon, a bench conference was held off the record.)

19

THE COURT: Bring the jury back, please.

20

(The following takes place in the presence of the jury.)

21

THE COURT: Madam forelady, I have your request ---

22

JURY FORELADY: Yes.

23

24

25

THE COURT: --- and your question you wanna hear some
testimony of three of the witnesses. That's gonna a take a
little and which is fine but but the reason I mention that is

MOTIONS AND MATTERS

1 this: Do you wanna do that tonight or would you prefer to
2 come back in the morning to to listen to the testimony? Do
3 you have a preference?

4 JURY FORELADY: I would prefer to come back in the
5 morning but we, ---

6 THE COURT: Alright.

7 JURY FORELADY: --- we, we didn't discuss that ---

8 THE COURT: Okay.

9 JURY FORELADY: --- as an option.

10 THE COURT: Alright, well that's fine. Let's do this:
11 ya'll good back and talk about it and tell me if you wanna
12 continue tonight or you wanna come back in the mornin', okay?
13 Alright, you you just go back and talk about it and as soon
14 you decide let the bailiff know and he'll bring you back.

15 (Whereupon, the jury left the courtroom.)

16 THE COURT: Alright, bring 'em back.

17 (The following takes place in the presence of the jury.)

18 THE COURT: Madam forelady, I understand your wish is to
19 come back in the morning.

20 JURY FORELADY: Yes, sir.

21 THE COURT: Understand that's perfectly permissible.

22 Please understand and keep in mind the caution I've already
23 given you. You're not to discuss the case with anybody during
24 the overnight recess. You can't conduct any research, can't
25 do your own investigation, you can't try to get questions

MOTIONS AND MATTERS

1 answered by doing independent research or talkin' to other
2 people. Now that you are in deliberations ideally you would
3 stay in deliberations until you reach a decision but obviously
4 there are occasions when that's not possible and you've been
5 working this afternoon and so it is perfectly permissible for
6 ya to go home but you must understand how important it is that
7 you follow the instruction given and that is not to talk about
8 this case with anybody whatsoever in any fashion whatsoever
9 and as I say don't conduct any research or do any
10 investigation into any issue. Now when ya come back in the
11 mornin' the court reporter will have the testimony ready to be
12 replayed and we'll play it all or a portion of it, you'll just
13 have to tell us if you wanna stop it at any time but we'll
14 have it ready to be played in the mornin' and I suggest we
15 start at nine o'clock. Is there any reason why any person
16 can't be here at nine?

17 (No response.)

18 THE COURT: Alright. We'll start at nine o'clock in the
19 morning. Now when you report back be sure you report back at
20 nine o'clock but when you do report back understand that you
21 can't talk about the case even with your fellow jurors until
22 all twelve are in the jury room so once all twelve get there
23 you can talk about it if you want to but assumin' all twelve
24 don't get there until nine o'clock we're gonna have the
25 testimony ready to bring you back into the courtroom, okay?

MOTIONS AND MATTERS

1 Alright, have a good evening. We'll see ya at nine o'clock in
2 the mornin'.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Court is in recess until nine o'clock in the
6 mornin', nine o'clock.

7 (Notes from the jury marked Court's Exhibit Nos. 1, 2 and
8 3, for identification.)

9 (Proceedings June 10, 2011)

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: Alright everyone's present. Bring the jury
12 in, please.

13 THE BAILIFF: Bring 'em on.

14 (The following takes place in the presence of the jury.)

15 THE COURT: Good morning, ladies and gentlemen.

16 THE JURY: Good morning.

17 THE COURT: When we left you yesterday, you had requested
18 to hear some or re-hear some testimony that was received
19 yesterday and you wished to hear the testimony of Ms. Henson,
20 Mr. Brewington and Mr. Price so we're gonna play each of those
21 witness's testimony. They're gonna be played in the order
22 that the testimony was provided during the trial, that's the
23 easiest way to do it so it'll begin with Ms. Henson's
24 testimony, followed by Mr. Brewington's and then followed by
25 Mr. Price's. Now as the testimony is played you may want to

MOTIONS AND MATTERS

1 hear it, all, I don't know whether you do or not, but if you
2 get to a point and and you've heard what you need to hear,
3 you'll need to let me know, we'll stop that testimony at that
4 time then we'll go to the next until we complete it or you've
5 heard everything you need to hear, okay?

6 (Whereupon, the testimony of Ms. Henson and
7 Mr. Brewington was played back for the jury.)

8 (Whereupon, the jury requested a recess.)

9 THE COURT: We'll be at ease for fifteen minutes.

10 (Whereupon, a recess was taken.)

11 THE BAILIFF: Please be seated.

12 THE COURT: Bring the jury in.

13 (Whereupon, the testimony of Mr. Price was played for the
14 jury.)

15 (Whereupon, the testimony of Pamela Massey was played
16 back for the jury per the foreperson's request.)

17 THE COURT: Okay, is every -- is that everything ya need
18 to hear?

19 JURY FORELADY: Perhaps, sir, yes.

20 THE COURT: Okay, please retire to your jury room and
21 finish your deliberations.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: We'll be at ease while the jury continues to
25 deliberate.

VERDICT

1 (Whereupon, the jury continued to deliberate at 11:43
2 a.m.)

3 (Notes from the jury marked Court's Exhibit Nos. 4 and 5
4 for identification.)

5 (Whereupon, the jury reached a verdict at 4:10 p.m.)

6 THE COURT: I'm informed that the jury has reached a
7 decision. Ya'll ready to receive it?

8 MR. WHELCHEL: Yes, sir, Your Honor.

9 THE COURT: Alright, bring 'em in, please.

10 (The following takes place in the presence of the jury.)

11 THE COURT: Well, Madam forelady, have you and your
12 fellow jurors reached a unanimous decision as to each of the
13 separate indictments?

14 JURY FORELADY: Yes, sir, we have.

15 THE COURT: Have you indicated those decisions on the
16 verdict forms as requested?

17 JURY FORELADY: Yes, sir, we have.

18 THE COURT: Did you sign your name and date it as
19 requested?

20 JURY FORELADY: Yes, sir, I have.

21 THE COURT: If you'll please hand those verdict forms up
22 by way of the bailiff.

23 (Whereupon, the forelady complied.)

24 THE COURT: You may publish the verdicts.

25 THE CLERK: In the court of general sessions, Case

VERDICT

1 No. 2007-GS-42-2836: the State, vs. Randall Price indictment for
2 assault and battery with intent to kill, the verdict is
3 guilty, this is signed by the foreperson and dated today's
4 date. Case number 2007-GS-42-2837 State vs. Randall Price
5 indictment for assault and battery with intent to kill the
6 verdict is guilty, this is also signed by the foreperson and
7 dated today's date. Ladies and gentlemen of the jury, if this
8 is your verdict and still your verdict, please indicate by
9 raising your right hand.

10 (Whereupon, the jurors raised their hand.)

11 THE CLERK: So say you all.

12 THE COURT: Does the defendant wish to have the jury
13 polled.

14 MR. WHELCHEL: Yes, sir.

15 THE COURT: Alright, poll the jury please, ma'am.

16 THE CLERK: Ladies and gentlemen of the jury, I will pose
17 a question to you after which I will ask you to stand
18 individually and answer my question, the question being is
19 this your verdict and still your verdict. Number 157, Toney.
20 I'll ask you indicate by saying yes or no.

21 JUROR NUMBER 157: Yes.

22 THE CLERK: Thank you. Number 22, Brune?

23 JUROR NUMBER 22: Yes, ma'am.

24 THE CLERK: One forty-six (146), Smith?

25 JUROR NUMBER 146: Yes.

VERDICT

1 THE CLERK: Sixty-five (65), Gregory?
2 JUROR NUMBER 65: Yes, ma'am.
3 THE CLERK: One thirteen (113), Stripling?
4 JUROR NUMBER 113: Yes.
5 THE CLERK: One twenty-two, Patterson?
6 JUROR NUMBER 122: Yes.
7 THE CLERK: Fifty-four (54), Gass?
8 JUROR NUMBER 54: Yes.
9 THE CLERK: One-sixty three (163), Walsh?
10 JUROR NUMBER 163: Yes, ma'am.
11 THE CLERK: Ninety-two, Lamb?
12 JUROR NUMBER 92: Yes, ma'am.
13 THE CLERK: One thirty (130), Rice?
14 JUROR NUMBER 130: Yes, ma'am.
15 THE CLERK: One forty-seven (147), Smith?
16 JUROR NUMBER 147: Yes, ma'am.
17 THE CLERK: Thirteen (13), Bohmer.
18 JUROR NUMBER 13: Yes, ma'am.
19 THE CLERK: Forty-seven (47), Ellison?
20 THE COURT: She's the alternate.
21 THE CLERK: Oh, jury has been polled, sir.
22 THE COURT: Alright, any other matters we need to address
23 with the jury present?
24 MR. WHELCHER: No, sir.
25 MR. MCCARTY: No.

MOTIONS AND MATTERS

1 THE COURT: Okay, thank you, ladies and gentlemen, for
2 your participation as jurors this week and especially for your
3 participation in the actual trial of the case. I do sincerely
4 hope that that has been an educational and a beneficial
5 experience for ya and I do sincerely hope that it has not
6 posed too much of a hardship or inconvenience on you. That is
7 the last case that you're gonna be called upon to participate
8 in. You will be receiving a pay voucher for your service this
9 week, those pay vouchers will be mailed to you at the
10 addresses that appear on your juror summons so if the address
11 that appeared on your summons is not your correct address and
12 you have not already provided a different address to the
13 clerk, be sure you do that before you leave so that you will
14 be certain to receive your pay voucher. I thank you again for
15 your participation this week. Have a good weekend.

16 (Whereupon, the jury left the courtroom.)

17 THE COURT: Anything further on behalf of the State?

18 MR. MCCARTY: Nothing on behalf of the State, Your Honor.
19 Your Honor, I will inform the Court that he has no prior
20 criminal record, just rechecked that and confirmed that.

21 THE COURT: Alright. Mr. Whelchel, anything prior to the
22 imposition of sentence?

23 MR. WHELCHER: Your Honor, I would point out as I think
24 Your Honor's probly figured or heard when I was
25 cross-examining or direct examining my my client he was born

MOTIONS AND MATTERS

1 and raised in Spartanburg, has family here in Spartanburg. He
2 is the father of two children and is their -- they are in his
3 custody. At this point those children are staying with his
4 father while the trial is ongoing. The children are how old,
5 Randall?

6 THE DEFENDANT: Twelve and six.

7 MR. WHELCHEL: The mother is ---

8 THE DEFENDANT: She's remarried. She doesn't have
9 anything to do with 'em.

10 MR. WHELCHEL: And he's -- he and his father sole
11 responsible persons for those two children, Your Honor. I
12 would ask for in this instance for a probationary sentence.
13 He has no prior record whatsoever and I believe that he's a --
14 he can stay in Spartanburg and can make a probationary
15 sentence, Your Honor.

16 THE COURT: Okay. Mr. Price, do you have anything you
17 wanna add to what your lawyer's told me?

18 THE DEFENDANT: Yes, sir. I just ask Your Honor just to
19 please consider thirty-five years I never done anything wrong
20 and this happened and I just ask Your Honor to please consider
21 that when you sentence me and none of my children have nobody
22 but me and my dad has cancer and I'm the only one that's here
23 for 'em.

24 THE COURT: Okay. Mr. McCarty, do either Ms. Henson or
25 Ms. Massey wish to address the Court?

MOTIONS AND MATTERS

1 MR. MCCARTY: No, Your Honor. Thank you.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: Mr. McCarty, are -- is there any restitution
5 to be paid on behalf of the victims or any health care
6 provider?

7 MR. MCCARTY: Your Honor, it's it's my information that
8 the State Office of Victim Assistance handled the matter but
9 I I don't have that figure before me, Your Honor, but for
10 these victims they -- that actually was handled by the State
11 Office Of Victim Assistance through an application with them
12 but I don't have the number in front of me type -- for any
13 restitutions type figure, Your Honor, I apologize.

14 THE COURT: So well are you telling me they don't owe
15 anything?

16 MR. MCCARTY: The victims do not but if if the Court
17 would be inclined to order any restitution would be paid to
18 SOVA, Your Honor. The victims' medical was handle by that
19 process.

20 THE COURT: Well what's the maximum SOVA would pay out,
21 fifteen?

22 MR. MCCARTY: I believe it's -- I believe that's it, Your
23 Honor.

24 THE COURT: Do the -- do they have an idea or do they
25 know what their medical bills were?

SENTENCE

1 (Whereupon, a discussion was held off the record.)

2 MR. MCCARTY: Your Honor, Ms. Massey believes that her
3 medical bills were in excess of the maximum but that SOVA
4 approved at the maximum but SOVA satisfied all of her bills.
5 Ms. Henson's just not sure. Your Honor, in regard to
6 restitution if the Court is inclined to allow that matter to
7 be heard, if we could come back before the Court, petition the
8 Court at that time with the accurate number, I just don't have
9 it and apologize.

10 THE COURT: Okay, I'm gonna check restitution to be
11 ordered but it's gonna be deferred until it's determined.

12 MR. MCCARTY: Thank you, Your Honor.

13 (Pause.)

14 THE COURT: On Indictment 2007-2836 an indictment for
15 assault and battery with intent to kill wherein you have been
16 found guilty by a jury, the sentence of the Court is you,
17 Randall Price, be confined to the South Carolina Department of
18 Corrections for a period of 20 years, that sentence suspended
19 upon the service of 12 years, you're placed on probation for 3
20 years, I'm recommending Alcohol Treatment Unit while or
21 Addictions Treatment Unit while incarcerated, also ordered to
22 make restitution, that will be determined at a restitution
23 hearing to be scheduled at a later date, conditions of
24 probation: substance abuse counseling, random drug testing and
25 pay \$500 for your appointed counsel in the case.

SENTENCE

1 Indictment 2007-2837 indicted for assault and battery
2 with intent to kill wherein you were found guilty the sentence
3 is 12 years consecutive suspended, probation for three 3, same
4 terms and conditions. Mr. Price, you have a right to appeal
5 the verdicts of the jury and the sentence of the Court. You
6 must file any notice of your intention to appeal those
7 decisions within 10 days of today's date, Mr. Whelchel will
8 advise you in that regard, okay. Anything else?

9 MR. MCCARTY: No, sir, from the State, Your Honor.

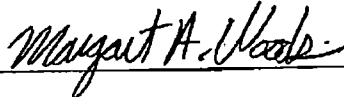
10 THE COURT: Alright, court's adjourned.
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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 8, 9 and 10, 2011 at the time and place heretofore set forth; and that the foregoing pages numbered from 7 through 276, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

September 27, 2011



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)RANDALL PRICE #346410)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-42-219

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution (SCDC)
2. Name and location of Court which imposed sentence 7th Circuit Court-Spartanburg
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07-GS-42-2836(K 23111)
 - (b) 07-GS-42-2837(k 23112)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 10th, 2011- 20yrs. suspended to 12 and 3 yrs. probation.
 - (b) June 10th, 2011* Suspended to run with above.

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2013-CP-42-219

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty (X) Plead not guilty to both charges. _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal from Spartanburg County Common Pleas _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Unpublished Opinion No. 2013-UP-141 _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted March 1, 2013- Filed April 10, 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Violation of my Due Process and Equal Protection Rights guaranteed by the United States Constitution.

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CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 AM 11:15
J. H. C. CLARKE

- (a) TRIAL JUDGE IN VIOLATION
- (b) INEFFECTIVE ASSISTANCE OF COURT APPOINTED COUNSEL.
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out

in (10): Court allowed case to go forward after being told that

(a) Applicant was under the influence of strong medication
and felt like he could not help in jury selection.

(b) (Please see attached pages for further explanation)

(c) *Please see attached page for explanation of Ineffective Counsel

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions
 relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions,
 if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or
 application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAY -9 AM 11:14
 FR. ROSE BLACKLEY

11. Facts that support each of the grounds set out in (10):

Trial Judge in Violation-

- (b) Court made a ruling in a pre-trial hearing that no pictures of the victims injuries would be admitted unless he ruled on them during the trial. (All four photos entered by state without any objection or ruling.)
- (c) After days of a locked jury the forelady sent a note to Trial Judge informing him that the jury panel are becoming "abusive and combative towards each other" and she needs help on how to proceed. He sent the baliff into the room and never called them out to charge them with their duties. I believe that due to the late hour and the fact that some intimidation was present and caused a forced decision of guilty after days of deliberation.

Ineffective Assistance of Counsel-

- (a) Court appointed attorney met with me for thirty minutes over more than four years of being my appointed attorney. We never met to discuss how my case was being handled. He was not prepared to take my serious charges to trial on the day of my trial.
- (b) Mr. Whelchel advised me that he had evidence on one of the victims that proved she had no problem telling lies to officers- yet when he was asked by the judge were the documents to support the charges was he replied he did not have them with him. The previous charges were not allowed because of him leaving disposition papers behind.
- (c) Mr. Whelchel had a list of more than six people who said they wanted to testify to my character and my past. He elected not to call any of them; I was very upset and made him aware of this.
- (d) On the morning of the trial Mr. Whelchel advised me to be at the court house to go over my case and testimony. He was more than 15 minutes late and the court was held up waiting for him we never went over my case.

