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STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

RECEIVED

JUN 26 2015

THE STATE,

RESPONDENT, **SC Court of Appeals**

V.

JAMES SCOTT MCABEE,

APPELLANT

APPELLATE CASE NO. 2014-001528

RECORD ON APPEAL

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COURT’S EXHIBIT #1 (CD of 911 Calls)

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2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 James Scott McAbee,) 2013-GS-42-3627;3628
7 Defendant.) July 7 - 9, 2014
8) Spartanburg, South Carolina
9

10 B E F O R E :
11

12 HONORABLE J. DERHAM COLE, JUDGE
13

14 A P P E A R A N C E S :
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Guilty plea

1 MR. SNYDER: No, sir.

2 (Whereupon, the remaining members of the jury venire
3 were excused.)

4 MR. GHENT: Your Honor, may we approach?

5 (Bench conference held off the record.)

6 THE COURT: Any matters we need to address before the
7 jury is brought in?

8 MR. GHENT: None from the state, Your Honor.

9 MR. SNYDER: Yes, sir. I have two brief matters.

10 THE COURT: Okay.

11 MR. SNYDER: First, may we approach, please?

12 (Bench conference held off the record.)

13 THE COURT: All right. You are James Scott McAbee.

14 THE DEFENDANT: I am.

15 THE COURT: Mr. Snyder is your lawyer.

16 THE DEFENDANT: He is.

17 THE COURT: How long has he been representing you?

18 THE DEFENDANT: Three months. Even longer probably.

19 THE COURT: Sir?

20 THE DEFENDANT: A little longer probably.

21 THE COURT: Okay. As you know, you have two charges.

22 Those charges are carjacking and assault and battery third
23 degree. Your cases were called for trial.

24 Mr. Snyder has indicated to me that you have decided
25 to plead guilty to the assault and battery charge. You

Guilty plea

1 still wish to go forward with the jury trial on the
2 carjacking charge, is that correct?

3 THE DEFENDANT: Correct.

4 THE COURT: The assault and battery charge alleges --
5 that's in Indictment 2013-3627. It alleges that on or
6 about June the 5th of 2013 you committed an assault and
7 battery on William Martin by unlawfully injuring him or
8 offering or attempting to injure him.

9 Assault and battery in the third degree carries a
10 sentence of up to 30 days in jail or a fine of \$500.

11 Do you understand what the charge is?

12 THE DEFENDANT: I do.

13 THE COURT: Do you understand the potential punishment
14 or penalty?

15 THE DEFENDANT: I do.

16 THE COURT: Do you still want to go forward and plead
17 guilty to it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did Mr. Snyder go over this indictment
20 with you and explain to you the charge in it?

21 THE DEFENDANT: Yes.

22 THE COURT: Did he tell you what the state would have
23 to prove in court before you could be convicted or found
24 guilty of assault and battery third degree?

25 THE DEFENDANT: Right.

Guilty plea

1 THE COURT: Did you tell him everything you know about
2 the facts that relate to the allegations?

3 THE DEFENDANT: I did.

4 THE COURT: Did y'all discuss whether or not you have
5 a defense to the charge?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have one?

8 THE DEFENDANT: No.

9 THE COURT: Did Mr. Snyder explain to you each of the
10 constitutional rights that you have that you must give up
11 if you want to plead guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: Did he explain to you about your right to
14 remain silent?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand it?

17 THE DEFENDANT: I do.

18 THE COURT: Did he explain to you about your right to
19 confront and to examine the witnesses in court that would
20 offer evidence against you?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand it?

23 THE DEFENDANT: I do.

24 THE COURT: Did he explain to you about your right to
25 have a jury trial and to have 12 jurors decide if you're

Guilty plea

1 guilty or not?

2 THE DEFENDANT: Yes.

3 THE COURT: Of course you've already helped in their
4 selection. Do you understand the state has the burden of
5 proving your guilt to their satisfaction beyond a
6 reasonable doubt before you could be found guilty?

7 THE DEFENDANT: I do.

8 THE COURT: During the trial you could testify or not.
9 That would be up to you. Nobody can force you to. You
10 have to make that decision on your own. Do you understand
11 your right to have that jury trial?

12 THE DEFENDANT: I do.

13 THE COURT: Do you wish to give it up in order to
14 plead guilty?

15 THE DEFENDANT: I do.

16 THE COURT: Anybody promised you anything that caused
17 you to make that decision?

18 THE DEFENDANT: Nothing.

19 THE COURT: Has anybody threatened you or coerced you
20 or put any pressure upon you of any kind?

21 THE DEFENDANT: No.

22 THE COURT: Are you pleading guilty freely and
23 voluntarily?

24 THE DEFENDANT: I am.

25 THE COURT: And are you guilty of assault and battery

Guilty plea

1 third degree just as it is described in this indictment?

2 THE DEFENDANT: I am.

3 THE COURT: And what did you do that makes you guilty
4 of assault and battery in the third degree?

5 THE DEFENDANT: I threw a towel at him.

6 THE COURT: All right. And is that all of the salient
7 and material facts?

8 THE DEFENDANT: That is.

9 THE COURT: Nothing else I need to know about those
10 facts?

11 THE DEFENDANT: No.

12 THE COURT: You threw a towel at him, is that right?

13 THE DEFENDANT: That's correct, yes.

14 THE COURT: Okay. You're 44 years old.

15 THE DEFENDANT: Forty-three.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: High school, two years of college.

18 THE COURT: Are you married?

19 THE DEFENDANT: I am.

20 THE COURT: Do you have children?

21 THE DEFENDANT: Four teenagers.

22 THE COURT: Do you work?

23 THE DEFENDANT: Disabled.

24 THE COURT: And howso?

25 THE DEFENDANT: I got a blood clotting disorder called

Guilty plea

1 Factor V that they've tried to take my legs off for the
2 last four or five years, lack of circulation.

3 THE COURT: All right. Listen to what the solicitor
4 tells me about the facts that relate to the assault and
5 battery charge.

6 MR. GHENT: Your Honor, on June 5th of 2013 after an
7 attempted carjacking at the intersection of Highway 9 and
8 292 in Spartanburg County the defendant had been wounded
9 when the victim of the carjacking defended himself by
10 shooting the defendant, a through and through, on the side
11 just below the armpit.

12 The defendant continued in his bizarre attacking
13 behavior. Law enforcement was summoned to the scene, and
14 eventually the defendant was subdued.

15 The defendant was taken to Spartanburg Regional
16 Medical Center for treatment. There his behavior which had
17 continued to be -- he was grossly intoxicated, completely
18 out of control.

19 He at the hospital in the emergency room with medical
20 staff trying to assist him and help him and basically bind
21 his wound, he at some point blew his nose into a towel and
22 threw it and struck a male nurse who was standing there
23 trying to help him. Those are the facts of this particular
24 charge.

25 THE COURT: All right. Mr. McAbee, you heard what the

Guilty plea

1 solicitor told me. Do you agree or disagree with him?

2 THE DEFENDANT: I agree with it.

3 THE COURT: Do you still want to plead guilty to it?

4 THE DEFENDANT: I do.

5 THE COURT: Is your birthdate January 11th, 1970?

6 THE DEFENDANT: Correct.

7 THE COURT: Why doesn't that make you 40 years old?

8 THE DEFENDANT: Yeah. You're right. It's 40 then.

9 All right. You're right.

10 THE COURT: All right. I'll accept your plea and we
11 will defer a sentencing hearing until the conclusion of the
12 other trial.

13 MR. GHENT: Thank you, Your Honor.

14 THE COURT: All right. Are we ready for the jury now?

15 MR. GHENT: Does Mr. Snyder have another motion?

16 MR. SNYDER: Yes, Your Honor.

17 I just -- as I stated at the bench, I spoke with the
18 witnesses in this trial, and I feel that for Mr. McAbee to
19 get a fair trial it would be better to sequester the
20 witnesses in this case. The solicitor said he would
21 consent to that.

22 MR. GHENT: The state would, Your Honor, with the
23 understanding that the victim of course has a
24 constitutional right to remain in the courtroom. Thank
25 you. Oh, and, Your Honor, of course we would ask that the

1 investigating officer be allowed to remain in the courtroom
2 as well.

3 THE COURT: He will.

4 All right. Let your other witnesses know. I don't
5 know who's here and not here, but let them know. Let the
6 other witnesses know that they're sequestered.

7 You can't discuss the case with any other witness.

8 Do they know where to go?

9 MR. GHENT: Your Honor, may I explain to them what
10 this is?

11 THE COURT: Sure. You'll need to show them where they
12 can go.

13 MR. GHENT: May I approach?

14 THE COURT: I don't know where they're going. Do you?

15 MR. GHENT: No, sir.

16 THE COURT: Well, you need to find out. They can't go
17 home.

18 (Pause.)

19 THE COURT: They're not going anywhere. And, again,
20 by way of clarification, the state intends to call Robert
21 today -- Robert Kaminski, Michael Arledge and Traci
22 Arledge.

23 I don't know if we're going to get much further than
24 that today. It was my understanding that Your Honor said
25 three would be more than enough as a gift.

1 MR. SNYDER: Judge, along the lines of the
2 sequestration, Mike and Traci Arledge are exactly the two
3 witnesses that I wanted to testify after Mr. Habitzruther
4 testifies.

5 MR. GHENT: I'm sorry, Your Honor. He's not entitled
6 to that.

7 THE COURT: Well, I'm not -- I mean, I can't -- I
8 can't require him to call witnesses in a particular order.

9 MR. SNYDER: I understand that, Judge, but that was
10 the whole purpose behind sequestering the witnesses.

11 THE COURT: So you don't want to sequester them?

12 MR. SNYDER: Well, I still do, but it would just --
13 that -- that is the reason why I wanted him to testify
14 before the other witnesses, the later witnesses.

15 THE COURT: Well, I mean, I just don't have any
16 authority to require it.

17 MR. SNYDER: Yes, sir.

18 THE COURT: All right. Anything else we need to
19 address before the jury is brought in?

20 MR. GHENT: No, sir.

21 THE COURT: All right. Bring them in. Ask -- be sure
22 you just put six on the front row since they're going all
23 the way down.

24 Ask Ms. Bahnmuller to take the foreperson's seat.

25 (The following takes place in the presence of the

Robert Joseph Kaminski
Direct examination by Mr. Ghent

1 A It is at the intersection of 292 and Highway 9.

2 Q And in discussing the case with you today did I show
3 you an aerial photograph of that intersection?

4 A No.

5 Q All right. Did we go over the intersection and the
6 events of June 5th of 2013?

7 A Yes.

8 Q And do you -- first of all, you're a patron in that
9 place?

10 A I am.

11 Q You sometimes work as what they call a bouncer?

12 A I am.

13 Q And on occasion have you worked as a volunteer
14 bartender?

15 A No.

16 Q All right. Were you there June the 5th of 2013?

17 A Yes.

18 Q Do you recall an individual coming into the bar on
19 that date and the events of what he did? Do you recall
20 those circumstances?

21 A I do.

22 Q First of all, do you see the individual who came in
23 that day in the courtroom?

24 A Yes.

25 Q Well, look around. Who is it?

Robert Joseph Kaminski
Direct examination by Mr. Ghent

1 A Gentleman standing or sitting at the defendant table.

2 Q Would you please point out? The defendant over here
3 at this table?

4 A Yes.

5 Q All right. Please tell the ladies and gentlemen of
6 the jury what -- what was his conduct that day?

7 A He was very -- he wanted to pick a fight with anybody
8 he could. He tried with several people and was somewhat
9 violent and very unkind.

10 Q Well, let me ask you this. Was he sober?

11 A No.

12 Q Did it appear that he had been drinking?

13 A Excessively.

14 Q Okay. Tell the ladies and gentlemen a little bit
15 about this. And, by the way, is this your first time
16 giving testimony?

17 A Yes.

18 Q Are you a little bit uncomfortable?

19 A A little.

20 Q A lot more uncomfortable than maybe acting as a
21 bouncer in an environment you know?

22 A Yes.

23 Q Okay. If you would, would you please relax and just
24 tell these folks about the behavior that day.

25 A When he came into the bar he was obviously extremely

Robert Joseph Kaminski
Direct examination by Mr. Ghent

1 intoxicated, very loud and obnoxious, wanted to pick a
2 fight with anybody he could for whatever reason unknown.
3 That just was his intention from the time he walked into
4 that bar. Several -- well, not several -- a few people
5 tried to talk to him and calm him down, and he would just
6 argue with them and try and poke at them and wanted to pick
7 a fight.

8 Q Did ultimately someone -- first question, did anybody
9 give him anything alcoholic to drink?

10 A No.

11 Q Did a bartender kind of take charge of the
12 circumstances?

13 A Yes.

14 Q Male or female?

15 A Female.

16 Q About how big was she? Is she a big, huge woman?

17 A No. She's fairly small.

18 Q But would it be fair to say that she has a certain air
19 of authority about her?

20 A Yes.

21 Q And did she order him to leave?

22 A Yes.

23 Q And did he?

24 A No.

25 Q All right. Tell us what happened.

Robert Joseph Kaminski
Direct examination by Mr. Ghent

1 A When the first customer that was trying to talk to him
2 and help him -- I don't remember the conversation, but she
3 finally gave up and she walked out, outside, out the door,
4 and he followed. And both I and the bartender followed
5 them out because we didn't know what his intention was.

6 Nothing happened once we were outside. They were just
7 talking. And the bartender ordered him to sit down, shut
8 up and not to move, which he did briefly for a few minutes
9 until he finally got up and started to speak to another
10 customer who was trying to calm him down and reason with
11 him and just diffuse the situation, which he was still the
12 same, just wanted to argue and just pick a fight. He was a
13 lot calmer but still wanted to intend to do something from
14 what it appeared.

15 Q Ultimately, was he ordered to leave the bar, and did
16 he leave?

17 A Yes.

18 Q Did you see him again that day?

19 A Yes.

20 Q Tell the ladies and gentlemen of the jury about that.

21 A When he finally left the bar he got in his car and
22 started to leave and veered off into the grass onto the --
23 and drove onto the bank on the side of Highway 9 where he
24 got his car stuck. And he tried to get it free, which did
25 not -- he did not achieve. He got back in his car, and

Robert Joseph Kaminski
Direct examination by Mr. Ghent

1 that was the last I had seen until I went to check on him
2 later that evening.

3 Q About how much later?

4 A Maybe about two hours later.

5 Q Was it dark?

6 A Yes.

7 Q Did you look in the car?

8 A Yes.

9 Q What did you see?

10 A He was passed out.

11 Q All right. And did you then go back into the bar?

12 A I went back in the bar. And I'd say maybe half an
13 hour later, maybe half an hour to an hour later, we got
14 there at the bar, got a call saying that he was in the
15 middle of the street trying to wave down cars. I assumed
16 to help.

17 And when one of the cars that was passing by -- he
18 struck it with his arm or leg. I don't recall. The
19 vehicle then turned around, pulled up to him. And I don't
20 know what was said. All I --

21 Q Could I ask you, when he turned around could you see
22 either the driver of the vehicle or the defendant when the
23 car stopped?

24 A I could not.

25 Q Okay. Go ahead.

Robert Joseph Kaminski
Cross-examination by Mr. Snyder

1 A Yes, sir.

2 Q Did you see him taken away in an ambulance?

3 A Yes.

4 Q And after that did you go back inside a bar?

5 A I did.

6 Q Back inside the bar rather.

7 A Yes.

8 Q Thank you.

9 MR. GHENT: Your Honor, if I could have a moment.

10 (Pause.)

11 MR. GHENT: I have no further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SNYDER

14 Q Mr. Kaminski -- is it Kaminski?

15 A That's right.

16 Q What time -- I'm sorry. Let me back up. So you're at
17 the bar as a customer. You weren't working.

18 A Correct.

19 Q And you never told Investigator Davis that you were
20 working as a bartender that night?

21 A No.

22 Q So you're -- you're there drinking, correct?

23 A I was not drinking alcohol, no.

24 Q Okay. What time did you notice Scott arrive at the
25 bar?

Robert Joseph Kaminski
Cross-examination by Mr. Snyder

- 1 A I think around 5:00 o'clock.
- 2 Q 5:00 o'clock. What time did he try to leave, a couple
- 3 of hours later, you think?
- 4 A I think maybe an hour later.
- 5 Q 6:00?
- 6 A Maybe.
- 7 Q You said that when he tried to leave he got -- he got
- 8 stuck.
- 9 A Yes.
- 10 Q Where did he get stuck? I mean, can you describe?
- 11 A Well, the -- from where he was parked he was heading
- 12 towards Highway 9. And when he -- he was going towards the
- 13 exit to the driveway and ran off to the left into the grass
- 14 and got stuck on the bank alongside Highway 9.
- 15 Q There's a ditch right there, correct?
- 16 A I think so. I -- yeah.
- 17 Q And you said he then passed out in his car.
- 18 A After he tried to push it free, yes.
- 19 Q Okay. And this is around 6:00.
- 20 A Well, this was after he had got it stuck.
- 21 Q So, but you say he tried to leave around 6:00, 6:30.
- 22 A Right, yes.
- 23 Q Somewhere around there.
- 24 A Around there, yes.
- 25 Q Then he couldn't get it out, so he --

Robert Joseph Kaminski
Cross-examination by Mr. Snyder

- 1 A Got back in his car.
- 2 Q And you went out there to check on him?
- 3 A Yeah. It was about 8:00 o'clock. It was pretty dark.
- 4 Q It was 8:00 o'clock?
- 5 A Maybe just about coming dusk.
- 6 Q Okay. What time did you hear? What time did you
- 7 start receiving calls that he was out in the middle of the
- 8 road?
- 9 A I think it was around 8:00 or 8:30.
- 10 Q Okay. And he was trying to flag down a car for help.
- 11 A Yes.
- 12 Q He needed help because his car was stuck.
- 13 A I assumed he wanted a ride, or I don't know what.
- 14 Q All right. But he needed -- looked like he was trying
- 15 to get help.
- 16 A Correct.
- 17 Q And you just said, told the solicitor, that you
- 18 couldn't see the driver or Scott.
- 19 A Correct.
- 20 Q The car was in the way.
- 21 A Correct.
- 22 Q So you don't know what happened at the vehicle.
- 23 A No.
- 24 Q But you said it was a few seconds and then you heard a
- 25 gunshot.