2013-CP-42-284

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MASSACHUSETTS
2013 MAY -9 AM 11:14

2013-CP-40-2119

11. Facts that support each of the grounds set out in (10):

- (e) Mr. Whelchel was made aware that I gave detailed information on my injuries to the Judge that set my bond. The state continued to say that I never told anyone. Mr. Whelchel was advised to get the recordings of the bond hearing on the day he and I met. He did not get the records and this caused the state to appear right; thou they are not.
- (f) The state said that I went to the victims home; however, we had a eyewitness that they continued to come and get me to come with them. Mr. Whelchel felt this would not help my case. The state brought this up twice saying I went to their home; they come picked me up.
- (g) I advised Mr. Whelchel that I was on strong narcotics the day of the jury selection and during the trial. He told me that my input would not be helpful during the selection. I told him that I wanted to help in the process, but could not because of my state of mind. He never asked the court to give us a day so that I may be clear of the narcotics.
- (h) During the trial I continued to try and give input to Mr. Whelchel he told me to wait until the jury was out of the room. He would remove hearing-aids and place them in a box on the table. I tried several times to get his attention when the person was not being truthful; he pointed to his ears and said wait.

End of page.

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SPARTANBURG COUNTY
2013 MAY -9 AM 11:14
M. J. BLACKLEY

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Appeals Court chose to raise only on issue.
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

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SPARTANBURG COUNTY
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J. MURPHY CLARK

2013-CP-42 2119

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Richard Whelchel-Spartanburg County Public Defender
Spartanburg County, SC
- ii. Lanelle Cantey Durant-Div. of Appellant Defense
- iii. P.O. Box 11589 Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. Whelchel-Trial-Appeal
- ii. Cantey-Durant -Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application: I ask for a negotiated reduced sentence and or vacate my sentence and grant a new trial.
20. Are you now under sentence from any other court that you have not challenged?
NO

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SPARTANBURG COUNTY
2013 MAY -9 AM 11:14
M. HOFFE BLACKLEY

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

Randall Price

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Randall Price

Randall Price -SCDC#346410
Perry C.I. (ALU-195)

SWORN to and subscribed before me this 3rd
day of May, 2013.

Patricia Buchanan (L.S.)
Notary Public

My Commission Expires: 4-26-2020

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CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 AM 11:14
M. huf e BLACKLEY

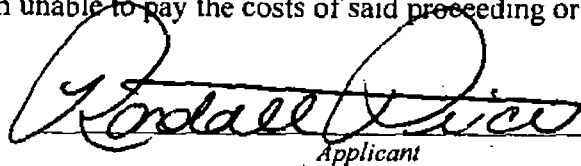
Revised 3/2003

2013-CP-42-219

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

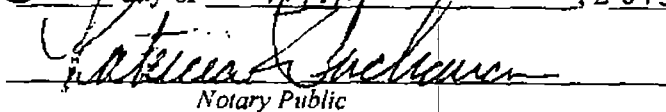
I, Randall Price, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) ☒ I am the applicant in this action and I believe I am entitled to redress.
- (2) ☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this 3rd day of May, 2013.

Randall Price-Applicant


Notary Public

My Commission Expires: 4-26-2020

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 AM 11:14
M. NORTON BLACKLEY

2013-05-09-42-2119287

Randall Price # 346410
Perry C.I. (ALU-195)
430 Oaklawn Road
Pelzer, SC 29669

May 6, 2013

Ms. M. Hope Blackley
Clerk of Court
Spartanburg, SC
PO Box 3483
Spartanburg, SC 29304

RE: Completed PCR Application for
Randall Price

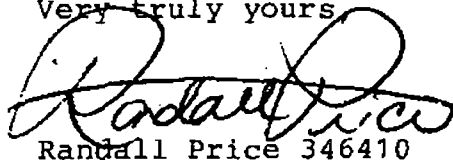
Dear Ms. Blackley,

Please, find enclosed my completed PCR application for your review and filing. Per your instructions, I am also enclosing a self addressed stamped envelope so that I can receive a clocked copy of my completed PCR.

I thank you for your time and consideration of this matter.

I am and remain,

Very truly yours


Randall Price 346410

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY -9 AM 11:13
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-2119
Randall Price, #346410,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 9, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2007 term of the Spartanburg County Grand Jury for two counts of assault and battery with intent to kill (2007-GS-42-2836, -2837). The Applicant was represented by Richard Whelchel, Esquire. On June 10, 2011, the Applicant proceeded to trial, where he was convicted of the charges by a jury. The Honorable J. Derham Cole sentenced Applicant to twenty years, suspended upon service of twelve years to three years of probation (2007-2836) and a consecutive sentence of twelve years suspended to three years of probation (2007-2837).

A timely notice of appeal and Anders brief were filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Price, Op. No. 2013-UP-141 (filed April 10, 2013). The Remittitur was returned on June 4, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's Appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel only met with Applicant for a total of thirty minutes during the four years of being appointed,
 - ii. Counsel was not prepared to take the charges to trial,
 - iii. Counsel failed to call any character witnesses as requested by Applicant,
 - iv. Counsel was late the morning of trial and was not able to review the case,
 - v. Counsel failed to bring evidence to prove issues with a victim's credibility,
 - vi. Counsel failed to obtain the bond hearing records to prove issues regarding the Applicant's injuries,
 - vii. Counsel failed to call witness to address the victims coming to get Applicant to bring to home,
 - viii. Counsel never asked the court for a continuance based upon Applicant's use of strong narcotics on the day of jury selection,
 - ix. Counsel would refuse to accept input from Applicant during the trial.
- b. Trial judge in violation, in that;
 - i. Court ruled in a pre-trial hearing that no pictures of victim's injuries could be entered into evidence unless ruled upon during trial, but the photos were entered by the State without any objection or ruling,

- ii. Court never brought in jury to give instructions as to their duties when concerns about deadlock and jurors attitudes towards each other were expressed,
- c. Violation of due process and equal protection rights.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges various issues of abuse of discretion by the trial judge. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

The Applicant further alleges that he was denied due process and equal protection of law. However, the Applicant fails to set forth with specificity the grounds upon which these violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C.

385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that these allegations should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. The allegations are so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By: 
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May 8, 2014.

1 STATE OF SOUTH CAROLINA }
 2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
 4 RANDALL PRICE,)
 5 Applicant,) TRANSCRIPT
 6 vs.) OF
 7 THE STATE OF SOUTH CAROLINA,) RECORD
 8 RESPONDENT.) 2013-CP-42-2119

9
 10 January 13th, 2015
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

15
 16 A P P E A R A N C E S:

17 CHRISTOPHER D. BROUGH
 18 ESQ.
 Attorney for the Applicant

19 SUZANNE H. WHITE
 20 ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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A-1	SLED report	15	16
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P R O C E E D I N G S

1
2
3 THE COURT: This is Randall Price versus the State of
4 South Carolina, 2013-2119, before the Court on an
5 application for post-conviction relief.

6 The Applicant went to trial on two counts of assault
7 and battery with intent to kill. Judge Cole sentenced him,
8 after conviction, to 20 years suspended upon the service of
9 12 years to -- and three years probation, and suspended to
10 three years -- I'm confused.

11 Let's see. Twenty years suspended upon the service of
12 12 years to three years probation, and a consecutive
13 sentence of 12 years and three years of probation. An
14 appeal was filed. It was dismissed pursuant to an Anders
15 brief in an unpublished opinion, and he has filed an
16 application for post-conviction relief based on ineffective
17 assistance of counsel.

18 Is the Applicant ready to proceed?

19 MR. BROUGH: We are, Your Honor.

20 Your Honor, before I, before I begin, there, there was
21 a stipulation between the Applicant and the State of South
22 Carolina as to the admissibility of a forensics SLED
23 laboratory report, Your Honor.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. BROUGH: The individual that did the testing is no

Randall Price - Direct examination
by Mr. Brough

1 longer with SLED---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. BROUGH: ---and is working at a lab in Atlanta,
4 Georgia, and rather than expending expense and deposition to
5 do that, we've decided to agree that that report is actually
6 just admissible in this hearing, Your Honor.

7 MS. WHITE: That's correct, Your Honor. The State is
8 stipulating to that as well.

9 THE COURT: You've explained to your client, Mr.
10 Brough, that the only relief this Court could order would be
11 a new trial in which he would face the maximum penalty of 20
12 years?

13 MR. BROUGH: Yes, I have, Your Honor.

14 THE COURT: Okay.

15 MR. BROUGH: And he does wish to proceed.

16 THE COURT: Proceed.

17 MR. BROUGH: We call Randall Price to the stand, Your
18 Honor.

19 THE COURT: Sir, raise your right-hand to be sworn.

20 RANDALL PRICE, being first duly
21 sworn, testified as follows:

22 THE COURT: If you'll take your seat, sir.

23 Please state your full name for the record spelling
24 your last name for the court reporter.

25 THE WITNESS: My name is Randall Price. P-R-I-C-E.

Randall Price - Direct examination
by Mr. Brough

1 THE COURT: You may proceed.

2 MR. BROUGH: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. BROUGH:

7 Q Mr. Price, if you could briefly tell the Court what the
8 factual allegations were against you at trial, sir?

9 A The State's position was that, on January the 13th,
10 2007, that I went to the home of Dawn and Dwayne Henson with
11 the intent to harm Dawn and -- Henson and Pamela Massey by
12 stabbing them with a knife. State says that I was provoked
13 in no way and did this malice aforethought.

14 Q Okay. And, and, at the trial, you were represented by
15 who?

16 A Mr. Richard Welchel.

17 Q Okay. And did you and he discuss a potential defense
18 to those charges?

19 A We had a, a period of 45-minutes over about four and a
20 half years to where we met and spoke about this particular
21 case.

22 Q Okay. And what was -- did you tell Mr. Welchel that
23 you had a defense in this case?

24 A Yes, I did. I told Mr. Welchel that -- actually I
25 told the police officers that evening that I was robbed and

Randall Price - Direct examination
by Mr. Brough

1 that I was held against my will and that the money was taken
2 from me, and I told Mr. Welchel, when we met at his office,
3 I actually had a typed statement, and told him exactly what
4 happened was that Dawn, Dwayne, a fellow named Rodney, and
5 Ms. Massey attacked me, take -- took my money and tried to
6 kill me, and there was some proof in the evidence that he
7 had before him.

8 There was some---

9 Q well, before we get to that---

10 A okay.

11 Q okay. I'm gonna direct your attention back to January
12 of 2007 when the incident happened.

13 At that time, sir, how did you come to know Pam Massey
14 and Dawn Henson?

15 How did you know those individuals?

16 A I met Dawn and Dwayne Henson through my cousin, Daniel
17 Pace, who was friends of Mrs. Henson and Mr. Henson for
18 years and just knew them. I lived kind of close to them. I
19 was staying with my father, at the time, who lived a few
20 hundred yards from them, a few acres apart. So that's how I
21 knew them.

22 Ms. Massey, I never met before that evening and the
23 fellow named Rodney I never met before that evening until
24 Mr. Henson and myself went to procure drugs at the, at a
25 home in Una, and when Mr. Henson came out of the home he

Randall Price - Direct examination
by Mr. Brough

1 had Ms. Massey and a fellow that I was introduced as her
2 boyfriend, Rodney, with him.

3 Q Now, you, you said to procure drugs.
4 what started you on your, I guess, issue with drugs?
5 what happened?

6 A In 2006 I was going to, I was going on the interstate
7 and a refrigerator fell off the back of a truck, a Lowe's
8 truck, and came through the window and damaged my internal
9 arteries and also caused permanent damage to my spine and my
10 back. So I guess my answer is and -- is that I began to
11 self-medicate using cocaine.

12 Q Okay. And before this incident had you filed a lawsuit
13 in regards to that accident?

14 A Yes, I did. I had a pending lawsuit in Mr. John White,
15 Jr. office and Mr. Tom Killoren was representatives of that
16 case for me.

17 Q Okay. And in the time of January of 2007 had you ever
18 told Pam Massey or Dawn Henson about the fact that you had
19 that lawsuit pending?

20 A I had never spoke to Ms. Massey, but I had told Dawn
21 and Dwayne, who came to my dad's on several occasions, that
22 I had several thousand dollars that I would be receiving
23 soon and they actually asked me could they borrow some money
24 because they were behind on their power bill, and, at one
25 point, I remember loaning Dawn and Dwayne about \$300.00 the

Randall Price - Direct examination
by Mr. Brough

1 week prior to this happening.

2 Q And, and on this date, specifically, January 13th,
3 2007, the date of the incident, at that point in time had
4 you received any settlement?

5 A Prior to that date?

6 Q Uh-huh. (Affirmative).

7 A Just a, just like a small sum of money, like maybe four
8 or five hundred dollars that Mr. White would give me to make
9 it, you know, pay some bills and things, but nothing of a
10 large amount, no, sir.

11 Q But on, on this date, on January the 13th, had you
12 received a settlement check?

13 A Yes, sir, I did. I went to Mr. White's office and
14 received a check of around \$9,000 that particular day.

15 Q Okay. And Dawn and Dwayne, on January the 13th, were
16 they with you during this incident?

17 A They, they were not with me when my dad and I went to
18 pick the check up. But no sooner than we pulled into the
19 driveway, maybe 30, 45 minutes later, they were coming to "I
20 need to use the telephone" and asked to use the phone, and
21 then asked me if I wanted to go back to their home and use
22 drugs or to get party, as they said, and I told them no, I
23 did not, not at that time, that I was planning to go and
24 look for an automobile that day.

25 Q And, and were they aware that you had a substantial

Randall Price - Direct examination
by Mr. Brough

1 amount of cash on you at that time?

2 A Yes, I do believe so.

3 Q Okay. And how much cash would you say you had on you?

4 A I had on me, at that time, about \$3,600 in one hundred
5 dollar bills.

6 Q Okay. And, and tell me, if, if you could, what
7 happened on January 13th of 2007?

8 A Okay. On the 13th of 2007 I was at my dad's house.

9 Dawn and Dwayne had came at least two other times to use the
10 phone or just to see what -- how I was doing and asked me to
11 go back to their home. I told them no, both times. And the
12 third time they came back to my house, to my dad's house to
13 get me to go, that time I told them okay, I'll go with you
14 for a little while, but I'm gonna need to leave, at some
15 point. I'm gonna go and look for an automobile.

16 So we went back to their home. We walked, the three of
17 us, Dawn, Dwayne, and myself, we walked down Wingo Heights
18 Road, which is about 3 acres distance between where my
19 father lives and where they -- their mobile home is
20 situated.

21 We went into their home and began using cocaine and
22 drinking a little bit of alcohol. That took place and we
23 did that up until around, around -- in the evening time. I
24 can't -- it's been such a long time I can't say for sure
25 like three hours or four hours, but it was a pretty good bit

Randall Price - Direct examination
by Mr. Brough

1 of time that we were there doing that, and then we ran out
2 of drugs, and Dwayne says I know we can re-up, which is a
3 term that means to go and get some more drugs, and I told
4 him, I said, well, okay, if you'll drive, then I'll pay
5 since you bought the other ones.

6 So we left. Dewayne and myself left. Dawn stayed in
7 her home and we went to a home in Una to where we were gonna
8 get the drugs. I sat in the car and Dwayne went inside the
9 car. I mean he went inside the home to get the drugs. I
10 gave him the money from my pocket. I gave him three one
11 hundred dollar bills. He went inside.

12 He came back out and there was three people at this
13 time. This is the first time that I had seen the other two
14 people. He introduced them as, as acquaintance, Rodney,
15 which he had said that this is my girlfriend, Pam, and then
16 he introduced me to them and we went back to the home at [REDACTED]
[REDACTED] Road.

18 Q Now when you say Pam, is that Pam Massey?

19 A That's Ms. Massey.

20 Q Okay.

21 A Pam Massey.

22 Q The, the victim on the case you been convicted of.

23 A She was said to be a victim, yes, sir.

24 Q And tell me what happened about -- tell me what
25 happened.

Randall Price - Direct examination
by Mr. Brough

1 A Once we were inside the home we all began to use some
2 drugs. During the course of the night they would continue
3 to get up and leave, the four of them, and go to the
4 restroom, and I think Ms. Massey had said that, in her
5 statement, that they would leave the kitchen and go to the
6 bathroom. So I just felt like that I was in the way.

7 So when Dawn came back and Dwayne came back, I said
8 listen, y'all, I'm gonna go ahead and go and I'm gonna see
9 y'all tomorrow or the next day, and as soon as I did that,
10 the male, Rodney, told me to give him the money and I
11 thought he was joking, so I laughed, and he told me that --
12 give him the money. Said it again real stern. This time he
13 punched me upside my face and my eye.

14 I -- this is a mobile home. So I went up against the
15 wall, which was like a little bar that was adjacent to the
16 living room, and the four of them began to attack me and
17 assault me and to take the money from me. During the
18 process of them attacking me I was able to hold onto some of
19 the money, which ripped, and the three of them, which is
20 being Dwayne---

21 Q well, let me back you up.

22 A ---Rodney, and---

23 Q What were you attacked with?

24 A At the first it was just a physically -- with fists.
25 It was just a physical beating with the, the four of them

Randall Price - Direct examination
by Mr. Brough

1 coming on me taking the money, and then, when the money was
2 in their hands or the, the majority of the money was in
3 three of their hands, I had this other money in my hand, but
4 Ms. Massey continued to come at me and she said -- has a
5 knife in her hand at this time she says now you're gonna die
6 and used the word M.F.

7 And so I take the money. I think well, if I get rid of
8 this money, then she will leave me alone. So I throw the
9 rest of the money, which is broken pieces of one hundred
10 dollar bills into the little area, and all three of them
11 continued to go for that extra -- the money that was in
12 there. Ms. Massey comes at me with the knife towards my
13 face. I throw up my arm, which is where I received the cut
14 in my arm, and then I take the knife and she continues to
15 come towards me, and, as she does, the knife jabs her in her
16 clavicle area of her neck.

17 At this point she takes off running to where they are.
18 So all four of them are away from me and I can try and I do
19 try to make it to the back-door. As I'm running to the
20 back-door I am knocked onto my back. I'm knocked onto my
21 face by two people who jump on my back. We knock over a
22 trash and were wrestling.

23 At this point I do not know who is on my back. I do
24 know that I had a knife in my hand. I no longer have it.
25 So I'm looking for the knife in the trash, and we struggle

Randall Price - Direct examination
by Mr. Brough

1 and I do get the knife back, and then I attack whoever's on
2 my back with the knife, I do admit that, to get them off of
3 me because they're saying kill the M.F., kill the M.F., and
4 as I am trying to get to the back-door we still fighting
5 till we get to the back-door.

6 Once we're at the back-door, the door -- the weight of
7 all three of us burst the door opened and then the three of
8 us fall to the ground. Once we're on the ground I remember
9 Rodney, the African-American man, running to the left, which
10 is toward New Cut Road. I remember Dawn running to the
11 right, and I remember seeing a light on across the street,
12 which is the closest places that I can go.

13 So I jump in the---

14 THE COURT: I don't mean to interrupt you, but I've
15 read the transcript. I know the factual basis.

16 MR. BROUGH: Okay.

17 THE COURT: I don't -- intend to get to what he claims
18 ineffective assistance---

19 MR. BROUGH: That will be fine, Judge.

20 THE COURT: ---of counsel.

21 Q All right. Mr. Price?

22 A Yes, sir.

23 Q The defense you just described, did you tell that to
24 Mr. Welch?

25 A I did, sir.

Randall Price - Direct examination
by Mr. Brough

1 Q Okay. Ultimately was there a knife that was recovered?

2 A I beg your pardon, sir?

3 Q Was there a knife that was recovered?

4 A There was two knives recovered. There was the knife
5 that I had and there was the knife that Ms. Massey had.

6 Q Okay. And, and, to your knowledge, was the knife
7 ever -- was there any forensic testing done on the knife?

8 A I didn't realize that there was until you told me about
9 it the other day.

10 Q Okay. So you never had that discussion with Mr.
11 Wheelchel?

12 A I did not have that discussion.

13 (WHEREUPON, the SLED report was marked as Applicant's
14 Exhibit No. 1 for identification purposes only at this
15 time.)

16 Q Okay. I'm gonna hand you a copy of what's been
17 premarked for identification purposes as Applicant's Exhibit
18 1.

19 Is that a copy of the SLED forensic testing that was
20 done in your case?

21 A Yes, sir.

22 MR. BROUGH: Okay. Like to move that into evidence
23 pursuant to---

24 THE COURT: Any objection?

25 MS. WHITE: No objection, Your Honor.

Randall Price - Direct examination
by Mr. Brough

1 THE COURT: Marked and admitted without objection.

2 (WHEREUPON, Applicant's Exhibit No. 1 was received into
3 evidence at this time.)

4 Q Mr. Price, I'd like to turn your attention, if I can,
5 sir, to exhibit under items of evidence on -- in Applicant's
6 1 that's listed at -- on the fourth page.

7 What is Item 5?

8 A Item 5 shows knife and it shows results. Potential
9 evidence collected and sent to the DNA department.

10 Q Okay. And then continuing with the report under the
11 DNA analysis, if you could indicate for me, in Applicant's
12 1, what it says as to Item -- the DNA obtained from Item
13 5.2?

14 A Says that the DNA from Item 5.2 are from at least three
15 individuals. Jennifer Dawn Henson, Randall Price are
16 excluded as possible contributors to this mixture. The
17 probability of randomness (phonetic) selecting an unrelated
18 individual could have contributed to this mixture in
19 approximately one in 10,000. Pamela Massey is excluded as a
20 possible contributor to this mixture, 6.1.

21 Q Okay. And the, the 5.2, continuing Applicant's 1, is
22 that a swab, a blood swab from the knife?

23 A Yes, it is. That's the swab from the knife.

24 Q Now, at your trial, when you were represented by Mr.
25 Whelchel, did the State call the SLED agent that did that

Randall Price - Direct examination
by Mr. Brough

1 testing to the stand?

2 A No, sir, they did not.

3 Q Okay. Did your lawyer call that witness to the stand?

4 A No, sir, he did not.

5 Q Okay. Would it be your contention that that might have
6 shown that your blood was on that knife?

7 A Yes, sir, it would definitely show that I was injured
8 with that particular knife and that my blood was on the
9 knife. As I stated, Ms. Massey came at me with the knife
10 and stabbed me.

11 Q Okay. And how do you feel that that would -- would you
12 feel that would support your claim for self-defense?

13 A Yes, sir, I do because I had told Mr. Welchel, from
14 the first time I met him, exactly what I've told the Court
15 and Mr. Welchel told me not to repeat what I said, that
16 that was our defense, and I feel like that, if the, the jury
17 had of heard that my knife -- the blood that was on there
18 was my blood as well, they couldn't say that I wasn't
19 injured. They couldn't say that I was not hurt inside the
20 home, that they didn't attack me.

21 (WHEREUPON, copies of notes from the jury were marked
22 as Applicant's Exhibit Nos. 2 through 6 for identification
23 purposes only at this time.)

24 Q I'm gonna show you what's been premarked for
25 identification as Applicant's Exhibits 2 through 6.

Randall Price - Direct examination
by Mr. Brough

1 A Yes, sir.

2 Q Have you seen those before, sir?

3 A I've seen them. Those are part of, I think, the --
4 that was in the packet that was sent to me that shows what
5 the jury sent back to Judge Cole. I think it's notes from
6 the juror.

7 Q Okay. So they're, they're notes from the jury in your
8 case?

9 A Yes, sir, they are.

10 MR. BROUGH: Okay. Move those into evidence as---

11 MS. WHITE: NO---

12 MR. BROUGH: ---2 through 6.

13 MS. WHITE: No objection, Your Honor.

14 THE COURT: Marked and admitted without objection.

15 (WHEREUPON, Applicant's Exhibit Nos. 2 through 6 were
16 received into evidence at this time.)

17 Q Okay. Now, Mr. Price, in looking at the exhibits that
18 the jury sent back, and I'm gonna direct your attention
19 specifically to what's been marked as Applicant's Exhibit 5,
20 which, at the time of your trial, was Court's Exhibit 4.

21 Could you read me what Applicant's Exhibit 5 says, sir?

22 A Yes, sir, this was after, I think, the jury had been
23 out for a couple days. The lady, forelady wrote back to
24 Judge Cole and says the jury has become very verbally
25 combative with one another, and I do not think that we're

Randall Price - Direct examination :
by Mr. Brough

1 able to come to any decision. Please advise of how to
2 proceed.

3 Q Okay. So you said the jury was out for a couple of
4 days, sir?

5 A Yes, sir, they were out to -- I remember being here
6 till nine o'clock at night the first time, and I think
7 Mr. Cole -- Judge Cole let them go home for the evening.

8 Q Okay.

9 A Then we came back and I think they requested to hear a
10 bunch of other evidence.

11 Q In fact, in looking at Applicant's Exhibit 4, can you
12 read that?

13 Is that one of the notes that the jury sent out?

14 A Yes, it says that we request to return in the morning.

15 Q Now, prior to this charge, had you ever been in trouble
16 with the law before, sir?

17 A No, sir, I had not been in trouble with the law.

18 Q You'd never been arrested before?

19 A No, sir.

20 Q And prior to the accident, did you have a -- did you
21 make a good living?

22 A Yes, sir, I was -- at one point I had owned the bowling
23 center of Spartanburg known as Hidden Hill Lanes, and I
24 worked, worked at that position for a number of years, and
25 then went into the real estate appraisal and the real estate

Randall Price - Direct examination
by Mr. Brough

1 field and was the owner of Real Estate Solutions, which was
2 a firm that did appraisal, closing -- appraisals and---

3 Q And, and the reason I'm asking this is did you talk to
4 Mr. Whelchel about the possibility of putting up evidence of
5 your character for being a nonviolent person?

6 A Yes, I did. I spoke to Mr. Whelchel on several
7 occasions and gave him the names of individuals who were
8 willing to come and Mr. Whelchel's statement to me was that
9 my testimony and that of the lady from the hospital should
10 be enough.

11 Q And the witnesses that you talked to him about, who
12 were they?

13 A There was several, a list of several. I think I gave
14 him a list of about eight or ten. One was my pastor,
15 Reverend Kevin Smith. One was a seated judge who's a friend
16 of mine, Donnie Blakely, but he was unable to participate
17 because he's a seated judge. There was a couple officers,
18 my grandmother, Mrs. Juanita Price, my aunt, Mrs. Becky
19 Nichols, and my best friend, Mr. Timothy Powell.

20 Q Okay. And do you see any of those individuals here
21 today in Court?

22 A I do see them all.

23 Q Okay. Now, other than what you and I have gone
24 through, the failure to call on any character evidence
25 witnesses as to your good character for being a nonviolent

Randall Price - Direct examination
by Mr. Brough

1 person, and the failure to put in the evidence about the
2 forensic testing on the knife which was recovered by law
3 enforcement which shows your blood on it, is there anything
4 else that you felt Mr. Whelchel was defective or ineffective
5 for not doing?

6 A Several times during the trial the prosecutor kept
7 telling me why have you waited four and a half years to tell
8 anybody that you were robbed. The fact is I didn't wait
9 four and a half years. I told the police officer from the
10 moment I was lifted off the ground that I was robbed, that I
11 was attacked, and they tried to kill me. I told Mr.
12 Whelchel, who was suppose to be protecting my rights, and he
13 told me not to say anything to anyone about that.

14 My question is why has the police department not taken
15 my statement?

16 Why is anyone not taking what I'm saying serious?
17 Why did he tell me not to tell what really happened?
18 Is, is it want a conviction or the truth?

19 Because the truth is I was assaulted. Those ladies
20 attacked me with their boyfriends, they took my money, and
21 they tried to kill me. That's the truth.

22 Q And, and is that the reason you are asking for a new
23 trial, sir?

24 A It is, sir. I would just like for a jury to hear all
25 the evidence and for the Spartanburg, Spartanburg County

Randall Price - Direct examination
by Mr. Brough

1 Sheriff's Department, since you have this DNA evidence, to
2 take what I've said, consider this, and investigate this.

3 Q Okay. Now, I'm gonna ask you, again, is there anything
4 else that -- and, and we'll call some of your character
5 witnesses in a moment.

6 Is there anything else that you feel I could of done
7 other than what I've done to assist you?

8 A No, sir, Mr. Brough. I believe you've helped me as an
9 attorney should. You brought out all the facts.

10 Q All right. Please answer any of Ms. White's questions.

11 A Yes, sir, I'll be happy to.

12 THE COURT: You may proceed.

13 MS. WHITE: Thank you.

14 THE COURT: You're welcome.

15 CROSS-EXAMINATION

16 BY MS. WHITE:

17 Q Mr. Price, you testified at your own trial, didn't you?

18 A Yes, ma'am, I did.

19 Q Okay. And the story that you gave us today was the
20 same testimony that you provided at the trial?

21 A Yes, ma'am.

22 Q Okay. And your attorney cross-examined some of the
23 State's witnesses including Officer Talanges.

24 Do you remember that?

25 A I seen it in the transcripts, yes, ma'am.

Randall Price - Cross-examination
by Ms. White

1 Q Okay. And, and would you agree with me that your
2 attorney asked him if he were -- and Officer Talanges was
3 the one that took photos I believe of you at the scene or
4 that he had seen a cut on your hand?

5 A Yes, ma'am, and I remember Mr. Welchel saying to him
6 did you take pictures of all of his body and he said yes.
7 But Mr. Welchel says well, he was laying on his side when
8 he was taking those pictures, and that's where my injury was
9 and the hospital records would prove that.

10 Q Okay. And on Page 152 he asked him again, if you look
11 at your report, did he note that there were wounds that you
12 had on the defendant and he said that there was a small cut
13 to your right wrist area with blood observed.

14 A Yes, ma'am.

15 Q Do you recall that?

16 A That's correct.

17 Q Okay. And, in fact, you testified that you threw your
18 arm up and that's how you got cut?

19 A Yes, ma'am.

20 Q Okay. Now, the other witnesses, the females that were
21 there, denied having a knife or trying to cut you?

22 A Yes, ma'am.

23 Q Is that right?

24 A That's right. They said they were only two of them
25 there, that they were the only two in the home, but the fact

Randall Price - Cross-examination
by Ms. White

1 is there were four people there.

2 Q Okay.

3 A Two males and two females.

4 Q And there was no -- when the police got there though,
5 the two gentlemen that you said were in the home were no
6 longer present, is that right?

7 A There was no one in the home. I think there were --
8 three, three of them were in the outbuilding as I stated.
9 Rodney ran, and as far as I know, nobody seen him since. I
10 don't know where he is.

11 Q And a neighbor also testified for the State as to the
12 women coming to the house and trying to get him to help
13 them?

14 A He stated that -- see I went to the house that, that he
15 lived at with the lady, but no one would come to the door
16 when I knocked. He lives -- he's -- he has some issues that
17 she has -- makes him stay out in a building beside her
18 house, and so I seen a light in that building on.

19 So I went into that building and knocked on the door
20 and that's when I saw Dwayne, Dawn, Pam, and the
21 Mr. Brewington that testified. I saw the four of them in
22 that building. So I took off in the opposite direction
23 toward a pay phone to call the police.

24 Q And, and that was your testimony.

25 There was conflicting testimony where they accused you

Randall Price - Cross-examination
by Ms. White

1 of coming, kind of aggressively at them, to still attack
2 them?

3 A That's -- that was their testimony, yes, ma'am.

4 Q Okay. So, essentially, it, it was partially
5 credibility as to whether or not the jury believed you or
6 believed the two females and Mr. Brewington, is that right?

7 A I believe so, yes, ma'am.

8 Q Okay. You said you spoke with Mr. Welchel for a total
9 of 45-minutes over four years.

10 A About four and a half years, that's correct. I met him
11 at one time in his office and we spent 45-minutes together,
12 and he told me -- he brought his -- as a matter of fact he
13 brought me back to my dad's home in his truck that day, and
14 he told me that he had to go and pick his wife up at the
15 airport, and that he would return to take my father's
16 statement of what happened and how Dawn and Dwayne continued
17 to come to my father's house that day. Mr. Welchel never
18 returned to speak to my father. Not that day or ever.

19 Q Did you ever discuss with him whether or not this --
20 they would have an investigator that might talk to some of
21 these folks?

22 A I did.

23 Q Okay.

24 A And he told me that they was gonna get to it, but they
25 kept putting everything off. It's like four and a half

Randall Price - Cross-examination
by Ms. White

1 years that they kept putting it off and it never happened.

2 Q You also said that you spoke with him several times
3 about this defense?

4 A Well, when I said---

5 Q Was that on the phone or was---

6 A Well, I used emails. That was the only way that I
7 really could get a response, and it was no -- it was not --
8 it was more like when are we going to trial, things like
9 that. It wasn't like the, the defense itself. Like this is
10 what we're gonna put up, this is what you're gonna do. I've
11 never had that discussion with him even till today. Even
12 today.

13 Q Okay. So you met with him once and then had some
14 communication via email?

15 A Via email concerning when the trial would take place.

16 Q Were there any communications on telephone or by
17 letter?

18 A No, just that you need to be at Court for roll call
19 type things.

20 Q Okay. And you were aware, both of the knives were
21 found with you, is that correct?

22 A The knives were found in the vicinity of where I was
23 when I fell. The knives went out of my hands. Yes, that is
24 correct.

25 Q Okay.

Randall Price - Cross-examination
by Ms. White

1 All right. That's all I have at this time, Your Honor.

2 THE COURT: Any redirect?

3 MR. BROUGH: Just briefly, Your Honor.

4 THE COURT: You may proceed.

5 REDIRECT EXAMINATION

6 BY MR. BROUGH:

7 Q Mr. Price, when Ms. White asked you about basically the
8 case down -- came down to credibility between you and the
9 other witnesses.

10 You'd agree with that, right?

11 A I, I would agree that, that, yes, it's the character of
12 the person that they had on the stand I would think, yes.

13 Q Is there anything that you feel like might have been
14 able to help---

15 A Certainly.

16 Q ---show that your credibility was the correct side---

17 A Most of the---

18 Q ---from an objective standpoint?

19 A Most definitely. From the point of this DNA report
20 that the State gathered the evidence and failed to, to let
21 that evidence be brought in. If that evidence had been
22 brought in I believe that the jury would have seen that I
23 was telling the truth, that I was attacked, that my blood
24 was on the knife, and that there was other people in the
25 home.