Robert Joseph Kaminski
Cross-examination by Mr. Snyder

1 A Correct.

2 Q How many seconds?

3 A Twenty or 30 seconds.

4 Q Twenty or 30?

5 A From the time the car stopped and approached him.

6 Q Okay. And I just have a few more questions. You said
7 he was -- the police responded and he was -- or after he
8 was shot he fell down? Is that what --

9 A I don't remember the exact recurrence of events from
10 the time he got shot.

11 Q But you're pretty -- you're pretty sure that it was
12 about 20 or 30 seconds between when -- when the car pulled
13 up to him. I'm sorry. Where was he standing when the car
14 pulled up to him?

15 A They were in, directly in, the middle of the road on
16 Highway 9.

17 Q Of the median, is that fair?

18 A It may have been the median. It was either the median
19 or left lane of the going-towards-North-Carolina.

20 Q Okay. And that's a 4-lane highway.

21 A Correct.

22 Q When did you see him on the ground?

23 A It was maybe a few minutes after he got shot. He was
24 still stumbling around in pain, obviously.

25 Q Right.

Michael Arledge
Direct examination by Mr. Ghent

1 A But he was still very, appeared very, intoxicated.

2 Q And, again, I mean, he was drunk.

3 A Yes.

4 Q Okay. And that -- that's what led to him getting his
5 car stuck.

6 A Yes.

7 Q Okay. I have no further questions. Thank you.

8 MR. GHENT: No further questions.

9 Thank you, Mr. Kaminski.

10 THE COURT: You may step down.

11 MR. GHENT: The state calls Michael Arledge.

12 MICHAEL ARLEDGE, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. GHENT

15 Q Please state your name for the record.

16 A Michael Arledge.

17 Q And do you live here in Spartanburg County?

18 A I do.

19 Q Do you recall the events of June 5th of 2013 at
20 Highway 9 and 292?

21 A Yes, sir.

22 Q Was there -- first of all, were you in your car?

23 A Yes, sir, originally. Originally, I was.

24 Q Was there anybody with you?

25 A My wife.

Michael Arledge
Direct examination by Mr. Ghent

1 Q And what's her name?

2 A Traci.

3 Q And please tell us how you approached that
4 intersection. What road were you on as you approached it?

5 A I was on Highway 292 at the intersection of Highway 9.
6 I turned right headed towards Boiling Springs.

7 Q All right. And were you able to see the median?

8 A Yes, sir.

9 Q That's on 292 after you completed your turn?

10 A Yes, sir.

11 Q Almost immediately after.

12 A Yes, sir.

13 Q Please tell the ladies and gentlemen of the jury what
14 you saw when you completed that turn.

15 A The first thing that I saw was a car that had ran out
16 of the parking lot of the Lake Bowen Country Club, and it
17 was stuck on the embankment.

18 I looked at my wife, and I made notice that someone
19 had ran off the parking lot and wrecked their car.

20 Then immediately as soon as I looked back towards the
21 road I saw the back of a guy that was in the median. It
22 was dark. I slowed down to ask. I just assumed that it
23 was whoever was driving that car. And I asked. I rolled
24 down my window, slowed down, and I asked if I could help,
25 if he needed help.

Michael Arledge
Direct examination by Mr. Ghent

1 I did not realize until he turned around to me that he
2 was urinating in the road.

3 Q Urinating in the road.

4 A Yes, sir.

5 Q This is in the median.

6 A Yes, sir.

7 Q Is the individual who was doing that in the courtroom?

8 A Yes, sir.

9 Q Would you please point him out?

10 A Mr. McAbee.

11 MR. GHENT: Could the record reflect that he's pointed
12 out the defendant was in the intersection in the median
13 urinating in the road?

14 A Yes, sir.

15 Q And you then did what?

16 A It appeared to me that he was very intoxicated, so my
17 wife was afraid, so we pulled off.

18 I immediately called 9-1-1. They asked me for some
19 descriptions of the car, what the defendant was wearing. I
20 did not -- I could not tell her that information exactly,
21 so I told her that I would turn around and go back and give
22 her the description.

23 So at that point I turned around at Rainbow Lake Dam
24 Road. I went back.

25 There was a car in front of me that had to dodge

Michael Arledge
Direct examination by Mr. Ghent

1 Mr. McAbee, and then he stepped in the road in front of me.

2 So I went into the median around him, and I pulled into the

3 parking lot of the country club.

4 Q Rainbow Lake Country Club.

5 A Yes, sir.

6 Q That's kind of a joke. It's a bar, but it's called

7 that, correct?

8 A That's the name of it, Rainbow Lake Country Club. To

9 my -- to my knowledge that's the name of it.

10 Q And just in a matter of a few seconds two cars had to

11 swerve to avoid this man, is that correct?

12 A Yes, sir.

13 MR. GHENT: Your Honor, could I ask that the defendant

14 merely stand up?

15 THE COURT: For?

16 MR. GHENT: For purposes of the size of the defendant,

17 and that only.

18 THE COURT: All right. If you will, stand, please,

19 sir.

20 (Whereupon, the defendant stood.)

21 Q That's the individual for sure who was standing in the

22 median urinating.

23 A Yes, sir.

24 Q And --

25 THE COURT: You can be seated.

Michael Arledge
Direct examination by Mr. Ghent

1 (Whereupon, the defendant was seated.)

2 Q Your wife's reaction was apparently not to laugh, was
3 it?

4 A No, sir.

5 Q Was it your reaction?

6 A No, sir.

7 Q As a matter of fact, as I understand your testimony
8 you had turned around because of concern for what was going
9 on.

10 A That is correct.

11 Q Tell us next what happened.

12 A I was still on the phone with the 9-1-1 operator, and
13 I told her that she needed to hurry and get someone out
14 there because this man was apparently drunk, he was in the
15 road trying to stop cars, and that I was afraid he was
16 going to get hit or something worse would happen.

17 while I was still on the phone with her one car
18 stopped in the -- in their lane, in the left-hand lane.
19 And he came around and approached the driver's side. That
20 car actually backed up, turned around and went back towards
21 Boiling Springs.

22 Another car stopped. He approached the car, and they
23 swerved around him and started back and then went around
24 him and left.

25 Q So this is four cars that, again, the defendant had

Michael Arledge
Direct examination by Mr. Ghent

1 attempted to avoid him, had to avoid him.

2 A Yes, sir.

3 Q Go ahead.

4 A Then there was a -- an S.U.V. I don't remember the
5 brand of the vehicle. It was an S.U.V. came by headed
6 towards Lake Bowen on Highway 9, headed towards the 292
7 intersection.

8 Mr. McAbee was in the -- standing in the median. And
9 the vehicle slowed down and then sped up again. As it sped
10 up Mr. McAbee -- I don't know if he had -- I don't know
11 what he did, but I heard. I saw him hit the vehicle with
12 his hand. I don't know if he had anything in his hand or
13 not, but it was a loud -- a loud thud.

14 At that point I was relaying all of this to the 9-1-1
15 operator. I said he just hit someone's vehicle and that
16 vehicle is now turning back around.

17 Q Let me ask you again. Where was your vehicle parked
18 in relation to this as you were talking to 9-1-1?

19 A It was in the country club parking lot.

20 Q Okay. So you had driven up the driveway into the bar
21 parking lot.

22 A That's correct.

23 Q And you had a clear field of vision. Had you turned
24 around?

25 A I had turned around, and I had gotten out of the

Michael Arledge
Direct examination by Mr. Ghent

1 vehicle.

2 Q All right. What did you tell your wife when you got
3 of the vehicle?

4 A To stay in the vehicle.

5 Q Okay. Were you concerned?

6 A Absolutely.

7 Q Now, when you got out of the vehicle and you saw the
8 S.U.V. turn around and come back was the driver's side of
9 the S.U.V. away from you?

10 A It was. I was on the passenger side.

11 Q And was the defendant on the driver's side of the
12 S.U.V.?

13 A Yes, sir.

14 Q So that he was away from your field of vision.

15 A Yes, sir.

16 Q Tell us what happened next.

17 A When the S.U.V. turned around and came back it slowed
18 down and stopped.

19 At that point I could not see Mr. McAbee. I could not
20 see the driver of the S.U.V. But I did see the S.U.V.
21 shaking.

22 Q Okay. I want to stop you.

23 When you say shaking are you talking about the entire
24 vehicle?

25 A Yes, sir.

Michael Arledge
Direct examination by Mr. Ghent

1 Q Okay. Was it like a vehicle would shake if it was
2 having, say, engine trouble?

3 A No, sir.

4 Q It was the vehicle itself was shaking side to side,
5 back and forth?

6 A Side to side, yes, sir.

7 Q Tell us what happened next.

8 A Less than -- probably less than ten seconds after the
9 vehicle stopped and the shaking was going on I heard a
10 gunshot.

11 Q Go ahead.

12 A After I heard the gunshot I heard Mr. McAbee
13 screaming, cursing that he had been shot.

14 I told my wife to stay in the vehicle, I was going to
15 go check -- check on him.

16 The guy that shot Mr. McAbee, he pulled his vehicle
17 into a parking-lot area, a drive, probably 20 or 25 yards
18 from where the shooting took place.

19 Q Right across from the driveway for the country club?

20 A It's probably 40 yards towards Boiling Springs.

21 Q Okay. And the vehicle remained there, the S.U.V.

22 A When he pulled in he turned around and faced back
23 towards Highway 9.

24 By this time I had walked up to his vehicle. He
25 rolled his passenger-side window down. He was on the

Michael Arledge
Direct examination by Mr. Ghent

1 phone, and he said this guy just tried to carjack me, this
2 guy just tried to get in my car. He was on the phone with
3 9-1-1. I told him that I was also on the phone with 9-1-1
4 and had been for a while.

5 Q Let me ask you this. You were out there. Do you mind
6 standing up for just a moment?

7 (Whereupon, the witness stood.)

8 Q Okay. Thank you.

9 No disrespect, but it would be fair to say that you're
10 not quite the size of the defendant. Is that a fair
11 statement?

12 A That's a very fair statement.

13 Q Yet you got out and you were on the phone to 9-1-1.
14 Did you tell 9-1-1 something that indicated why you felt
15 comfortable with at least approaching what appeared to be a
16 dangerous situation?

17 A I told them that I had a concealed weapons permit and
18 that Mr. McAbee was still -- he -- at that time he was
19 walking towards me and the S.U.V. and --

20 Q Where was your hand?

21 A My hand was inside my shirt on my weapon.

22 Q On your gun.

23 A Yes, sir.

24 Q And he was walking towards you.

25 A Yes, sir.

Michael Arledge
Direct examination by Mr. Ghent

1 Q Go ahead.

2 A Before that happened I actually walked around to the
3 passenger, I mean, to the driver's side of the vehicle.

4 And Mr. McAbee -- he had been down on the -- on the ground
5 on his knees. He was -- he was holding his hand over what
6 appeared -- I thought he'd been shot in the chest.

7 He got up off of the -- off of the sidewalk and
8 approached the S.U.V. and began kicking the side of it and
9 beating on the glass trying to get back to the driver of
10 the S.U.V.

11 Q This is after he had been shot with you standing right
12 there. Both of you were on 9-1-1, and he is attacking the
13 S.U.V.?

14 A Yes, sir.

15 Q Go ahead.

16 A I instructed the driver of the S.U.V. that it would
17 probably be best to avoid any further altercations, for him
18 to pull across the -- the road to get away from Mr. McAbee.
19 Thinking back, not sure how smart that was because that
20 just left me there with Mr. McAbee but --

21 Q Did you take your hand from where it was at any time
22 during that period?

23 A No, sir. I never pulled a weapon.

24 Q I understand that, but did you ever take your hand
25 from where the weapon was?

Michael Arledge
Direct examination by Mr. Ghent

1 A No, sir. The only time I took my hand away is when
2 the police showed up. And I stood there with my hands up
3 because I was -- I was very close to Mr. McAbee at that
4 time. And the police actually thought that I was the one
5 who shot him when they first arrived.

6 Q Did they take charge of the situation?

7 A Yes, sir.

8 Q Did they need [sic] anybody?

9 A No, sir.

10 Q Did they shoot anybody?

11 A No, sir.

12 Q Did they investigate the matter?

13 A Absolutely.

14 Q Did they question you?

15 A Yes, sir.

16 Q Did they question your wife?

17 A Yes, sir.

18 Q And, again, you kept on the phone with 9-1-1 letting
19 them know all that was happening. And you observed him on
20 the phone -- that is the victim on the phone -- and he told
21 you he was on 9-1-1, is that correct?

22 A That's correct. I heard him speaking with 9-1-1 when
23 I was talking to him.

24 Q Did he appear upset?

25 A Oh, very. He was shaking.

Michael Arledge
Cross-examination by Mr. Snyder

1 Q Okay. Thank you.

2 MR. GHENT: Your Honor, if I could have just a moment.

3 (Pause.)

4 Q No further questions. Please answer any questions of
5 counsel.

6 CROSS-EXAMINATION

7 BY MR. SNYDER

8 Q Mr. Arledge, you stated that Scott was in the road
9 trying to flag down cars, correct?

10 A That's correct.

11 Q And he was trying to flag down cars. You thought he
12 needed help, correct?

13 A I am not sure why he was trying to flag down cars,
14 sir.

15 Q But he was acting impaired.

16 A Yes, sir.

17 Q I mean, he was acting drunk.

18 A Absolutely.

19 MR. SNYDER: Your Honor, may I approach the witness?

20 Q We kind of went over these briefly before the trial.

21 MR. GHENT: Your Honor, may I approach? I don't know
22 what he is -- have these been marked?

23 MR. SNYDER: Right now I'm just getting him to
24 identify them.

25 MR. GHENT: Well, they need to be marked, don't they,

Michael Arledge
Cross-examination by Mr. Snyder

- 1 A I'm assuming that's the driver.
- 2 Q The driver. Yeah. I'm sorry.
- 3 A He was driving this way.
- 4 Q Okay. And at this point -- well, Mr. -- Scott had
- 5 flagged down, tried flagging down, a couple of cars --
- 6 A Yes, sir.
- 7 Q -- because he was trying to get help.
- 8 A Yes, sir.
- 9 Q And other cars were stopping.
- 10 A One did stop but turned around and went the other way.
- 11 Q Okay. And then the driver passed by, and Scott
- 12 reached out and nicked the side-viewer mirror? Is that --
- 13 A I'm not sure what he hit. That's -- he hit --
- 14 Q The side -- the side of the car.
- 15 A Yes, sir.
- 16 Q Okay. Then he, the driver, kept going and turned
- 17 around?
- 18 A Yes, sir.
- 19 Q Okay. How much farther did the driver go after his
- 20 car was hit?
- 21 A It was -- it was somewhere around that intersection.
- 22 Q Okay. Did you say that he hit the passenger side of
- 23 the car?
- 24 A No, sir. He hit the driver's side --
- 25 Q Okay.

Michael Arledge
Cross-examination by Mr. Snyder

1 A The S.U.V.'s lane of travel?

2 Q Right. It just went down? I mean, I just want to see
3 kind of how far it was.

4 A He drove to that intersection.

5 Q Okay. He drove all the way to the intersection.

6 A He drove all the way to the intersection, turned
7 around and came back.

8 Q Okay. And you said that was about 45 seconds.

9 A Well, you said until I heard the shot, so.

10 Q Well, I'm sorry. How many? How many seconds passed
11 between when you heard him hit the car and he pulled up
12 next to Scott?

13 A Maybe 40 seconds.

14 Q Forty seconds?

15 A Forty-five or 40 seconds.

16 Q Okay. And then, again, so the driver is parked next
17 to Scott, and you are on the other side of the car,
18 correct?

19 A That's correct.

20 Q And then you say you saw the car shaking?

21 A Yes, sir.

22 Q And then you heard a gunshot.

23 A Yes, sir.

24 Q So how long was it between the time that he pulled up
25 next to Scott and you heard a gunshot?

Michael Arledge
Cross-examination by Mr. Snyder

1 A I would say five seconds, sir.

2 Q Five seconds.

3 A Five seconds.

4 Q Not long at all.

5 A No, sir.

6 Q Okay. Did I also hear you say that -- that you heard
7 the driver scream out that -- I guess he didn't know his
8 name -- but this guy is trying to get in my car?

9 A Once I walked up to his vehicle, yes, sir, he rolled
10 his passenger window down. And the first thing that was
11 said was this guy tried to carjack me, this guy tried to
12 get in my car.

13 Q Okay.

14 A And at that point I said I saw -- I saw what happened.
15 I've been on the phone with 9-1-1 for several minutes now.
16 And he said I'm on the phone with them as well.

17 Q But you really couldn't see what happened between the
18 driver and Scott like --

19 A No, sir.

20 Q -- you couldn't see whether or not there was any
21 physical interaction or you just saw a car shaking and you
22 heard a gunshot.

23 A That's correct.

24 Q It was that quick.

25 A Yes, sir.

Traci Lee Arledge
Direct examination by Mr. Ghent

1 A Yes, sir. I remember.

2 Q And is there a bar, an establishment, right up there
3 from the intersection?

4 A The country club, yes, sir.

5 Q What's the name of it?

6 A Lake Bowen Country Club.

7 Q Not Rainbow Lake.

8 A Right. Lake Bowen.

9 Q Someone told me that I may have used the name Rainbow
10 Lake. The Lake Bowen Country Club. Is that, in fact, the
11 name of it?

12 A Yes.

13 Q And were you riding in the car with your husband?

14 A I was.

15 Q About what time of the day would you estimate that as
16 being?

17 A I remember it was nighttime.

18 Q And I'm talking about when you arrived at that
19 intersection. Was it nighttime?

20 A Yes.

21 Q And do you recall whether or not there's a stoplight
22 at that intersection?

23 A Yes. There is.

24 Q And who was driving?

25 A My husband was driving our vehicle.

Traci Lee Arledge
Direct examination by Mr. Ghent

1 Q And would it be fair to say y'all found that peculiar?

2 A Yes, sir.

3 Q And did y'all then get onto -- was it 292 you turned
4 onto?

5 A No. We were turning onto No. 9.

6 Q No. 9. And you started to drive by the individual.
7 Do you recognize that individual in the courtroom? Please
8 look around.