Randall Price - Redirect examination
by Mr. Brough

1 Q And, and it wasn't just your blood?

2 It was your blood and the blood of one of the victims
3 arguably, right?

4 A It says that at least two individuals.

5 Q well, from 5.2, it says---

6 A It says -- yes, it says Jennifer Dawn Henson, Randall
7 Price, and Pamela Massey.

8 Q Right.

9 But it says Jennifer Henson and Randall Price are not
10 excluded as possible contributors, correct?

11 A Yes, sir.

12 Q And that Pam Massey is excluded?

13 A Yes.

14 Q So there was at least one other person who's DNA was on
15 that knife?

16 A Yes, it was the other -- the male that I have said
17 since day one, if they bring those two males in---

18 Q well, you don't know that for a fact, but it shows that
19 there's someone other than the two of them on there?

20 A If the police would of investigated what I've said and
21 investigate those two males and swab them, that would be one
22 of their DNA.

23 Q But it's certainly an argument that someone other than
24 the two of them was there?

25 A Exactly, yes, sir.

Randall Price - Redirect examination
by Mr. Brough

1 Q And it would show that they're lying?

2 A Yes, sir.

3 Q Okay. Thank you. No further questions.

4 MS. WHITE: Nothing further.

5 THE COURT: You may step down, sir.

6 THE WITNESS: Thank you, ma'am.

7 THE COURT: Applicant may proceed.

8 MR. BROUGH: Yes, the Applicant would like to call
9 Kevin Smith to the stand please.

10 THE COURT: Are these character witnesses?

11 MR. BROUGH: They are.

12 THE COURT: Can't we just stipulate that they would
13 testify that he was good and nonviolent character?

14 MR. BROUGH: I'm -- ask her.

15 MS. WHITE: Your Honor?

16 THE COURT: Cause I assume they're all gonna come up
17 and say they've known him a certain number of years, that
18 they know him to be of good character, and what the
19 character testimony usually is.

20 MS. WHITE: Yes, Your Honor. I -- my only concern is
21 I, I don't know any of these folks names and generally I
22 would of tried to run a---

23 THE COURT: Oh, I got you.

24 MS. WHITE: ---background check on those and---

25 THE COURT: Okay. Proceed.

Kevin Smith - Direct examination
by Mr. Brough

1 MS. WHITE: Just --.

2 KEVIN SMITH, being first duly
3 sworn, testified as follows:

4 THE COURT: If you'd take a seat for me please and
5 state your full name for the record spelling your last name
6 for the court reporter.

7 THE WITNESS: Kevin Smith. S-M-I-T-H.

8 THE COURT: You may proceed.

9 MR. BROUGH: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. BROUGH:

13 Q Mr. Smith, how do you know Randall Price, sir?

14 A I've been his pastor for about eight or nine years now.

15 Q Okay. And, and how long have you been a pastor for?

16 A This November will be 17 years.

17 Q Would you describe Mr. Price as a violent person or
18 nonviolent person?

19 A In the years that I've known, very nonviolent to the
20 point to where my daughters have spent the night in his home
21 and he's been in my home, cooked us dinner. We've gone on
22 trips together and so, in, in my relationship with
23 Mr. Price, it's always been a joy. I -- just a good time,
24 fun time, yeah.

25 Q Could you -- based on your experiences with him, would

Kevin Smith - Direct examination
by Mr. Brough

1 you think he's the type of person who would attack two women
2 with a knife unprovoked?

3 A Not to, not to my knowledge, no.

4 Q All right. Please answer any of Ms. White's questions.

5 THE COURT: You may proceed.

6 MS. WHITE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. WHITE:

9 Q Mr. Smith, in the time that you knew him you've said
10 you've been his pastor for eight or nine years.

11 So, at the time of this incident in 2007, how long had
12 you known him?

13 A I, I did not know him at the time of the incident.

14 Q So you, you did not know Mr. Price at the actual time
15 of the incident?

16 A No, ma'am, he --- he'd come to our church and he's
17 testified numerous times at our church. So, so he called it
18 the 12 step program and he counted the steps he made to our
19 altar and gave his life to the Lord and was faithful, never
20 missed a service. Like I said, was at my home numerous
21 times.

22 My daughter, who was about seven or eight at the time,
23 spent several nights with his daughter at their home. His
24 son, just a mutual relationship, and as a pastor, I see all
25 kinds of people. In the last 17 years I believe I've become

Kevin Smith - Cross-examination
by Ms. White

1 a pretty good judge of character and discernment, and I
2 wouldn't have no problem, if he got out today, letting my
3 daughter go back to his house.

4 Q Okay. And so your communication with him and the time
5 you spent and the time your children spent together all
6 occurred after this arrest?

7 A That, that, that would be correct, yes, ma'am.

8 Q Okay. Were you aware, at the time, that he had been
9 involved in taking drugs?

10 A Yes.

11 Q Okay. So, at this point, you were aware that he had
12 been involved in taking drugs, but your understanding---

13 A He was very forthcoming.

14 Q ---he was a---

15 A He was very forthcoming with everything. I mean he, he
16 told me---

17 Q Right.

18 A ---about his drug use. He told me about this incident.

19 Q Okay.

20 A He, he -- we don't let our kids just go to anybody's
21 house without knowing something about them.

22 Q Sure.

23 A And so he, he was up front. You know, I, I didn't
24 interrogate him. He, he upfront, came and told me these
25 things, and was never hidden.

Kevin Smith - Cross-examination
by Ms. White

1 Q But if you had talked to Mr. Welchel or had testified
2 you would not have been able to testify as to whether or not
3 his character, prior to this incident, had been violent or
4 any -- of any nature?

5 A Not prior to me knowing him, no.

6 Q Okay. Sure.

7 A I mean nobody could.

8 Q All right. Thank you very much.

9 That's all I have, Your Honor.

10 THE COURT: Any redirect?

11 MR. BROUGH: No, Your Honor.

12 THE COURT: Sir, you may step down.

13 You may call your next witness.

14 MR. BROUGH: Tim Powell.

15 THE COURT: Sir, raise your hand to be sworn.

16 TIM POWELL, being first duly
17 sworn, testified as follows:

18 THE COURT: Thank you, sir. Take your seat. State
19 your full name in the record spelling your last name for the
20 court reporter.

21 THE WITNESS: Timothy Metts Powell. P-O-W-E-L-L.

22 THE COURT: Thank you.

23 You may proceed.

24 DIRECT EXAMINATION

25 BY MR. BROUGH:

Tim Powell - Direct examination
by Mr. Brough

- 1 Q Mr. Powell, how do you know Mr. Price, sir?
- 2 A I grew up with him since kids.
- 3 Q And ballpark on how long that's been?
- 4 A Twenty, thirty years. Twenty or thirty years.
- 5 Q Would you say you know him pretty well?
- 6 A Better than anybody in here probably besides his
- 7 grandma.
- 8 Q Okay. And in the times that you've known him, would
- 9 you describe him as being violent---
- 10 A Never.
- 11 Q ---or nonviolent?
- 12 Never?
- 13 A No.
- 14 Q Has there ever been occasions, during the time you've
- 15 known him, when he could of gotten into a fight?
- 16 A Yeah, I mean I probably put him in that position where
- 17 we could of got in a fight. My fault.
- 18 Q Okay. And what would -- what did you do in those
- 19 situations?
- 20 A Took me away from it except we got -- he'd say ride,
- 21 let's go. He's not a fighter. He's not a provoker. He's
- 22 calm, kept me calm, kept me out of trouble many times.
- 23 Q And during the timeframes before this, were you aware
- 24 that he had the drug issues that he had?
- 25 A Yes, ma'am. Yes, sir, I sure do.

Tim Powell - Direct examination
by Mr. Brough

1 Q Okay. And, and when he had those drug issues, did that
2 change his character for violence?

3 A Did not change his character towards violence. He was
4 just using drugs. I mean he kind of -- I would say he kind
5 of concealed hisself to -- just to him. He just kind of
6 shelled up and was alone.

7 Q All right. Thank you, sir.

8 A Never really talked to him much either.

9 Q Okay. Please answer any of Ms. White's questions.

10 THE COURT: You may proceed.

11 MS. WHITE: Thank you, Your Honor, just briefly.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Powell, you said you knew the defendant since you
15 were children. Never knew him as violent.

16 Had you been around him when he was taking crack?

17 A I have before.

18 Q Okay. And you're saying that never had he gotten any
19 violent or his personality never changed when he was taking
20 crack?

21 A Like I said, he kind of concealed hisself, you know, to
22 just what he was doing. I, I was not a user. I -- and he
23 just kind of clammed up and went off to his own self. I
24 mean nothing violent.

25 Q But he did that, even if you were in his presence with

Timothy Powell - Cross-examination
by Ms. White

1 him, he went over off to the side and was silent or --?

2 A He wouldn't do it in front of you. He went off by
3 hisself and done it and then no violence ever.

4 Q Okay. But you're not aware -- you were not with him
5 all the time when he was using drugs, were you?

6 A I mean I can't -- I don't, I don't know how many times
7 he used drugs.

8 Q All right.

9 A I mean I've been around him when he done it, yeah.

10 Q All right.

11 A I mean now whose -- I don't know how many times he's
12 used it.

13 Q Okay. And you're not aware of how he acts necessarily
14 after he's been doing drugs for several hours and drinking?

15 A He was a professional businessman. I mean come on. He
16 was a professional businessman. He run businesses even
17 while he was doing drugs.

18 Q But you're, you're aware that, and he even testified,
19 that on that day, for several hours, he had been using drugs
20 and drinking?

21 A Okay. Yeah.

22 Q Okay. So your testimony is that, to your knowledge and
23 understanding, never affected how he operated?

24 A Never.

25 Q Okay. Thank you.

Timothy Powell - Cross-examination
by Ms. White

1 A I mean unless he was provoked. I mean I'm sure anybody
2 would be if I was attacked.

3 Q Okay.

4 A I think he would too.

5 MS. WHITE: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Redirect?

8 MR. BROUGH: None, Your Honor.

9 THE COURT: Sir, you may step down. You may call your
10 next witness.

11 MS. WHITE: Juanita Price.

12 THE WITNESS: I'm so sorry I'm so slow.

13 THE COURT: Take your time. You don't have to
14 apologize.

15 THE WITNESS: Thank you.

16 THE COURT: Raise your right-hand.

17 JUANITA PRICE, being first duly
18 sworn, testified as follows:

19 THE COURT: If you could take your seat for me.

20 Do you need help getting into the witness stand?

21 THE WITNESS: I think I can do it. Thank you.

22 THE COURT: Okay. You're welcome.

23 Once you're seated, if you could tell us your full name
24 and state -- and spell your last name for the court
25 reporter.

Juanita Price - Direct examination
by Mr. Brough

1 THE WITNESS: Okay. Juanita Price. P-R-I-C-E.

2 THE COURT: You may proceed.

3 MR. BROUGH: Thank you, Your Honor.

4 THE COURT: Thank you.

5 DIRECT EXAMINATION

6 BY MR. BROUGH:

7 Q Mrs. Price, tell me what relation Randall is to you,
8 ma'am?

9 A I'm his grandmother, but mostly his mother.

10 Q Why do you say mostly his mother?

11 A Well, when he was five days old they came home from the
12 hospital and they lived next to us, and I took him in, you
13 know, let his mother rest and he's in there all the time,
14 and then, when he was ten years old, his mother died. So me
15 and my husband and his father, we finished raising him.
16 He's been there all the time.

17 Q Have you ever known him to be a violent person?

18 A No, sir.

19 Q Did he ever get into fights?

20 A He might of got into a fight, you know, in the yards
21 with the children, but not no -- because we didn't allow him
22 to go out of the yard.

23 Q At the time of this incident were you aware that, after
24 his accident, he started using some drugs?

25 A He did. He was using a lot of pain --.

Juanita Price - Direct examination
by Mr. Brough

1 Q And, and were you around him?

2 A Yes, he lived with his father next door to me.

3 Q Did his drug usage ever make him violent?

4 A I never saw him violent.

5 Q Never?

6 A No, and he helped me every way he could.

7 Q Thank you, ma'am. Please answer any of her questions.

8 THE COURT: Any questions for the witness?

9 MS. WHITE: Nothing, Your Honor.

10 THE COURT: Ma'am, you may step down.

11 Do you need help or can you navigate that okay?

12 THE WITNESS: Thank you. I better have someone. I've
13 sit so long.

14 would you help me, sir?

15 THE COURT: Take your time.

16 THE WITNESS: Thank you. Thank you.

17 THE COURT: The Applicant may proceed.

18 MR. BROUGH: Applicant rests, Your Honor.

19 THE COURT: State may proceed.

20 MS. WHITE: Thank you, Your Honor.

21 We would call Richard Whelchel to the stand.

22 THE COURT: Sir, if you would come to the stand to be
23 sworn.

24 (witness complies.)

25 THE COURT: If you'd raise your right-hand.

Richard Whelchel - Direct examination
by MS. White

1 RICHARD WHELCHER, being first duly
2 sworn, testified as follows:

3 THE COURT: Thank you, sir. If you would take your
4 seat and give us your full-time and spell your last name for
5 the court reporter.

6 THE WITNESS: Richard Whelchel. W-H-E-L-C-H-E-L.

7 THE COURT: You may proceed.

8 MS. WHITE: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 DIRECT EXAMINATION

11 BY MS. WHITE:

12 Q Mr. Whelchel, do you recall representing Mr. Price in
13 these charges?

14 A Oh, yes, ma'am.

15 Q And the trial itself was in 2011, is that correct?

16 A Yes, ma'am.

17 Q I believe he's testified that he -- you were
18 representing him for approximately four or four and a half
19 years?

20 A Yes, ma'am, it was a considerable amount of time.

21 Q Okay. And just give me a brief overview.

22 At that point in time, how long had you been practicing
23 law here in South Carolina?

24 A In 2011 I had been practicing since -- about 29 years.

25 Q And had you had the occasion to represent clients in

Richard Whelchel - Direct examination
by Ms. White

1 charges that were of a violent nature or of issues involving
2 drugs like this?

3 A Yes, ma'am.

4 Q Okay. Do you recall how many times you met with
5 Mr. Price?

6 A No, ma'am, I can't give you a specific number. I do
7 know that he came to my office on several occasions. I
8 asked him to write up a -- his statement so that I could use
9 that in my file, and his testimony was quite similar to
10 what, what the statement was that he, that he wrote up, and
11 I don't remember if he, he typed that up and brought it with
12 me or brought it to me or he may of emailed it to me because
13 he, he is one of the clients that had email access with me.
14 A lot of my clients don't, don't have access to, to email
15 and don't avail themselves of it, but he had it and, and I
16 think it may of been that way how I got it.

17 Q Now, was he out on bond during this time period?

18 A Yeah, he, he was in jail for about a month I believe
19 after he was arrested. But the Public Defender's Office was
20 not appointed to represent him until he was directly
21 indicted on the assault and battery with intent to kill
22 charges. The incident occurred in January and he was
23 directly indicted after that and we were appointed by Court
24 order in June I believe.

25 Q Okay. And in regards to the defense, you've heard the

Richard Welchel - Direct examination
by Ms. White

1 testimony today obviously that was similar to testimony that
2 was presented at trial.

3 Did you have conversations with him about how to
4 present a self-defense argument?

5 A Yes, ma'am, there was never any question, from the
6 beginning, that his was going to be a self-defense case. I
7 mean when he, when he told me what had happened and how it
8 had happened, self-defense was obvious and that it would of
9 required his testimony and obviously there's no way for us
10 to put up a, a self-defense case without, without his
11 testimony.

12 Q Were you concerned of putting him on the stand?
13 Obviously we know he didn't have a record.

14 Was there anything that concerned you about putting him
15 on the stand or --?

16 A No.

17 Q Okay. He mentioned also the testimony of a nurse that
18 you had told him you believed would help with that.

19 Do you recall that?

20 A The nurse from the hospital who found the \$700 or I
21 think took custody of the \$700.

22 Q And can you explain a little bit, when you say took
23 custody of \$700, was that from one of the victims?

24 A Yes, ma'am, one of the alleged victims, I forget
25 whether it was Ms. Massey or Mrs. Henson, when she checked

Richard Welchel - Direct examination
by Ms. White

1 into the hospital, and they did that -- an inventory of her
2 property, we subpoenaed the records and found that she had
3 seven crisp one hundred dollar bills in her possession, and
4 I cross-examined her on that and asked her if she could do
5 the math of what one fourth of \$2,800 was, and she said she
6 couldn't do that, but it just turned out to be, oddly
7 enough, \$700.

8 Q And, in fact, that's what your client had testified to,
9 that they had taken some of his money?

10 A Yes, ma'am.

11 Q Is that right?

12 A I think he testified to the -- that he had roughly
13 \$2,800 and some change left after the purchases had been
14 made.

15 Q Okay. And you cross-examined both the female witnesses
16 and, and victims in this case and did they ever acknowledge
17 having that money or taking that money?

18 A They didn't acknowledge having that money until they
19 were put up on redirect.

20 Q Okay. And in regards to the SLED report, were you
21 aware or had you talked at all with Mr. Price about whether
22 or not there was something you could use for the SLED
23 report?

24 A We had talked about his entire discovery. Whenever I
25 have a case with a client that's -- especially a case that

Richard Whelchel - Direct examination
by Ms. White

1 is gonna go to trial like this case is going to trial, we
2 would review the discovery and we talked about what the
3 potentials were in, in any of this.

4 Q Was -- did you think that the evidence I guess of him
5 being cut, was that strong evidence for his defense?

6 A I -- his evidence of what, ma'am?

7 I didn't---

8 Q Him being cut, having a cut on his wrist or the
9 possibility of any of his blood being on the knife?

10 A Well, the cut was some evidence. He had already
11 testified that he was cut and I believe Officer Talanges
12 testified and there were photographs taken too.

13 Q To your knowledge or recollection, was it a substantial
14 cut?

15 A No, ma'am.

16 Q Okay. And were there any other injuries that he had
17 clearly to support his argument of self-defense?

18 A He claimed that he was hurt in the side, but there were
19 no photographs of that, and, that I know of, and I don't
20 think there were any photographs of that at all.

21 Q Okay. Now, tell me about -- do you recall him giving
22 you any names of possible character witnesses?

23 A He gave me some names and a couple of them were
24 officers and I contacted some of them and I can't, at this
25 point, tell you which ones it was. Ted Beatty is one of

Richard Whelchel - Direct examination
by Ms. White

1 them cause I know him, and they were asking me why he was
2 wanting them to be a character witness for him. They, they
3 indicated that they didn't know him that well. That's my
4 understanding---

5 Q Okay.

6 A ---and that's what I got from my conversation with
7 them.

8 Q Your recollection is that some of the officers weren't
9 really offering that much or didn't really say they had much
10 knowledge of him?

11 A They knew -- they were questioning why they would be
12 called.

13 Q Okay. And was there any concern with putting up the
14 character or putting up character witnesses?

15 A I didn't want to open the door again to
16 cross-examination by the State much like you asked one of
17 the witnesses earlier. Do you know what their character is
18 or how it changes their character or their reputation for
19 violence when and if they're taking crack cocaine or other
20 drugs and mixing that with alcohol. I wanted to minimize
21 that as much as possible.

22 Q Okay. Thank you. That's all I have at this time.

23 THE COURT: You may proceed.

24 MR. BROUGH: Thank you, Your Honor.

25 THE COURT: You welcome.

Richard whelchel - Direct examination
by Mr. Brough

1 CROSS-EXAMINATION

2 BY MR. BROUGH:

3 Q Mr. whelchel?

4 A Yes, sir.

5 Q would you agree with me that the jury was out a long
6 time on this case?

7 A Yes, they were.

8 Q okay. So would it be fair to say that this case was, I
9 guess, a close call?

10 A Oh, yeah, I mean I told him it was gonna boil -- it
11 would boil down to whether they believed him or that they
12 believed them.

13 Q Okay. So the credibility between the victims and
14 Mr. Price was essentially the crux of the case?

15 A That's what I argued in my closing argument, do you
16 believe them or do you believe him.

17 Q Now, would it be a fair statement to say that, in a
18 criminal case, it's sort of a snapshot in time?

19 You can only get into what occurred or didn't occur on
20 that date generally speaking?

21 A Yeah.

22 Q Okay. So if I look at just what occurred on, on that
23 date, would you agree with me that the jury's picture of
24 Mr. Price is somebody that uses drugs and goes and parties
25 and does crack cocaine?

Richard whelchel - Direct examination
by Mr. Brough

1 A Well, that's the evidence that was testified to, yes.

2 Q Okay. And wouldn't character showing him outside that
3 setting, nonviolent person, and being a business owner,
4 wouldn't that help him with the jury?

5 A Well, it could possibly help him, but I was more
6 concerned about the cross-examination.

7 Q Okay. Were you aware specifically of any incidents
8 that could of been brought up as to him being violent?

9 A No.

10 Q Okay. And he didn't have any record, did he?

11 A No, there -- I represented him on two separate
12 charges---

13 Q Okay.

14 A ---and I think the other set of charges were dismissed
15 after this case was over---

16 Q Okay.

17 A ---was prosecuted. But there was nothing in his prior
18 record or any prior record that would cause me to have any
19 problem. It was self-defense. So regardless of what his
20 prior record was, there was no question that he was gonna
21 take the stand.

22 Q Okay.

23 A I mean we, we knew that from the very beginning.

24 Q Now, I think you said one of the things you did to go
25 after the credibility of the, the, the victims on the case

Richard whelchel - Direct examination
by Mr. Brough

1 was to point out the fact that, that had the money on them,
2 on their person, the \$700, the \$2,800 that you had from the
3 settlement check?

4 A Yes, sir.

5 Q Okay. And I guess there was some testimony that
6 Mr. Price had a cut on his arm.

7 Is that also correct?

8 A I think so.

9 Q Okay. And would that be consistent with a defensive
10 wound?

11 A Yes.

12 Q was that question specifically asked?

13 A Of the witnesses?

14 Q Yes, sir.

15 A (witness nods negatively.)

16 Q No.

17 Okay.

18 A I don't, I don't recall that it was or it wasn't.

19 Q Okay.

20 A I didn't, I didn't put a whole lot of stock in what the
21 defense witness, excuse me, the prosecution witnesses were
22 testifying to---

23 Q Okay.

24 A ---and I didn't want to give them a chance to deny.

25 Q Okay. Now, the, the knife was recovered and there was

Richard Whelchel - Direct examination
by Mr. Brough

1 a swab taken from the knife, is that correct?

2 A I believe so, yes, sir.

3 Q Okay. And the, the swab that was listed as Item 5.2,
4 there was a swab that was taken from the knife that was
5 recovered.

6 A Yeah.

7 Q And would it be fair to say it was a DNA mixture,
8 according to the report, of at least three individuals?

9 A I believe so.

10 Q Okay. And---

11 A You talking about the second paragraph here?

12 Q Yes, sir.

13 A Okay.

14 Q And two of the individuals that could not be ruled out
15 would of been Mr. Price and Mrs. Henson who was one of the
16 victims, correct?

17 A That's correct.

18 Q Okay. And the probability of randomly selecting an
19 unrelated person would be one in 10,000.

20 Is that accurate?

21 A Yeah.

22 Q Ninety-nine point---

23 A That's what it says here.

24 Q Okay. But there was a third individual that was not
25 identified on that swab, correct?

Richard whelchel - Direct examination
by Mr. Brough

1 A Ms. Massey was excluded and---

2 Q Right.

3 Ms. Massey was excluded.

4 A Yeah.

5 Q But there would of been at least one other unidentified
6 individual, correct?

7 A There had been cause there---

8 Q Okay.

9 A Two or more. So there had to be.

10 Q Was there ever any testing that was done as to the
11 other people that Mr. Price testified were there, as to
12 Dwayne, Rodney?

13 Were they ever tested?

14 A Not to my knowledge. We couldn't find them.

15 Q Right.

16 Now, but the fact that there was an unidentified third
17 individual, wouldn't that help support Mr. Price's version
18 of events that there was more than just those two girls
19 there?

20 A Well, in order to get that testimony in I'm gonna have
21 to bring in the SLED, the SLED chemist that---

22 Q Right.

23 A ---does the blood analysis.

24 Q Okay. And, and show a proper chain of custody and all
25 those things?

Richard Whelchel -- Direct examination
by Mr. Brough

1 A Yeah, I wasn't really concerned about that. But my
2 problem is when you bring in what I consider to be
3 professional normal State's witnesses, they tend to tailor
4 their testimony towards the State and not the defense.

5 Q Well---

6 A They could, they could testify that they have no way of
7 knowing when or where that blood was on the knife, whether
8 it was on there, you know, from before, had not related to
9 the incident at all.

10 Q Well -- and all that may be true.

11 They didn't test it for a reason, right?

12 A Oh, yeah.

13 Q Okay. So you could of sufficiently argued that?

14 A Yeah.

15 Q Okay. Now, had the jury heard that Mr. Price's blood
16 was on there and there was an unidentified individual, don't
17 you think they would of let him go?

18 A I don't know.

19 MR. BROUGH: All right. No further questions.

20 THE COURT: Any questions further from the State?

21 MS. WHITE: Nothing further, Your Honor.

22 THE COURT: Sir, you may step down.

23 Anything further from the State?

24 MS. WHITE: The State has no other witnesses, Your
25 Honor.

1 THE COURT: Anything -- any rebuttal testimony?

2 MR. BROUGH: No, Your Honor.

3 THE COURT: Anything further for the record from the
4 Applicant?

5 MR. BROUGH: Your Honor, I think Mr. Price wants a --
6 to put something on the record, but I don't---

7 THE COURT: Unless there's a question, to be positive
8 for the record, there's, there's no hybrid representation.
9 So if there's some questions, if you feel you need to call
10 him in rebuttal and they're questions that you need to ask,
11 fine, then I'm only hearing argument---

12 MR. BROUGH: That would be fine.

13 THE COURT: ---from you. That's who was appointed to
14 represent him.

15 MR. BROUGH: No, Your Honor.

16 Just for the record, we'd indicate that this was a
17 close case. The jury was out for two days. There's a jury
18 note indicating that the jury had become combative.

19 The crux of the matter was the credibility between the
20 victims and the defendant and there was specific testimony
21 of a forensic nature, meaning the DNA swab from the knife,
22 that was undisputed that was used in this incident showing
23 that his blood was on it as well as an unrelated third
24 individual, which would of supported Mr. Price's argument of
25 self-defense, that he was attacked by not just those two

1 girls, but their two boyfriends potentially as well, and at
2 least showing that there was an unrelated individual that
3 was there.

4 Your Honor, as such, that, coupled with the fact that
5 this is an individual that, you know, has a character for
6 nonviolence, that should have been brought to the jury's
7 attention with, it would be our position, would of been
8 enough to have given him an acquittal in this case and we
9 think we've met our burden of showing that, had the case
10 been presented differently, that Mr. Price would have been
11 acquitted and we'd ask the Court for a new trial on his
12 behalf, Your Honor.

13 THE COURT: You may respond.

14 MS. WHITE: Thank you, Your Honor.

15 The State would argue that the Applicant has failed to
16 meet his burden of proof in this matter. The evidence was
17 presented and testimony was presented by the Applicant
18 himself as to his version of events that night involving how
19 he was robbed and attacked and how he responded. I think
20 that, unfortunately, the testimony from other, multiple
21 other witnesses as well as the actual injuries that were
22 suffered by the victims compared to the small cut on his
23 wrist was probably telling for the jury.

24 I do agree that the jury went out one afternoon, came
25 back the next day until about 4:00 I believe for a verdict.

1 But, Your Honor, I believe that they heard all the evidence,
2 they weighed that, and clearly came back with a verdict that
3 they felt was fair.

4 So we would argue that the application should be
5 denied.

6 THE COURT: In an application for post-conviction
7 relief, the Applicant has the burden of proving that his
8 client -- that his attorney's performance was deficient, and
9 as a result of that deficient performance, which fell below
10 reasonable professional norms, that he was prejudiced, and
11 pursuant to the Strickland standard, prejudice is defined as
12 such deficient performance that the Court's confidence in
13 the outcome of the proceeding is undermined such that the
14 outcome would have been different.

15 The Court finds that the Applicant has failed to meet
16 his burden of proof. Hindsight is always 20/20 when it
17 comes to a trial. A -- an attorney is not required and is
18 not held to the standard of perfection. They're held to a
19 standard of professional competence, which is presumed in
20 most instances.

21 I have read this -- the entirety of the record in this
22 case. I had the benefit of reading all of the eye witnesses
23 testimony and as well as that of Mr. Price, and it is
24 correct, it was a credibility contest. It is not unusual,
25 in a credibility contest or any type of serious case, for a

1 jury to be out. It is not unusual for them to be
2 conflicted. It's not unusual for them to be deadlocked.

3 In fact, in the adversarial process where you have 12
4 people, 12 different backgrounds, to then exercise
5 collective thought and reasoning to reach a verdict and,
6 quite frankly, gives me confidence in the system when juries
7 stay out because it tells me that they have entertained and
8 been engaged in a healthy debate, which is what the process
9 is about. If they came back and immediately with a verdict,
10 that would tell us that they were predisposed prior to
11 beginning the deliberative process.

12 So that does not trouble the Court at all. In fact,
13 having tried too many cases to number, it is the norm. Not
14 abnormal for a jury to have done exactly what this jury did
15 and the statute is very clear, and there's been no violation
16 of the statute regarding the jury having been out, the time
17 that they were out, and I'm referring to 14-7-1330. There's
18 no indication that they were ever sent back out to
19 deliberate without their consent, and so I can discern no
20 prejudice to the Applicant in light of the testimony that
21 has been presented in that regard, and I don't see anything
22 in the record that indicates a jury, exercising its right to
23 deliberate, prejudicial to him. In fact, the, the
24 perception that it enured greatly to his benefit even though
25 he was convicted because it tells me that they considered

1 carefully all the evidence that has been presented.

2 Again, this was a credibility contest. Either the jury
3 was gonna believe self-defense, which is a complete defense,
4 in other words, Mr. Price's version, that he, without
5 provocation, was attacked, that these parties had basically
6 set him up to rob him because they knew he was coming into
7 some money, and that, during the course of them getting high
8 on alcohol and cocaine, that they, without provocation,
9 attacked him, or they're gonna believe the victim's
10 testimony in this case, as it appears, after a great debate,
11 they believed that of the State's witnesses regarding how
12 these events developed.

13 There is testimony in the record regarding a small cut
14 to the Applicant in this case. There is other testimony
15 regarding -- I guess I'll take it in the order that it was
16 presented, and maybe -- well maybe not so much in the order
17 that it was presented. But I do find compelling the
18 testimony of the, of defense counsel regarding the DNA
19 evidence.

20 It was a strategic decision. It is not this Court's
21 posture or prerogative to substitute its judgment for a well
22 reasoned strategic decision and that's why they call it
23 hindsight because it's always 20/20, and people can always
24 say what they would have done, but based on the record in
25 this case, it is not sufficient to undermine this Court's

1 confidence in the verdict, and there's no guarantee that it
2 would of turned out any differently..

3 I do find credible Mr. whelchel's strategic decision
4 not to call the SLED chemist and he is correct that they
5 are -- their testimony -- they would of been prepped and
6 their testimony would have been probably, under these
7 circumstances, more beneficial to the State because, on one
8 hand, it's a, it's a knife that cuts both ways. It could of
9 been perceived as exculpatory, but by the time the State
10 would of neutralized that testimony, that being the
11 inability to determine the origin of when it was there,
12 coupled with the fact that you could not find these other
13 individuals, and even if you could, there's no law, there's
14 nothing that would of compelled them to submit themselves
15 for testing.

16 So you would of been left with a void that could not
17 have been answered, and, in my perception, would not have
18 been exculpatory to the Applicant in this case. And, again,
19 in hindsight, it looks and sounds compelling, but when you
20 delve into it a little more deeply, you find that it's
21 something that, that could of been raised, but it really
22 does not necessarily support self-defense because you have
23 another sample that you can't confirm who it belongs to.
24 They routinely run it through the system. It apparently did
25 not get flagged when it came to the system and someone who

1 was already in the system.

2 And so I would have to assume that these individuals
3 that he was getting high with, and I don't mean to say that
4 in the pejorative sense, that they weren't in the system,
5 and I don't find that believable because these gentlemen
6 that these women were hanging out with, I suspect they had a
7 little brush with the system at some point in their life,
8 and so it would seem to me that they would have popped up
9 because when they run DNA they run it through CODIS. They
10 run it routinely because they want to know if that has been
11 involved in some other crime. They want to know if they can
12 identify, one, because it's exculpatory and needs to be
13 turned over, and also it acts as a mechanism to eliminate
14 people.

15 And so without being able to identify who this third
16 sample belonged to, it really was of little help to the
17 Applicant in this case especially where the State would have
18 cross-examined their witness and that witness would of had
19 to say I don't know when the sample was put there. I don't,
20 you know, we think, when we wash things off or when we do
21 certain things, that it eliminates DNA. It doesn't.

22 I had a trial recently, was quite interesting, a
23 gentleman was accused of a robbery. He had on a t-shirt and
24 the DNA expert -- there were three samples. It was his on
25 the t-shirt, underarm of the shirt, and two other people.

1 And what the DNA expert testified to is they don't know when
2 it could of been left there. It could of been left there
3 when somebody tried them on in the store, which was a little
4 disconcerting to me to think that, when you try things on in
5 a store you leave your DNA behind and it can't be washed off
6 of an article, which, I guess, really corroborates that you
7 should have everything dry cleaned before you wear it or
8 wash it or something when you buy it from the store, but it
9 was really quite interesting and very informative and
10 educational for that, that you leave your sample behind in
11 clothing.

12 So this -- he -- I don't remember what happened with
13 the trial, but I thought it was quite interesting because
14 the allegation was that he put it up, he had had it on, and
15 then he put it over his face and did some other things with
16 it. So while his sample was on the underarms and certain
17 portions of this shirt, there were -- like there were two
18 other people's or three other people's sample that could not
19 be identified, and they could not confirm when those samples
20 would of been left, and washing them, dry cleaning them,
21 would not have removed the samples. So they said they -- we
22 don't know when it was put there.