9 A Well, to be honest, you know, whenever I'm driving or
10 whenever we're riding by I'm just -- I see the back of a
11 big man.

12 Q Okay.

13 A I -- I cannot say. I didn't -- I never got close
14 enough to his face to identify, to say, oh, yes, that's
15 him. I can just honestly say I just saw a big man using
16 the restroom in the middle of the road.

17 Q Would it be fair to say a very big man?

18 A Yes.

19 Q And he was urinating in the roadway. Was he in the
20 median?

21 A He was.

22 Q And please tell the ladies and gentlemen of the jury
23 in your own words what then happened.

24 A We slowed down just a bit to see if he needed help.
25 My husband actually rolled down the window and said, "Do

Traci Lee Arledge
Direct examination by Mr. Ghent

1 you need help?" But then whenever we really realized what
2 he was doing we went on and decided to turn around. We
3 turned around in Lake Bowen Country Club.

4 Q You pulled up into the drive?

5 A We did.

6 Q And that was the drive located on which road?

7 A 292.

8 Q 292. And you turned around.

9 A We did.

10 Q All right. Go ahead.

11 A We pulled down to the drive of the Country Club that
12 was located on No. 9.

13 So then after we pulled down we could see that he was
14 trying to flag down cars in the road. There was probably,
15 I know, several cars that went by that had to slow down for
16 him. And finally a car that did come by he hit. That car
17 then slowed down, turned around.

18 Q Do you recall what the car looked like?

19 A I can honestly say, no, you know, a year later, no.

20 Q Do you recall --

21 A I know on my report that, of course that, it happened,
22 you know, minutes later that I wrote down that it was a
23 silver S.U.V.

24 Q All right. And do you recall what direction that car
25 was going in?

Traci Lee Arledge
Cross-examination by Mr. Snyder

1 Q In a minute I'm going to get you to display the
2 intersection where this happened, just get you to walk
3 everyone through it so we can see exactly what happened.
4 But when you turned right onto Highway 9 you saw a man
5 standing in the median. And as the solicitor alluded to
6 several times, he was going to the restroom. Is that
7 typical behavior?

8 A No, sir.

9 Q That's the behavior of someone that is intoxicated,
10 drunk.

11 A Yes.

12 MR. GHENT: Your Honor, I'd object to the speculation
13 drawing a conclusion. If we want to stipulate --

14 THE COURT: Sustained. There's no foundation for
15 that, Mr. Snyder.

16 Q And this individual was, you stated, trying to flag
17 down cars.

18 A Yes.

19 Q Several cars.

20 A Yes.

21 Q Because he needed help. It looked like he may have
22 needed help.

23 A Maybe, yes.

24 Q Okay. At this time I want to show you a diagram of
25 the area.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Your husband was out of the car.

2 A Yes.

3 Q And his instructions to you were stay here.

4 A Yes.

5 Q You had no problem following those instructions, did
6 you?

7 A That's correct.

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

9 MR. GHENT: Your Honor, at this point may I ask that
10 the Arledges be excused only subject to recall?

11 THE COURT: Any objection?

12 MR. SNYDER: No objection.

13 THE COURT: They may be. Thank you.

14 (Whereupon, the witnesses were excused.)

15 MR. GHENT: The state would call Ms. Kim Belue.

16 KIMBERLY WILLIAMS BELUE,

17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GHENT

19 MR. GHENT: May it please the Court.

20 THE COURT: Mr. Ghent.

21 Q Please state your full name for the record.

22 A Kimberly Williams Belue.

23 Q And, Ms. Belue, do you live in Inman in Spartanburg
24 County?

25 A I do.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Do you recall the events of June 5th of 2013?

2 A Yes, sir.

3 Q This would be at the intersection of Highway 9 and
4 292?

5 A Yes.

6 Q In Spartanburg County.

7 A Yes.

8 Q And I would ask you if you were in your car when those
9 events occurred.

10 A I was.

11 Q And, again, this was at an intersection where I
12 believe just up from it there's an establishment called --
13 I believe at 62 I'll get it right -- the Lake Bowen Country
14 Club, is that correct?

15 A Yes, sir.

16 Q Did you approach and come to the intersection?

17 A I did.

18 Q And I'm going to take the liberty of trying to do this
19 myself.

20 would you please look at the exhibit up on the screen,
21 an aerial view of the area we're talking about? Does that
22 appear to you -- and of course you, I assume have never
23 flown up over it -- but does that appear to you to be the
24 intersection we're talking about?

25 A It is.

Kimberly Williams Belue
Direct examination by Mr. Ghent

- 1 Q And that appears to be 292.
- 2 A Yes.
- 3 Q That appears to be Highway 9.
- 4 A Yes.
- 5 Q And do you know of the Lake Bowen Country Club?
- 6 A I know the name of it and I know what it is, yes.
- 7 Q It's a bar.
- 8 A Yes.
- 9 Q Would that appear to be the building?
- 10 A Yes.
- 11 Q Would that appear to be the parking lot?
- 12 A Yes, it is.
- 13 Q And is that a drive as best you know that goes down
- 14 into Highway 292?
- 15 A Yes.
- 16 Q And is that a drive that goes down into Highway 9?
- 17 A Yes.
- 18 Q And this would be fields here, a field here, open
- 19 field?
- 20 A It's cleared space, yes.
- 21 Q Okay. And you approached that intersection on which
- 22 road?
- 23 A 292.
- 24 Q So you were coming up to the intersection on this
- 25 road.

Kimberly Williams Belue
Direct examination by Mr. Ghent

- 1 A Yes.
- 2 Q Is there a stoplight there?
- 3 A Yes.
- 4 Q And at that intersection did you turn right or left?
- 5 A I turned right.
- 6 Q Was anybody in the vehicle with you?
- 7 A My son.
- 8 Q Carter is his name?
- 9 A Yes.
- 10 Q When you turned right onto Highway 9 -- is that
- 11 correct -- going this direction --
- 12 A Yes, it is.
- 13 Q -- please tell the ladies and gentlemen of the jury
- 14 what you saw.
- 15 A There was a man standing in the middle of the road,
- 16 and he was waving his hands and shouting. And he stepped
- 17 in front of my car.
- 18 Q Was he -- I mean, shouting in what way? Could you
- 19 explain for the jury?
- 20 A He was waving his hands above his head and shouting.
- 21 I believe he was trying to get me to stop my car or pull
- 22 over for him. That was the impression I got with the
- 23 shouting.
- 24 Q Did you see his car?
- 25 A I did not.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Did you see another vehicle?

2 A I didn't see another vehicle.

3 Q But it appeared to you that the man was trying to get
4 you to stop.

5 A Get me to stop or at least get my attention, yes.

6 Q All right. Did he stand in front of your vehicle?

7 A He was in the middle of the road. And as I went to go
8 around him he stepped into my, yeah, my line of driving.

9 Q Was he facing you?

10 A Yes.

11 Q Was it dark?

12 A Yes.

13 Q Were your headlights on?

14 A Yes.

15 MR. GHENT: I would ask that the lights be turned on
16 for just a moment, please.

17 Q Do you see the individual who was standing in the road
18 in this courtroom?

19 A I cannot identify him. I'm sorry.

20 Q All right. Was he big?

21 A He was big.

22 Q Very big?

23 A Well, he was much taller than me, and broad.

24 Q All right. But it was dark. This suddenly happened.

25 And you can't say for sure who it was, but he was a very

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 big individual.

2 A Yes.

3 Q That's fine.

4 MR. GHENT: Could we dim the lights again, please?

5 Thank you, sir.

6 Q Now, you said that he was out in the road after you
7 made the intersection and began driving. Would that be
8 towards Boiling Springs?

9 A Yes.

10 Q Were you going home?

11 A Yes.

12 Q All right. And tell us after he began yelling to you
13 and you drove around him, what did you do?

14 A I drove around him, and I went a little further down
15 the road. And I couldn't tell you how far but maybe about
16 50 feet or so, a safe distance.

17 And I was afraid to pull over because I didn't see
18 anybody else or any other cars, and I had my son in the
19 car. But I didn't want to leave him in case he had gotten
20 into an accident or hit something.

21 So I turned my vehicle around and I faced him and had
22 my headlights on him. And I watched to see what was
23 happening and to see if I could identify if he was injured
24 or see if I saw a car or something. I was trying to figure
25 out why he was standing in the road shouting and waving me

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 down.

2 Q All right. Go ahead.

3 A At that time I saw -- I saw a car coming, and I
4 believe it was coming from Boiling Springs towards Lake
5 Bowen, the first car I saw. And it was coming at a rather
6 rate of speed for that highway.

7 And he didn't slow down because I don't -- I could
8 barely see the man when I came around the corner until he
9 was on top of me. So I didn't think the driver saw him,
10 and I got really scared.

11 And just as the car approached the man got very close.
12 The man in the middle of the road stepped into the line of
13 the cars driving. And the car swerved around him and kept
14 going.

15 Q Didn't stop; didn't come back.

16 A No.

17 Q All right. Now, let me ask you. At any point did you
18 contact 9-1-1?

19 A I did right after that.

20 Q All right. You called 9:11.

21 A I did.

22 Q And reported to them what you had seen.

23 A Yes.

24 Q Did you remain on the phone with 9-1-1?

25 A Yes, I did.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Tell us basically what happened next.

2 A After I had called 9-1-1 I told them that there was a
3 man in the middle of the road and that he was stepping into
4 traffic or I was afraid that he was going to get hit by a
5 car.

6 And as I was speaking to them another car came -- and
7 I think this one was going towards Boiling Springs -- and
8 almost the identical thing happened. The car came up on
9 him. He stepped into the line of traffic waving his arms,
10 stamping his feet, yelling.

11 Q Stamping his feet?

12 A Yes, like he was frustrated, is what it looked like.
13 The car swerved, missed him and kept going.

14 Q So among those cars that nearly hit him we have yours,
15 another one and now this one, correct?

16 A Yes, yes.

17 Q Go ahead.

18 A And then I don't know how much time went by. It
19 doesn't seem like much, maybe seconds. Another car came,
20 this one coming from Boiling Springs heading towards Lake
21 Bowen. And it -- the same type of thing. He stepped out.
22 And this time I heard -- I heard something hit the car.
23 And I shouted into the 9-1-1 tape that I thought the man
24 had been hit.

25 Q But you didn't see whether he had been hit or whether

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 he had hit the car. Is that a fair statement?

2 A That's very fair.

3 Q Okay. And so you were on the phone still with 9-1-1.

4 A Yes.

5 Q Tell us what happened next.

6 A The driver of the S.U.V. hit the brakes, swerved and
7 his car spun around facing more towards us.

8 Q All right. Now, you had stopped twice already about
9 this if I understand correctly.

10 A Can you repeat that again?

11 Q It's my understanding from your testimony you had
12 already stopped twice and adjusted your position during the
13 course of this, is that correct?

14 A Once when I first turned on and saw a man in the road.
15 I don't think I stopped. I think I slowed and moved out of
16 his way. And then I turned the vehicle around, and I
17 stayed in that position up until this point.

18 Q And you couldn't tell from the sound whether or not he
19 had been hit or whether or not he had hit the car, is that
20 correct?

21 A I couldn't tell. I know he was still standing, but I
22 couldn't tell what got hit.

23 Q If you would, please look up at the screen. I'm going
24 to begin moving this laser. And you tell me when I reach a
25 point where you would have been approximately in terms of a

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 distance from.

2 A I know -- I know for sure. Actually, that little
3 building on the left there --

4 Q This one? Here, let's do it the easy way.

5 MR. GHENT: May I approach, Your Honor?

6 THE COURT: Yes, please.

7 A This building right here.

8 Q Yes.

9 A I was parked right here.

10 Q Okay. And tell us what you saw next.

11 A So the driver of the S.U.V., as they said, spun. And
12 when he recovered from spinning his car he drove up slowly
13 to the person standing in the road. And he rolled down his
14 window and he -- I heard him say, "What the hell are you
15 doing?"

16 THE WITNESS: Am I allowed to say that?

17 THE COURT: You just did.

18 A That's what I heard.

19 Q In all fairness, you were on 9-1-1 making the call.

20 A Yes.

21 Q And have you ever listened to your --

22 A I have not.

23 Q All right. And you kind of had kind of an embarrassed
24 look. Is it possible that without realizing it you used
25 one or two choice words in the course of things?

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 A Yes.

2 Q Okay. And with respect to when you say he spun, if
3 you could clarify, did he spin from a sudden turn? Did
4 he --

5 A It looked like he skidded. It looks like he hit the
6 brakes, his car went into a little bit of a skid, he
7 corrected for it, the car skidded into this position. He
8 recovered from that, stopped. The car stopped and
9 recovered. And then he in control of his vehicle slowly
10 approached the guy in the middle of the road.

11 Q All right. And what happened next?

12 A I saw the man standing in the middle of the road
13 attempt to open the door from the vehicle.

14 Q Were you on the -- in your line of sight on the same
15 side?

16 A I was on the driver's side. I could see.

17 Q Okay. Tell us what you saw.

18 A I saw the man in the middle of the road attempt to
19 open the car door.

20 The man who was the driver had already put the window
21 down. The man in the middle of the road reached through
22 the driver's window, and I don't know what he was
23 attempting to do, but I did see him reach through the
24 window. I heard sounds. I couldn't give you specific
25 words. I heard sounds of --

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Did it sound like an argument?

2 A Yeah. It sounded like a -- more like disbelief on the
3 driver's side attempting to ask him what the man was trying
4 to do.

5 Q And did it appear that the man had his hands on the
6 driver?

7 A Oh, yes, yes.

8 Q Is there any question about that?

9 A No, there's no question to me about that, no.

10 Q All right. And did it appear to you like a struggle
11 was taking place?

12 A Yes.

13 Q What happened next?

14 A They struggled for a short, a very short, bit. And I
15 saw a flashlight and heard what sounded like a gunshot.

16 I saw the man in the road stumble back a couple of
17 steps, and I heard him shouting what did you do that for,
18 you shot me, you shot me, why did you shoot me.

19 He turned towards me a bit because he was kind of
20 walking around or spinning around in a -- not spinning but
21 kind of stumbling around in a circle. And when he turned
22 towards my car I could see he had a stain on his
23 chest-shoulder area. I could see a dark spot.

24 Q Did he appear to you to be significantly weakened by
25 whatever had happened?

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 A Surprisingly, no. I mean, he was still standing, and
2 his focus was -- seemed to be on the why-did-you-do-this.

3 Q Okay. Now, you were the one who just told the ladies
4 and gentlemen of the jury that it was the man in the road
5 who reached through the window and grabbed whoever was in
6 the S.U.V., is that correct?

7 A Yes, absolutely.

8 MR. GHENT: Could I ask that the lights be turned up
9 for just a moment, please?

10 Q How big was the man in the road?

11 A Let me see. My husband was 6'3". I would say he
12 was -- he definitely topped 6'3". I don't know how much
13 bigger. And he was a -- he was really broad frame. He
14 wasn't -- I wouldn't say he was obese. He just was broad.

15 Q Big.

16 A Yes.

17 Q Very big. Do you see him in the courtroom?

18 A Yes. I see somebody who matches a description, but I
19 cannot tell you what his face looked like.

20 Q Okay. There was a lot going on.

21 A Yes.

22 Q Who in the courtroom appears to you to match the
23 description of the individual you saw?

24 MR. SNYDER: Objection, Your Honor. She already
25 stated she couldn't see the individual.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 THE COURT: Overruled.

2 BY MR. GHENT

3 Q Who in the courtroom appears to you to match the
4 description of the big individual you saw that evening?

5 A The gentleman sitting at the table in the blue shirt
6 would have matched the description of the person that I saw
7 in terms of his body frame.

8 Q All right.

9 MR. GHENT: Your Honor, could the record reflect she
10 has referred to and pointed out the defendant?

11 THE COURT: It shall.

12 BY MR. GHENT

13 Q What did -- if you could...

14 MR. GHENT: If we could, turn the lights back down for
15 a moment.

16 Q What did the S.U.V. then do? And, again, if you want
17 to point out where the S.U.V. was as this occurred.

18 A Right about there.

19 Q All right. And that's right at the intersection,
20 because that's the intersection.

21 A Correct.

22 Q Up here is Lake Bowen.

23 A And I don't know. I cannot tell you whether he was
24 under the light or prior to the light, but I don't believe
25 he was past the light. I want to -- he was right in this

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 area. I don't know exactly where.

2 Q Okay. That would be as best you recall?

3 A Yes.

4 Q Now, you had originally gotten on the phone because
5 you were concerned about the safety of the individual who
6 was out in the street nearly getting hit with a car,
7 correct?

8 A Yes, yes.

9 Q As things progressed did you remain on the phone with
10 9-1-1?

11 A Yes.

12 Q Throughout?

13 A Through to the end of the phone call, yes.

14 Q What was your son Carter doing in all of this?

15 A It was terrible. He was in the back seat, and he was
16 crying and he was begging me to leave.

17 Q And how old is Carter?

18 A He was ten.

19 Q And you referred to your husband. Is your husband
20 deceased?

21 A He is.

22 Q Where are y'all from originally?

23 A We're from Rhode Island.

24 Q And y'all moved down here?

25 A We did.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q About how long ago?

2 A Five years ago.

3 MR. SNYDER: Objection. This is irrelevant.

4 MR. GHENT: Actually, it's not, Your Honor.

5 THE COURT: Okay. I'll let you go a little further.

6 MR. GHENT: Okay.

7 BY MR. GHENT

8 Q You moved from Rhode Island to Spartanburg?

9 A Yes.

10 Q Was it job related, was it relocating because of the
11 economy?

12 A Economy.

13 Q Rhode Island basically went belly-up.

14 A Yes.

15 Q Y'all moved to Spartanburg for a better life.

16 A Yes.

17 Q And your husband is deceased.

18 A He is.

19 Q And Connor --

20 A Carter.

21 Q Carter. Do you have any other children?

22 A No, I do not.

23 Q And he was very upset and in the back seat.

24 A He was.

25 Q Now, did you remain on the phone?

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 A I did.

2 Q Your original concern had been for the safety of the
3 man in the street.

4 A Yes.

5 Q You remained on the phone. Did you tell 9-1-1 why you
6 were now staying on the phone?

7 A Yes.

8 Q Please tell the ladies and gentlemen of the jury why
9 you stayed on the phone.

10 A I -- well, I saw the man. I saw what looked like the
11 man getting shot, the man from the road getting shot. And
12 I wanted to make sure that --

13 MR. SNYDER: Objection, Your Honor. She can't testify
14 to why she -- what she thought at the time.

15 THE COURT: She's testifying to why she remained on
16 the phone.

17 You may proceed.

18 BY MR. GHENT

19 A I stayed on the phone because they didn't tell me to
20 hang up and because things were still happening and I
21 wanted to make sure that I gave as accurate of a detailed
22 description of what was going on so that they would
23 understand.

24 Q The area I'm pointing to is the parking lot, the
25 drive, Lake Bowen Country Club.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 A Yes.

2 Q Were people coming outside now?

3 A After the -- after the -- what I thought was the
4 gunshot was fired I saw people, yes, come to the side of
5 the road from the country club parking lot and drive.

6 Q And sometime soon thereafter did the police arrive?

7 A There were still more things that happened, but they
8 arrived later, yeah, later, later on.

9 Q Let's go through the other things. Tell the ladies
10 and gentlemen of the jury. What other things happened?

11 A After the man was shot and he kept saying I can't
12 believe you shot me, why did you shoot me, he then
13 approached the -- the S.U.V. again.

14 Q This is the S.U.V. that he had reached into.

15 A Yes, yes.

16 Q And grabbed the driver.

17 A Yes.

18 Q And been shot. Would it be fair to say he appeared
19 physically unfazed?

20 A He did not appear to be fazed physically.

21 Q And he attacked the vehicle again?

22 A He went up to the vehicle, and I heard him and saw him
23 kick the vehicle. He hit the door. And I don't know if he
24 was trying to open the door again, but he certainly was --
25 he certainly was beating on the door.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 Q Beating on the door.

2 A Yes.

3 Q Was the window down?

4 A At that point the window was still down, but the
5 driver did roll the window up. He rolled the window up.
6 And after he rolled the window up he drove his truck
7 forward enough feet to separate himself from the man
8 standing in the road.

9 Q Did he at any time attempt to use his vehicle as a
10 weapon against the man in the road?

11 A No.

12 Q Did he at any time after that attempt to use any other
13 weapon against the man in the road?

14 A No, no.

15 Q Did you then relocate down the street?

16 A After I heard -- after I heard the first siren coming
17 I moved my car into a little drive that was almost where I
18 was but maybe a little bit down, and I was off the road
19 because I didn't want to be on the road when whoever was
20 coming arrived.

21 Q Okay. Would you know basically where that little
22 drive would have been located?

23 A Yeah, sure.

24 Q Can you point it out?

25 A It was -- keep going up. Up Highway 9. Oh, I'm

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 sorry. Go down Highway 9. Stop. It was right across the
2 street from that.

3 Q Right around in here?

4 A Somewhere in there is -- there's a little clear drive.

5 Q At any time did -- as best you recall did you hang up
6 and call 9-1-1 back?

7 A I did. I hung up when I heard the sirens coming. I
8 figured they had everything in control, so I hung up with
9 9-1-1. And I sat and waited thinking that they would need
10 somebody to talk to and want to know what happened. And
11 that's why I waited.

12 Q And did you explain to 9-1-1 -- and I'm simply asking
13 whether you recall -- it was your understanding that you
14 were being taped. And you are aware of 9-1-1 calls being
15 taped.

16 A Yes, I am.

17 Q And, like I said, some of the language may have been a
18 little bit colorful, and I'm trying to put the lighter note
19 on it.

20 A Yes. I had never seen somebody get shot before.

21 Q Nor had your son.

22 A No.

23 Q And when you called 9-1-1 back do you recall giving
24 them an explanation?

25 A Yes.

Kimberly Williams Belue
Direct examination by Mr. Ghent

1 MR. SNYDER: Objection, Judge. We have an issue to
2 take up outside the presence of the jury.

3 THE COURT: Well, let me see you.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 THE COURT: All right. We're going to take a short
7 break. I'll ask the jury to please go to your jury room.
8 Do not discuss the case. I'll bring you back after that
9 break.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Ms. Belue, you can step down from the
13 witness stand, but you can't leave. You can't discuss your
14 testimony with anyone during the break.

15 THE WITNESS: Can I walk out of the room?

16 THE COURT: Sure.

17 THE WITNESS: Okay.

18 THE COURT: We'll be at ease for 15 minutes.

19 (Whereupon, a recess was taken.)

20 MR. GHENT: Your Honor, I will get Ms. Belue.

21 THE COURT: Please do.

22 (Pause.)

23 THE COURT: All right. Bring the jury in, please.

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

kimberly williams Belue
Cross-examination by Mr. Snyder

1 THE COURT: You may continue.

2 MR. GHENT: Thank you, Your Honor.

3 BY MR. GHENT

4 Q Ms. Belue, I have no further questions of you. Thank
5 you very much.

6 CROSS-EXAMINATION

7 BY MR. SNYDER

8 Q Ms. Belue, you said when you saw this individual it
9 was -- he was in the middle of the road trying to flag cars
10 down, correct?

11 A He was trying to flag me down, correct.

12 Q And you also said he was going to try to flag a couple
13 of other cars down.

14 A Yes.

15 Q So he was acting like was -- he needed help.

16 A That's what I thought at first, yes.

17 Q And you also said he stepped in front of your car.

18 A Yes.

19 Q Did he step in front of other cars?

20 A Yes.

21 Q Did -- was he trying to stop those cars, or he just
22 didn't appear that he was trying to -- he stepped in front
23 because he was trying to stop a car.

24 A Yes.

25 Q And then you said he was acting frustrated.

Kimberly Williams Belue
Cross-examination by Mr. Snyder

1 A Yes.

2 Q And that a lot of cars weren't stopping as he was
3 trying to stop them.

4 A Correct.

5 Q And it was dark.

6 A Yeah.

7 Q And it was dark enough to where you couldn't see the
8 individual.

9 A No. I could see the individual.

10 Q But you couldn't see his face.

11 A I didn't look at his face.

12 Q Okay. But you couldn't -- you couldn't see him enough
13 to identify him today.

14 MR. GHENT: Objection, Your Honor.

15 She did identify him sufficiently in terms of size and
16 appearance. She pointed out that fact on the record, and
17 she qualified her problems in identification.

18 THE COURT: She said there's another person in the
19 courtroom that fits the physical description of the man she
20 saw.

21 MR. GHENT: Yes, sir.

22 THE COURT: She has not identified the defendant.

23 MR. GHENT: Thank you, Your Honor.

24 BY MR. SNYDER

25 A Can you repeat?

kimberly williams Belue
Cross-examination by Mr. Snyder

1 Q Yes. It was dark enough to where you couldn't get a
2 very good view of this individual.

3 A of his face, that's correct.

4 Q Okay. This is the same image that you saw earlier,
5 and I just wanted to clarify. When the -- the car, the
6 silver S.U.V., stopped next to this individual, where were
7 they? Mind using this?

8 A Sure. They were right in this area to the best of my
9 knowledge.

10 Q Pretty close to the intersection.

11 A It was close to the intersection, but I knew that they
12 were close to this because I remember -- does it matter?
13 Do you want me to tell you what I remember?

14 Q Please.

15 A I remember when he -- after he had apparently gotten
16 shot and he spent some time in the middle of the road,
17 there's another individual. I remember he stumbled into
18 this area. So the whole thing must have happened right in
19 this area, but I don't know if it was close to the
20 intersection or -- or right next to that building.

21 Q Okay. So you are, what, 75 yards from -- from them?

22 A I'm sorry. I really couldn't tell you. I don't know
23 the distance.

24 Q Okay. Let's go back to where you heard a loud noise
25 like some -- a car hit the individual or the individual hit

Kimberly Williams Belue
Cross-examination by Mr. Snyder

1 the car. You said you couldn't tell.

2 A Right.

3 Q It was then when you saw the car spin around, correct?

4 A Yes.

5 Q When it spun around was it -- did it go past that
6 intersection?

7 A I really -- I'm sorry. I can't be specific on that.
8 I was really concentrating on the individual standing. I
9 don't -- I don't remember if it was in the intersection
10 before it.

11 Q Right. Because you were worried for that individual.

12 A I was watching him, yes.

13 Q Okay. Because you also testified that -- that the car
14 spun. He had to actually recover from the spinning. And
15 then he slowly came back to the individual.

16 A Yes.

17 Q And when he pulled up to the -- the car pulled up to
18 the individual, that's when you heard a gunshot, correct?

19 A After an altercation I heard a gunshot yes.

20 Q But you couldn't -- you were far enough away and it
21 was dark enough to where you couldn't see the individual's
22 face.

23 A I couldn't -- I couldn't see his face, but his back
24 was to me.

25 Q Okay.

Kimberly Williams Belue
Cross-examination by Mr. Snyder

- 1 A And I could see him at a profile. I didn't see
2 directly his back. I didn't see him forward. I saw a
3 profile of him slightly from the side -- from that side.
4 Q Sort of an angle?
5 A Yes.
6 Q Okay. You said you saw him try to open the door.
7 A Yes.
8 Q And there was an exchange between them?
9 A Yes.
10 Q And you said the driver's -- driver's-side window was
11 down?
12 A He put it down.
13 Q Okay. So he rolled it down.
14 A Yes.
15 Q And he said -- what did you say? What the -- what the
16 hell are you doing, why did you -- or is that -- is that
17 what he said -- what the hell are you doing?
18 A Yes.
19 Q And the window was down?
20 A Yes.
21 Q So he wasn't too afraid.
22 A I think he was shocked. It sounded like he was
23 shocked.
24 Q Okay. And that's when you heard the gunshot.
25 A When he -- no. It wasn't then that I heard the

Kimberly Williams Belue
Cross-examination by Mr. Snyder

1 gunshot.

2 Q Okay. So you saw -- he said that. You saw this
3 individual try to open the car door. Is that what you
4 said?

5 A I saw that.

6 Q Reach in?

7 A Yes.

8 Q And gunshot.

9 A Yes.

10 Q Then you -- you said that this individual started to
11 kick and hit the vehicle.

12 A After he had gotten shot.

13 Q Right.

14 A And recovered and came forward, he did, yes.

15 Q Right. Like he was mad.

16 A Yes.

17 Q Like he had been shot.

18 A Like he was frustrated like before. He just wanted --
19 I don't know what he wanted.

20 Q This time -- this time it was more than just
21 frustrated from no car stopping. He was frustrated because
22 he'd been shot.

23 A He -- well, he kicked the door this time, which was
24 different than the first time.

25 Q Right. But -- but you could tell that he was -- he

Kimberly Williams Belue
Redirect examination by Mr. Ghent

1 was visibly upset from getting shot.

2 A Oh, yes, yes.

3 MR. SNYDER: I have no further questions.

4 MR. GHENT: Briefly, Your Honor.

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. GHENT

8 Q Counsel asked you if you saw the individual reach into
9 the car.

10 A Yes.

11 Q I'm going back to your direct testimony. Please tell
12 the ladies and gentlemen of the jury whether or not you saw
13 the individual reach into the car and grab the driver.

14 A Yes, I did.

15 Q Did it appear to you that he was attempting to pull
16 the driver out of the vehicle?

17 A Yes, because I saw the driver try to pull away from
18 the man and put up his arms to push the man back. That's
19 what I saw.

20 Q So there was a struggle over the vehicle, was there
21 not?

22 A There was.

23 Q Which you saw.

24 MR. SNYDER: Objection.

25 THE COURT: Sustained.

Kimberly Williams Belue
Recross-examination by Mr. Snyder

1 Q Did you see a struggle for the vehicle?

2 A I saw a struggle through the vehicle window.

3 Q And did it appear to you to be a struggle for control
4 of the vehicle?

5 MR. SNYDER: Object, Your Honor. There is no way that
6 she can tell what was happening.

7 THE COURT: She can just describe what she saw, but
8 she doesn't know the intention of anyone.

9 MR. GHENT: Yes, sir.

10 BY MR. GHENT

11 Q Did it appear to you that the individual in the road
12 was trying to pull the driver out of the window? Just yes
13 or no.

14 A I would say, yes, I saw him pulling. And I guess
15 there's no other way to interpret that because the car door
16 was not open. The door -- in fact, he couldn't get the
17 door open, so he grabbed the driver and was pulling on him.
18 So I would have to say yes.

19 Q Thank you.

20 MR. GHENT: No further questions.

21 MR. SNYDER: Just briefly.

22 RECROSS-EXAMINATION

23 BY MR. SNYDER

24 Q You say you saw this individual pulling the driver.

25 A Yes.

Kimberly Williams Belue
Recross-examination by Mr. Snyder

1 Q And you just made it pretty clear that the only
2 logical reason would be because you -- he wanted the driver
3 out of the vehicle.

4 A Yes.

5 Q You don't know why he was wanting it.

6 A I do not know.

7 Q He was just -- his hand was in -- in the car.

8 A Two hands, yeah.

9 Q Both hands.

10 A Yes.

11 Q Okay. Again, you only say that you thought he was
12 trying to pull him out of the car because you don't know
13 why both of his hands were in the car.

14 A Correct.

15 Q Thank you.

16 THE COURT: Thank you. You may step down.

17 Any objection to the witness being excused?

18 MR. SNYDER: No, sir.

19 MR. GHENT: Thank you so much, Ms. Belue.

20 (Whereupon, the witness was excused.)

21 MR. GHENT: Your Honor, at this time the state calls
22 Anthony Lachica.

23

24

25

Anthony Lachica
Direct examination by Mr. Ghent

1 boisterous. But we still don't know any of the facts.

2 Saw the S.U.V. sitting over on the side of the road,
3 so I made my way over to it. I had information that that's
4 where the shooter might be.

5 So I -- the guy sitting in there was polite, calm. So
6 I asked him what happened. He said he was attacked and he
7 shot somebody. And I asked him if he had the gun, and he
8 said he did. I said can I have it. He handed me the
9 weapon. I secured it in my pocket.

10 They went ahead, and ambulance came and put the guy
11 who was being loud and boisterous. He was -- apparently
12 had been shot.

13 Q When you say loud and boisterous, that kind of has the
14 ring of police speak.

15 A Okay.

16 Q What was he doing? Just tell the ladies and gentlemen
17 of the jury in everyday language.

18 A He was yelling, cursing, being uncooperative with
19 the -- basically, verbally arguing with the officers.

20 Q Did any of the officers pull their guns?

21 A I don't know. I didn't see it.

22 Q Okay. So by the time you arrived there are already a
23 number of officers on the scene.

24 A There are two, possibly three, by the time I got
25 there.

Anthony Lachica
Direct examination by Mr. Ghent

1 Q All right. And you obtained a weapon from the
2 individual who was in the S.U.V.

3 A That is correct.

4 Q I'll ask you. Do you see the individual who gave you
5 that weapon in the courtroom?

6 A I believe it was that guy right there with the pink
7 shirt, but I can't be positive.

8 Q All right. And did he identify himself to you?

9 A He did.

10 Q Did he readily tell you what had happened?

11 A Yes, sir, he did.

12 Q And you took the weapon and put it into custody,
13 evidence.

14 A Yes, sir. No. I gave it to Deputy Mark Ervin.

15 Q Mark Ervin.

16 A Yes.

17 Q And he would have then transferred it to someone to
18 put it into evidence and custody, is that correct?

19 A He would have done it himself or done -- gave it to
20 somebody, yes.

21 Q Did the individual you have identified, did he have
22 any information as to the lawfulness of his carrying such a
23 weapon?

24 A I believe he did say he had a C.W.P.

25 Q And would that have been confirmed to the best of your

Anthony Lachica
Cross-examination by Mr. Snyder

1 Q Okay. So he had a reason to be mad.

2 MR. GHENT: Objection, Your Honor.

3 THE COURT: Sustained.

4 Q Then he was taken to the hospital --

5 A Yes, sir, he was.

6 Q -- because he had just been shot.

7 A Yes.

8 Q Was the shooter ever charged?

9 A I don't believe so.

10 Q Thank you.

11 MR. GHENT: Your Honor, I'd like to approach.

12 THE COURT: Okay.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 MR. GHENT: No further questions, Your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. GHENT: Your Honor, may he be released?

19 THE COURT: Any objection?

20 MR. SNYDER: No, sir.

21 THE COURT: You may be.

22 (Whereupon, the witness was excused.)

23 MR. GHENT: The state would call Investigator Lorin
24 Williams.

25

Lorin Williams
Direct examination by Mr. Ghent

1 I had the opportunity to speak with the victim in this
2 case, was able to talk to him a little bit, ask him a few
3 questions about what had happened. I saw the different
4 vehicles, where they were in the -- in relationship to the
5 scene.

6 Q Did you determine whether or not a shot had been fired
7 at the scene?

8 A Yes, sir. It had.

9 Q Did you determine whether or not this -- if you would,
10 do you recognize this individual?

11 A Yes, sir, I do.

12 Q Did you determine whether or not he had fired the shot
13 at the scene?

14 A Yes, sir.

15 Q Was he charged by you?

16 A No, he was not.

17 Q Was he charged by anyone with the sheriff's
18 department?

19 A No, he was not.

20 Q And would that be based upon y'all's complete
21 investigation?

22 A Yes, yes, it would.

23 Q In the course of your investigation you take the
24 facts, is that correct?

25 MR. SNYDER: Objection. He's leading the witness,

Lorin Williams
Cross-examination by Mr. Snyder

1 Judge.

2 THE COURT: Sustained.

3 Q In conducting an interview do you determine the facts
4 at the scene?

5 A As best we can, yes.

6 Q And did you do so?

7 A We did.

8 Q And is it also a part of your duty to be familiar with
9 the law?

10 A It is.

11 Q And is it a part of the duty of law enforcement
12 officers to make a decision as to whether or not to charge
13 or place somebody under arrest?

14 A It is.

15 Q And you did not arrest this individual.

16 A No, sir.

17 Q Thank you.

18 who was arrested?