23 So it ended up not being particularly, particularly --
24 it ends up being a wash because you can't confirm that it
25 belongs to somebody else and you can't -- so really, since

1 you can't corroborate, it, it, it becomes a bit of a
2 nullity. And while it may sign -- sound again, in
3 hindsight, as a really viable argument, I am inclined, in
4 the heat of battle, to rely on the strategic decision making
5 of an attorney who's seasoned and experienced in these type
6 matters who made a strategic decision that he didn't feel it
7 would enure to his client's benefit cause he believed the
8 State would of tailored the testimony again to confirm that
9 they don't know when the -- what the origin of it was or
10 when it was left because they would not have been able to
11 corroborate that it was left there during some attack.

12 So, again, I'm not going to second guess his strategy
13 when it has been articulated and well reasoned and I do find
14 that testimony to be credible.

15 As regards to character witnesses, I am also going to
16 give weight and credibility to that of Mr. Whelchel who
17 testified that he did not want to open the door to that and
18 that is a viable and very valid strategy and, and I can not
19 find any fault in that.

20 Again, your defense doesn't have to be perfect. It
21 just has to fall within professional norms, and it's
22 reasonable that a defense attorney would say I don't want to
23 open the door to character because he -- defense -- State's
24 counsel would of done exactly what Ms. White did in this
25 case, which is people are very different when they are under

1 the effect of intoxicating substances than when you see them
2 normally. It's no different than a functional alcoholic.

3 They act one way when they're around you conducting
4 business, and they act a whole other way later on in the
5 evening when you don't see them. So there's no way for them
6 to confirm, on that particular night, that they couldn't of
7 testified as to that particular night anyway, and the
8 question that you asked, would he have done such and such
9 under these circumstance, it wouldn't have been admissible.
10 It's speculative. It's not within the ambit of lay
11 testimony, lay person's ability to perceive that as a lay
12 person, and it would of been too closely related to the
13 facts.

14 So you would have only been limited to has he ever been
15 violent around you, does he have a reputation for good
16 character and that's it. And so what it becomes, frankly,
17 again is a strategic decision of not wanting to open the
18 door and have that line of questioning pursued, just as Ms.
19 White did, which is -- and it was confirmed by his best -- I
20 would characterize as his best friend who said he knew him
21 for 20 to 30 years, that he secreted his behavior away from
22 them. That even though he had been around him when he did
23 drugs, he went away from him to engage in that behavior.

24 But there's nobody that could -- I think to say that a
25 person on crack cocaine acts the same way they are when

1 they're sober is a stretch, and I think we all know people's
2 personalities morph after using crack cocaine. They become
3 a whole different person. And so there's no way to confirm,
4 when you got people in a room, several people if I believe
5 you -- the Applicant's testimony, all high on cocaine, and
6 crack we know is a whole another level of cocaine, with a
7 very short life-span that alters the personality
8 drastically. You combine that with alcohol.

9 I don't know that character testimony, under those
10 circumstances, would of made a difference. One, because
11 juries are jaded. Two, they don't give it much weight cause
12 they believe that you love that person and you're gonna come
13 say whatever's beneficial to them, and, three, they're gonna
14 say well, guess what?

15 We're gonna look at who was there that night cause none
16 of these people were there and they don't know what
17 happened. All they can say is we don't think he would have
18 been capable of that type of behavior. So it becomes a
19 wash, and then, again, the door is opened to those witnesses
20 being impeached and basically their testimony becoming a
21 nullity and confirming that really they don't know him that
22 well at all. They know him in an uninduced crack state, but
23 they really don't know him in a crack induced state.

24 And so while, again, in hindsight, it looks plausible,
25 I believe that his counsel made a valid strategic decision

1 not to open the door regarding character witnesses, and,
2 again, he did, however, and, I, again, have read the
3 testimony of the witnesses. He was effective in
4 cross-examining regarding the cut to his wrist, whether they
5 had examined him regarding his complaint about an injury to
6 his side. I think he was effective in cross-examination and
7 that's really, if you talk to most defense lawyers, they
8 will tell you that, in terms of winning a case, that is very
9 important to draw -- put holes in the State's case, so to
10 speak, as to their, their witness' credibility and the
11 thoroughness of an investigation.

12 So based on what has been presented to the Court, and
13 my review of the entirety of the record, which includes the
14 transcript, I find that the Applicant has failed to meet his
15 burden of proof and his application for post-conviction
16 relief is denied.

17 Now, I'm going to direct that Ms. White provide the
18 Court with a proposed order making any finding of fact and
19 conclusions of law that are, that are supported by this
20 record. She will submit that to the Court within 20 days in
21 word format to djeffersonsc@sccourts.org, and also she will
22 provide Mr. Brough with a copy of that order.

23 Now, I've now already -- Ms. White already knows this,
24 Mr. Brough, but I'll tell you. I don't ever sign anything
25 the way it was submitted to me. It's gonna be rewritten,

1 and so if there's something you want to add to it, you might
2 want to hold off on expending that kind of time on it cause
3 it's gonna be something to -- I just use that as a template
4 cause I have a way that I do them and it will be a whole
5 different work product once it's completed.

6 So you might want to wait till it's completed and see
7 if you want to file a motion for reconsideration to change
8 anything that's within the fact finding or if there's
9 something really critical that you feel has been left out,
10 make Ms. White aware of it and maybe y'all can agree for it
11 to be included.

12 okay?

13 MR. BROUGH: Yes, ma'am.

14 THE COURT: Thank you very much.

15 MS. WHITE: Thank you, Your Honor.

16 THE COURT: Thank you.

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16th day of January, 2015.

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

June 8th, 2015

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

L08-01614

Sub# 1 Received (1/30/2008)
Spartanburg County Sheriff's Office
Agency Case #: 2007010695

359

Name of Investigating Officer: ANTHONY LACHICA

Agency ID/ORI No: SC04200000

Agency: SPARTANBURG COUNTY SHERIFF'S OFFICE Phone No: (864)503-4587

Case No: 2007010695

Fax No: (864)503-4689 Email: ALACHICA@SPARTANBURGCOUNTY.ORG

Case Type: ABWIKx2

Mailing Address: P.O. Box 771

Offense Date: 01/13/07

City: Spartanburg State: S.C. Zip Code: 29304

County: SPARTANBURG

CC: _____

Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab?

☐ Yes ☒ No

If yes, Lab Number: _____

Is this evidence related to another lab number?

☒ Yes ☐ No

If yes, Lab Number: _____

For Toxicology Cases ONLY

Death:

☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained

Traffic Fatality:

☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other _____

Other Causes:

☐ Gunshot ☒ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease
☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other _____

DUI:

Felony ☐ Yes ☐ No (If felony resulted in death
Victim's name is required) _____

Breath test given: ☐ Yes ☐ No If yes, reading: _____

Drugs Suspected: ☐ Yes ☐ No If yes, list drugs _____

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
Price, Randall		m	w		

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
Henson, Dawn		f	w		
Massey, Pamela		f	w		



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

L08-01614

Subm 1 Received (1/30/2008)
Spartanburg County Sheriff's Office
Agency Case #: 2007010695

Name of Investigating Officer: <u>ANTHONY LACHICA</u>	Agency ID/ORI No: <u>SC04200000</u>
Agency: <u>SPARTANBURG COUNTY SHERIFF'S OFFICE</u> Phone No: <u>(864)503-4587</u>	Case No: <u>2007010695</u>
Fax No: <u>(864)503-4689</u> Email: <u>ALACHICA@SPARTANBURGCOUNTY.ORG</u>	Case Type: <u>ABWIKx2</u>
Mailing Address: <u>P.O. Box 771</u>	Offense Date: <u>01/13/07</u>
City: <u>Spartanburg</u> State: <u>S.C.</u> Zip Code: <u>29304</u>	County: <u>SPARTANBURG</u>
CC: _____	Officer Involved Shooting ☐ Yes

Has other evidence on this case been submitted to this lab? ☐ Yes ☒ No If yes, Lab Number: _____	Is this evidence related to another lab number? ☒ Yes ☐ No If yes, Lab Number: _____

For Toxicology Cases ONLY

Death:	☐ Yes ☐ No If yes: ☐ Traffic Fatality ☐ Child Fatality ☐ Accidental ☐ Natural ☐ Unexplained	
Traffic Fatality:	☐ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Bicyclist ☐ Boating ☐ Other _____	
Other Causes:	☐ Gunshot ☒ Stabbing ☐ Beating ☐ Strangulation/Suffocation ☐ Drug/Poison/Alcohol ☐ Fire ☐ Disease ☐ Carbon Monoxide ☐ Hanging ☐ Electrocution ☐ Heart Related ☐ Drowning ☐ Other _____	
DUI:	Felony ☐ Yes ☐ No (if felony resulted in death Victim's name is required) _____	Breath test given: ☐ Yes ☐ No If yes, reading: _____
Drugs Suspected: ☐ Yes ☐ No If yes, list drugs _____		

Subject(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
Price, Randall		m	w		

Victim(s)	Last Name, First Name, MI.	Sex	Race	DOB	SSN
Henson, Dawn		f	w		
Massey, Pamela		f	w		

SLED Lab No. 108-164

[illegible]

Robert Rosenberg
Print Name of Delivering Officer

Robert Rosulien
Signature of Delivering Officer

REM

362

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Det. Anthony Lachica
Spartanburg County Sheriffs Office
PO Box 771
Spartanburg, SC 29304

EVIDENCE PROCESSING
July 26, 2008
SLED LAB: L08-01614
Your Case No: 2007010695
Incident Date: 1/13/2007
(S) Randall Price
(V) Dawn Henson
(V) Pamela Massey

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 4 Knife

RESULTS:

No blood detected.

Item: 5 Knife

RESULTS:

Potential evidence collected and sent to the DNA Department.



Item: 6 Pair of shoes

RESULTS:

Potential evidence collected and sent to the DNA Department.

Betty W. Butler

Betty W. Butler
Forensic Technician

cc: Spartanburg County Solicitor's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L08-01614
December 11, 2009

Page 2 of 5

DNA ANALYSIS**ITEMS ANALYZED:**

- 1 Buccal swab from Jennifer Dawn Henson
- 2 Buccal swab from Pamela Massey
- 3 Buccal swab from Randall Price
- 7 Swabs from steps at back door
- 8 Swabs from back door
- 9 Swabs from light switch at back door
- 10 Swabs from drop off stereo
- 11 Swabs from front storm door glass
- 12 Swabs from front door steps

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from items 5.1, 7, 8, and 9 matches the DNA profile of Jennifer Henson. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 73 trillion.

The DNA obtained from item 5.2 is a mixture of at least three individuals. Jennifer Henson and Randall Price are not excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 10 thousand. Pamela Massey is excluded as a possible contributor to this mixture.

The DNA obtained from item 6.1 is a mixture of at least two individuals. Randall Price cannot be excluded as a possible contributor to this mixture. Jennifer Henson and Pamela Massey are excluded as possible contributors to this mixture.

The DNA obtained from item 6.2 is a mixture of at least two individuals. Randall price and Jennifer Henson cannot be excluded as possible contributors to this mixture. Pamela Massey is excluded as a possible contributor to this mixture.

The DNA profile developed from items 10, 11, and 12 matches the DNA profile of Pamela Massey. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 1.2 quadrillion.



SLED LAB No. L08-01614
December 11, 2009

Page 3 of 5

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Jasper E. Humbert

Jasper E. Humbert
Forensic Scientist

cc: Spartanburg County Solicitor's Office



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Det. Anthony Lachica
Spartanburg County Sheriff's Office
PO Box 771
Spartanburg, SC 29304-0771

DNA ANALYSIS
December 11, 2009
SLED LAB: L08-01614
Your Case No: 2007010695
Incident Date: 1/13/2007
[S] Randall Price
[V] Jennifer Dawn Henson
[V] Pamela Massey

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

SEROLOGY ANALYSIS

Items Submitted:

7	Swabs from steps at back door
8	Swabs from back door
9	Swabs from light switch at back door
10	Swabs from drop off stereo
11	Swabs from front storm door glass
12	Swabs from front door steps

Results of Examinations:

7	Blood indicated. See DNA analysis.
8	Blood indicated. See DNA analysis.
9	Blood indicated. See DNA analysis.
10	Blood indicated. See DNA analysis.
11	Blood indicated. See DNA analysis.
12	Blood indicated. See DNA analysis.



SLED LAB No. L08-01614
December 11, 2009

Page 4 of 5

Table 1 - Identifier

Items	D8S1179	D21S11	D7S82A	CSF1PO	D3S135	TH01	D13S17	D16S539	D2S1338	D19S433	yWA	TPOX	D18S51	D5S818	FGA	Amelogenin
1 Jennifer Heison	13	29,30	10,11	10,(11)	15,18	6	9,11	11,12	17,23	12,14	18,19	(8,11)	14	12	19,22	X
2 Pamela Massey	13,15	30,32,2	8	11,12	15	7,9,3	11	12,13	24,25	14,16	15,17	8,11	14,15	9,13	19,22	X
3 Randall Price	11,13	29,31,2	10,11	9,14	15	6,8	9,11	9,12	20,23	13,13,2	15	8,11	14,15	11,13	21,22,2	XY
5.1 Swab from knife	13	29,30	10,11	10,11	15,18	6	9,11	11,12	17,23	12,14	18,19	8,11	14	12	19,22	X
5.2 Swab from knife	(10),11 13,15	29,30 31,2	10,11	9,10 (11,14)	15,18	6,(7) 8	8,9 11	9,11 12	(20),23 12,14	12,13 12,14	14,15 16,18 19	8,11	14,15	11,12 13	19,20 21,22 22,2,(24)	XY
6.1 Swab from shoe	11,12 13,14	29,31,2 33,2	10,11	9,11 14	15,16 17	6,8	9,11 12	9,12	17,(19) 20,23	12,13 13,2,14	15,18	8,9 11	14,15 19	11,12 13	20,21 22,2,23	XY
6.2 Swab from shoe	11,13	29,30 31,2	10,11	9,10 11,14	15,(17) 18	6,8 (9)	9,11	9,11 12	17,20 23	12,13 13,2,14	15,(17) 18,19	8,11	14,15	11,12 13	19,21 22,2,2	XY
7 Swabs from steps at back door	13	29,30	10,11	10,11	15,18	6	9,11	11,12	17,23	12,14	18,19	8,11	14	12	19,22	X
8 Swabs from back door	13	29,30	10,11	10,11	15,18	6	9,11	(9),11 12	17,23	12,14	18,19	8,11	14	12	19,22	X
9 Swabs from light switch at back door	13	29,30	10,11	10,11	15,18	6	9,11	11,12	17,23	12,14	18,19	8,11	14	12	19,22	X
10 Swabs from drop off stereo	13,15	30,32,2	8	(11,12)	15	7,9,3	11	12,13	(24,25)	14,16	15,17	8,11	(14,15)	9,13	(19,22)	X

(-) = alleles between 75 and 149 rfu



SLED LAB No. L08-01614
December 11, 2009

Page 5 of 5

Table 1 - Identifier

Items	D&S179	D21S11	D7S820	CSF1PO	D3S1158	TH01	D13S17	D16S539	D1S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Anclo- genin
11 Swabs from front storm door glass	13,15	30,32,2	8	11,12	15	7,9,3	11	12,13	(24),25	14,16	15,17	8,11	14,15	9,13	19,22	X
12 Swabs from front door steps	13,15	30,32,2	8	11,12	15	7,9,3	11	12,13	24,25	14,16	15,17	8,11	14,15	9,13	19,22	X

() = alleles between 75 and 149 rfu



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Det. Anthony Lachica
Spartanburg County Sheriff's Office
PO Box 771
Spartanburg, SC 29304

EVIDENCE PROCESSING

July 26, 2008
SLED LAB: L08-01614
Your Case No: 2007010695
Incident Date: 1/13/2007
(S) Randall Price
(V) Dawn Henson
(V) Pamela Massey

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 4 Knife

RESULTS:

No blood detected.

Item: 5 Knife

RESULTS:

Potential evidence collected and sent to the DNA Department.



Item: 6 Pair of shoes

RESULTS:

Potential evidence collected and sent to the DNA Department.

Betty W. Butler

Betty W. Butler
Forensic Technician

cc: Spartanburg County Solicitor's Office



This Space Reserved For Lab Receipt Barcode.