19 A The defendant.

20 MR. GHENT: Thank you, Your Honor. Thank you. No
21 further questions, Your Honor.

22 MR. SNYDER: Briefly.

23 CROSS-EXAMINATION

24 BY MR. SNYDER

25 Q Mr. Williams, did you know Mr. Habitzruther prior to

Mark Douglas Ervin
Direct examination by Mr. Ghent

1 THE COURT: It shall.

2 Q Trooper Collins was giving commands to the defendant?

3 A Yes, sir.

4 Q And was the defendant compliant with those demands?

5 A No, sir.

6 Q Please tell the jury what happened next.

7 A I drew my weapon, pointed it at Mr. McAbee and asked
8 him. Again, we were both asking him, please get on the
9 ground, get on the ground. And he was -- there were some
10 exchanges, you know, go to hell, go to hell and --

11 Q And when you say exchanges, no police-speak. who said
12 that?

13 A Mr. McAbee. He stated go to hell. And he was
14 completely defiant, would not listen to myself or Trooper
15 Collins.

16 At that point I asked Trooper Collins who had a taser
17 if he would -- and I noticed he had a red spot on his back.
18 And I asked him have you been shot, and he said yes and
19 so --

20 Q He who?

21 A Mr. McAbee.

22 Q All right.

23 A And so I asked Trooper Collins if he would hold him at
24 taser, if he had a teaser. He said yes. And he pulled his
25 taser. I unholstered my duty weapon.

Mark Douglas Ervin
Direct examination by Mr. Ghent

- 1 Q Had he been holding his weapon out too?
- 2 A Yes, yes, sir.
- 3 Q So there was two pistols, is that correct --
- 4 A Yes, sir, yes, sir.
- 5 Q -- pointed at him?
- 6 A Yes, sir.
- 7 Q Was the lighting such that there could be any question
- 8 that the defendant should have been able to see those guns?
- 9 A No, sir. It was under a large light, under a sign.
- 10 We were -- we were lit up very well.
- 11 Q And he was still not responding to that, is that
- 12 correct?
- 13 A Yes, sir.
- 14 Q All right. Go ahead with what Trooper Collins did.
- 15 A He -- there's a laser on the taser. And when the
- 16 laser was actually shined upon him, he actually started to
- 17 do what we were saying, started to kind of complying, still
- 18 not the most compliant. He didn't -- he never got on the
- 19 ground. He never did any of that, but I patted him.
- 20 Q When you say a laser was on him, you're talking --
- 21 A Just like that, but it is red.
- 22 Q But it's red.
- 23 A It's red, yes, sir.
- 24 Q So that he could see that the --
- 25 A Oh, yes, sir. He looked at it.

Mark Douglas Ervin
Direct examination by Mr. Ghent

1 Q Taser was now focused on him.

2 A Yes, sir.

3 Q And at that point, and at that point only.

4 A Yes, sir.

5 Q Do I understand your testimony? What happened next?

6 A I approached him and patted him around his waist and
7 up and down his legs for weapons, because at this point we
8 still don't know where the gun is, if he had the gun or if
9 he -- and asked him to put his arms down. Or actually I
10 went to grab his right arm, which is our normal procedure
11 to handcuff the right arm first, to put him in
12 investigative detention until we could find out what was
13 going on.

14 well, when I went to pull his arm down he was in -- in
15 pain. You could see. And that's when I noticed the place
16 on his shirt. I pulled his shirt up, and you could see
17 on -- on his back there was -- and looked like a wound.
18 And so I didn't try to force his arm down. We talked to
19 him and tried to calm him down. He was very boisterous,
20 but he did allow us -- sorry.

21 Q When you say boisterous, I mean, are we talking about
22 Mardi Gras or are we talking that he was having a good
23 time? What do you mean?

24 A No. He was very upset and this is B.S., what are you
25 doing to me, this is -- you know, he was just very upset,

Mark Douglas Ervin
Direct examination by Mr. Ghent

1 very irate. And we were just trying to get him medical
2 treatment. And he was refusing to comply just to get him
3 medical.

4 We told him over and over, sir, you've been shot, you
5 need to be -- just to be seen by the -- and the ambulance
6 was there, was on the scene.

7 We -- I was able with Trooper Collins to walk him to
8 the back of the ambulance. And at that point there was
9 officer Lachica, and there was a few other. There was two
10 E.M.T.s there, and Trooper Collins.

11 From there one of the officers said, okay, the gun and
12 the shooter are on the other side of the road. So then my
13 attention focused on he's getting medical treatment, I'm
14 going to go to the other side of the road to find out
15 what's going on and where the gun is and the other person
16 that's involved.

17 Q Did you then do so?

18 A I did so.

19 Q And did you speak to the other person involved?

20 A I did, yes, sir.

21 Q Do you see him in the courtroom?

22 A Yes, sir, I do.

23 Q Would you please point him out?

24 A In the pink shirt beside him.

25 Q This gentleman?

Mark Douglas Ervin
Cross-examination by Mr. Snyder

1 MR. GHENT: No further questions, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SNYDER

4 Q Mr. Ervin --

5 A Yes, sir.

6 Q -- you said at first Scott here was ordered to get
7 down.

8 A Yes, sir.

9 Q And he wouldn't.

10 A Yes, sir.

11 Q He was being noncompliant.

12 A Yes, sir.

13 Q And then you found out he had just been shot.

14 A Yes, sir.

15 Q So --

16 MR. GHENT: Objection, Your Honor. That assumes
17 facts, and it also contradicts facts.

18 THE COURT: Overruled.

19 Q But you had just found out he had been shot.

20 A Yes, sir.

21 Q So it all started to making sense why he was acting
22 like he was acting.

23 A No, sir. It was not. Actually, it made more question
24 of why he's not complying with us. He'd just been shot.
25 Normally -- normally, people want to get help that have

Kenneth Wayne Collins
Direct examination by Mr. Ghent

1 A Yes, sir.

2 Q Tell the ladies and gentlemen of the jury what you
3 saw, what you did.

4 A When I arrived on the scene the front of my patrol
5 vehicle was facing the embankment where the vehicle was
6 hanging over the edge.

7 I noticed some witnesses up on the top of that hill.
8 I opened up the door, and immediately I could hear some
9 yelling and screaming coming from my left.

10 When I turned I noticed a fairly large subject was
11 down there underneath the light that was just off the
12 roadway.

13 Based on the information I had received through
14 dispatch that there was a weapon involved and there had
15 been some type of an assault and that there were shots
16 fired, I immediately drew my weapon and proceeded to cross
17 the highway towards the subject and at the same time
18 ordered that subject to show me his hands.

19 Q Did he comply?

20 A He did not comply initially. He was yelling; he was
21 screaming; he was very irate. He was pacing around in a
22 circle. Again, it was a very large individual, very loud.

23 I gave him another set of verbal commands to show me
24 his hands and get down on the ground. He did acknowledge.
25 He continued to pace and scream and shout. I couldn't

Kenneth Wayne Collins
Direct examination by Mr. Ghent

1 quite understand what he was saying, but he continued to do
2 so.

3 And at that time, that's when I guess the second
4 officer arrived on the scene, a personnel from the
5 Spartanburg County Sheriff's Office. He got out of his
6 vehicle. He came up on my right.

7 He also -- also drew his side arm and also ordered the
8 subject to the ground.

9 At that point in time he didn't acknowledge. And
10 someone mentioned -- I guess another officer had arrived on
11 the scene, had made mention of a taser. And I carried a
12 taser. So I holstered my weapon. I drew my taser,
13 activated the taser where the light comes on, and also a
14 laser to mark the area that I want to shoot the projectiles
15 at.

16 Q Like this?

17 A That's correct.

18 Q Did you explain to the subject that was a taser?

19 A I explained to him that he was going to be tased if he
20 didn't follow our verbal commands or our instructions. And
21 at that point he started to understand what I was
22 instructing him to do.

23 Q Understand or obey?

24 A I would say more like obey, obey the commands that
25 were given. Remained -- my position with the taser on him

Lathier Graham
Cross-examination by Mr. Snyder

1 Q Indicating his wound?

2 A Yes, sir.

3 Q And his being secured.

4 A Yes, sir.

5 Q Thank you -- thank you. I appreciate it, Officer
6 Graham. Please answer any questions counsel may have.

7 CROSS-EXAMINATION

8 BY MR. SNYDER

9 Q Mr. Graham, you're a fine officer, and I have no
10 questions for you.

11 THE COURT: Thank you. You may step down.

12 MR. GHENT: Your Honor, can Officer Graham be excused,
13 please?

14 THE COURT: He can.

15 (Whereupon, the witness was excused.)

16 MR. GHENT: Thank you. Also Trooper Collins.

17 THE COURT: He is.

18 (Whereupon, the witness was excused.)

19 MR. GHENT: Thank you.

20 And at this time, Your Honor, the state would call
21 John Habitzruther.

22 JOHN MATTHEW HABITZRUTHER,
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. GHENT

25 MR. GHENT: May it please the Court.

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 THE COURT: Yes, sir.

2 Q Please state your full name for the record, sir.

3 A John Matthew Habitzruther.

4 Q And, John, where are you from originally?

5 A I'm from Michigan.

6 Q And when did you move to Spartanburg?

7 A 2007, August of 2007.

8 Q And what did you do in Michigan as employment?

9 A I owned a construction company for almost 17 years.

10 Q What happened to that construction company?

11 A With the housing crisis, you know, Michigan fell
12 apart.

13 I had an opportunity to come here and build homes in
14 the Cliffs communities, so therefore I did so. I relocated
15 here for a better life for my family.

16 Q Would it be fair to say that the housing crisis pretty
17 much left Michigan a basket case?

18 A Yes, sir.

19 Q I believe a major city declared bankruptcy?

20 A Yes, sir.

21 Q So basically there wasn't a great deal of
22 construction.

23 A There was not.

24 MR. SNYDER: Objection to relevance.

25 A There was nothing.

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 THE COURT: Is that an objection?

2 MR. SNYDER: Yes, sir.

3 THE COURT: Overruled.

4 BY MR. GHENT

5 Q Moving to South Carolina. What appealed to you about
6 South Carolina?

7 A The hospitality, the people, the basis of Christianity
8 here. Me and my family are strong believers in Jesus
9 Christ as our Savior and so forth. So that appealed to us.
10 It seemed like a peaceful place to live.

11 Q And did it also offer the means of support for your
12 family?

13 A Yes, sir. It did.

14 Q In construction.

15 A Yes, sir. It did.

16 Q Did the housing crisis follow you to the Cliffs?

17 A It sure did. It fell apart, and between 2008 and 2010
18 it just completely fell apart.

19 Q I would ask was that also at least in part subject to
20 a bankruptcy?

21 A Yes.

22 Q After that was it necessary that you find a job to
23 support your family?

24 A Yes, sir, absolutely. It was.

25 Q Did you have a friend or relative who offered you a

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 position?

2 A Well, I had a brother-in-law that is in the bail bonds
3 business up in Detroit and he -- he said you should get in
4 the bail bonds business. He said it's economic proof. And
5 it intrigued me. So therefore I took some classes and
6 moved forward to -- into the bail bond business.

7 Q Did -- did you obtain a concealed weapons permit?

8 A Yes, sir, I did.

9 Q In South Carolina?

10 A Yes, sir.

11 Q Had you ever had one before?

12 A No, sir.

13 Q Was that part of the job you took in the bail bonds
14 business?

15 A It was more of a personal. I wanted to get one for
16 years because it's our right to have one. And as I seen --
17 you know, you watch the news and all of the criminal
18 activity. I just thought it would be safe to obtain one.

19 Q Were you raised around firearms?

20 A Yes, sir.

21 Q What does your father do?

22 A My father worked for Dinchamrock [sic] and Chrysler,
23 but prior to that he was in the Marine Corp and in Vietnam
24 and so forth.

25 Q All right. Now, do you recall the events of June the

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 5th of 2013?

2 A Yes, sir. I'll never forget them for as long as I
3 live.

4 Q Did they upset you?

5 A It changed my life.

6 Q I will ask you if you have made arrangements to move
7 elsewhere.

8 A Yes, sir.

9 Q Were you charged in this case?

10 A No, sir.

11 Q Were you threatened with being charged?

12 A No, sir.

13 Q Have you returned to an area that you're more
14 comfortable working in in terms of business?

15 A Yes, sir.

16 Q Who are you working for?

17 A I'm working for Exxon.

18 Q And were you surprised at a job finally coming
19 through?

20 A Yes. It was a Heaven-sent blessing.

21 Q Where have you gone to work? Not the city. Let's
22 just leave it with the state.

23 A I'm managing some drilling operations in Wyoming.

24 Q And that is at least compatible with your training and
25 experience?

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 A I've got experience in project management. So I don't
2 know a lot about oil drilling, but what I am doing is
3 managing the excavation and so forth, the preparatory work
4 for the drilling operation and the construction of units
5 being built there. So I guess yes.

6 Q Are you making preparations to move your family from
7 Spartanburg?

8 A Yes, sir, I am.

9 Q Please tell the ladies and gentlemen of the jury what
10 happened June 5th of 2013 at the intersection of Highway 9
11 and 292 in Spartanburg.

12 A I was driving westbound towards North Carolina on --

13 Q What road?

14 A On Highway 9. As I approached the intersection --

15 Q where were you going?

16 A I was going -- I actually -- I was going to pay a mini
17 storage payment. They have an A.T.M. machine type deal out
18 there, and I was just going to pay my mini storage.

19 Q And go ahead.

20 A And as I traveled on Highway 9 and was getting close
21 to the intersection Mr. McAbee was -- it's just -- it's
22 like he just appeared in the road and he spun --

23 Q When you say Mr. McAbee --

24 A Yes, sir.

25 Q -- are you referring to the defendant?

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 A Yes, sir, that man right there.

2 Q Go ahead.

3 A He spun, and I don't know if he hit my car or I hit
4 him, because I had to swerve to avoid him. And then when I
5 corrected I ended up sideways under the light there. And I
6 looked forward, and I saw a car, a white car, on the
7 embankment. And I said, oh, no. So I figured the guy was
8 an Iraqi.

9 And when he hit my car, he said I need some help. You
10 know, I remember looking at him out of the corner of my
11 eye. He was like I need some help. I mean, he looked like
12 he was crying actually.

13 So I -- therefore I proceeded up to him, and, you
14 know, I said what's going on. And he walked up to my car
15 and he grabbed my arm, my left arm. I still cannot raise
16 my -- you can see my shoulders raise. He almost ripped my
17 arm off, and he tried pulling me outta the vehicle. The
18 seat belt was holding me locked into place. I couldn't
19 touch the gas pedal, brakes, anything.

20 Q Had you rolled down the window to speak to him?

21 A Yes, sir.

22 Q Were you anticipating anything like this?

23 A No, sir. He said he needed help. I mean, I never
24 anticipated anything like this.

25 Q Did you threaten him? And he did what?

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 A No, I didn't threaten him. I just asked what's going
2 on.

3 Q And what did he do?

4 A He walked up to the car. And he got within about a
5 foot of the car, and he just went into a rage. And he
6 grabbed me by -- by my left arm here, and he was trying to
7 pull me outta the car. And at that point I was trying -- I
8 was trying to grab my gun. And I got -- I got the gun, and
9 I just, I fired. I was in fear for my life.

10 Q How many times did you fire?

11 A Just one time.

12 Q Tell us what happened next.

13 A He stumbled backwards. He quenched down like this,
14 and he stood up, and he was I can't believe you f'ing shot
15 me.

16 Q Did he say f'ing or did he say the word?

17 A He said the word.

18 Q Right. Go ahead.

19 A And at that -- I was in shock. I was shaking. I
20 called 9-1-1 immediately. And he was standing still in the
21 road going, oh, oh, and that's when I got 9-1-1 on the
22 phone.

23 And the 9-1-1 operator asked me what happened. I told
24 her. She asked me if he was dead. I said no, he's
25 standing in the road.

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 And then he started coming at the vehicle again. So I
2 pulled away into a driveway across the street from the Lake
3 Bowen Country Club. And I turned around.

4 And I can't remember the guy's name -- the bald man
5 that was on the witness stand -- came up to the -- my side
6 of my car. And he said are you okay. And I said, no, I'm
7 not okay.

8 And we were talking. I was on the phone with 9-1-1.
9 He said he was on the phone with 9-1-1.

10 Mr. McAbee then came up to my car. I rolled up the
11 window. And he was trying to open the door. And then he
12 started kicking the side of the car and beating on the
13 window.

14 Q What did you do?

15 A So I drove across the street and parked in the
16 driveway across the street while on the phone with 9-1-1.

17 Q Was it a residential driveway?

18 A Yes, sir.

19 Q Were you out of sight?

20 A I wouldn't say completely out of sight, no, but I was
21 concealed where he didn't know where I was at that point.
22 So I felt safe. And I remained on the phone with 9-1-1
23 because I was scared.

24 Q All right. Did law enforcement respond?

25 A Yeah. It seemed like an eternity, but, you know, it

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 was all -- it's like my life was in slow motion. From the
2 time he grabbed me it's like everything was just in slow
3 motion. It was weird.

4 Q But law enforcement arrived?

5 A Yes, sir.

6 Q Did they investigate the scene?

7 A Yes, sir.

8 Q Did they question you?

9 A Yes, sir.

10 Q Did they ask you about your gun?

11 A Yes, sir.

12 Q Did you deny using it?

13 A No, sir.

14 Q Did you tell 9-1-1?

15 A I told 9-1-1 exactly what I did.

16 Q Did you ever try to flee the scene?

17 A No, sir. I called 9-1-1 immediately.

18 Q And remained on the scene.

19 A And remained on the scene.

20 Q Law enforcement then came.

21 A Uh-huh.

22 Q And about how many officers were there?

23 A Fifteen. There were a lot. I didn't count.

24 Q They seemed to be all over the place.

25 A Yes, sir. At that point I was thankful to be okay, so

John Matthew Habitzruther
Direct examination by Mr. Ghent

1 I really wasn't concentrating on how many officers were
2 there.

3 Q Okay. And had you ever shot anybody before?

4 A Never.

5 Q Have you sought counseling?

6 A Yes, sir.

7 Q Has that helped?

8 A It has, and I'm still dealing with pain in my shoulder
9 and numbness in my fingers from the guy yanking --
10 Mr. McAbee yanking on my arm. You know, and I've gone to
11 physical therapy, and they're not going to have to do
12 surgery. But they said it could take up to two years to
13 recover.

14 MR. GHENT: If I may have a moment, Your Honor.

15 (Pause.)

16 Q John, thank you. Please answer any questions counsel
17 has.

18 A Yes, sir.

19 MR. SNYDER: Judge, I'm going to ask that we take a
20 break for lunch now. My cross-examination is probably
21 going to last a little -- a little longer, and I think the
22 jury would probably enjoy a break.

23 THE COURT: We'll see how it goes. We'll break it up
24 if we need to.

25 MR. SNYDER: Okay.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 CROSS-EXAMINATION

2 BY MR. SNYDER

3 Q John, do you mind if I call you John?

4 A No, I don't mind.

5 Q I want to back up just a little bit.

6 So you're driving down Highway 9.

7 A Yes, sir.

8 Q You're headed to North Carolina.

9 A Towards North Carolina.

10 Q Towards.

11 A I wasn't headed to North Carolina, but that's the
12 direction I was headed in, yes, sir.

13 Q Okay. And at this point Scott reached out and hit
14 your side-view mirror. Is that --

15 A Well, he was in the road. I don't know if he reached
16 out. Like I said, I don't know whether I hit him, he hit
17 the vehicle, what was going on. He was in the road like
18 this.

19 Q Okay.

20 A He was flagging cars down. I mean, he said he needed
21 help. He was like I need some help.

22 Q Okay. You said you -- after he hit the car or you --
23 after there was some hitting involved --

24 A Uh-huh.

25 Q -- you went down and turned around.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 A Well, I had to swerve. So when I corrected I ended up
2 sideways like this, so.

3 Q Okay. Just now you said that you were sideways under
4 the light.

5 A I'd say under the light.

6 Q That's right.

7 A Around the traffic light, yeah. I remember seeing the
8 gas station over. I remember seeing the gas station here.

9 Q Okay. So --

10 A And I could see the white car here and the telephone
11 pole or the light pole, whatever it is, on that corner of
12 292 and Highway 9.

13 Q So the gas station. So you're -- you're just past the
14 intersection when you --

15 A I'd have so say I was in the intersection.

16 Q All right. In the intersection. And then you turned
17 back, and you went to go see -- see what was wrong.

18 A Uh-huh, yeah. I was concerned with Mr. McAbee's well
19 being to be honest with you. I mean, he was standing in
20 the road.

21 Q Right, right, yeah, right. I heard you're a big
22 Christian and you wanted to --

23 A Yes, sir.

24 Q And then, so you pulled up to Scott in the median.

25 A Yes, sir.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 Q And he approached your car.

2 A Uh-huh.

3 Q And you said that he said I need some help.

4 A No. He said I needed help back at the intersection.

5 He didn't say it at that point.

6 Q So you were -- you were in the intersection. He's
7 back past the country club, and you can hear him say I need
8 help?

9 A No. When he hit the car he said he needed help, or
10 when I hit him. At that point when we drove past he said I
11 need some help.

12 Q So he -- your testimony is he somehow or another
13 there -- there was physical interaction between your car
14 and Scott.

15 A Yeah. Like I said --

16 Q Right. And --

17 A -- I don't know if I hit him or hit the car, or who
18 knows.

19 Q Either way.

20 A Yeah. It was dark, it was raining, and, you know, he
21 was in the median.

22 Q How fast were you going?

23 A Not very fast at all. There was a minivan. I
24 remember a green minivan that was -- that was in front of
25 me. So, I mean, I wasn't going fast at all. And I

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 remember just glancing at him thinking what's he doing
2 there when I -- when I swerved. And I remember glancing at
3 him, and that's when the vehicle either hit him, or he hit
4 the vehicle.

5 Q Okay. So let's go back to the median when you stopped
6 to check on Scott.

7 A Uh-huh.

8 Q And your testimony just now was he just came straight
9 to your vehicle and attacked you?

10 A He wasn't far away from the vehicle. I mean, I pulled
11 up. He was --

12 Q You pulled up close to him.

13 A Maybe he was from me to you away.

14 Q Okay.

15 A And I said what's -- what's going on, I mean, are you
16 okay, what's going on. And he just -- he walked up to the
17 vehicle. And when he got probably within 3 feet he just
18 went wham, and he grabbed me. He didn't say anything. He
19 just grabbed me.

20 Q Right.

21 A And he began to try to pull me out of the vehicle.

22 Q Did he pull you out of the vehicle?

23 A He pulled me partially out the window until the seat
24 belt locked.

25 Q How far out the window?

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 A I don't know. I mean, I'd say -- at that point my arm
2 was up like this. You know, I'm trying to -- to battle to
3 get him off of me.

4 Q Now, you remember talking to me a few times last week,
5 correct?

6 A Yeah. You called me quite a bit.

7 Q And in one of those conversations you said that --
8 MR. GHENT: Objection, Your Honor. I object to
9 counsel testifying.

10 THE COURT: Sustained.

11 BY MR. SNYDER

12 Q So your testimony was that he reached in the car,
13 grabbed you and tried to pull you out when the seat belt
14 locked.

15 A Yeah.

16 Q And at that point you -- you -- pulled -- your gun was
17 in the side holster.

18 A Yes, sir.

19 Q You pulled it out and shot him.

20 A Uh-huh.

21 Q Okay. All right.

22 A Or he had ahold of this arm and I -- I just -- I was
23 fighting to get this arm back and I just -- I pulled my gun
24 out, and I just fired.

25 Q Okay. Did he -- did he try to hit you at all?

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 A He had ahold of my arm. I mean, I don't know.

2 Q Did he -- did he hit you?

3 A I don't know. At that point I don't know.

4 Q Okay.

5 A The whole -- the whole thing was shocking.

6 Q You gave an --

7 A You know, I had -- I had some bruises on my arm. I --
8 I don't know if he hit me or not.

9 Q Okay.

10 A He was yanking on me. The car, the whole car, was
11 shaking.

12 Q Right. And at the time you were a bail bondsman,
13 right?

14 A Uh-huh.

15 Q And you -- you stated you have lots of family members
16 who are attorneys, correct?

17 A I wouldn't say lots of family members, but I do have
18 family members that are attorneys, yes, sir.

19 Q And between that and the bail bonds business you
20 understand how important it is to give a very accurate
21 statement to the police.

22 A Repeat that, please.

23 Q You understand how important it is to give the police
24 accurate statements.

25 A Yeah.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 Q Okay. Do you remember making this -- giving this
2 statement?

3 A Yes, sir. I was in the back of a police car in total
4 shock and --

5 Q Will you read to yourself just the part that was
6 highlighted?

7 MR. GHENT: Objection, Your Honor. There's a proper
8 way to do this, and that ain't it.

9 THE COURT: Let me see y'all just a minute.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 BY MR. SNYDER

13 Q So getting back to this, can you identify what that
14 is?

15 A Yeah. It's a statement I filled out for the
16 Spartanburg Sheriff's Department.

17 Q And it was given after this event.

18 A Immediately.

19 Q Okay.

20 A On the scene.

21 Q And who -- do you remember what officer witnessed this
22 statement?

23 A They never identified themselves.

24 Q Okay.

25 A And I don't remember. It was a year ago. I don't

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 even remember what they looked like.

2 Q Okay. And, again, the highlighted portion of the
3 statement indicates that --

4 MR. GHENT: Objection, Your Honor.

5 THE COURT: The statement's not in evidence, and you
6 can't read it, Mr. Snyder.

7 You can ask him a question about what he -- if he's
8 made some other statement. You can ask him. But that
9 statement is not introduced. So you can't read from it.
10 It's not a document in evidence.

11 Q You told the police after this incident that he hit
12 you?

13 MR. GHENT: Objection, Your Honor.

14 THE COURT: Are you going to ask him a question, or
15 are you making a statement?

16 MR. SNYDER: That is a question.

17 THE COURT: Well, it didn't sound like a question.

18 MR. SNYDER: It was a leading question, but it was a
19 question.

20 THE COURT: Okay. Well, ask him a question.

21 BY MR. SNYDER

22 Q Did you tell officers that Scott hit you?

23 A I told them exactly what I wrote in that statement on
24 that night, so, yes, sir.

25 Q You did.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 A If it's written in that statement, that's what
2 happened.

3 Q Okay. How many times?

4 A Like I said, that was a year ago. So I don't know how
5 many times. I was -- I was basically in shock and I was
6 scared. I was shaking. Afterwards, I didn't leave my
7 house for a week.

8 Q Okay. I understand. To the best of your
9 recollection, how many times did he hit you?

10 A I have no idea.

11 Q You say that he tried to pull -- he almost pulled your
12 arm off.

13 A Yes, sir. I came -- if you look at my shoulder, when
14 I raise my arms this shoulder here doesn't proportion with
15 the other one.

16 Q And you?

17 A I've been unable to work out. You know, I'm a health
18 fanatic. I haven't been able to go to the gym. I've got
19 tingling in my fingers from him yanking on my arm.

20 Q Okay. And did -- you told the police all of this that
21 night, correct?

22 A I told them what's in the statement.

23 Q Did you ever go to the hospital that night?

24 A No, sir. I just wanted to go home and see my wife and
25 kids.

John Matthew Habitzruther
Cross-examination by Mr. Snyder

1 Q Okay.

2 A Count my blessings that I was still alive.

3 Q Right. And did you ever see -- you didn't see a
4 weapon or anything on Mr. -- on Scott.

5 A Sir, the man was trying to rip me out of a vehicle. I
6 didn't see anything but a blur.

7 Q Okay. Then after you shot him he said I can't believe
8 you fucking shot me.

9 A That's what he said.

10 Q He was -- he was shot.

11 A He wasn't -- it was like nothing hit him. He stood up
12 like a super hero like see you --

13 Q Super --

14 A Like you see on T.V. He just stood up like nothing
15 happened, like it didn't even slow him down.

16 MR. SNYDER: One second, Your Honor.

17 (Pause.)

18 Q So your testimony is that when he grabbed you your gun
19 was in the holster.

20 A Yes, sir.

21 Q And that's when you pulled it out and shot him.

22 A Uh-huh.

23 MR. SNYDER: I have no more questions.

24 MR. GHENT: Nothing further, Your Honor.

25 THE COURT: You may step down.

Meghan Lee Wilson
Direct examination by Mr. Ghent

1 Q Was he cooperative as you attempted to do that?

2 A No. He -- he gave us a lot of difficulty.

3 Q A lot?

4 A Uh-huh.

5 Q Could you please tell the jury? And I understand you
6 haven't had a lot of experience testifying. But we're in a
7 verbal situation where unless you tell it, they ain't going
8 to know it. So tell them what his conduct was like, what
9 the person who had been shot was like.

10 A Our patient was severely intoxicated. He was yelling
11 a lot of obscenities.

12 Any time you tried to get close to him to do a
13 physical exam he would kind of push you away and didn't
14 want you near him. He just -- he -- everything we tried to
15 do he -- he fought.

16 Q Where had he been shot?

17 A He had been shot in his right armpit, and we believed
18 he had an exit wound on his right shoulder on his back.

19 Q Meghan, is the individual you're talking about in the
20 courtroom?

21 A Yes, sir, he is.

22 Q And would you point him out?

23 A This gentleman right here in the tie and blue shirt.

24 MR. GHENT: Let the record reflect she's pointed out
25 the defendant.

Meghan Lee Wilson
Direct examination by Mr. Ghent

1 THE COURT: It shall.

2 Q Meghan, if you would for just one moment, come down
3 and demonstrate using me as -- they're going to love
4 this -- your dummy to show exactly where the wound was.
5 would you please do that Meghan?

6 A Sure.

7 (Whereupon, the witness left the stand.)

8 A Patient had a small entry here in the armpit, and like
9 a rash here. And then on his back right shoulder here we
10 could see a small circle with the metal that we believed to
11 be a bullet.

12 (Whereupon, the witness returned to the stand.)

13 Q And did you then take him in the vehicle to
14 Spartanburg Regional Medical Center?

15 A We did.

16 Q Was he any more cooperative inside the vehicle?

17 A No. He remained the same during the entire transport.
18 I had a couple of interventions that I was unable to
19 perform as I usually would.

20 Q When you say intervention, treatments to assist him?

21 A Correct. For example, putting oxygen on him. He kept
22 trying to take the oxygen mask off. He tried to get off
23 the stretcher a couple of times. I continued to yell on
24 the way to the hospital.

25 Q And once you got him there was he removed from the

Meghan Lee Wilson
Cross-examination by Mr. Snyder

1 vehicle?

2 A We transported him on the stretcher, rolled him into
3 the hospital, into the trauma bay, and slid him over from
4 our stretcher to the hospital bed.

5 Q And at that point was your duty pretty much concluded?

6 A That's transfer care to the hospital staff, yeah.

7 Q Thank you, Meghan. Please answer any questions
8 counsel has.

9 A Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. SNYDER

12 Q Ms. Wilson -- it's Ms. Wilson, correct?

13 A That's correct.

14 Q I only have a couple of questions.

15 You said earlier he was, Scott was, severely
16 intoxicated.

17 A That's here, yes, sir.

18 Q Can you go into that in a little more detail? How did
19 you know he was severely intoxicated?

20 A Before we got very close to him at all we could smell
21 the alcohol on him, just some of the behaviors he was
22 showing pretty common for anybody that's intoxicated.

23 Q Let's describe some of those behaviors.

24 A Slurred speech, unsteady on his feet, very loud,
25 smelled a lot like alcohol. His eyes were glassed over.

1 I'm a technological dinosaur -- turn over to Mr. Snyder and
2 my colleague, Ms. Robinette, the playing of the 9-1-1 tapes
3 by agreement of counsel.

4 MR. SNYDER: I'm sorry. I only heard the word
5 dinosaur.

6 THE COURT: Okay.

7 (Whereupon, the C.D. was played for the jury.)

8 (C.D. marked Court's Exhibit No. 1.)

9 MR. GHENT: That will be the end of those, Your Honor.

10 THE COURT: Okay.

11 MR. GHENT: Your Honor, at this time the state would
12 move to reintroduce again all evidence marked and offered
13 and previously admitted into evidence for the jury. And at
14 this point, Your Honor, state's case. Thank you, Your
15 Honor.

16 THE COURT: All right. Ladies and gentlemen, that is
17 all of the testimony or other evidence to be offered by the
18 state, at least in their case in chief.

19 Before we go further I've got some legal matters I'll
20 need to address with the lawyers. So I'll ask you to
21 please go to your jury room. Do not yet discuss the case.
22 I'll bring you back shortly to continue.

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

25 THE COURT: All right. Any motion or other matters to

James Scott McAbee
Direct examination by Mr. Snyder

1 THE COURT: All right. Ladies and gentlemen, as you
2 know, the state has rested in their presentation. So we'll
3 now proceed with any to be offered by the defense.

4 Mr. Snyder.

5 MR. SNYDER: Thank you, Your Honor. The defense calls
6 Scott McAbee.

7 JAMES SCOTT MCABEE, having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. SNYDER

10 Q Scott, please state your full name for the record.

11 A James Scott McAbee.

12 Q Where do you live, Scott?

13 A In Mayo, South Carolina.

14 Q How long have you lived there?

15 A Forty-one years.

16 Q All right. June 5th of 2013 were you at the Lake
17 Bowen Country Club?

18 A I was.

19 Q Why did you go there?

20 A They was supposed to be a bachelor party for our
21 friend. Supposed to be a bachelor party there. So I went
22 there, waited around for anybody to show up with that crowd
23 that I knew and never did see anybody.

24 I asked a couple of other people, and they said there
25 was another bar like right down the road from 292 that they

James Scott McAbee
Direct examination by Mr. Snyder

1 might have meant there.

2 Q Did you have anything to drink before you went to the
3 Lake Bowen Country Club?

4 A No.

5 Q Did you have anything to drink there?

6 A Yes.

7 Q Do you remember how much you had to drink?

8 A Not drink for drink, but it was quite a few.

9 Q Do you remember what you were drinking?

10 A Vodka, and chasing it with beer.

11 Q Shots of vodka.

12 A Yes, sir.

13 Q You don't remember how many shots you had? More than
14 ten?

15 A Possibly.

16 Q Do you remember how many beers you had?

17 A Probably more than ten.

18 Q Okay. How long were you at the Lake Bowen Country
19 Club?

20 A Maybe three hours; three and a half hours maybe.

21 Q Drinking the whole time?

22 A The whole time.

23 Q And you left. What happened when you left?

24 A Well, they wanted me to leave, and I wanted to call
25 somebody.

James Scott McAbee
Direct examination by Mr. Snyder

1 Q I'm sorry. Why did they want you to leave?

2 A Because I kind of kept asking a few people to use, let
3 me borrow, a phone because I had somebody that was going to
4 come and pick me up.

5 Q Okay. Why were you asking people to use their phone?

6 A Because I didn't want to drive.

7 Q Okay. I understand that. But did you have a phone?

8 A Oh, no, I don't have one.

9 Q Okay. So you didn't have a phone, and you needed a
10 ride because you were intoxicated.

11 A Correct.

12 Q We've heard this word thrown around. Were you drunk?

13 A Extremely.

14 Q Okay. So you are at the Lake Bowen Country Club.

15 They told you to leave. You didn't have a cell phone. You
16 didn't want to drive. And what happened then? I'm sorry.
17 Did anyone let you use their cell phone?

18 A No.

19 Q Okay. So what happened then?

20 A They was afraid that the cops were going to end up --
21 somebody was going to call the cops on me because I was
22 intoxicated. And they just wanted me to leave, so I tried
23 my best. I didn't do too well. I got stuck.

24 Q Okay. So you got in your car and attempted to drive
25 off.

James Scott McAbee
Direct examination by Mr. Snyder

1 A Correct.

2 Q And that's when the car got stuck. Is it fair to say
3 you got stuck because you were intoxicated?

4 A That's a fair statement.

5 Q Okay. At this point -- I mean, what was going through
6 your mind?

7 A That I knew somebody would come and pick me up if I
8 could get somebody to call them to come and get me.

9 Q Okay. So what did you do then?

10 A I tried to wave somebody down --

11 Q Okay.

12 A -- on No. 9.

13 Q You've seen the maps and you've heard the testimony.
14 This was Highway 9, correct?

15 A Correct.

16 Q It was in front of the country club?

17 A It was.

18 Q Okay. Walk us through what you were doing in the road
19 in trying not to flag down cars.

20 A I was just doing that, trying to flag somebody down.

21 Q Do you remember who?

22 A After two or three cars nobody was even, I guess,
23 attempting to stop or put brake lights on or anything. So
24 a couple of cars later I kind of stepped out to where they
25 were, which was not the smartest, but that's what I did.