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L08-01614Submission: 2 2/27/2009 9:10:03AM

Name of Investigating officer: <u>Inv. Robert Talanges</u>		ORI No: <u>SC0420000</u>
Agency: <u>Spartanburg County Sheriff's Office</u>	Phone No: <u>864-503-4509</u>	Agency Case No: <u>2007010695</u>
Fax No: _____	Email: _____	Offense: <u>ASSAULT</u>
Mailing Address: <u>PO Box 771</u>		County: <u>Spartanburg</u>
City / State / Zip: <u>Spartanburg, SC 29304-0771</u>		Offense Date: <u>01/13/2007</u>
CC: _____		Officer Involved Shooting ☐ Yes
		Rush: ☐ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number: _____

	Agency Item No.	Description of Evidence	Analysis Requested
7	7	Swab(s) - Swab from steps at back door	DNA ANALYSIS
8	8A	Swab(s) - Swab from back door	DNA ANALYSIS
9	8B	Swab(s) - Swab from light switch at back door	DNA ANALYSIS
10	10	Swab(s) - Swab from drop off stereo	DNA ANALYSIS
11	11	Swab(s) - Swab from front storm door glass	DNA ANALYSIS
12	12	Swab(s) - Swab from front door steps	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
Randall Price	M	W		

Victim(s)	Sex	Race	DOB	SSN
Dawn Henson	F	W		
Pamela Massey	F	W		

Comments

This Space Reserved For Lab Receipt Barcode.



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L08-01614

Submission: 2 2/27/2009 9:10:03AM

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

Submitted By :

JD Westmoreland

Ev. Officer John Westmoreland

Received By :

Amy Stephens

Amy Stephens
Forensic Technician

your Honor

Please come and remind of our responsibility.

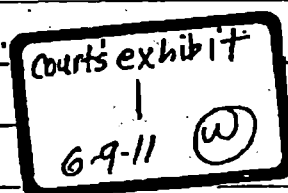
Butt Bohm #13

Please explain exactly what you wish for me to provide you by way of instruction.

Bole

Please direct us on what "guilty beyond a reasonable doubt" means for us again. What the responsibility of the state is in plain language. Thank you.

Butt Bohm
#13

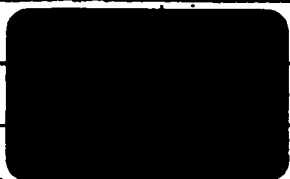


- We need to listen to Mrs. Brewington's testimony again and -
- Deft's closing remarks if allowable

RH RH
#13

- Also Dawn's testimony
- Also Mr. Price's testimony

RH
#13



Court's exhibit
2
6-9-11 (W)

The Jury requests we return
in the morning. BJA AL #13

Court's exhibit H

3

6-9-11 (u)



The jury may come to a has
become ^{verbally} combative with each other.
I do not think we will be able
to come to a unanimous
decision.

- Please advise on how to
proceed.

BPR

#13

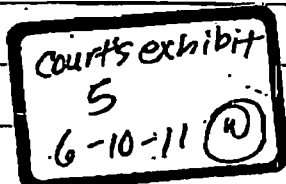
Do you believe any further
deliberations will assist you in
arriving at a unanimous decision?

Court Exhibit
4
6-10-11 (W)

Bole

The jury has reached a
verdict.

#13
RBL



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Randall Price, #346410,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2119

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Christopher D. Brough, Esquire
Suzanne H. White, Esquire
Richard H. Whelchel, Esquire
January 13, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 9, 2013. The Respondent made its Return on or about May 8, 2014. An evidentiary hearing into the matter was convened on January 13, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Pastor Kevin Smith, Timothy Powell, and Juanita Price testified on the Applicant's behalf. Richard H. Whelchel, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAY 7 AM 10:43
M. HOPE BLACKLEY

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2007 term of the Spartanburg County Grand Jury for two (2) counts of Assault and Battery with Intent to Kill (ABWIK)¹ (2007-GS-42-2836, -2837). The Applicant was represented by Richard Whelchel, Esquire. On June 10, 2011, the Applicant proceeded to a jury trial, where he was convicted of the charges. On June 10, 2011, the Honorable J. Derham Cole sentenced the Applicant to twenty (20) years' incarceration, suspended upon the service of twelve (12) years' imprisonment and three (3) years of probation on Indictment Number 2007-GS-42-2836 and a consecutive sentence of twelve (12) years' imprisonment suspended to three (3) years of probation on Indictment Number 2007-GS-42-2837.

Lanelle Cantey DuRant, Esq. of the South Carolina Commission on Indigent Defense filed a timely notice of appeal and Anders brief on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. Price, Op. No. 2013-UP-141 (filed April 10, 2013), *available at* 2013 WL 8507849. The Remittitur was returned on May 31, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. Counsel only met with Applicant for a total of thirty minutes during the four years of being appointed,
 - ii. Counsel was not prepared to take the charges to trial,

¹ "The crime of assault and battery with intent to kill shall be a [most serious, violent] felony in this State and any person convicted of such crime shall be punished by imprisonment not to exceed twenty [(20)] years." S.C. CODE ANN. § 16-3-620 (2007); S.C. CODE ANN. § 17-25-45 (2007); S.C. CODE ANN. § 16-1-60 (2007).

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SPARTANBURG COUNTY
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M. HOPE BLACKBURN

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[Signature]

- iii. Counsel failed to call any character witnesses as requested by the Applicant,
 - iv. Counsel was late the morning of trial and was not able to review the case,
 - v. Counsel failed to bring evidence to prove issues with a victim's credibility,
 - vi. Counsel failed to obtain the bond hearing records to prove issues regarding the Applicant's injuries,
 - vii. Counsel failed to call witness to address the victims coming to get the Applicant to bring to their home,
 - viii. Counsel never asked the court for a continuance based upon Applicant's use of strong narcotics on the day of jury selection,
 - ix. Counsel would refuse to accept input from Applicant during the trial.
2. Trial judge in violation, in that;
- i. Court ruled in a pre-trial hearing that no pictures of victim's injuries could be entered into evidence unless ruled upon during trial, but the photos were entered by the State without any objection or ruling,
 - ii. Court never brought in jury to give instructions as to their duties when concerns about deadlock and jurors attitudes towards each other were expressed,
3. Violation of due process and equal protection rights.

In his Application, the Applicant requested the following relief: negotiated reduced sentence or vacate his sentence and grant a new trial, or both.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon her or his credibility. This Court has weighed the testimony accordingly. Set forth below are the

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SPARTANBURG COUNTY
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3 of 29
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relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified that over the period of four and one-half (4.5) years from the date of his arrest and being appointed Counsel, he and Counsel met once for a total of only forty-five (45) minutes.² The Applicant testified that he met with Counsel one time in Counsel's office and communicated with Counsel via email, but mainly about dates for court. The Applicant denied ever really discussing his case with Counsel. The Applicant testified that Counsel utilized an investigator for his case and the Applicant spoke with the investigator.

The Applicant stated that he was accused of stabbing Dawn and Dewayne Henson with a knife in January 2007 and convicted of ABWIK; however, the Applicant claims that he was provoked and did not have the required malice to commit ABWIK. The Applicant testified that he told Counsel that he had a defense that the alleged victims robbed him, held him against his will, attacked him, took his money, and tried to kill him. The Applicant testified that because of a car accident in 2006, he suffered injuries for which he self-medicated with crack cocaine, thus beginning his drug abuse. The Applicant related the entire story that Dawn (Jennifer Dawn Henson) and Dewayne Henson (husband and wife), whom he befriended through his cousin and lived about one hundred (100) yards from, knew that the Applicant expected to receive a large sum of money from a settlement and knew that on the date of the offense, January 13, 2007 the Applicant had received a nine thousand dollar (\$9,000.00) check. The Applicant testified that he had lent the Hensons three hundred (\$300.00) dollars. The Applicant further testified that the day of the offense on January 13, 2007, he went to go get drugs and then carried three thousand

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SPARTANBURG COUNTY
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six-hundred (\$3,600.00) dollars in one hundred (\$100.00) dollar bills to the Henson's' mobile home to "party" with them and do crack cocaine and drink alcohol. The Applicant testified that he did not know Pam Massey and her boyfriend Rodney—the two additional party attendees—prior to that occasion.

The Applicant elaborated that the victims approached him while he was at his home with his father to go party with them. The Applicant said he would go party with them "for a little while" and walked about three (3) acres over to the Henson's' mobile home, which was the third time he had visited the Henson's' home. The Applicant testified that the group did crack cocaine and drank alcohol for approximately three (3) to four (4) hours. The Applicant further clarified that he and Dewayne went to a home to get the drugs, which was when the Applicant gave Dewayne the three hundred dollars (\$300.00). The Applicant stated that three (3) people came out of the home. Then, the Applicant testified they went back to the Henson's' home, met Pam Massey, and used drugs. The Applicant testified that the four (4) party attendees would frequently get up to go to the bathroom or the kitchen.

At that point, when the Applicant prepared to leave the residence suspecting a conspiracy to rob him, the Applicant stated he was attacked by all four (4) individuals for his money. The Applicant testified that Rodney approached him and in a stern manner demanded "give me the money" twice. Then, the Applicant stated, Rodney punched him in the face and eye. The four (4) attacked the Applicant, held him up against the wall, attacked and assaulted him, and took his money. The Applicant, further testified he, was able to hold on to some of his money, which was ripped in his hand. The Applicant stated that he endured a physical beating. Thereafter, the Applicant stated, Pam continued to "come at him," he threw the rest of the broken hundred dollar

² Although the transcript reveals the Applicant asserted this allegation to the trial court, the Applicant thereafter

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SPARTANBURG COUNTY
2015 MAY 7 AM 10:43
W. HOPE BLACKLEY

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bills, and then Pam came at him with a knife saying "kill the m***** f*****" and "now you gonna die m***** f*****." The Applicant stated that he retrieved his knife from his pocket and utilizing his knife in self-defense, got Pam in the neck. The Applicant testified that he then "took off" and when he made it to the back door he was knocked on his back and his knife was no longer in his hand. Thereafter, there was another struggle and the Applicant was again attacked with a knife, the individuals shouting "kill the m***** f*****." The Applicant stated that in the melee at the back door, all three (3) in the struggle fell to the ground and that Rodney and Dawn left in different directions.

The Applicant further testified that both of the knives were found in the vicinity where he was found out in the yard, but the Applicant testified that he was unaware that any testing was completed on the knives until he filed this post-conviction relief application because he did not discuss forensic testing with his attorney. The Applicant introduced, by stipulation, the SLED lab reports provided to Counsel in discovery as the Applicant's Exhibit #1. The Applicant stated that the DNA results from the knife revealed the blood of three (3) individuals; the DNA of Dawn and Rodney were not excluded, while the DNA of Pam Massey was excluded. The Applicant testified that he believes the results of those tests would have helped in his defense because the evidence would show that he was injured by Massey; the Applicant argued that the DNA evidence showing that the Applicant's blood, the blood of the victim, and the blood of one other unidentified individual on the knife confirms that he acted in self-defense. However, the Applicant testified that Counsel failed to call a SLED witness. The Applicant also testified that the State did not call the SLED witness who tested the knives, but he believes Counsel should have called them as a witness to support his claim that he was attacked by someone with one of

affirmed that he had had enough time to discuss his right to testify with his lawyer (Tr. 159:12-160:18).

FILED
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CHARLOTTE COUNTY
2015 MAY - 7 AM 10:43
M. HOPE BLACKLEY

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the knives. The Applicant pointed to the Applicant's Exhibit #1, the report indicating that SLED could not exclude him as a contributor to the mixture found on one of the knives, as evidence to support his claim of being attacked first and would also support his theory that Dawn was lying about the events. The Applicant admitted that Counsel told him his defense was self-defense.

The Applicant also testified that Counsel failed to properly address the jury questions and ask for the court to provide additional charges. In support, the Applicant introduced notes from the jury as Applicant's Exhibits #2-6. The Applicant claimed that the jury deliberated a few days, was deadlocked, and was verbally combative. The Applicant summarized that the jury deliberated until 9:00 PM the first night, went home, then came back the next day requesting more evidence.

The Applicant testified that he had no criminal record and no arrests. The Applicant testified that he used to own the Hidden Hill Bowling Alley and was a real estate appraiser before he was in the car accident and began abusing crack cocaine. The Applicant testified that he spoke with Counsel on several occasions about character witnesses and provided Counsel with a list of names, including Pastor Kevin Smith his pastor, Judge Donnie Blakely, Juanita Price his grandmother, Timothy Powell, his aunt, her boyfriend, and names of several police officers who could testify as to his character of being a non-violent person. The Applicant elaborated that the officers could testify that the Applicant made a statement after the incident that the individuals attacked him. However, the Applicant stated that Counsel told him that the Applicant and the hospital witness should be enough. The Applicant further stated that Counsel said he would investigate and return to get the Applicant's father's statement that Dawn and Dewayne kept coming back to the house to get him to party with them, but that Counsel never

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did. The Applicant stated that the emails he exchanged with Counsel were all about scheduling and that they never discussed the evidence or his defense.

The Applicant admitted that the success of his defense was based on the jury's credibility determinations, and that he believed his proposed character witnesses would have boosted his credibility. The Applicant further admitted that his testimony at trial was the same as his testimony during his evidentiary hearing, but that he desires the jury hear all of the evidence so that they can take his defense seriously. The Applicant also admitted Counsel cross-examined all witnesses at trial, including Officer Talanges about how the Applicant cut his hand and had a small bloody cut on his right wrist area. The testimony at trial was that the Applicant threw his arm up, which was how he got cut.

Pastor Kevin Smith, who did not testify at trial, testified during the Applicant's evidentiary hearing that he has been the Applicant's Pastor for eight (8) to nine (9) years and has always known the Applicant to be a non-violent man. However, he acknowledged that he did not know the Applicant at the time of the incident in 2007 and met him following the incident. Pastor Smith further testified that he allowed his daughter to spend the night at the Applicant's home with the Applicant's daughter after his arrest, even though he was aware of the Applicant's history, involvement in crime, and drug use. Pastor Smith related that the Applicant had given his testimony at church several times, was faithful, participated in a twelve (12) step drug rehabilitation program, and was forthcoming about everything. The Pastor opined that the Applicant would not have attacked anyone without being first provoked. However, the Pastor admitted that he was unable to comment on the Applicant's character for violence at the time of the incident.

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Timothy Metz Powell testified that he had been friends with the Applicant since they were children and for about twenty (20) to thirty (30) years. Powell testified that he knows the Applicant better than anyone except for the Applicant's grandmother. Powell testified that he has never known the Applicant to be violent or involved in fights. In fact, Powell testified, the Applicant had kept him out of trouble many times. He elaborated that the Applicant would never fight unless he was provoked, was calm, and generally kept out of trouble. Powell testified that he was aware of the Applicant's drug issues, but claimed that when the Applicant did drugs, he appeared to pull away and not become violent and that his personality did not change. Powell testified that he was not sure if he was around the Applicant much when he took drugs, but claimed that the Applicant successfully operated businesses while taking drugs. Powell admitted that the Applicant concealed his drug use and kept to himself and that he had never been with the Applicant after several hours of drug and alcohol use.

Juanita Price, the Applicant's grandmother, testified that she was more the Applicant's mother because the Applicant was with her since he was five (5) days old. Price testified that she had helped the Applicant's father raise the Applicant since the death of the Applicant's mother when he was ten (10) years old. Price testified that she never knew the Applicant to be violent, but knew that he was using drugs.

Richard H. Whelchel, trial counsel for the Applicant, testified that at the time of trial in 2011, he had been practicing law for approximately twenty-nine (29) years and had represented the Applicant for approximately four (4) to four and one half (4.5) years after his court appointment in June 2007. Counsel further stated that he has extensive experience in trials of this type. Counsel testified that the Applicant spent approximately one (1) month in jail after his

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arrest before bonding out. Counsel stated that the Public Defender's office was appointed to represent the Applicant when he was directly indicted.

Counsel testified that he does not specifically recall how many times he met with the Applicant, but recalled the Applicant coming to Counsel's office several times. In fact, Counsel had the Applicant sit in the office and write out a statement at one point, which statement was similar to the Applicant's testimony. Counsel also testified that he communicated via email with the Applicant, and testified that he didn't recall if he typed the statement, emailed the statement to Applicant or if the Applicant brought the statement in to him. During their meetings, Counsel testified that he reviewed all discovery with the Applicant and discussed the State's case and potential outcomes of the testimony. Counsel affirmed that it is his practice to review discovery with all of his clients, especially the cases that are going to trial. Counsel testified that he was fully aware of the Applicant's defense of being attacked and robbed because self-defense was the "obvious" defense. Counsel always knew that he would have to call the Applicant as a witness to support his self-defense claim but that the Applicant had no issues with his prior record for impeachment purposes. Counsel opined that there was no question that the Applicant would take the stand to establish his defense but admitted that he did not ask about the Applicant's defensive wound.

Counsel testified that he questioned the crime scene investigator about the defensive cut to the Applicant's hand and called the nurse to testify that one of the victims had approximately \$700, all in one hundred dollar bills, in her pocket at the hospital in order to prove the robbery. Counsel also testified that he believed he effectively cross-examined the victims to attack the credibility and that the witnesses did not acknowledge having the Applicant's money until redirect examination, which called into question their credibility. Counsel testified that he also

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focused his closing argument on the victims' credibility issues. Counsel testified that the jury deliberated for a long time and had questions, so he believed that they were seriously considering the self-defense claim. Counsel opined that the Applicant's case was a "close call" and a "credibility contest."