James Scott McAbee
Direct examination by Mr. Snyder

1 And then I think it was three or four cars actually that I
2 did that, and to one that was coming down the road I done
3 that. And when I did my hand hit the mirror of it as it
4 went by.

5 Q This we're -- this we're getting to the silver S.U.V.

6 A Yes, sir.

7 Q Now, let's back up. So you were trying to flag down
8 cars.

9 A I was.

10 Q No one was stopping. How did that make you feel?

11 A Oh, I was frustrated.

12 Q Right. And you were intoxicated, which probably made
13 it even more frustrating, correct?

14 A I'm sure it did.

15 Q Okay. I'm sorry. How many cars did you try to flag
16 down?

17 A I don't know the exact number. It was probably five
18 or six.

19 Q Okay. A lot.

20 A Yes, sir.

21 Q Okay. You've also heard this story about using the
22 restroom in the median. Fair to say you did that
23 because --

24 A It's fair to say that's correct, unfortunately, but
25 correct.

James Scott McAbee
Direct examination by Mr. Snyder

1 Q It's fair to say. I don't want to imply the answer,
2 but just state it.

3 A That I was pissing in the road?

4 Q Well, because you had been drinking a lot.

5 A Right.

6 Q So then the -- you were talking about the -- when the
7 silver S.U.V. that was driven by Mr. Habitzruther passed
8 by. And what happened then?

9 A Well, when I hit the mirror -- I was waving and hit
10 the mirror. I turned, and he went down the road just a
11 little piece, came back up and pulled up I guess maybe ten
12 foot from me. And I was thinking, you know, all right,
13 somebody's come back finally.

14 And as I started to walk to it I was stumbling, real
15 bad drunk. So as I stumbled my hands went out to catch
16 myself on the door of his car. His window was down. Catch
17 myself on the door of the car.

18 My hand goes in. And as I pulled back to push up, to
19 push myself back up to a standing position, is when I see
20 the gun, and he shoots me. It goes in under my arm and
21 comes out my back.

22 Q Okay. There's a lot there that we need to get into.
23 You -- you stumbled, and you caught yourself on the
24 car?

25 A Correct.

James Scott McAbee
Direct examination by Mr. Snyder

- 1 Q Okay. And you're a pretty big guy, right?
- 2 A Always have been, yes.
- 3 Q So how tall are you?
- 4 A 6'6".
- 5 Q How much do you weigh?
- 6 A About 300.
- 7 Q So when you caught yourself on the car did the car
- 8 shake?
- 9 A Oh, I am satisfied it did --
- 10 Q Okay.
- 11 A -- with my size falling against it.
- 12 Q Okay. You caught yourself on the car. Did you
- 13 ever -- did you ever try to open the driver's door?
- 14 A No, no.
- 15 Q Did you ever grab?
- 16 A I take that back. I think I did after he shot me.
- 17 Q Okay.
- 18 A After I was --
- 19 Q But up to the shooting had you grabbed -- did you grab
- 20 his car-door handle?
- 21 A No, no.
- 22 Q Did you ever grab him?
- 23 A I think I touched him when I fell into the door.
- 24 Q Okay.
- 25 A And when I went to put my hands out to catch myself on

James Scott McAbee
Direct examination by Mr. Snyder

1 his door and my hand slid in, I think I did make contact
2 with him, but just long enough for me to regain composure
3 and push myself back up to a standing position.

4 Q And how much time was there from when he turned around
5 and met you in the median to when he shot you?

6 A I don't know. He didn't go far. So from the time my
7 hand -- he smacked my hand until he turned down right about
8 the red light or right after that and drove back, maybe ten
9 seconds.

10 Q Okay. So just to make sure we get the story straight,
11 you're in the road. The silver S.U.V. is coming down. You
12 hit the side-view mirror. He keeps driving, turns around
13 at the intersection or a little bit past it and comes back
14 to meet you in the median.

15 A That's correct.

16 Q And then you walk up to this car, stumble, catch
17 yourself on the window. And it was down -- the window, the
18 door.

19 A It was already down.

20 Q Prior to holding the door the window was down. And is
21 that when he shot you?

22 A Just -- well, not -- not as I fell into the car.

23 Q Okay.

24 A But in a matter of just a couple of seconds it took me
25 to regain my composure and push myself back up from the car

James Scott McAbee
Direct examination by Mr. Snyder

1 door, I seen the gun come up there, and it shot me. When
2 he pulled the trigger, I mean, it shot me in my arm.

3 Q Did you say anything to him up until that point?

4 A No. There wasn't a chance because I was all happy
5 that somebody had stopped.

6 Q Right.

7 A I was going to go over and ask to see if he could make
8 a call for me or something. And then I stumbled and fell
9 into his vehicle 4-wheel drive or S.U.V.

10 Q Right. Did he ever say anything to you?

11 A Oh, I think he did after he shot me. I think he --

12 Q Did he say anything before he shot you?

13 A Not that I -- not that I can remember.

14 Q What the hell are you doing or anything?

15 MR. GHENT: Object to the leading, Your Honor.

16 THE COURT: Don't lead him.

17 A I don't -- to me if I remember it right that was after
18 he shot me.

19 Q Okay.

20 A Not before.

21 Q Okay. What happened right after he shot you?

22 A I staggered back from his vehicle for two or three
23 steps. And on my part I guess I started screaming at him,
24 I can't believe you just shot me, what are you thinking,
25 what are you doing.

James Scott McAbee
Direct examination by Mr. Snyder

1 And he was -- he was all bent out of shape too. He
2 was -- he was -- he was going on about what were you doing
3 or what were you thinking or something like that. But then
4 he was on the phone, I think. So I think he pulled off. I
5 was mad at him then. He just shot me.

6 Q Right. It was a .357, which is a pretty powerful
7 handgun. Did you fall?

8 A I don't think so.

9 Q Okay. After he shot you you said you were mad,
10 obviously, and --

11 A And in pain.

12 Q Right. And you could feel the pain?

13 A Oh, yeah. It was terrible.

14 Q Assuming --

15 A Absolutely. It was terrible.

16 Q Did you ever hit or kick his vehicle?

17 A Oh, yeah, after -- yeah.

18 Q Why did you do that?

19 A Because he shot me.

20 Q Right. Okay. So please tell everyone what happened
21 next out there.

22 A Mr. Arledge got -- he was -- he walked up, and the
23 driver after a few seconds pulled on up the road and -- and
24 within a few minutes the Spartanburg County showed up.
25 Well, I think the trooper did first, but right in together.

James Scott McAbee
Direct examination by Mr. Snyder

1 And they had the guns on me trying to get me to lay
2 down. I didn't want to lay down because I had a bullet
3 hole in me. I was trying to scream to them that I was
4 shot. I didn't want to lay on the ground because it was
5 wet, muddy or whatever. I didn't want to lay on that with
6 a hole in me. So one of the officers --

7 Q You didn't want it to get infected.

8 A Right.

9 Q Okay.

10 A I already had a blood disease, so, yeah, I don't -- I
11 didn't need that.

12 So finally the -- I think it was Spartanburg sheriff's
13 deputy finally walked up to me, and I guess he seen what it
14 was, or finally I relayed to him that I was shot from
15 screaming or whatever. He finally understood it.

16 So they finally got me to go to the ambulance, which I
17 was beside myself. I mean, there ain't no other way to
18 describe that. Beside myself.

19 Q You ever been shot before?

20 A Never.

21 Q And then they took you off to Spartanburg Regional?

22 A Correct.

23 Q And you -- you're admitting that you had a lot to
24 drink that night.

25 A Way too much.

James Scott McAbee
Cross-examination by Mr. Ghent

1 Q But you still feel like you can remember everything
2 that happened?

3 A Yeah.

4 Q Okay. Scott, please answer any questions solicitor
5 Ghent has.

6 CROSS-EXAMINATION

7 BY MR. GHENT

8 MR. GHENT: May it please the Court.

9 THE COURT: Mr. Ghent.

10 Q Mr. McAbee, your explanation for all of this, for the
11 fact that this happened, as I understand it is that it was
12 all a mistake or misunderstanding. Is that basically what
13 you're saying?

14 A The mistake was me stumbling into his vehicle.

15 Q You wouldn't agree the mistake was getting drunk in
16 the first instance?

17 A Oh, yes, absolutely. That's a true statement.

18 Q Do you -- do you deny the fact that you were accosting
19 patrons at the Lake Bowen Country Club?

20 A I was trying to get a cell phone, trying to get
21 somebody to let me use their cell phone.

22 Q That wasn't my question. Were you accosting them?

23 A Badgering them?

24 Q Yes.

25 A Yes. I probably was about the cell-phone issue.

James Scott McAbee
Cross-examination by Mr. Ghent

1 Q Okay. And would you agree that you have an anger
2 management problem?

3 A Not a problem.

4 Q Do you have an anger-management situation?

5 A Possibly at times.

6 Q But you don't believe this was one of those times.

7 A This night I just wanted to get home.

8 Q Yes.

9 A That's all. That's what I wanted. I wanted to get
10 home.

11 Q And you no longer had a car that could take you there.

12 A I couldn't drive. That's why it was setting there.

13 Q Okay. Well, let me ask you this. Did it roll that
14 entire distance down there onto the ridge?

15 A No, sir.

16 Q You drove it down there, did you not?

17 A I did.

18 Q So you did try to drive it.

19 A Yeah. I already made that statement.

20 Q And you were passed out in the car for a while, were
21 you not?

22 A Possibly.

23 Q Possibly. And when you tried to drive it, you drove
24 it down to a ridge and got it stuck.

25 A Correct.

James Scott McAbee
Cross-examination by Mr. Ghent

1 A I did.

2 Q So these are three charges, one of which involve an
3 assault and battery of a high and aggravated nature. This
4 is spoken by you who says this was just a terrible
5 misunderstanding because you were drunk. You were so drunk
6 you were urinating in the middle of the road and waving at
7 cars expecting them to stop and give you a ride. And that
8 is because your story is -- just yes or no -- that you had
9 been through the bar trying to get someone, anyone, to loan
10 you a cell phone so that you could call whom?

11 A Somebody to pick me up.

12 Q Who?

13 A My mother or my wife.

14 Q Right. And throughout all of that time it's your
15 testimony that basically the testimony of Robert Kaminski
16 in terms of the fact that you were trying to pick fights
17 with people -- now, you said you were badgering them. Did
18 you know these people?

19 A No, sir.

20 Q You had shown up at the wrong bar?

21 A I did.

22 Q For a -- what was it, a bachelor party?

23 A Yes, sir.

24 Q And someone suggested another bar, is that correct?

25 A That's right. They said there was one right down the

James Scott McAbee
Cross-examination by Mr. Ghent

1 road from the intersection of 292 and No. 9.

2 Q And your solution for the problem of being in the
3 wrong bar on the wrong occasion was to, according to you,
4 drink maybe as many as ten shots of vodka and ten beers, is
5 that right?

6 A Possibly.

7 Q Could have been more.

8 A There is a chance.

9 Q Because, in fact, you were very intoxicated.

10 A Yes, sir.

11 Q And because you were so careful to try to make sure
12 that you contacted someone to drive you after badgering
13 people in the bar. They essentially told you to leave,
14 didn't they?

15 A Yeah. They said they didn't want the cops to come to
16 the bar.

17 Q They didn't want you to stay.

18 A That's true.

19 Q They didn't want trouble. And by then it was looking
20 like you were trouble, isn't that correct?

21 A They didn't want to have trouble at the bar with the
22 cops showing up.

23 Q well, basically they didn't want to have trouble with
24 you, a man 6'6", 300 pounds, correct?

25 A Correct.

James Scott McAbee
Cross-examination by Mr. Ghent

- 1 Q They wanted you out of the bar.
- 2 A Correct.
- 3 Q And the bartender who ordered you out was a woman who
- 4 said you're out of here. And you left and went and got in
- 5 your car, correct?
- 6 A Yes, sir.
- 7 Q And at that point your car didn't roll. It wasn't
- 8 dragged. It wasn't towed. You drove it across the field
- 9 and got it stuck on a ridge, correct?
- 10 A That is correct.
- 11 Q So you did try to drive it.
- 12 A I did.
- 13 Q This was after you supposedly showed up at the wrong
- 14 place, wrong time, drank a whole lot of booze, because that
- 15 wasn't where a bachelor party was supposed to take place,
- 16 correct?
- 17 A Correct.
- 18 Q That's what you want the ladies and gentlemen of the
- 19 jury to believe so far, correct?
- 20 A That's correct.
- 21 Q So you then get out of your car, go down the
- 22 embankment, stand in the middle of the road and urinate,
- 23 and began waving at people expecting them to stop for you,
- 24 is that correct?
- 25 A That's correct.

James Scott McAbee
Cross-examination by Mr. Ghent

1 Q And, again, with Mr. Arledge saying the vehicle was,
2 in fact, moving from side to side, that's not just even a
3 man 6'6", 300 pounds, dimensions akin to Godzilla, coming
4 up to a man who is stopped to help him and you claim
5 tripped and just bumped against the vehicle and fell into
6 the window.

7 A I didn't just bump into the door. I fell into the
8 door and used the whole car to catch myself.

9 Q You do realize this whole scenario leaves this jury
10 with two things to decide. You're the unluckiest son of a
11 gun in the history of western civilization or you ain't
12 telling the truth and you expect them to believe it rather
13 than get convicted. You do realize that's basically what
14 you leave them with.

15 A I understand. That's a statement you're making.

16 Q With respect to the circumstances of the shooting,
17 where were you shot?

18 A Under my arm, at the very back under my arm.

19 Q Right like this.

20 A Very back of the armpit.

21 Q Back of the armpit. It was a .357.

22 A Correct.

23 Q That's not a Derringer, right?

24 A No.

25 Q That's a gun with some degree of stopping power, as

Closing arguments

1 liability issue there, that they're responsible for who
2 drinks there and who leaves.

3 They could have called the police. They could have
4 prevented this whole situation. They didn't. He knew
5 that, and that's why he testified the way he did.

6 We have Kim Belue. She stated that she was far away
7 from where this happened. She said she could see it, she
8 had a good angle, but she was far away. She also said it
9 was dark. She said because of those reasons and the fact
10 that the client or Mr. Scott was kind of turned away from
11 her she never saw his face. She couldn't see that well.

12 See said she saw Scott reach in the car with both
13 hands.

14 The solicitor yesterday when he was cross-examining
15 Scott, he made a big deal about how she said he reached in
16 and grabbed out. That's not what she said. She said she
17 saw him grab the door handle and put his arm in there, and
18 the only logical explanation was because she said he was
19 trying to get something, he was trying to pull something.
20 He -- she never said that he was going in there, he was
21 grabbing and he was jerking out with all of his might.
22 That's not what she said. You heard her.

23 Then you've got John Habitzruther. He shot someone.
24 Now he feels like he needs to justify shooting someone.
25 It's a big -- big event in someone's life. He needs to

Closing arguments

1 justify it to himself; he needs to justify it to the Court;
2 he needs to justify it to y'all; and he needs to justify it
3 to the state. He could very easily have been charged in
4 this matter.

5 MR. GHENT: Objection, Your Honor.

6 THE COURT: Sustained.

7 MR. SNYDER: He has now changed his story. You heard
8 what he said in court. He said he went back to Scott
9 because he thought he might have hit Scott. He wanted to
10 make sure he was okay.

11 You heard the 9-1-1 call he made. He said this guy
12 just hit my side-view mirror. He knew he didn't hit Scott,
13 but he went back anyway. He went back because he was mad.

14 He also said he tried to pull or Scott tried to pull
15 him out of the car with super human strength. He referred
16 to him as a super hero. He said he pulled him so hard, he
17 grabbed him so hard, that he still feels it today.

18 He didn't tell the police that. He did tell the
19 police that Scott was also hitting him. But on his direct
20 testimony he didn't make any mention of that. And then
21 when I was asking him about it he didn't say anything about
22 it until I brought up that's what he told the police that
23 night.

24 If someone with super human strength, a super hero,
25 was hitting you, you would remember that, and you would

Closing arguments

1 And the solicitor kept harping on the fact that he was
2 big. If it was me, we wouldn't be here today. It's
3 because of how big he is. Being big doesn't mean he's
4 trying to take someone's car.

5 You also heard a lot of testimony about him being
6 drunk. He said he had a lot to drink that night. The
7 hospital report is in evidence. His blood alcohol content
8 was over three times the legal limit. By his own admission
9 he had more than ten beers, ten shots.

10 I'm way off, but I've been drunk before. I've been
11 extremely drunk. In that state I can't do what the
12 solicitor is claiming he did that night. Just doesn't
13 happen.

14 And the time. Time is a crucial element in this case.
15 I want you to hear the 9-1-1 call of Kim Belue, and I want
16 you to think to yourself how much time was there in between
17 Scott reaching out and hitting the side mirror to the
18 driver going down, turning all the way back, approaching in
19 the median and then shooting him. You'll hear how short in
20 time had elapsed between those events.

21 (Whereupon, the C.D. was played for the jury.)

22 MR. SNYDER: So here is what the state is trying to
23 say happened. You heard from the witnesses. You heard
24 from Mike Arledge. He said that Scott was -- was right
25 here in this triangle. The driver, Mr. Habitzruther, was

closing arguments

1 driving this way.

2 Mr. Habitzruther said he was driving very slowly. He
3 came by Scott inside of his car. The 9-1-1 call said that.
4 He said he thought he hit him.

5 He drove down still going slowly and came down. And
6 then you heard Ms. Belue's testimony that he skidded when
7 he got to this intersection, had to recover, correct
8 himself. And she even said he slowly went back, went back
9 to the intersection. Met him in the median.

10 You heard from Michael Arledge; you heard from Traci
11 Arledge. Less than five seconds. Less than five seconds
12 he was there next to Scott when there was gunshot. Less
13 than five seconds.

14 You use your common sense. There wasn't enough time
15 for all of that to have happened. He was mad that Scott
16 hit his car. He drove up to Scott in the median with his
17 gun already drawn. Again, Scott's size is the only reason
18 we're here today.

19 Criminal intent. Criminal intent is also a big part
20 of this case. To be guilty of a criminal offense that
21 person must have intended to commit that offense.

22 Scott was drunk. He wasn't trying to take his car.
23 You heard Mr. Habitzruther testify. He said Scott came to
24 his car, didn't say anything, reached in and grabbed him.
25 And that's when he shot. He didn't say anything. If he

Closing arguments

1 was trying to take his car he would have said something. I
2 mean, that's just common sense will tell you that.

3 He also said that Scott with super human strength
4 grabbed him by his arms. Someone with super human strength
5 grabs you by your arms it's kind of hard to get a gun out
6 of your holster, pick it up and shoot.

7 I want to thank the solicitor yesterday for being the
8 dummy and acting that out. It just couldn't have happened
9 that way. Someone with super human strength grabs you by
10 your arms so hard that you can still feel it a year later,
11 you just cannot grab a gun out of your side holster, pull
12 it up over a window and shoot. Again, common sense will
13 just tell you he was drunk, he wasn't trying to take his
14 car.

15 Then we've got this entry wound underneath the right
16 armpit. If he was grabbing him with super human strength
17 there's no way that he was shot right there.

18 He testified because of the -- due to his level of
19 intoxication he stumbled and he caught the sides of the
20 car. That's when the car is shaking. He's a big guy.
21 That explains why his arms were in position. That bullet
22 entered here and exited right here, because it was a
23 downward motion because he was bent over.

24 You heard a lot of testimony about urinating in the
25 road. What is that common with? Common with being drunk.

Closing arguments

1 Again, this guy was drunk. Common sense will tell you he
2 was just drunk, he was not trying to take his car.

3 You heard from Scott. He said that he was leaving the
4 Lake Bowen Country Club. He was intoxicated. He was
5 trying. Before he left he was trying to get a phone. He
6 was talking to other patrons trying to get a phone so he
7 could call a ride. He couldn't. He left. Got his car
8 stuck. Again, just common with being intoxicated.

9 He was asked to leave the Lake Bowen Country Club. He
10 was in the car. He couldn't call anyone. He didn't have a
11 cell phone. He couldn't go back to the Lake Bowen Country
12 Club because he was asked to leave. He went and did the
13 only thing that he thought he could do. Again, he was just
14 drunk.

15 He tried to flag down cars. All of the testimony said
16 he was in the road trying to flag down cars. He was trying
17 to get help. He was trying to stop someone so that he can
18 use their phone and call someone to come and get him.

19 You also heard how when he saw this car turn around he
20 got happy. He was mad because he was in need of help and
21 every other car kept going, just passed him, that just no
22 one would stop.

23 Someone finally turned around. He got excited. So as
24 he's walking up to this car, again, he was excited, and he
25 stumbled, caught on the car, and that's when he was shot.

Closing arguments

1 He wasn't trying to take his car. He was just drunk.

2 Common sense will tell you here's probably what
3 happened. Scott was in the median. As Mr. Habitzruther is
4 passing by Scott tried to flag him down, hit the side-view
5 mirror.

6 Again, Mr. Habitzruther knew he didn't hit him. He
7 was upset that he hit his mirror, so he came down. He
8 slowly came down the intersection, went back. There's
9 Scott in the median. Scott was already mad because he was
10 drunk.

11 He saw Scott who is big, say 6'6", 300 pounds. That's
12 big. Not quite Godzilla but still pretty big. He saw this
13 big -- he's already mad. Saw this drunk individual coming
14 toward him.

15 As soon as he fell into the car, he shot him, thought
16 he was lunging at him. Again, I am not saying anything
17 about whether or not Mr. Habitzruther was justified in
18 shooting. But what happens, what this case comes down to,
19 was Scott McAbee trying to take that car. No, he wasn't.
20 He was just drunk. Being drunk and being big is far
21 different from trying to take someone's car. Thank you.

22 MR. GHENT: May it please the court.

23 THE COURT: Yes.

24 MR. GHENT: Mr. Snyder, Madam Forelady and ladies and
25 gentlemen of the jury, you can do all you can think of as

Closing arguments

1 oh, he's just big and he's just drunk.

2 John testified not that he tripped. Do you really
3 think from what you saw and heard of John Habitzruther that
4 he was just dying to use that gun?

5 He had never used that gun before. He'd never shot
6 anybody before. He told you he had to go into counseling
7 and he is getting out of here. He is taking his family and
8 moving.

9 I told you you are the conscience of this community.
10 what that means is you're the better angels of the nature
11 of Spartanburg. As Spartans I've got to ask you what have
12 we done if we send a message when a man comes from Michigan
13 after an economic collapse to start a new life? And I will
14 use another word. A thug, a bully, a drunkard in the
15 middle of a highway flagging down people, trying to get
16 them to stop because nobody is going to stop for somebody
17 that big.

18 I would submit that John probably stopped for two
19 reasons. He is what he said, a good individual. That's
20 No. 1. No. 2, human nature is sometimes better in some
21 people than others.

22 He stopped to find out what was going on. Other
23 people were driving around and kept going. Not John. He
24 stopped to find out what the problem was. why? Because he
25 heard the contact with his car. It wasn't so much a matter

Closing arguments

1 I say you are the conscience of the community. I can
2 only call upon you to do what's right and do your duty.

3 It concerns me. I don't know as long as I've been
4 doing this. I read a jury. Sometimes they shake their
5 head while I'm saying things, and I go, well, I don't know
6 what else I can say. They're shaking their head no.

7 Other times they look or other times -- I don't know
8 how to read these things after all of these years and after
9 all of these trials. But I do know this. When I say that
10 they're the conscience of the community I have now
11 advocated for this community, their safety and for the
12 victim.

13 I'm not the town's lawyer. I'm the state's lawyer.
14 And I've been told that I scalp. Again, I'm trying to stop
15 that, but I'm getting tense. And I've been told that I can
16 be not the nicest of a guy, guys, when I'm on
17 cross-examination.

18 I'm not there to make friends. I'm there to make sure
19 that at least one person in this courtroom, no matter what
20 happens, understands. Somebody's got to speak for the
21 victims. Somebody's going to stick up for them. In this
22 case that's me.

23 You've got to ask yourselves of all of the crimes that
24 could be committed, of all of those people who could be
25 vulnerable, who was with Kim Belue? Her child. Who was

Closing arguments

1 with Michael Arledge? His wife. This man was alone that
2 night. And congratulations to us as Spartans. We've lost
3 somebody who moved a thousand miles to come here and work.
4 Kim Belue moved from Rhode Island when that state went
5 belly up.

6 We have got to do our job, do our duty as citizens in
7 this community, to show that the conscience of the
8 community and Spartanburg is a very good, fair, righteous
9 but truthful statement of what this community believes in.

10 There's absolutely no question, no reasonable doubt,
11 no doubt for which a juror seeking the truth can give
12 somebody else a reason.

13 If any of you came in with a bias or a prejudice
14 against the defendant or against the defense or the state,
15 then the chance of a fair trial is lost from the get-go.

16 You are here to judge based upon the facts using your
17 common sense, and I would respectfully submit that the only
18 place you saw truth in this courtroom was from the state's
19 witnesses establishing that on June the 5th of 2013 on the
20 streets of our community, our county, this man over here
21 tried to take someone's car by dragging them out a window
22 because he was angry, drunk, frustrated and just big enough
23 to do it. That's what he is being prosecuted for.

24 Now, as the conscience of this community it is up to
25 you now to determine the truth. I've told you that I am

Jury charge

1 Your sole obligation and duty under your oath as a
2 juror is to determine whether or not the evidence in this
3 case has established the defendant's guilt of this crime
4 beyond a reasonable doubt. And you make that determination
5 without regard to the consequence of that decision.

6 The section, 16-3-1075, is the code section that
7 defines the crime of carjacking. And that particular code
8 section provides that a person is guilty of the crime of
9 carjacking if he takes or attempts to take a motor vehicle
10 from another person by force and violence or by
11 intimidation while the person is operating the vehicle or
12 while the person is in the vehicle.

13 In this case the state alleges that the defendant is
14 guilty of the crime of carjacking by attempting to take a
15 motor vehicle from another person by force and violence or
16 intimidation while John Matthew Habitzruther was operating
17 or occupying that vehicle.

18 In order for the defendant to be found guilty of a
19 violation of this particular section of law it would be
20 necessary that the evidence in this case establishes in
21 your mind beyond a reasonable doubt the following essential
22 elements: First of all, it must be proven that the
23 defendant, James Scott McAbee, did attempt to take a motor
24 vehicle from John Matthew Habitzruther; secondly, it must
25 be proven that the attempt to take the vehicle was

Jury charge

1 accomplished by the use of force and violence or by
2 intimidation; and, thirdly, it must be proven that the
3 attempt to take the vehicle occurred while John Matthew
4 Habitzruther was operating the vehicle or while he was in
5 the vehicle.

6 Now, with regard to the provision in the statute
7 attempting to take, you are instructed that an intempt
8 [sic] -- an attempt is an act done in partial execution of
9 a design to commit a criminal offense.

10 There must be an intent that the crime be committed
11 and the commission of an act in furtherance of and pursuant
12 to that intent.

13 In order to constitute an attempt to commit a crime it
14 is essential that coupled with the intent to commit the
15 crime there be some overt act in furtherance of the intent.
16 The act constituting the attempt must be done with the
17 intent to commit the particular crime alleged, in this case
18 carjacking.

19 The state must prove the defendant's specific intent
20 was accompanied by some overt act in furtherance of that
21 intent and the attempt or overt act committed moves towards
22 the commission of the crime itself.

23 Criminal intent is also an essential element of the
24 attempt to commit a crime. Criminal intent is a state of
25 mind which operates jointly with an act in the commission

Verdict

1 THE COURT: Have you signed it and dated it?

2 THE FOREPERSON: Yes.

3 THE COURT: If you will, please hand that verdict form
4 up by way of the bailiff.

5 You may publish the verdict.

6 THE CLERK: State of South Carolina, County of
7 Spartanburg, Court of General Sessions, Indictment
8 No. 2013-GS-42-3628, the State vs. James Scott McAbee,
9 indictment for carjacking.

10 We, the jury, find James Scott McAbee guilty of
11 carjacking.

12 Signed by the foreperson, Debra Bahnmuller, on this
13 day, July the 9th of 2014.

14 Ladies and gentlemen of the jury, is this your verdict
15 and still your verdict?

16 If so, please raise your right hand.

17 (Whereupon, all responded in the affirmative.)

18 THE CLERK: So say you all.

19 THE COURT: Does the defendant wish to have the jury
20 polled?

21 MR. SNYDER: No, sir.

22 THE COURT: Any other matters to address with the jury
23 present?

24 MR. SNYDER: No, sir.

25 (Whereupon, the trial jury was excused.)

Sentence

1 while I respect the jury's verdict, I don't
2 necessarily agree with it. I think Mr. -- Mr. McAbee was
3 drunk. And that's that, Your Honor. I don't believe that
4 he was intentionally trying to take anyone's car. And I
5 hope Your Honor will just be merciful with Scott.

6 I mean, probation is an option. And if Your Honor
7 feels like he should serve time in the Department of
8 Corrections, as little time as possible.

9 THE COURT: All right. Mr. McAbee, anything you'd
10 like to add?

11 THE DEFENDANT: I know in my heart I never tried to
12 take his car. I know that as well as I know I'm standing
13 here. That's all I need to say, I guess.

14 MR. GHENT: Your Honor, may I ask one question real
15 quickly?

16 THE COURT: Sure.

17 MR. GHENT: The other charge, I believe I gave the
18 sentencing sheet.

19 THE COURT: I have it.

20 MR. GHENT: Thank you, Your Honor.

21 THE COURT: It's automatic. I have it.

22 All right. On Indictment 2013-3627, that's the
23 indictment for assault and battery, the sentence of the
24 Court is you, James Scott McAbee, after having pled guilty
25 to that offense -- sentence of the Court for a period of 30

Sentence

1 days.

2 Indictment 2013-3628, an indictment for carjacking,
3 wherein you have been found guilty by the jury of that
4 offense, the Sentence of the Court is you, James Scott
5 McAbee, be confined to the South Carolina Department of
6 Corrections for a period of 15 years.

7 That sentence is suspended upon the service of ten.
8 You're placed on probation for three. Conditions of
9 probation, complete a substance abuse counseling course,
10 submit to random drug and alcohol testing, pay \$500 for
11 your appointed lawyer and complete an anger management
12 class.

13 Mr. McAbee, you have a right to appeal the verdict of
14 the jury and the Sentence of the Court. You must file any
15 notice of your intention to appeal those decisions within
16 ten days of today's date.

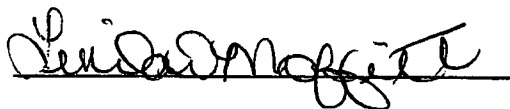
17 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, 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 all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 7th, 8th and 9th days of July 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 26, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

146

J. David Wren, MD, PhD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212MCABEE, JAMES SCOTT
43Y
MESSER, CATHY AMR#: S000867405
DOB: 01/11/1970
Location: PT Type: EMERGENCY ROOMACCT#: S7709002006
Admitted: 05/05/2013

Test	Result	Units	Reference
05/05/2013 22:15 Releated 05/05/2013 22:35	Sodium	135	mmol/L 133-146
Potassium	3.8	mmol/L	3.5-5.2
Chloride	104	mmol/L	100-111
Carbon Dioxide	20.8 L	mmol/L	23.0-32.6
Glucose	113 H	mg/dL	70-100
Urea Nitrogen	15	mg/dL	7-25
Creatinine	1.31	mg/dL	0.47-1.35
Calcium	8.8 L	mg/dL	8.9-10.3
Anion Gap	14 H	mmol/L	6-13
Bun/Creat Ratio	11		8-23
Osmolality Calculation	272	mOsm/kg	270-350
Total Protein	7.8	g/dL	6.1-8.0
Albumin	4.6	g/dL	3.5-4.9
Globulin	3.2	g/dL	2.0-4.5
Albumin/Globulin Ratio	1.4		0.9-2.4
Alanine Transferase	47 H	IU/L	8-39
Aspartame Transferase	40 H	IU/L	12-33
Alkaline Phosphatase	54	IU/L	36-108
Total Bilirubin	0.3	mg/dL	0.0-1.5
Ethanol	265 H	mg/dL	0-0
Estimated GFR-African American	>60	mL/min/1.73 m ²	
Estimated GFR-Other	60 ²	mL/min/1.73 m ²	

Result Units Reference

BLOOD



*Comment: tr 01

No hemolysis noted

*Do not use this eGFR calculation for medication dose adjustments.

Patient Name: MCABEE, JAMES SCOTT
Location:
PT Type: EMERGENCY ROOM

HPF ONLY- OUTPATIENT AND ED REPORT

Printed: 05/06/2013 02:45
Page: 4 of 5

PRINTED BY: DB30588

DATE 06/03/201

147

WITNESSES

SCSO

[Handwritten signature]

ARREST WARRANT NUMBER

2013A4210201954

ACTION OF GRAND JURY

AUG 22 2013

True Bill

Foreperson of Grand Jury
Date:

VERDICT

We, the jury, find James
Scott McAbee guilty
of carjacking.

[Handwritten signature]

Foreperson of Petit Jury

Date: July 9, 2014

DOCKET NO.

13-GS-42-3628

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2013

TERM

THE STATE
vs.

James Scott McAbee

Indictment for
CARJACKING

SC Code: 16-3-1075 (B) (1)
CDR Code: 2599
Class FEL/C

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 AUG 28 PM 1:18

M. HOPE BLACKLEY

RECEIVED

JUL 16 2014

SC Court of Appeals

①

PS

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG)

INDICTMENT

2013

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

CARJACKING

That James Scott McAbee did in Spartanburg County on or about June 5, 2013, take, or attempt to take, a motor vehicle by force and violence and/or by intimidation while the victim, John Matthew Habitizruther, was in the motor vehicle, to wit: by grabbing the victim and attempting to pull him from his vehicle, in violation of §16-3-1075 (B) (1), *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

149

WITNESSES

SCSO

Kevin L. Lott

WARRANT NUMBER

2013A4210201955

ACTION OF GRAND JURY

AUG 22 2013

Harold Dy **True-Bill**
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

13-GS-42-3627
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 7 1 2013

TERM

THE STATE
vs.

James Scott McAbee

Indictment for

ASSAULT AND BATTERY 3rd Degree

SC Code: 16-3-600(E)(1)
CDR Code: 3414
Class MIS/U

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 AUG 28 PM 1:18
M. HOPE BLACKLEY

173

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

AUG 2013

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 3rd Degree

That the Defendant, James Scott McAbee, did in Spartanburg County on or about June 5, 2013, commit an assault and battery on the victim, William Martin, by unlawfully injuring the victim, or by offering or attempting to injure the victim with the present ability to do so. To wit: by striking the victim in the face and/or throwing a towel containing the defendants bodily fluids in the victims face, in violation of §16-3-600(E)(1), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

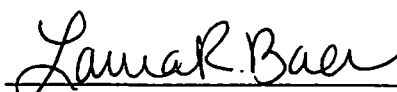
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Timi Poulos
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 26th, 2015



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

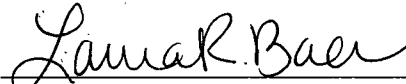
JUN 26 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 26th, 2015

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in dark ink and is positioned above a horizontal line.

Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

 ORIGINAL

RECEIVED

JUN 26 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

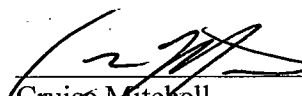
JAMES SCOTT MCABEE,

APPELLANT

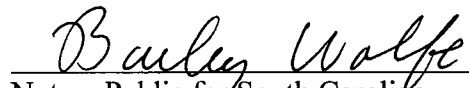
APPELLATE CASE NO. 2014-001528

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Megan Harrigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 26th day of June, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of June, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021