Counsel testified that the Applicant did provide him the names of some character witnesses. He further testified that he spoke with the officers whom the Applicant named. Counsel testified that one of the officers told him that he had no idea why the Applicant would want him as a character witness and the other character witnesses said that they did not know the Applicant that well. Counsel testified that it could have possibly helped to show the jury that the Applicant had been a business owner, but Counsel was more concerned about the cross examination of those witnesses and their limited knowledge of the Applicant. Counsel testified that he was concerned with calling character witnesses and opening the door to testimony regarding how the Applicant's personality and character changed with his use of crack cocaine and alcohol because he wanted to minimize evidence about the Applicant's drug use as much as possible and because character evidence "cut both ways." Although Counsel was not aware of any specific instances of the Applicant's bad or violent conduct, Counsel further testified that he represented the Applicant on two (2) sets of charges and the others were dismissed after the verdict. Counsel further testified that he elicited testimony from the Applicant and the officer about the Applicant's defensive cut and also submitted photos. However, Counsel observed that the Applicant's cut was small and the defensive nature of it questionable. Counsel further observed that the Applicant claimed that he was hurt on his side, but that there was no photographic evidence of that "at all."

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Counsel testified that he reviewed all discovery with the Applicant and talked about all of the evidence against the Applicant and its potential, especially when preparing for trial. He and the Applicant knew that the SLED report was an option, but that he did not want to call the SLED agent as a witness because in his experience, SLED scientists' testimony could easily be tailored to support the State's case. Further, Counsel testified that he believed it was likely they would testify that there was no test to determine when or in what manner the Applicant's blood was placed on that knife and it could have been there prior to that night.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised in the application and at the hearing.

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must

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overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to this claim.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 348 S.E.2d 44

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312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)). See Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79 (finding counsel's decision not to call witnesses reasonable where their testimony would have been of no value to the case and witnesses were not credible); Abney v. State, 408 S.C. 41, 51, 757 S.E.2d 544, 549 (Ct. App. 2014) ("While trial counsel should consult with his client, the final decision on strategy belongs to counsel."); More v. State, 399 S.C. 641, 723 S.E.2d 871, 873 (2012) (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551 (2004) ("Attorneys have a duty to consult with their clients regarding 'important decisions,' including questions of overarching 'defense strategy.' . . . This does not require counsel to obtain the defendant's consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights [to plead guilty, waive a jury, testify on his own behalf, or take an appeal] cannot be made for the defendant by surrogate").

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *relied on for other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)).

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(4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, his constitutional rights, the range of penalty, the Applicant's version of the facts, and the Applicant's defense at trial. The record also reflects that Counsel zealously advocated on his client's behalf.

Failure to Present Evidence

The Applicant asserts that Counsel was ineffective for failing to call character witnesses on his behalf and submit purportedly exculpatory DNA evidence. This Court finds Counsel's testimony credible and finds that the Applicant failed to meet his burden of proof regarding this issue.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689, 104 S. Ct. at 2065. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id. This Court finds that the Applicant has failed to meet his burden of proof as to this claim.

Where counsel articulates a valid strategic reason for his action or inaction, counsel

performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778–79 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)). See Stokes, 308 S.C. at 548, 419 S.E.2d at 778–79 (finding counsel’s decision not to call witnesses reasonable where their testimony would have been of no value to the case and witnesses were not credible); Abney v. State, 408 S.C. 41, 51, 757 S.E.2d 544, 549 (Ct. App. 2014) (“While trial counsel should consult with his client, the final decision on strategy belongs to counsel.”); Moore v. State, 399 S.C. 641, 723 S.E.2d 871, 873 (2012) (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551 (2004) (“Attorneys have a duty to consult with their clients regarding ‘important decisions,’ including questions of overarching ‘defense strategy.’ . . . This does not require counsel to obtain the defendant’s consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights [to plead guilty, waive a jury, testify on his own behalf, or take an appeal] cannot be made for the defendant by surrogate”).

This Court finds that Counsel was not ineffective for failing to introduce DNA evidence and exercised his discretion by making tactical, strategic decisions for the Applicant’s defense. Cf. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812 (2005) (citing McLaughlin v. State, 352 S.C. 476, 483–84, 575 S.E.2d 844–45 (2003)) (finding defense counsel’s decision not to call an expert witness to rebut the State’s expert witness was legitimate strategic decision and any resulting prejudice to the Applicant would be merely speculative). This Court finds that the Applicant’s case was ultimately a credibility case. Counsel successfully and adequately elicited

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testimony regarding the Applicant's small cut, the Applicant's statement that he was attacked and provoked, and the victim's possession of seven hundred dollars (\$700.00) in cash. However, ultimately, judging credibility and believability is the province of the jury. Counsel's testimony regarding the SLED evidence was compelling and credible. This Court finds it highly probable that the SLED witness's testimony would have been more beneficial to the State. The Court further finds that the State could have neutralized the finding of Applicant's DNA by calling into question when and how the blood was placed on the knife.

Additionally, Counsel's testimony regarding his strategic decision not to call the Applicant's character witnesses was given more weight and credibility based on the testimony of each of the witnesses themselves: none of the witnesses could testify as to the events that occurred that evening, Pastor Smith met the Applicant subsequently and did not know him at the time of the crime, and Powell testified that the Applicant became secretive and withdrawn when he was on drugs. The testimony that the Applicant's personality did not change when he was on drugs was not credible based upon the common knowledge of the effects of crack cocaine and alcohol usage on the personality highlighted by each witnesses lack of knowledge of the Applicant under these circumstances. Ultimately, this Court finds that it cannot rely on hindsight in assessing the Applicant's claims in order to prove his PCR. The record reflects that Counsel has expertise as a seasoned trial attorney and effective advocate. This Court finds that the Applicant failed to meet his burden of proving Counsel was ineffective in this regard based on Counsel's credible, valid, supported, and articulated strategic decision not to introduce certain testimony. Cf. Jackson v. State, 329 S.C. 345, 351, 495 S.E.2d 768, 771 (1998) ("Counsel claimed he thought the testimony concerning the corroboration of respondent's statement would be more credible if presented through the testimony of the police officer instead of Sanford. The

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Further, the Applicant failed to present his father's purportedly beneficial testimony that the victims coaxed the Applicant into visiting their home and partying at the PCR hearing. Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). The Applicant's mere speculation as to what a witness' testimony would have been by itself cannot satisfy the Applicant's burden of showing prejudice. Id. (citing Glover, 318 S.C. at 498-99, 458 S.E.2d at 540). Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this allegation.

Moreover, this Court notes that even if the Applicant had proved Counsel was ineffective for failing to submit the DNA evidence or even if the Applicant had been successful on appeal, it is unlikely that he would have been granted a new trial. "In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted." State v. Ford, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (citing State v. Butler, 261 S.C. 355, 200 S.E.2d 70 (1973); State v. Jennings, 40 S.C. 553, 18 S.E. 932 (1894)). "The requirements for a new trial are: (1) the evidence is such as will probably change the result if a new trial is granted, (2) the evidence has been discovered since

(1999) (citing State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996)) ("The *res gestae* exception recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, and may be needed to aid the fact finder in understanding the context in which the crime occurred."); see also State v. Gagum, 328 S.C. 560, 563 & n.2, 492 S.E.2d 822, 823 & n.2 (1997) (citing State v. Lyle, 125 S.C. 406, 418 S.E.2d 803 (1992); State v. Bolden, 303 S.C. 41, 43, 398 S.E.2d 494, 495, n.1 (1990)) ("While there are times when evidence may be admissible under *Lyle* and Rule 404(b) and the *res gestae* exception, the *res gestae* exception is properly viewed as independent of *Lyle*—that is, some evidence that would be inadmissible under *Lyle* and Rule 404(b) would be admissible as part of the *res gestae*."). In addition, the Applicant's statements are more aligned with non-hearsay admissions rather than inadmissible character evidence and statements offered for their truth.

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the trial, (3) the evidence could not have been discovered prior to trial by the exercise of due diligence, (4) the evidence is material to the issue, and (5) the evidence is not merely cumulative or impeaching.” Id. (citing Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983); State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981)).

Just because the Applicant exercised his rights pursuant to the Access to Justice Post-Conviction DNA Testing Act, see S.C. CODE ANN. § 17-28-10 (2014), does not mean that the Applicant has also satisfied the requirements of the Act, has met his burden of proving the DNA evidence was actually exculpatory, supports his theory of self-defense, and has established the requisite prejudice supporting the grant of a new trial. See S.C. CODE ANN. § 17-28-100 (2014) (“If the results of the DNA test are exculpatory, the applicant may use the exculpatory results of the DNA test as grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure. If the results of the DNA test are inconclusive, the court may allow for additional DNA testing or may dismiss the application.”). Cf. Bagwell v. State, 410 S.C. 259, 268, 763 S.E.2d 630, 635 (Ct. App. 2014), *reh’g denied* (Oct. 21, 2014), *cert. denied* (Feb. 27, 2015) (“Although the DNA test results indicating Bagwell’s blood was not found on the pieces of glass do not exonerate Bagwell or preclude the possibility of his guilt, we believe the jury more likely than not would have reached a different verdict had this evidence been presented at trial.”); Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, 792, 178 L.Ed.2d 624 (2011) (recognizing Strickland prejudice “does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case’ ”). The Applicant has failed to show that the DNA results conclusively exculpate him and inculpate some unknown individual—who had not been submitted for DNA testing—or tend to prove his assertion of self-

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defense. Additionally, the State introduced multiple photographs of the knife and crime scene during trial for the jury's consideration and in support of the defense's theory of the case (Tr. 136:7-143:7) and Counsel effectively cross-examined the responding officer, Robert Charles Talanges regarding where the knives were found in relation to the Applicant's proximity (Tr. 143:16-149:24; 153:14-154:7).

Accordingly, this Court finds that the Applicant has failed to meet his burden of proving Counsel was ineffective in this regard.

Failure to Investigate

This Court finds that the Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or prepare enough for trial are without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), *overruled on other grounds*; Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003). To establish counsel was inadequately prepared, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 5, 35, 496 S.E.2d 415, 417 (1998).

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495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial. Thus, respondent has failed to show his counsel's lack of preparation prejudiced him."); Skeen v. State, 325 S.C. 210, 213-14, 481 S.E.2d 129, 131-32 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2039, 2047 (1984); U. S. v. LaRouche, 896 F.2d 815, 823 (4th Cir. 1990).

The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or had additional time prior to the case being called to trial. This Court notes that Counsel has years of experience representing clients on similar charges and remains updated on case law through research. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or lack of investigation. Accordingly, this allegation is dismissed.

Failure to Adequately Cross-Examine Witnesses

In regards to the Applicant's allegation that Counsel was deficient in his cross-examination of the State's witnesses, including victims, this Court finds that the Applicant has failed to meet his burden of proof. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead

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State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel's performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the Applicant's defense. To the contrary, Counsel effectively cross-examined crucial prosecution witnesses including the victim, Dawn Henson (Tr. 82:6-93:19); the victim, Pam Massey (Tr. 110:5-115:6); the victim's neighbor, Isaac Brewington (Tr. 127:24-132:1); and the responding officer, Robert Charles Talanges (Tr. 143:16-149:24; 153:14-154:7). Accordingly, this Court finds that the Applicant has failed to meet his burden of proving Counsel was ineffective in this regard.

Failure to Address Jury Issues

The Applicant alleges that Counsel was ineffective for failing to properly address the jury questions and ask for the court to provide additional charges to the deadlocked and combative jury. This Court finds that Counsel was not required to move for an Allen charge or a murder charge. The trial judge has a duty to urge the jurors to reach a verdict, but he may not coerce them. See State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996). "The typical judicial mechanism for encouraging

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an indecisive jury is the *Allen* charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors." State v. Williams, 386 S.C. 503, 510, 690 S.E.2d 62, 65 (2010) (citing State v. Robinson, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004). S.C. CODE ANN. § 14-7-1330 (2007) provides that when a jury returns a second time without having agreed on a verdict, the trial judge cannot send the jurors out again without the jurors' consent unless the jurors ask for further explanation of law. See Buff v. South Carolina Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000)

Although the decision is vested in the sound discretion of the trial court, a mistrial is proper only where it is dictated by "manifest necessity" or "the ends of public justice." Whether a mistrial is manifestly necessary is a fact specific inquiry. "It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." A trial judge's decision to grant or deny a mistrial will not be reversed on appeal absent an abuse of discretion amounting to an error of law.

State v. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). See State v. Baum, 355 S.C. 209, 214-15, 584 S.E.2d 419, 422 (2003); State v. Bantan, 387 S.C. 412, 417, 692 S.E.2d 201, 203-04 (2010) (State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999); State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000) ("The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial").

The Applicant has presented no argument or authority supporting his contention that Counsel was required to make any motions regarding the jury's deliberation or that such request would have altered the trial's outcome. Indeed, Counsel, the Solicitor, and the trial judge

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were constrained by S.C. CODE ANN. § 14-7-1330 (2007) in affecting the jury's deliberation. This Court finds that there Counsel was not ineffective regarding the jury deliberations. Although there were several jury notes, there was no indication to the trial court or Counsel that the jury was deadlocked or that the panel was fatally hung. The Applicant has failed to meet his burden of proof of establishing that there was any violation of statute or any prejudice suffered as a result of the jurors' initial indecision.

Trial Court Violations

This allegation raises a direct appeal issue that is procedurally barred by S.C. CODE ANN. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Further, the Applicant presented no argument regarding error of the trial court during the hearing; therefore, this ground is deemed abandoned and dismissed.

Prejudice

Specifically regarding the Applicant's claims that Counsel was ineffective for failing to call character witnesses and introduce DNA evidence: "In order to prevail on a claim of ineffective assistance of counsel, petitioner must demonstrate that but for counsel's ineffectiveness, there is a reasonable probability the result of the trial would have been different." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999). "A reasonable probability is probability sufficient to undermine confidence in the outcome of trial." Jackson v. State, 329

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S.C. 345, 348, 495 S.E.2d 768, 769 (1998). ABWIK is an unlawful act of violent injury to the person of another accompanied by circumstances of aggravation. Hill v. State, 350 S.C. 465, 472, 567 S.E.2d 847, 851 (2002) (citing State v. Fennell, 340 S.C. 266, 531 S.C.2d 512 (2000)). ABWIK is an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. Id. Malice is a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it. Fennell, 340 S.C. at 278, 531 S.E.2d at 518. Intent to kill required to convict of ABWIK need only be a general intent demonstrated by acts and conduct from which a jury may naturally and reasonably infer intent and may be proved with evidence of the character of the means of instrument used. State v. Coleman, 342 S.C. 172, 176, 536 S.E.2d 387, 389 (Ct. App. 2000) (citing State v. Forest, 325 S.C. 12, 14, 479 S.E.2d 50, 51 (1996)).

This Court finds that the Applicant has failed to meet his burden of proof. Based on the testimony provided at the evidentiary hearing and a review of the record, this Court cannot discern any error in Counsel's performance that would undermine this Court's confidence in the jury's verdict. This Court finds it probable that a reasonable jury could find the Applicant guilty of the charged offense more specifically that the Applicant was not provoked and did have the required malice to commit ABWIK. Therefore, this Court finds that the Applicant has failed to establish prejudice supporting vacating his convictions.

Violations of Due Process and Equal Protection Rights

Although the Applicant raised this allegation in his application, the Applicant did not pursue this claim at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this issue.

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Failure to Move for Continuance

In his Application, the Applicant asserts that Counsel should have moved to continue his case because he was under the distorting effects of narcotics and was unable to meaningfully participate in his trial. However, the Applicant presented no evidence supporting his claim. Therefore, this allegation is deemed abandoned and dismissed. Moreover, this Court notes that Counsel informed the trial court that the Applicant was under the influence of medications and Counsel, the Applicant, and the Court discussed whether the Applicant was competent to pick a jury (7:4-10:15).

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations, which are denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland).

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466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

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AND IT IS SO ORDERED this 30th day of April, 2015.

Debra L. Jefferson

Debra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

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Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court
May 7, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Randall Price
31640
Applicant

7TH JUDICIAL CIRCUITCASE # 2013CP40 2119

VS
Steele
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 4-20 2015 on 2-7-15

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Suzanne White
Ashley Hawthorth
Christopher Krough
Judge Wreatha Jefferson

5-7-15

(Date)

Carrie Self
(Signature)

WITNESSES

SPARTANBURG CO SHERIFF'S OFFICE

REPORT MADE

CARD FILED

INDEXED

CHECKED RETURN

ARREST WARRANT NUMBER

ASSIGNMENT AND
K223412 AND NAME

TRAFIC VIOLATION

ACTION OF GRAND JURY

True Bill

Halish
Foreperson of Grand Jury

Date: 6/17/07

VERDICT

Guilty

But Bel
Foreperson of Petit Jury

Date: 6/10/11

DOCKET NO.

07-GS-42-2837

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 11 2007

TERM

THE STATE
VS.

RANDALL PRICE

Indictment for

ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

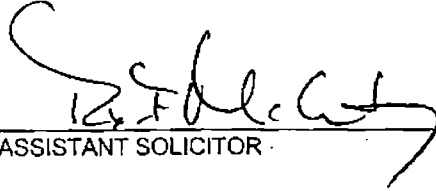
INDICTMENT

At a Court of General Sessions, convened on JUN 07 2007, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The defendant, Randall Price did, in Spartanburg County on or about January 13, 2007, with malice aforethought, commit an assault and battery upon, Pamela Massey, by stabbing the victim in the neck, with the intent to kill the victim, all in violation of §16-03-620, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR