

STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Gary Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

RECEIVED

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SC Court of Appeals

V.

AVIS CREDELL PRIOLEAU,

APPELLANT

APPELLATE CASE NO. 2014-002411

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
THE STATE,	)	CASE NO. 2013-GS-10-05348
	)	2013-GS-10-05349
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
AVIS CREDELL PRIOLEAU,	)	
	)	
DEFENDANT.	)	

October 28 to 29, 2014

Charleston, South Carolina

B E F O R E:

The Honorable D. Garrison Hill, Judge; and a Jury.

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For the State

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(DW) - DENOTES DEFENSE WITNESS

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1 (WHEREUPON, trial began October 28, 2014, 1:29 p.m.)

2 THE COURT: Okay. It looks like we have everybody here
3 including Mr. Prioleau. And any matters before we bring the
4 jury panel in?

5 MR. WARING: Your Honor, there's just a few pre-trial
6 matters. I don't know if you want to handle those ---

7 THE COURT: Okay. Go ahead.

8 MR. WARING: --- or afterwards?
9 Brown.

10 THE COURT: What are they?

11 MR. WARING: Your Honor, there's a couple of matters.
12 Mainly an issue of the defendants having HIV in this case.
13 Brief factual history: The police officers got a call out
14 to a residence in North Charleston to a burglary in
15 progress. They arrived, saw the defendant falling off of
16 the house. He busted his face open and was bleeding
17 profusely and they were able to get him into a police
18 vehicle. EMS showed up. They get him on a stretcher. At
19 one point he pulled down a mask guard and splits blood on
20 them.

21 Prior to that incident they had been notified by the
22 defendant to a separate officer who was also there that
23 night that he had HIV. Subsequently he was tested and it
24 was determined that he did in fact have HIV.

25 We would like to get into that in our case in chief,

1 Your Honor. We think it is relevant for a few different
2 reasons. Specifically, infectious diseases such as HIV are
3 transmitted through bodily fluids. The legislature
4 specifically mentions HIV in this statute and they also
5 allow for the testing of the defendant if it is believed
6 that the defendant has exposed the victims to a significant
7 health risk.

8 I think it also goes towards the defendant's criminal
9 intent to commit this crime. He knew he had HIV, Your
10 Honor; and by spitting on the officers anyway he is
11 illustrating his intent to actually spit on them.

12 The police officers in this case had a legitimate
13 safety concern; and that was before they know about it.
14 Once they knew he had HIV it was an even greater concern,
15 Your Honor.

16 It is also relevant to the officer's potential injuries
17 that they could have sustained by being spit on with
18 somebody who has HIV. We argue that it is more probative
19 than prejudicial and should be allowed, Your Honor.

20 And just to give you another procedural history
21 background, this case was originally called for trial in
22 late 2013. The judge in that case continued the case. He
23 agreed that and ruled that it was relevant but he continued
24 the case for a few different reasons. The State did not
25 have the specific documents and physician from MUSC ready to

1 testify. The State now has that, Your Honor, and we have
2 everything ready to go. We would ask that it be allowed.

3 In addition, the case law that is on this Ex parte DHEC
4 pretty much says that HIV test results can be confirmed or
5 proved false by re-testing at a later date, unlike somebody
6 who is pulled over for a DUI or somebody who is intoxicated
7 where those results are time sensitive, Your Honor.
8 Therefore, the admission of HIV test results are not
9 controlled by the line of cases dealing with drugs and
10 alcohol.

11 The South Carolina Supreme Court in Ex parte DHEC
12 agreed that the procedure for admitting business records
13 were for sufficient indicia of liability to admit HIV test
14 results without chain of custody.

15 We would argue that the holding in that case should
16 apply to this case. Though it is not specifically applied
17 in that case to the statute of throwing bodily fluids, it is
18 looked at in the context of the statute for exposing
19 somebody intentionally to HIV.

20 But I would argue that it should be looked at in the
21 same light because both of these cases involved or could
22 involve somebody who has HIV. And in this case the
23 defendant does have HIV. We would ask that the results come
24 in and that it come in without a chain of custody, Your
25 Honor. Thank you.

1 THE COURT: Mr. Waring, you said was it Judge
2 Nicholson?

3 MR. WARING: Yes, Your Honor.

4 THE COURT: He ruled that the HIV would be admissible?

5 MR. WARING: He ruled that it was relevant, Your Honor.

6 THE COURT: So he didn't rule it was admissible?

7 MR. WARING: Well, he did not agree with the way the
8 State was trying to get that evidence admitted ---

9 THE COURT: Okay.

10 MR. WARING: --- with foundation. We were trying to
11 get in that information in through a different method. He
12 didn't agree with it so he continued the case. And since
13 then we have gotten a medical professional who is prepared
14 to testify fulfilling all these elements, his business
15 record; and we are prepared to go forward on that, Your
16 Honor.

17 THE COURT: So I mean I just want to make sure. I
18 can't overrule what he did. So what did he do in terms of
19 admitting this evidence, or are you saying he never got to a
20 final ruling on this particular issue?

21 MR. WARING: Your Honor, the trial never technically
22 began ---

23 THE COURT: Yeah.

24 MR. WARING: --- as far as I am concerned.

25 THE COURT: I understand that. But I'm talking about

1 the pretrial ruling on admissibility of this HIV evidence.
2 One never made or ...

3 MR. COCHRAN: Your Honor asked if Judge Nicholson ruled
4 on the admissibility of HIV evidence in this case, and the
5 answer is no.

6 THE COURT: Okay. All right. Thank you.

7 MR. COCHRAN: Thank you, Your Honor.

8 THE COURT: All right. Yes, sir.

9 MR. COCHRAN: Your Honor, well, we would argue -- I
10 mean first -- first of all, evidence that my client was HIV
11 positive is enormously prejudicial against him.

12 This is -- you know, culturally HIV has a stigma
13 different than all other diseases. And in this case it
14 would be, given other details about this case, would end up
15 being a huge distraction and extremely prejudicial to Mr.
16 Prioleau with I would say zero probative value. I don't
17 think it is relevant in any way.

18 It goes -- according to the State's argument it goes to
19 show motive. I don't know that spitting on somebody
20 requires the establishment of a motive. I think the motive
21 of spitting on somebody is sort of like sexual assault,
22 motive is inherent in the act itself; you don't need
23 extrinsic evidence to prove a motive.

24 In this case the officers did get blood on them
25 incidentally to this arrest, which they will admit to.

1 THE COURT: What do you mean incidentally?

2 MR. COCHRAN: Just my client was bleeding so much
3 during the arrest that just by putting him in handcuffs they
4 say that their hands were covered in blood.

5 So they were getting blood on them, spitting or no
6 spitting, because of this. And my client never said on this
7 incident date that he had -- he never gave them any
8 indication that he did have an infectious disease. In fact
9 when he was booked in at the jail he answered in the
10 negative when asked if he did have any infectious diseases.

11 And because of the statute there was testing done. He
12 was deemed to be HIV-positive and the hospital actually
13 informing the jail of that noted that this may be the first
14 time he himself is hearing about this. I don't even know
15 that the State would be able to prove to a sufficient degree
16 that he knew that he was HIV positive on that night.

17 They've got an officer who says that he is
18 HIV-positive. She would not have ever confirmed that. She
19 would I guess testify to a hearsay statement on a previous
20 date that my client said he had HIV.

21 My client is an openly gay man in this neighborhood.
22 It is a pretty small community outside of Charleston, and I
23 believe law-enforcement was probably familiar with him. And
24 I think that they assumed it. I think that maybe there had
25 been talk about it. But I don't think that there is any

1 real concrete evidence that Mr. Prioleau had any idea at
2 that time that he was HIV positive.

3 Your Honor, the other issue I have with this is that
4 knowingly attempting or actually transmitting an infectious
5 disease is a crime on the books in South Carolina; so and it
6 is a more serious crime than what Mr. Prioleau is on trial
7 for. So if they are allowed to get into this they are
8 essentially being allowed to establish a motive for a more
9 serious crime than what Mr. Prioleau is being charged with.

10 If they had sufficient evidence they should charge him
11 with knowingly attempting to transmit an infectious disease.
12 And they can't do that, so they are trying to bootstrap this
13 extremely prejudicial information in with a less serious
14 charge.

15 THE COURT: What are the elements of this crime?

16 MR. WARING: The current one, Your Honor, throwing
17 bodily fluids?

18 THE COURT: Yes, sir.

19 MR. WARING: You have got to be detained or
20 under arrest and he's got to spit a bodily fluid on a
21 law-enforcement officer.

22 Just to clarify, this case wouldn't apply to the
23 statute of the purposefully or knowingly exposing somebody
24 to HIV. That statute is specifically under the context of
25 drugs, sharing needles, or through sexual intercourse, Your

1 Honor; and therefore I don't think that would apply to this
2 case.

3 THE COURT: So how does the defendants having HIV make
4 it more or less probable that he committed one of the acts
5 that is part of the elements of the crime?

6 MR. WARING: Well, Your Honor, the statute says to spit
7 on somebody or attempt to spit. And he knew he had HIV
8 therefore this was not some involuntary action that
9 happened. He was -- it was willful. He was knowingly doing
10 it. He was intentionally trying to spit on them. He had
11 the requisite mens rea to complete the crime of throwing
12 bodily fluids.

13 And I think it is also relevant to a handful of other
14 considerations; Your Honor, such as a legitimate safety
15 concern of the officers when dealing with somebody who spits
16 on them.

17 THE COURT: Well, certainly. But that is not part of
18 the elements of the crime.

19 MR. WARING: Yes, Your Honor.

20 THE COURT: All right. Well, I am excluding the
21 evidence on the grounds that any probative value it adds,
22 which may be none, is vastly outweighed by prejudicial
23 impact.

24 Moreover, it sounds like we would be chasing rabbits
25 about previous statements he made about his knowledge of

1 having HIV, which really have nothing to do with this case.

2 I agree with the defense that that is really about
3 another type of crime. So I respectfully rule the HIV
4 evidence is not admissible and it is excluded by Rule 403.

5 MR. WARING: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, break for unrelated matter 1:40 p.m.to 1:41
8 p.m.)

9 MR. WARING: Your Honor, there was just one other small
10 I guess potential issue. We have already discussed it
11 beforehand. He had another quasi statement, more like a
12 spontaneous utterance, where contemporaneous with the
13 spitting he apologized to one of officer. He wasn't under
14 interrogation, and we would like to get into that. I don't
15 believe a Jackson-Denno hearing is necessary, but I just
16 wanted to bring it to the court's attention.

17 MR. COCHRAN: I guess the only -- I don't think that we
18 need a Denno hearing because I don't think that it would
19 have been involuntary. I guess my only problem would be is
20 if it's -- it's too vague.

21 I don't know that whether the officer is going to
22 testify to the context of that conversation what the apology
23 was for specifically.

24 MR. WARING: I mean, Your Honor, it is an admission.
25 He had just spit on the officer and then he apologized to

1 the female officer and said that he didn't want to do
2 anything to hurt her.

3 MR. COCHRAN: Your Honor, I don't know that I have an
4 objection under Denno for that. We would object just based
5 on general hearsay, Your Honor. Rest on that.

6 THE COURT: All right. Well, it appears to be
7 admissible to me. Okay. Anything else before we bring the
8 jury in?

9 MR. WARING: Nothing from the State, Your Honor.

10 THE COURT: Okay. Well, let's go ahead and select the
11 jury.

12 (WHEREUPON, the jury pool enters the courtroom October 28,
13 2014, 1:44 p.m. for voir dire.)

14 THE COURT: All right. Ladies and gentlemen, good
15 afternoon. I am Gary Hill. I am a circuit judge from
16 Greenville down here this week, and we are going to begin
17 the case of the State versus Avis Credell Prioleau.

18 And he is charged in two indictments. And I'm going to
19 read the charges to you in the indictment. But before I do
20 that I want to remind you that the mere fact that Mr.
21 Prioleau has been indicted or charged doesn't mean anything,
22 doesn't constitute evidence of any kind. It doesn't even
23 create a suspension of guilt.

24 These indictments are merely pieces of paper. They are
25 the ticket so to speak that allow the State to come in this

1 courtroom and begin a case against a citizen and let the
2 citizen know what he is charged with. That is all they are.

3 So he is not presumed anything but innocent at this
4 stage and he will be presumed innocent throughout the trial.
5 And he may only be convicted if all 12 jurors agree the
6 State has proven each and every element of the crime beyond
7 a reasonable doubt.

8 Mr. Prioleau doesn't have any burden of proof himself.
9 He doesn't have to offer any evidence or explanation
10 whatsoever. So keep that in mind as we go through this
11 case.

12 And the first indictment is 2013-GS-10-05348. It
13 alleges that in Charleston County, South Carolina on or
14 about April 19, 2013, the defendant, Avis Credell Prioleau
15 while he was an inmate, detainee, a person taken into
16 custody, or a person under arrest while removing the
17 defendant from a police vehicle did throw or attempt to
18 throw bodily fluids on - I don't know what that means -
19 P-T-L; patrolman, is that what is?

20 MR. WARING: Yes, Your Honor.

21 THE COURT: Okay. ...M. Slager, S-L-A-G-E-R, an
22 employee of the North Charleston Police Department in Case
23 Number 2013-GS-10-05349. It alleges that Mr. Prioleau in
24 this county and state on the same date or April 19, 2013,
25 while he was an inmate, a detainee, a person taken into

1 custody, or a person under arrest while removing the
2 defendant from a police vehicle did throw or attempt to
3 throw bodily fluids on Officer Prosser, an employee of the
4 North Charleston Police Department. So those are the
5 allegations.

6 Is there anyone here who is related by blood or
7 marriage to either the defendant, Mr. Prioleau - sir, if you
8 would stand up and turn around so everybody can see who you
9 are (Mr. Prioleau stands) - or either of the victims; and
10 that would be Officer Prosser or Officer Slager; if so,
11 please stand.

12 (WHEREUPON, no one stood.)

13 THE COURT: Does anyone have any personal, social or
14 business relationship with any of these people, that is the
15 defendant or any of the victims; if so, please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Does anyone know anything about this case
18 other than what you have heard here from me this afternoon;
19 if so, please stand.

20 (WHEREUPON, no one stood.)

21 THE COURT: I'm going to ask the lawyers who are going
22 to be involved in trying the case to introduce themselves
23 and anyone who is at the table.

24 Yes, sir, solicitor.

25 MR. WARING: Thank you, Your Honor. Hi. I am Richard

1 Waring. I am an assistant solicitor for the State. This is
2 my co-council, Burns Wetmore, who is also an assistant
3 solicitor for the State.

4 THE COURT: Thank you. Yes, sir.

5 MR. COCHRAN: My name is Charles Cochran, and I
6 represent Avis Prioleau. This is my co-council, Annie
7 Andrews.

8 MS. ANDREWS: Good afternoon.

9 THE COURT: Is anyone related by blood or marriage or
10 kin to any of the lawyers; if so, please stand.
11 (WHEREUPON, no one stood.)

12 THE COURT: Does anyone have any personal, social, or
13 business relationship with any of these lawyers; if so,
14 please stand.
15 (WHEREUPON, no one stood.)

16 THE COURT: Has anyone ever been employed by the
17 Solicitor's Office or the U.S. Attorney's Office or the
18 Attorney General's Office or the Public Defender's Office;
19 if so, please stand.
20 (WHEREUPON, no one stood.)

21 THE COURT: Has anyone or any member of your immediate
22 family ever been employed by the Solicitor's Office,
23 Attorney General's Office, U.S. Attorney's Office or Public
24 Defender's Office; if so, please stand.
25 (WHEREUPON, no one stood.)

1 THE COURT: Has anyone been employed by any
2 law-enforcement agency or had a member of your immediate
3 family be so employed; if so, please stand.

4 POTENTIAL JUROR: One fifty-six, Emily Hansen. I don't
5 know if this -- do you mean in Charleston County?

6 THE COURT: Anywhere.

7 POTENTIAL JUROR: In general. I was employed as the
8 Federal Defender Office in Little Rock, Arkansas.

9 THE COURT: All right. Thank you.

10 POTENTIAL JUROR: Debbie Cook, Juror Number 80. My
11 half brother he is a police officer in Kentucky.

12 THE COURT: Thank you.

13 POTENTIAL JUROR: Steve Griffin, Juror 148. My
14 son-in-law is a North Charleston policeman.

15 THE COURT: Thank you.

16 POTENTIAL JUROR: Fred Dolloff, 97. My wife worked at
17 the Detention Center for a little while.

18 THE COURT: Here?

19 POTENTIAL JUROR: Here, yeah.

20 THE COURT: All right. Thank you.

21 POTENTIAL JUROR: Herb Stokes, Number 348. My
22 brother-in-law is a police officer in Cartersville, North
23 Carolina.

24 THE COURT: Thank you, Mr. Stokes.

25 POTENTIAL JUROR: Jasmyne Hymes, Juror Number 173. My

1 mother works at a law firm.

2 THE COURT: Whoa, whoa, whoa. I can't -- you talk too
3 fast. I'm sorry?

4 POTENTIAL JUROR: Jasmyne Hymes, Juror Number 173. My
5 mother works at a law firm.

6 THE COURT: Which one?

7 POTENTIAL JUROR: Young Clement Rivers.

8 THE COURT: All right. I don't know if I mentioned law
9 firms.

10 POTENTIAL JUROR: Oh, you didn't? Oh, I'm sorry.

11 THE COURT: I just meant law enforcement. Law
12 enforcement.

13 POTENTIAL JUROR: Oh, okay.

14 THE COURT: That's okay.

15 POTENTIAL JUROR: Christina Saporito, Juror Number 319.
16 And my brother-in-law is a deputy sheriff in Ohio.

17 THE COURT: Thank you.

18 POTENTIAL JUROR: I'm Almadela Rivera, 309. My
19 daughter is a prosecutor in Kernersville, North Carolina.

20 THE COURT: Oh, okay. Thank you. All right. Of those
21 who responded who have family members connected to law
22 enforcement do you believe that despite that connection you
23 could still be fair and impartial in this criminal case; if
24 so, please stand -- I mean if you don't believe that, please
25 stand.

1 (WHEREUPON, no one stood.)

2 THE COURT: All right. Let me tell you who the people
3 who may testify in this case are. And those potential
4 witnesses are Odika, O-D-I-K-A, Brown; Bradley Woods;
5 Michael Slager, S-L-A-G-E-R; and Charity Prosser; and
6 Cassandra Salgado, S-A-L-G-A-D-O. Is anyone related by
7 blood or marriage or kin to any potential witnesses; if so,
8 please stand.

9 (WHEREUPON, no one stood.)

10 THE COURT: Does anyone know of any reason why they
11 could not be fair and impartial in this case or is anyone
12 aware of any bias or prejudice they may have about any issue
13 or anyone involved in this case; if so, please stand.

14 (WHEREUPON, no one stood.)

15 THE COURT: Has anyone ever had any criminal charges
16 adjudicated by or currently being pending with Charleston
17 County Solicitor's Office?

18 (WHEREUPON, no one stood.)

19 THE COURT: All right. Any further voir dire from the
20 State?

21 MR. WARING: No, Your Honor.

22 THE COURT: Defense?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: All right. We will proceed with the
25 selection of the jury. I don't know how y'all do it here,

1 but they can just stand. When your name is called just
2 stand up where you are and if you are chosen you will come
3 forward and sit in the box.

4 Is that how y'all do it?

5 THE CLERK: We usually have them come up to the podium.

6 THE COURT: They can just stand right there.

7 THE CLERK: Okay.

8 THE COURT: The lawyers can turn around.

9 THE CLERK: Ladies and gentleman, if you could when I
10 call your juror number and your name if you could just stand
11 for me. If you are selected you are going to take all of
12 your belongings and just proceed to the jury box and take a
13 seat. And if you are not selected you can just sit back
14 down and wait a moment.

15 Starting with Juror Number 275, Christopher Pelic.

16 (WHEREUPON, Christopher Pelic, a white male, stood.)

17 THE CLERK: And sir, you can just stay standing. Yes,
18 sir.

19 What say you for the State?

20 MR. WARING: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MR. COCHRAN: Please seat the juror.

23 THE CLERK: Sir, you have been selected in the trial of
24 this case. You may now take a seat in the jury box.

25 (WHEREUPON, juror was seated in jury box.)

1 THE CLERK: Juror Number 56, Walter Campbell.

2 (WHEREUPON, Walter Campbell, a white male, stood.)

3 THE CLERK: What say you for the State?

4 MR. WARING: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MR. COCHRAN: Please seat the juror.

7 THE CLERK: Sir, you have been selected for the trial
8 of this case. You may take a seat in the jury box.

9 (WHEREUPON, juror was seated in jury box.)

10 THE CLERK: Juror Number 283, Lorie Pitts.

11 (WHEREUPON, Lorie Pitts, a white female, stood.)

12 THE CLERK: What say you for the State?

13 MR. WARING: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MR. COCHRAN: I'm sorry, what was that number?

16 THE CLERK: That number was 283.

17 MR. COCHRAN: Please seat the juror.

18 THE CLERK: Ma'am, you have been selected in the trial
19 of this case. You may now take a seat in the jury box.

20 (WHEREUPON, juror was seated in jury box.)

21 THE CLERK: Juror Number 173, Jasmyne Hymes.

22 (WHEREUPON, Jasmyne Hymes, a white female, stood.)

23 THE CLERK: What say you for the State?

24 MR. WARING: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MR. COCHRAN: Please seat the juror.

2 THE CLERK: Ma'am, you have been selected for the trial
3 of this case. You may now take a seat in the jury box.

4 (WHEREUPON, juror was seated in jury box.)

5 THE CLERK: Juror Number 71, Suzanne Coffey.

6 (WHEREUPON, Suzanne Coffey, a white female, stood.)

7 THE CLERK: What say you for the State?

8 MR. WARING: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MR. COCHRAN: Please excuse the juror.

11 THE CLERK: Ma'am, you have been excused from the trial
12 of this case. You may take a seat.

13 (WHEREUPON, juror returned to her seated.)

14 THE CLERK: Juror Number 367, Mark Vanhorn.

15 (WHEREUPON, Mark Vanhorn, a white male, stood.)

16 THE CLERK: What say you for the State?

17 MR. WARING: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MR. COCHRAN: Please seat the juror.

20 THE CLERK: Sir, you have been selected in the trial of
21 this case. You may now take a seat in the jury box.

22 (WHEREUPON, juror was seated in jury box.)

23 THE CLERK: Juror Number 131, Warren Garrett.

24 (WHEREUPON, Warren Garrett, a black male, stood.)

25 THE CLERK: What say you for the State?

1 MR. WARING: Please seat this juror.

2 THE CLERK: What say you for the defendant?

3 MR. COCHRAN: Please seat the juror.

4 THE CLERK: Sir, you have been selected in the trial of
5 this case. You may now take a seat in the jury box.

6 (WHEREUPON, juror was seated in jury box.)

7 THE CLERK: Juror Number 363, Claudia Townsend.

8 (WHEREUPON, Claudia Townsend, a black female, stood.)

9 THE CLERK: What say you for the State?

10 MR. WARING: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. COCHRAN: Please seat the juror.

13 THE CLERK: Ma'am, you have been selected in the trial
14 of this case. You may now take a seat in the jury box.

15 (WHEREUPON, juror was seated in jury box.)

16 THE CLERK: Juror Number 13, Jennifer Baker.

17 (WHEREUPON, Jennifer Baker, a white female, stood.)

18 THE CLERK: What say you for the State?

19 MR. WARING: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. COCHRAN: Please excuse the juror.

22 THE CLERK: Ma'am, you have been excused from the trial
23 of this case. You may now take your seat.

24 (WHEREUPON, juror was seated in jury box.)

25 THE CLERK: Juror Number 393, Sandra Winters.

1 (WHEREUPON, Sandra Winters, a white female, stood.)

2 THE CLERK: What say you for the State?

3 MR. WARING: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MR. COCHRAN: Please seat the juror.

6 THE CLERK: Ma'am, you have been selected in the trial
7 of this case. You may now take a seat in the jury box.

8 (WHEREUPON, juror was seated in jury box.)

9 THE CLERK: Juror Number 348, Herbert Stokes.

10 (WHEREUPON, Herbert Stokes, a white male, stood.)

11 THE CLERK: What say you for the State?

12 MR. WARING: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MR. COCHRAN: Please excuse the juror.

15 THE CLERK: Sir, you have been excused from the trial
16 of this case. You may take your seat.

17 (WHEREUPON, juror returned to his seat.)

18 THE CLERK: Juror Number 94, Emmie Dawson.

19 (WHEREUPON, Emmie Dawson, a white female, stood.)

20 THE CLERK: What say you for the State?

21 MR. WARING: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MR. COCHRAN: Please excuse the juror.

24 THE CLERK: Ma'am, you have been excused from the trial
25 of this case. You may now take a seat.

1 (WHEREUPON, juror was seated in jury box.)

2 THE CLERK: The defendant has exhausted four of its
3 five strikes. Juror Number 259, Levi Nogues.

4 (WHEREUPON, Levi Nogues, a white male, stood.)

5 THE CLERK: What say you for the State?

6 MR. WARING: Please seat this juror.

7 THE CLERK: What say you for the defendant?

8 MR. COCHRAN: Please excuse the juror.

9 THE CLERK: Sir, you have been excused from the trial
10 of this case. You may take your seat.

11 (WHEREUPON, juror return to his seat.)

12 THE CLERK: The defendant has exhausted five of its
13 five strikes. Juror Number 86, Devorah Danielskranz.

14 (WHEREUPON, Devorah Danielskranz, a white female, stood.)

15 THE CLERK: What say you for the State?

16 MR. WARING: Please seat this juror.

17 THE CLERK: Any challenges from the defendant?

18 MR. COCHRAN: No.

19 THE CLERK: Ma'am, you have been selected as a juoro in
20 this case. You may take a seat in the jury box.

21 (WHEREUPON, juror was seated in jury box.)

22 THE CLERK: Juror Number 80, Debbie Cook.

23 (WHEREUPON, Debbie Cook, a white female, stood.)

24 THE CLERK: What say you for the State?

25 MR. WARING: Please seat this juror.

1 THE CLERK: Any challenges from the defendant?

2 MR. COCHRAN: No, ma'am.

3 THE CLERK: Ma'am, you have been selected for the trial
4 of this case. You may now take a seat in the jury box.

5 (WHEREUPON, juror was seated in jury box.)

6 THE CLERK: Juror Number 124, Christopher Forst.

7 (WHEREUPON, Christopher Forst, a white male, stood.)

8 THE CLERK: What say you for the State?

9 MR. WARING: Please seat this juror.

10 THE CLERK: Any challenges from the defendant?

11 MR. COCHRAN: No, ma'am.

12 THE CLERK: Sir, you have been selected as a juror in
13 this case. You may take a seat in the jury box.

14 (WHEREUPON, juror was seated in jury box.)

15 THE CLERK: Juror Number 175, Amy Inabinet.

16 (WHEREUPON, Amy Inabinet, a white female, stood.)

17 THE CLERK: What say you for the State?

18 MR. WARING: Please seat this juror.

19 THE CLERK: Any challenges from the defendant?

20 MR. COCHRAN: No, ma'am.

21 THE CLERK: Ma'am, you have been selected as a juror in
22 this case. You may take a seat in the jury box.

23 (WHEREUPON, juror was seated in jury box.)

24 THE CLERK: Now striking for our first alternate.

25 Strikes are one and two. Juror Number 68, Sheryl

1 Ciccarelli.

2 (WHEREUPON, Sheryl Ciccarelli, a white female, stood.) What
3 say you for the State?

4 MR. WARING: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MR. COCHRAN: Please seat the juror.

7 THE CLERK: Ma'am, you have been selected as our first
8 alternate. You may now take a seat in the jury box.

9 (WHEREUPON, juror was seated in the jury box.)

10 THE CLERK: Your Honor, the jury has been selected.

11 THE COURT: Thank you.

12 THE CLERK: You are welcome.

13 THE COURT: All right. Any objection or motions
14 related to the selection process or composition of the jury?

15 MR. WARING: Not from the State, Your Honor.

16 MR. COCHRAN: No, Your Honor.

17 THE COURT: All right. I find that we followed
18 statutory and constitutional requirements. And ladies and
19 gentlemen, you have been selected to be the jury in the case
20 of the State versus Avis Prioleau.

21 And we have a scheduling conflict with another court.
22 One of the lawyers has to be in another courtroom for
23 another hearing that had to be moved to this time, so we are
24 going to take a break and resume when that hearing
25 concludes. I don't know how long that will be. Probably

1 somewhere 30 to 45 minutes.

2 So don't talk about this case. Obviously you haven't
3 heard anything about it yet. But nevertheless the bailiff
4 will show you where the jury room is and we will just be in
5 recess until we reconvene hopefully in about 30 or 45
6 minutes and we will start the case then. Thank you.

7 (WHEREUPON, jury exits the courtroom October 28, 2014,
8 2:17 p.m.)

9 THE COURT: All right. We will be I guess at ease
10 until we hear.

11 MR. COCHRAN: Okay. Thank you, Your Honor.

12 MR. WARING: Thank you, Your Honor.

13 MR. COCHRAN: I appreciate it.

14 THE COURT: All right.

15 (WHEREUPON, the court has a discussion with the clerk.)

16 THE COURT: All right. Ladies and gentlemen, thank you
17 for your patience and cooperation. If you weren't chosen in
18 this case I guess you will have other opportunities later in
19 the week. But just call back tonight at midnight -- no,
20 6:00 p.m. All right. We will see -- just call. They will
21 let you know about tomorrow. Thank you.

22 (WHEREUPON, recess was had October 28, 2014, 2:20 p.m.)

23 (Whereupon, proceeding resumed October 28, 2014, 2:59 p.m.,
24 with jurors present.)

25 THE COURT: Good afternoon, ladies and gentlemen. We

1 are going to begin the trial now, State versus Avis Credell
2 Prioleau. And before we get started I want to thank you for
3 your service this week.

4 I know you didn't come down here voluntarily and you
5 probably groaned when you got the summons in the mail. But
6 I know you are here because you understand and recognize the
7 right to a jury trial is a valuable and fundamental part of
8 our country's heritage and our law, and you are making it
9 possible for these parties to exercise their
10 constitutionally guaranteed right to a jury trial.

11 You probably know that you were summonsed because you
12 are either licensed to drive or registered to vote or you
13 have some kind of identification card issued by the DMV.

14 You might be wondering why you were chosen to sit on
15 this particular jury. And the reason is because both sides
16 in this case, the State and Mr. Prioleau, believe you can be
17 fair and impartial and you can decide this case without any
18 kind of bias or prejudice or preconceived ideas.

19 Now ladies and gentlemen, the lawyers in this case and
20 the other participants in this trial have all taken an oath
21 to do our jobs; and you are going to take an oath to do
22 yours. So at this time I will ask Ms. Marks to administer
23 that oath.

24 And listen to it was very carefully because the words
25 have been around a long time and they tell you in a nutshell

1 what your responsibilities are. And I will expand on that
2 once she finishes.

3 Yes, ma'am.

4 THE CLERK: Ladies and gentlemen, if you could just
5 please stand and raise your right hand and if you could have
6 the defendant stand as well.

7 (WHEREUPON, the jury was duly sworn.)

8 THE COURT: All right. Thank you. Any time a case is
9 tried in circuit court with a jury there are always two
10 judges. There is the judge of the law which is the role
11 that I fulfill, and there is the judge of the facts which is
12 the role that you discharge.

13 My job is much easier, so I will tell you what my job
14 is first. My job as the judge of the law primarily consists
15 of two things. The first is to rule on the admissibility of
16 evidence. And that generally means that if someone objects
17 to evidence during this trial - and don't hold it against
18 them for objecting; that is the lawyer's job; they are
19 actually bound to do it when they think evidence is
20 improper.

21 But if they do object I can decide whether or not the
22 evidence is something you can consider during this trial
23 according to the law. So if I sustain the objection that
24 simply means that the evidence is improper and you can't
25 consider it for this particular case. If I overrule the

1 objection that means the evidence is something you can
2 consider in this particular case.

3 The second requirement or job I have as the judge of
4 the law is that I will give you the law that applies to the
5 facts of this case, and I will tell you about that at the
6 end of the trial.

7 You are a judge as well, and you are the judge of the
8 facts of this trial. Our constitution and system of justice
9 gives you, the jury, the sole and exclusive prerogative to
10 determine the facts in a trial.

11 I am not going to indicate in any manner what I think
12 the facts are even if I had an opinion. And I don't know
13 much about the case other than what I had already told you
14 about. But nevertheless I am not going to indicate or
15 suggest to you what I think the facts may be or what your
16 verdict should be because you are the sole and exclusive
17 judge of the facts.

18 So when it comes to deciding what the facts are your
19 badge should say judge instead of juror because you are the
20 judges of the facts.

21 Now how do you determine what the facts are: You must
22 do that by weighing and evaluating the evidence you are
23 going to hear during this trial. The only thing you can use
24 to determine what the facts are are sworn witness testimony
25 and exhibits.

1 You also have to by necessity judge the credibility of
2 every witness who testifies and every exhibit that may be
3 admitted. And that means you have to decide whether the
4 witness's testimony is believable or credible or whether the
5 exhibit is believable or credible.

6 Now ladies and gentlemen, this is a criminal case; and
7 there are certain principles that apply to all criminal
8 cases. And the first is that the defendant is presumed
9 innocent. Any time anyone is charged with a crime in our
10 state and country they are presumed innocent of the charge.

11 The indictment is not evidence, as I told you before
12 the trial. Obviously the indictment is not a witness and it
13 is not an exhibit, so it couldn't be evidence. So it is not
14 something you can consider in determining what the facts are
15 in this case.

16 Mr. Prioleau is presumed innocent, and the burden of
17 proof because he has pled not guilty is on the State. And
18 the State must convince all of you that they have proven
19 each and every element of the crime beyond a reasonable
20 doubt before Mr. Prioleau may be convicted.

21 The presumption of innocence stays with him throughout
22 the trial and even into your deliberations, and it can only
23 be removed by a finding that you all share that he is guilty
24 based on the State meeting its burden of proof.

25 Mr. Prioleau doesn't have any burden of proof. He

1 doesn't have to offer any evidence or explanation
2 whatsoever. The burden of proof is entirely on the State.

3 Now some of you may have served before on a jury in a
4 criminal case, and some of you may know from your own
5 experience a little bit about criminal trials. But just to
6 refresh everybody's memory and kind of demystify the
7 surroundings for you a little bit more let me tell you what
8 you can expect.

9 In just a moment we are going to hear the opening
10 statement by the solicitor or prosecutor, Mr. Waring. And
11 he is going to provide a brief outline of what he thinks the
12 issues are and what the evidence is going to show.

13 Then the defense will have the opportunity but not the
14 obligation to give an opening statement. Because remember
15 they don't have to prove anything or do or say anything
16 during this trial. But nevertheless, Mr. Cochran may give
17 an opening statement if he chooses to on behalf of Mr.
18 Prioleau where he will also give an outline or a road map.

19 Then we will move into the evidence portion of the
20 trial where the State again bearing the burden of proof will
21 present their evidence which the defense may confront. And
22 then after you have heard all of the State's evidence we
23 will have the opportunity for the defense to present any
24 evidence they may wish to which the State may confront.

25 After you have heard the evidence portion of the trial

1 we will have the closing arguments where the lawyers will
2 tell you what they think the evidence showed and what your
3 verdict should be. And then after that I will give you the
4 instruction on the law that you are to apply to the facts.
5 And then the case will be in your hands for a decision and
6 for a verdict where you will determine the facts from the
7 evidence, take the law I gave you and apply it to those
8 facts and you will be able to reach a verdict about this
9 case.

10 Now until we reach that point, ladies and gentlemen,
11 please don't discuss this case with anyone. Don't do any
12 outside investigation or research, and keep an open mind.

13 And I want to thank you for your attention to me. I
14 don't know how long or short the case is going to be, but
15 regardless of its length it is an important case for both
16 sides. So this is their day in court.

17 And I know it is hard to sit for long periods and
18 listen to evidence; but as we all know, it is right when we
19 start letting our minds wander that something important
20 happens. So please try to pay keen attention throughout the
21 trial. So with that we will have the opening statement from
22 Mr. Waring.

23 MR. WARING: Thank you, Your Honor. May it please the
24 court.

25 THE COURT: Thank you, sir.

1 **OPENING BY MR. WARING:**

2 Degrading and disrespectful, that describes the
3 defendant's actions in this case. Back on April 19th, 2013,
4 around 6:00 in the morning officers from North Charleston
5 Police Department got a call out to
6 in North Charleston. It was in reference to a burglary.
7 When they arrived on the scene they see the defendant
8 falling off the top of the roof, hit a banister, and landed
9 on the ground. Officers also noticed that a window had been
10 bashed out near where the defendant had been standing on the
11 roof.

12 They rush over to the defendant, were able to get the
13 cuffs on him. They notice that the defendant's face is
14 busted up and that he is bleeding. He is bleeding a lot.

15 They start walking him towards the patrol vehicle. All
16 the while the defendant is being loud. He is being
17 boisterous. He is being disorderly. He is yelling
18 profanities.

19 They are able to get him secured in the back of the
20 police vehicle while they call EMS. EMS arrives on the
21 scene and everybody is able to get the defendant out onto a
22 stretcher.

23 A mask guard is placed over the defendant's mouth. And
24 at one point the defendant pulls off the mask and spits
25 blood all over one officer and the blood gets on another

OPENING BY MR. WARING

1 officer as well.

2 Due to the defendant's actions of spitting this blood
3 on these officers he was charged with two counts of throwing
4 bodily fluids. Now what does that mean?

5 The State has the burden of proving beyond a reasonable
6 doubt that the defendant was in custody or detained in some
7 way and that he spit a bodily fluid, which includes blood,
8 on a law enforcement officer.

9 I am confident that after the presentation of all the
10 evidence you will determine we carried our burden and find
11 the defendant guilty of two counts of throwing bodily fluids
12 and hold him accountable for his degrading and disrespectful
13 actions that day.

14 THE COURT: Thank you, Mr. Waring.

15 Yes, sir, Mr. Cochran.

16 MR. COCHRAN: Thank you, Your Honor. May it please the
17 court.

18 **OPENING BY MR. COCHRAN:**

19 It sounds pretty straightforward the way he gave it to
20 you that my client, Avis Prioleau, was arrested and while he
21 was arrested he spat blood on the officers. The State would
22 like you to believe that this case is just that simple. The
23 problem is is that it is just not that simple.

24 My client, Avis, was indeed up on an awning over a
25 front door of a residence when police officers pulled onto

1 the street and saw him up there. And they saw him have this
2 violent fall where he hit a banister and landed on his face.
3 They came and approached him and put him in handcuffs. They
4 drag him over to the patrol car. Tossed him into the patrol
5 car. Weren't really listening to what he was saying.
6 Didn't really care what he had to say at that point.

7 But while he was in the patrol car or while he was
8 getting taken to EMS at some point somebody came out of that
9 residence to see what was going on, and it was the person
10 who had called the police for this burglary call. And it
11 was at that point that everybody realized that Avis lived at
12 this house. It was his mother's house and he lived with her
13 there and that he was trying to climb into his own bedroom
14 window because he was locked out.

15 And when he fell over 12 feet onto his face onto the
16 ground he broke his jaw and suffered a head injury and also
17 was bleeding from his lip and his nose. Obviously shaken
18 up, disoriented at that point.

19 When officers approached him with their guns drawn,
20 flipped him over, got blood on their hands in the act of
21 flipping him over, cuffed him, and took him to the squad
22 car. And they had blood on them. And not pleasant, and
23 they were upset about it.

24 And at the same time because of the nature of his
25 injuries Avis is getting blood going back -- anybody who has

1 had a nose bleed understands this feeling of having blood
2 going back into your throat. But it was magnified by the
3 fact that he had a broken jaw, a split lip, and a bloody
4 nose. And all this blood is going back when he is sitting
5 back in a car, choking on this blood, coughing, trying not
6 to get blood all over the squad car.

7 They finally opened the door when they were going to
8 take him into EMS. Coughs blood out. He is taken to the
9 EMS, laid on his back with all this blood draining into his
10 throat. They slap a mask on him. And remember, that is
11 someone who has just fallen on his head 12 feet. He is a
12 little bit disoriented at this point. They slap a mask on
13 his face.

14 Obviously EMS is just doing their job, but Avis is in a
15 lot of pain at this point and not necessarily comfortable
16 with being on his back having a mask put on him and had all
17 this blood going on him; and blood is getting everywhere.
18 Blood is getting on the officers, and they are not happy
19 about it.

20 And they are going to tell you that Avis is using
21 profanity, yelling. Well, yeah. He is getting arrested in
22 his own front yard and he has just broken his jaw, and the
23 first thing that happens to him is he is getting handcuffs
24 placed on him and he is at gun -- being held at gun point.

25 So what I would say to you is that profanity is not

1 illegal and it is not illegal to be loud. Avis was getting
2 arrested for what turned out to be no reason in his own
3 front yard. And it was cleared up by his mother during this
4 process.

5 And a lot of this could have been avoided if Avis had
6 been allowed to just go into his house or -- and wait for
7 the ambulance or sit outside and wait for ambulance not
8 handcuffed, have his injuries tended to. But he wasn't
9 given that.

10 It was a misunderstanding. The officers of course were
11 doing their job. They got a burglary call. But at the end
12 of the day it was a misunderstanding.

13 And they were upset about the fact that just by the act
14 of arresting him and dealing with this very messy arrest
15 they got blood and saliva on them and didn't have this
16 burglary that they thought they had. They had nothing to
17 charge him with, so they charged him with theft.

18 Ladies and gentlemen, this was a big misunderstanding.
19 A lot of people trying to do their jobs. But my client,
20 Avis Prioleau, did not do anything wrong that night. He was
21 trying to get into his own bedroom because he was locked out
22 of his house, suffered severe injuries to his face and
23 happened to get his blood and saliva on the officers. That
24 would be shown to you throughout this case, throughout the
25 testimony in this case. And I would ask you at the end of

1 the trial to find him not guilty. Thank you.

2 THE COURT: Thank you, Mr. Cochran.

3 Mr. Waring, you may call your first witness.

4 MR. WARING: Thank you, Your Honor. The State calls
5 Officer Woods.

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: State your name into the microphone. Spell
8 your last name for the record.

9 OFFICER WOODS: Officer Bradley Woods, W-O-O-D-S.

10 **DIRECT EXAMINATION BY MR. WARING OF OFFICER WOODS:**

11 Q. Good afternoon, Officer Woods. How are you doing
12 today?

13 A. Doing well. How are you?

14 Q. Good. Good. Officer Woods, can you tell the jury
15 where you work?

16 A. North Charleston Police Department.

17 Q. And how long have you worked there?

18 A. Approximately three-and-a-half years.

19 Q. What do you do with North Charleston?

20 A. I am a patrolman. I patrol the streets and answer
21 calls for service.

22 Q. And can you describe to them a few of the duties and
23 responsibilities you have?

24 A. Yes, I answer calls for service such as when people
25 place 911 calls; need police assistance, patrol the streets,

1 look for suspicious activities; such as that.

2 Q. Were you involved with the Avis Prioleau case on April
3 19th, 2013?

4 A. Yes, sir.

5 Q. And how did you get brought into that case?

6 A. We were dispatched there in reference to a burglary.

7 Q. And do you recall what address that was?

8 A. Yes, it was

9 Q. And it is ; it that -- what does that mean?

10 A. It is .

11 Q. Okay. About what time did you get this call?

12 A. Approximately 05:55 hours. 5:55 in the morning.

13 Q. Okay. And just so we're clear, what county was this
14 in?

15 A. The County of Charleston.

16 Q. Okay. Once you arrived what happened?

17 A. We responded to the scene. We were advised -- we
18 were -- when we got on the scene we parked down the street.
19 As we were coming on the scene we observed the defendant
20 falling from the like an awning over a door falling to the
21 ground.

22 Q. Was he on -- what part of the house was that on?

23 A. It was the front of the house. There was the steps and
24 then right above the door there was like a -- like a smaller
25 roof like a little awning over the door that he had fallen

1 from.

2 Q. Did you notice anything else about the house?

3 A. As we were running up it was dark. It was -- you know,
4 it was still a little dark. When we ran up after all was
5 done we observed a window had been broken out. Which that
6 was also advised to us while we were out to the call that
7 someone was trying to break in. And we observed the window
8 to be broken.

9 Q. What did you do once you arrived?

10 A. We started running up and we observed the defendant
11 falling from the awning. Fell down. We -- it was, like I
12 said when -- it was still, you know, somewhat dark outside.
13 We ran up. We ordered him -- he was laying on his back. We
14 ordered him to roll over so we could place him in the
15 handcuffs. He was being very combative, not cooperating
16 with our verbal commands to roll over. We physically had to
17 roll him over to place the cuffs on him.

18 Q. Did you notice any injuries on the defendant?

19 A. I did.

20 Q. And what kind of injuries?

21 A. He had injuries to his mouth. From what we can tell
22 all we could tell was they were on his mouth. Also whenever
23 we placed him into cuffs I had blood from -- on my hands
24 from that.

25 Q. So was bleeding from his mouth?

1 A. Correct.

2 Q. Can you describe briefly what the defendant's
3 appearance was?

4 A. Black male, long hair, dressed in with a pink dress.
5 Dressed to be a female.

6 Q. What was his demeanor at that time?

7 A. Very uncooperative, very combative. He appeared to be
8 intoxicated. I could smell the alcohol emanating from his
9 person for the most part.

10 Q. Were there other officers present when you arrived?

11 A. Yes, sir.

12 Q. About how many?

13 A. When I arrived on the scene, myself and Officer Brown
14 arrived at the same time. We approached at the same time.
15 We were both on the scene when we took the defendant into
16 custody. And other officers arrived. While that was going
17 on they searched -- signaled around the house just for
18 anybody else that was possibly attempting to break into the
19 house.

20 Q. Can you explain to the jury why at that point he was
21 under arrest?

22 A. Because of the nature of the call. We observed the
23 window to be broken out. Because of the call he was
24 instantly put -- placed into handcuffs because the nature of
25 the call was coming out as someone is breaking into my

1 house. She had locked herself in the bathroom is what we
2 were advised by our dispatch.

3 When we got on the scene he -- when he fell from the
4 awning, shattered the rail -- the handrail. We saw the
5 broken window so we knew right then and there we had, you
6 know, malicious injury right there. We had the possibility
7 of a burglary. So he was arrested for that.

8 He also continued to resist while we were trying to
9 place him in cuffs. We smelled the alcohol on his breath.
10 He was basically using foul language, profanities; wouldn't
11 comply with our demands. So right at that time he was under
12 arrest.

13 Q. Okay. What happened next?

14 A. We were able to get him up and place him in the back of
15 one of the patrol cars.

16 Q. And was -- did y'all try to do anything to help him,
17 help his situation?

18 A. We attempted to. Due to his combativeness, all the
19 blood, we realized that he just had too many injuries. And
20 the way he was screaming and carrying on and being combative
21 we placed him into the back of the patrol car and responded
22 EMS so they could come treat his injuries.

23 Q. Did any resident of that address come outside ---

24 A. Yes, sir.

25 Q. --- to speak with y'all?

1 A. Yes, sir.

2 Q. Okay. Now this whole time his demeanor was -- what was
3 his behavior like?

4 A. Again, it was very combative, very aggressive, did not
5 comply with anything we tried to do. Like I said, we did
6 try to attempt to render aid to him due to his injuries to
7 his mouth. But he was just being very combative, yelling
8 profanities; you know, trying to resist everything we tried
9 to do. The only thing we could do was place him in the car
10 and wait for EMS to come and give proper aid.

11 Q. At that point EMS showed up, what happened?

12 A. Once they arrived on the scene we advised them the
13 situation. They brought the gurney up. We -- multiple
14 officers tried to get the defendant onto the gurney so we
15 can get him to the hospital to get treatment for his
16 injuries.

17 Q. And did anything unusual happen during that time?

18 A. At the time he continued to be combative again. We got
19 him outside. He continued to cuss, use profanities. He --
20 we got him down on the gurney.

21 As we attempted to place restraints, medical
22 restraints, on his hands to the bars he ended up digging his
23 fingernails into my hands basically ripping the surgical
24 gloves I had on my hand and causing a contusion on top of my
25 hand.

1 Q. Was this while he was on the stretcher?

2 A. This was while he was being placed on the stretcher.
3 He was being very resistant. He wouldn't allow us to put
4 him on the stretcher and put him with the cuffs onto the
5 stretcher so he could, you know, be sent to the hospital.

6 Q. Did he do anything to the other officers?

7 A. Yes, while he did that he -- while we were trying to
8 get his hands secure when he dug his hands into my -- the
9 top of my hand and breaking my surgical gloves he then was
10 able to pull his hands up, remove his mask. At that time he
11 basically yelled profanities.

12 As he moved his head towards my way and with force
13 slung his head towards the other officers, spitting blood
14 into their direction which got on both of their uniforms.

15 Q. Did you, any of the EMS staff, or anybody else remove
16 the mask yourselves?

17 A. The mask was placed on by EMS. He is the one that
18 reached up and pulled the mask over to the side to where he
19 was able to do those actions.

20 Q. Do you recall approximately how far away from those
21 officers the defendant was?

22 A. He was within a foot or so. They were standing right
23 by trying to assist him to be restrained on the gurney.
24 After he did spit in their direction I think they tried to
25 back away. The blood got on them. But he -- they were

1 right next to the gurney, probably a foot or two.

2 Q. Do you recall the area of the body where these officers
3 were spat on?

4 A. On the front. Officer Slager had it a lot on the front
5 of his shirt. Sergeant Prosser had a little bit on the
6 shirt and had it on her badge.

7 Q. Can you describe -- after that, after these officers
8 were spat on, did anything else happen?

9 A. Finally we were able to get him the mouth projection --
10 protector back on. We were finally able to get him
11 restrained to the gurney. And that is when he was taken to
12 the hospital by EMS.

13 Q. Was the defendant ultimately end up being charged with
14 something?

15 A. Yes, he was charged with public intoxication,
16 disorderly conduct, assault on police, resisting arrest, and
17 throwing bodily fluids and -- I believe I said twice - and
18 malicious injury to property.

19 Q. Now this is going to sound like a basic question, but
20 is blood considered a bodily fluid?

21 A. Yes, sir.

22 Q. Now your vehicles were there any cameras in the
23 vehicles?

24 A. There were -- there are cameras -- were cameras in our
25 vehicles.

1 Q. On that night were they operational?

2 A. They -- they weren't -- they were working but not at
3 the time of the call.

4 Q. Please describe to the jury why they weren't on at that
5 time.

6 A. When we respond our cameras don't activate unless we
7 run with lights and siren. Due to the nature of it being a
8 burglary and it being very close to where we were, we got
9 there in a hurry. We didn't want to run lights and siren
10 because that would give away our position and allow the, you
11 know, the suspects at the time to hide or something like
12 that. So we did not run with lights and siren which did not
13 activate our cameras.

14 Q. Typically will only activate if the siren lights are
15 on?

16 A. That or if we personally turn it on to record.

17 Q. But in this case were y'all trying to be stealthy?

18 A. Yes. We arrived on the scene. We parked a goods ways
19 out from the actual residence. Even if our camera was on it
20 wouldn't have captured anything due to the distance being so
21 far away. It being at night time it wouldn't had captured
22 anything any way.

23 Q. So were your lights or siren on that night?

24 A. No, sir, which did not activate the cameras. That's
25 why.

1 MR. WARING: Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. WARING: Please answer any questions the defense
4 has, Mr. Cochran.

5 MR. COCHRAN: Thank you, Your Honor.

6 THE COURT: Yes, sir. Mr. Cochran.

7 **CROSS-EXAMINATION BY MR. COCHRAN OF OFFICER WOODS:**

8 Q. So did you personally see the fall from the roof?

9 A. I did.

10 Q. Yeah, it was a pretty violent fall?

11 A. Yes, sir.

12 Q. Okay. And he said it shattered the hand railing of the
13 stoop in front of the house?

14 A. Correct.

15 Q. Okay. Is that like a wooden railing or ---

16 A. It was like a wooden railing.

17 Q. Okay. And landed on his face, face down?

18 A. No. No, sir. He landed -- when we approached he was
19 on his back.

20 Q. Okay. Did you know -- do you know if he landed face
21 down or if he rolled over?

22 A. He landed on his back. When he fell he fell down kind
23 of like on his butt, back area.

24 Q. Okay. Did you write a report in this case?

25 A. I did.

1 Q. And is this the report that you wrote?

2 (WHEREUPON, document presented to the witness.)

3 A. It appears to be.

4 Q. And on the first page do you agree that it does
5 indicate that my client hit the banister and landed on the
6 ground face down?

7 A. It says that.

8 Q. And when you write those reports your -- this is
9 written relatively soon after the incident, correct?

10 A. Normally they are. This one was not.

11 Q. Okay. Why not?

12 A. I was at the hospital first quite some time with him
13 being treated.

14 Q. And but your memory was more fresh about this incident
15 when you wrote this report, correct?

16 A. It was, correct.

17 Q. And the report does indicate that he landed face down?

18 A. Correct.

19 Q. How many squad cars responded to this?

20 A. I couldn't tell you. I know that the first two on the
21 scene were myself and Officer Brown.

22 Q. Okay. So at least two squad cars?

23 A. At the minimum. I know that three other officers
24 arrived.

25 Q. Okay. So potentially five squad cars?

1 A. Potentially.

2 Q. Okay. And they are equipped with dash cam videos like
3 things that most people see on TV that show directly in
4 front of the car?

5 A. Correct.

6 Q. And is there a camera also that shows what is happening
7 in the backseat of the car?

8 A. Correct.

9 Q. And that was done on all of these cars, correct?

10 A. I can't say that would be on all ---

11 Q. It was on your car though?

12 A. At the time I believe it was on my car, yes.

13 Q. And was Mr. Prioleau placed in the back of your squad
14 car?

15 A. He was not.

16 Q. Whose squad car was he placed in the back of?

17 A. Officers Slager's.

18 Q. Okay. Mr. Prioleau was not responding to commands when
19 he was lying on the ground; is that correct?

20 A. Correct.

21 Q. And so y'all -- he did end up on his back?

22 A. Correct.

23 Q. And y'all flipped him over to cuff him?

24 A. Correct.

25 Q. Okay. So you just cuffed behind his back?

1 A. Correct.

2 Q. Did the handcuffs remain behind his back the entire
3 time?

4 A. Not when he was trying to be put on the gurney.

5 Q. Okay. So they were switched to the front?

6 A. They were switched -- they were off and we were trying
7 to get his both hands down to be individually restrained to
8 each side of the gurney.

9 Q. Okay.

10 A. But he was not -- he was not allowing us to do that.

11 Q. Okay. So originally he is handcuffed behind his back?

12 A. Correct.

13 Q. Okay. And at that point you did after rolling him over
14 and handcuffing him you noticed the injuries to his face?

15 A. Well, I observed the blood. I had a lot of blood on my
16 hands.

17 Q. Okay.

18 A. So at the time we didn't -- until we were able to get
19 him stable, and then we had saw what we had when we tried to
20 look -- you know, it was really not much we could do with
21 the mouth injuries.

22 Q. Right.

23 A. Because he was being combative we tried to get him into
24 a car. We had EMS respond as soon as we could to come and
25 treat him.

1 Q. Okay. And in the act of turning him over and cuffing
2 him you got blood on your hands?

3 A. Correct.

4 Q. Okay. That was not blood that he was projecting from
5 his mouth?

6 A. Correct.

7 Q. Okay. So that got on you ---

8 A. That got on -- that got on me as I was putting him in
9 cuffs.

10 Q. Okay. Accidentally?

11 A. Yeah, I mean there was no ill will there.

12 Q. Guns were drawn when y'all came up to him because this
13 was a burglary call?

14 A. It was a burglary in progress is the call that we got.

15 Q. Okay.

16 A. We came and as we saw we -- we saw him fall.

17 Q. Right.

18 A. Weren't sure if he was trying to get up and run. So
19 as we were approaching, you know, running to where we drew
20 our -- our guns.

21 Q. Okay.

22 A. And when we were yelling, you know, turnover, we
23 realized he wasn't complying. He was still yelling and not
24 wanting to comply. But that is when we holstered and were
25 able to turn him over. He still wanted to resist. That is

1 when we tried to put the cuffs on him.

2 Q. Okay. And while he is in the front yard being cuffed
3 that is when the resident of the home comes out?

4 A. I can't -- I'm not 100 percent sure about that.

5 Q. Okay.

6 A. I was focused on him. I know another officer -- I
7 think Officer Slager is the one that made contact with I
8 guess if the resident came out. I can't tell you when they
9 actually came out. Because I never really made contact with
10 them.

11 Q. Do you remember the resident coming out?

12 A. I remember at some point the resident coming out.

13 Q. And that would be the most important part of a burglary
14 investigation is actually talking to the resident, correct?

15 A. Correct.

16 Q. And as a result of speaking with the resident you did
17 not make an arrest for burglary in this case?

18 A. Not for burglary.

19 Q. Now Mr. Prioleau was placed in the back of the squad
20 car and there was obviously the solicitor when he was
21 talking to you asked if you were trying to stealth in terms
22 of being far away from the scene when you were approaching
23 the suspect?

24 A. We were trying to stay as -- you know, get there and be
25 very, you know, not -- we didn't want him to know that we

1 were on the scene. Once they observe that we are there they
2 tend to try to flee. And we tried to be as quiet and
3 blacked out as we could so we can get there at a reasonable
4 time and safety.

5 Q. Okay. And as -- but after he is in custody you did
6 have the capability of turning on -- or one of the officers
7 at least had the capability of turning on the in-car camera
8 in the squad car after he was in custody and placed in the
9 back of the squad car, correct?

10 A. Sure.

11 Q. And that camera was not turned on?

12 A. It was not.

13 Q. You said that when he was taken to -- he was taken out
14 of the squad car to be taken to the EMS?

15 A. We -- they -- EMS rolled the gurney up to the car.

16 Q. Okay.

17 A. He was taken out of the squad car to be placed on the
18 gurney. And the hands, we uncuffed him; his hands from
19 behind his back to cuff them to the gurney. That's when he
20 began to resist again.

21 Q. Okay. And he was kind of thrashing his head around?

22 A. He was yelling, screaming profanities, ---

23 Q. Okay.

24 A. --- resisting like pulling his hands up. It took
25 numerous officers kicking his feet. It took numerous

1 officers to hold him to try to get his hands on -- secured
2 to the gurney.

3 Q. Okay. And while he is thrashing around like this
4 during that period of time there were still a significant
5 amount of blood on his face, correct?

6 A. Correct.

7 Q. And around his mouth area?

8 A. Correct.

9 Q. And in his hair?

10 A. I didn't observe to ---

11 Q. Did he have longer hair at the time than he does now?

12 A. Yes.

13 Q. Any he -- and you said that he was whipping his head
14 back and forth?

15 A. Correct. And he was flailing everything around.

16 Q. Did you say that blood got on you taking him out of the
17 squad car or in an ambulance or ---

18 A. No, the blood got on me when I put him under arrest.

19 Q. Okay. So blood didn't -- additional blood did not get
20 on you after that?

21 A. Yes, after that we got him in the car. I, myself, and
22 Officer Brown went to get our -- because my hands were
23 covered in blood. We went to immediately get blood off of
24 our hands.

25 Q. Right.

1 A. Sanitized and everything like that. Once we did that,
2 put the gloves back on; and when EMS arrived we went -- all
3 the officers approached the car to get him out knowing that
4 he was being very combative.

5 When we were trying to get his hands restrained to the
6 gurney is when he dug his fingernails into my -- into the
7 top of my hand. Which like I said broke open -- perforated
8 the gloves and caused a contusion on top of my hand.

9 Q. Okay. Was additional blood getting on your uniform at
10 this time?

11 A. Not me.

12 Q. Okay. On the other officers?

13 A. Right. But then it got on my hand as he broke my glove
14 open.

15 Q. On your hand. Okay. But he was not spitting on your
16 hand?

17 A. Not on me.

18 Q. Okay. Mr. Prioleau you noted in your report about
19 5'4", 119 pounds?

20 A. Correct.

21 Q. The EMS workers were present for all of this, correct?

22 A. Present for ...?

23 Q. For -- I'm sorry, not all of this. The EMS workers
24 were present when he was being taken out of the squad car,
25 thrashing around, things like that or being put on the

1 gurney. Any of these EMS workers press charges?

2 A. They did not.

3 MR. COCHRAN: No more questions, Your Honor.

4 THE COURT: Redirect.

5 MR. WARING: Just a few questions, Your Honor.

6 **REDIRECT EXAMINATION BY MR. WARING OF OFFICER WOODS:**

7 Q. Officers Woods, about how long was the defendant in
8 Officer Slager's squad car.

9 A. I'm not sure. Approximately 10 to 15 minutes maybe. I
10 really don't know how long. We were -- like I said, at one
11 point I was trying to get off -- you know, the blood off my
12 hands. But I don't -- not -- I can't really give you an
13 honest answer there, because I don't know.

14 Q. While he was in the squad car were y'all preoccupied?

15 A. At some points, yes.

16 Q. And why were ya'll preoccupied?

17 A. Trying to figure out what's -- what was going on. I
18 know that the resident of the house was coming out. We were
19 trying to get -- find out what was going on there.

20 Like I said, at one point I was trying to get cleaned
21 up and get the blood off my hands. That was whenever I was
22 covered with blood.

23 Q. So were a lot of things going on at one time?

24 A. Yes, sir.

25 MR. WARING: Court's indulgence. No further questions,

1 Your Honor.

2 MR. COCHRAN: Nothing further, Your Honor.

3 THE COURT: All right. Thank you, Officer.

4 OFFICER WOODS: Thank you.

5 THE COURT: You may call your next witness, Mr. Waring.

6 MR. WARING: Thank you, Your Honor. The State calls
7 Officer Slager.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: State your name into the microphone. Spell
10 your last name for the court.

11 OFFICER SLAGER: Officer Michael Slager, S-L-A-G-E-R.

12 **DIRECT EXAMINATION MR. WARING OF OFFICER SLAGER:**

13 Q. Good afternoon, Officer Slager. How are you doing?

14 A. Good.

15 Q. Officer Slager, can you tell the jury where you work.

16 A. I work for North Charleston Police Department.

17 Q. And how long have you worked there?

18 A. Almost five years.

19 Q. What is your role there?

20 A. I am a patrol officer.

21 Q. Were you involved with the Avis Prioleau case on April
22 19th, 2013?

23 A. Yes.

24 Q. And how did you get brought into that case?

25 A. We were dispatched to in reference to a

1 burglary in progress.

2 Q. What happened once you got there?

3 A. I was the third one on the scene, and as I arrived on
4 the scene I observed Officer Woods run out of his vehicle
5 and towards the house.

6 I stopped and rounded the corner and observed Officer
7 Woods and Officer Brown taking the defendant into custody.
8 At that time I proceeded around the house to do a protective
9 sweep to make sure nobody else was on the property.

10 Q. Did you notice anything about the house?

11 A. Yes, I observed the front window to be broken and the
12 banister to be broken.

13 Q. Did you notice the defendant having any injuries?

14 A. I -- after doing a protective sweep of the home I
15 observed the defendant had blood on his face.

16 Q. Where was he bleeding from?

17 A. His mouth area.

18 Q. Can you briefly describe what his demeanor was?

19 A. As I approached him I could smell the odor of alcohol
20 coming from the subject. He was very loud and boisterous,
21 screaming, cursing. So loudly that neighbors across the
22 street were coming outside. Very disorderly.

23 Q. During all this time was he detained or under arrest?

24 A. Yes, he was.

25 Q. At that point do you recall what he was under arrest

1 for?

2 A. He was under arrest for breaking and entering.

3 Q. Do you recall if he was under arrest for anything else?

4 A. Officer Woods is the arresting officer. And I'm pretty
5 sure he was also under arrest for disorderly conduct in
6 reference to being loud and boisterous and also public
7 intoxication due to the fact that he was intoxicated.

8 Q. During this time was he being cooperative?

9 A. Absolutely not.

10 Q. How was he being uncooperative?

11 A. He was screaming, yelling. It took three of us to
12 physically pick him up and put him into the patrol vehicle.

13 Q. Once he got into the patrol vehicle what happened next?

14 A. When we put him in the patrol vehicle and we saw his
15 injuries we proceeded to call EMS. EMS, Charleston County
16 EMS, arrived on the scene. And then we escorted him from
17 the patrol vehicle to Charleston County EMS. At that time
18 he was placed on the stretcher.

19 Q. And what happened next?

20 A. At that time Charleston EMS secured him on the
21 stretcher with bandages. Due to the fact that his injuries
22 to his hand he wasn't handcuffed at that time. At that time
23 he reached up with his left hand and his shoulder and
24 proceeded to remove the spit mask off of his face due to the
25 fact that he was heavily bleeding from his mouth. At that

1 time he turned to the right and yelled fuck you very loud.

2 Turned to his left and proceeded to with force move his head
3 to the right and spit at myself and Sergeant Prosser.

4 Q. What did he spit at you?

5 A. Blood.

6 Q. Did it get onto you?

7 A. It got all over the front of my uniform.

8 Q. Did it get on Sergeant Prosser?

9 A. On the front of her uniform too.

10 Q. Had you or anyone else other than the defendant removed
11 the mask for him?

12 A. No, he did it himself.

13 Q. Now, Officer Slager, did you try to avoid getting spit
14 on?

15 A. Yes.

16 Q. What did you do to try to avoid that?

17 A. I tried to jump back, but I couldn't do it in time.

18 Q. Did you physically try to jump?

19 A. Yes.

20 Q. And did you physically see the defendant spit blood at
21 Sergeant Prosser?

22 A. Yes.

23 Q. Do you recall about how far away distance wise the
24 defendant was from y'all during this?

25 A. We were standing next to him; I would probably say a

1 foot, two foot maybe.

2 Q. So pretty close?

3 A. Yes.

4 Q. And can you briefly describe where exactly on your
5 uniform it got on, the blood?

6 A. It got right here in the center of my chest (pointing).

7 Q. Was it dripping; or was it, you know, a spot; do you
8 recall?

9 A. It was splatter all over my chest area here (pointing).

10 Q. After this what happened?

11 A. At that time we had to physically put the spit mask
12 back on him, and then he was transported to EM --
13 transported to the hospital.

14 Q. Now when you arrived at this residence was your in-car
15 camera activated?

16 A. No, it was not.

17 Q. Why wasn't it activated?

18 A. Due to the fact that we were dispatched to a burglary
19 in progress I didn't want to put I mean my lights or sirens
20 on to scare the subject away.

21 Q. During the whole time were your lights or siron on?

22 A. No, they were not.

23 Q. At one point when he was put into a patrol vehicle was
24 it your patrol vehicle?

25 A. He was first put in my patrol vehicle, yes.

1 Q. During that time were y'all preoccupied with what was
2 going on?

3 A. Yes. The neighbors, we had the neighbors coming out.
4 And we had the mother, the defendant's mother, come outside
5 also.

6 MR. WARING: Court's indulgence. Please answer any
7 questions the defense has.

8 MR. COCHRAN: Thank you, Your Honor.

9 THE COURT: Cross-examination.

10 **CROSS-EXAMINATION BY MR. COCHRAN OF OFFICER SLAGER:**

11 Q. Was Sergeant Woods standing with y'all in the ambulance
12 as well?

13 A. I was -- we were never in the ambulance.

14 Q. Or -- I'm sorry, outside -- I guess when you were next
15 to him on a gurney. I'm sorry.

16 A. Yes, myself and Sergeant Prosser were on the right side
17 of the gurney.

18 Q. Okay.

19 A. Officer Woods was on the left side of the gurney.

20 Q. Was it your squad car that Mr. Prioleau was placed
21 into?

22 A. Yes.

23 Q. Okay. And is your squad car equipped with a camera
24 that shows the back seat of the car?

25 A. Yes.

1 Q. Okay. And that could have been turned on that day?

2 A. It could have, but it was not due to the fact of the
3 way we came in.

4 Q. And after he was placed into custody and put in the car
5 it could have been turned on at that point?

6 A. It could have been.

7 Q. But it was not?

8 A. No.

9 Q. And that video would have depicted his demeanor and
10 actions at that time?

11 A. Absolutely.

12 Q. Or on that night?

13 A. Absolutely.

14 Q. You and -- you say you were standing next to Officer
15 Prosser and Mr. Prioleau was on the gurney when you were
16 standing next to him?

17 A. Yes.

18 Q. Okay. When he started thrashing his head around, you
19 said?

20 A. Yes.

21 Q. Okay. And you said that there was splatter of blood on
22 your uniform, correct?

23 A. Yes.

24 Q. Did you have your uniform shirt processed ---

25 A. No.

1 Q. --- into evidence? Was it photographed?

2 A. No.

3 Q. Okay. And you can take photographs at crime scenes,
4 correct?

5 A. Correct.

6 Q. But you did not photograph the way that your shirt
7 looked that night, correct?

8 A. No.

9 Q. And you said that Mr. Prileau's mother came out?

10 A. Yes.

11 Q. And she was the resident of the house that the call
12 originated from, correct?

13 A. Correct.

14 Q. And neighbors also came out, correct?

15 A. Correct.

16 Q. Okay. Statements were not taken from Mr. Prioleau's
17 mother?

18 A. I did not -- I did not take a statement.

19 Q. And none of the neighbors gave statements, correct?

20 A. I didn't take a statement from them.

21 Q. And in the course of investigating a crime or in the
22 course of getting eye witness accounts you can get written
23 statements from people, correct?

24 A. Yes.

25 Q. And sometimes audio recorded statements from people?

1 A. I don't have an audio recording.

2 Q. Okay. But you can take oral statements, correct, and
3 note them in a report?

4 A. Correct.

5 Q. And you can have them handwrite their own statements,
6 correct?

7 A. Correct.

8 Q. Did you write a report in this case?

9 A. No, I was not the arresting officer.

10 Q. And none of the witnesses to this other than the
11 officers wrote in any statements, correct?

12 A. Correct.

13 Q. And EMS workers also did not write statements, correct?

14 A. Correct.

15 Q. And they did not press charges for the same offense,
16 correct?

17 A. Correct.

18 MR. COCHRAN: Beg the court's indulgence.

19 Q. I said earlier the mother did not give an official
20 statement; but she did talk to law enforcement, correct?

21 A. Correct.

22 Q. And as a result of law enforcement's conversations with
23 her a burglary charge was not pursued, correct?

24 A. I am assuming correct. Like I said, I wasn't the
25 arresting officer and I didn't talk to the mother.

1 Q. All right. Thank you.

2 MR. COCHRAN: No more questions, Your Honor.

3 **REDIRECT EXAMINATION BY MR. WARING OF OFFICER SLAGER:**

4 Q. Just a few brief questions, Officer Slager. Was time
5 of the essence when dealing with the defendant's injuries?

6 A. Yes.

7 Q. And did that factor into your decision regarding not
8 taking photos?

9 A. Correct. When the defendant fell off the second story
10 roof onto the banister and onto the ground my first concern
11 is his medical condition. At that time EMS was called and
12 he was transported right away.

13 We didn't have time to stick around and take
14 statements, take photos of him or anything like that. We
15 were concerned about his medical condition to get him
16 medical aid.

17 Q. And again, how did this blood get splattered on you?

18 A. He spit on me.

19 Q. Was it intentional?

20 A. Absolutely.

21 Q. Was it an accident?

22 A. No.

23 MR. COCHRAN: Objection.

24 THE COURT: Sustained.

25 MR. WARING: Court's indulgence.

1 No further questions, Your Honor.

2 MR. COCHRAN: Briefly.

3 **RE CROSS-EXAMINATION BY MR. COCHRAN OF OFFICER SLAGER:**

4 Q. It is possible to do follow-up interviews with
5 witnesses, correct?

6 A. Correct.

7 MR. COCHRAN: No more questions.

8 THE COURT: All right. Officer, thank you. You may
9 step down, sir.

10 You can call your next witness.

11 MR. WARING: Thank you, Your Honor. The State calls
12 Sergeant Prosser.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: State your name into the microphone and
15 spell your last name for the record.

16 MS. PROSSER: Charity Prosser, P-R-O-S-S-E-R.

17 **DIRECT EXAMINATION BY MR. WARING OF SERGEANT PROSSER:**

18 Q. Good afternoon, Sergeant Prosser. How are you?

19 A. Good afternoon. Fine. How are you?

20 Q. Good. Please tell the jury where you work?

21 A. North Charleston Police Department.

22 Q. And how long have you worked there?

23 A. Almost ten years.

24 Q. What do you do for North Charleston?

25 A. Currently I run the STAND program which is to help

1 rehabilitate ex-offenders into society.

2 Q. What was your role back when this incident occurred?

3 A. I was a street sergeant.

4 Q. Okay. And were you involved with the Avis Prioleau
5 case?

6 A. Yes, sir, I was.

7 Q. How did you get brought into this case?

8 A. Reference to a call via 911 to a burglary in progress.

9 Q. What happens once you arrived?

10 A. Once I arrived Mr. Prioleau was already in the back of
11 Officer Slager's vehicle. Went immediately to my officers
12 to see what the situation was at hand. Once I did that I
13 could hear Mr. Prioleau screaming and yelling in the back of
14 the car. They advised me that he had injuries and that EMS
15 was in route to him. I went over to the car to speak with
16 Mr. Prioleau to try and keep him calm.

17 Based on the description of the injuries that they gave
18 me I was concerned at the level of his excitedness that he
19 would create more blood flow within his system so I wanted
20 to keep him calm so that he didn't further injure himself.
21 They did indicate that it was an injury to his face.

22 When I opened the door I was able at some point to keep
23 him calm. He calmed down. He recognized me. So he did
24 calm down. I spoke to him. Once he was calm I went back
25 and spoke to officers, waited for EMS, helped them clean the

1 blood off of their uniforms. Mr. Prioleau again began to
2 yell and scream, and EMS arrived at that point.

3 Q. What was he under arrest for; do you know?

4 A. Yes, at that time he was under arrest for at that time
5 a burglary based on the way that the call came. We saw the
6 broken window. As I approached I saw the broken window, the
7 top. The 911 call indicated that the person was in their
8 bathroom locked in, scared. So based on what we had at that
9 time prior to speaking to the homeowner it was for a
10 burglary.

11 Q. What happened next?

12 A. At that time the homeowner exited the residence as well
13 as other neighbors around came out because they could hear
14 the noise.

15 I spoke to the homeowner at that point. She indicated
16 that she knew Mr. Prioleau, advised that she did want to --
17 advised as to whether or not he lived there, she indicated
18 that he did not and that she wanted charges to be pressed
19 against him ---.

20 MR. COCHRAN: Objection.

21 THE COURT: Sustained.

22 Q. Without saying what this individual did, what happened
23 next?

24 A. With Mr. Prioleau?

25 Q. Yes.

1 A. EMS arrived on the scene. They had pulled a gurney
2 over to the vehicle. We removed Mr. Prioleau out of the
3 vehicle. And the whole time I was speaking to him. And we
4 got him off to the gurney. We took the handcuffs off in an
5 attempt to get him onto the gurney, a place to get
6 comfortable.

7 They were putting a spit mask on because of the way he
8 was yelling and his excited state that, you know, one, he
9 was injuring himself even further; and, two, he is getting
10 blood everywhere.

11 He -- they put the spit mask on him. We tried to
12 restrain him down to the gurney. At that point he reached
13 up, was able to get his arm up close enough to his face to
14 pull the spit mask down. He yelled fuck you, turned his
15 face and then swung and spit at both myself and Officer
16 Slager.

17 We both attempted to jump back as soon as we heard the
18 words that left his mouth knowing that it was intended
19 toward us. We both attempted to jump back to miss this --
20 the blood that we knew was going to be coming in our
21 direction.

22 And at that point I didn't have any blood on my
23 uniform.

24 Q. Did you physically try to get out of the way?

25 A. I did. I jumped back.

1 Q. Did you or anybody else move the mask from the
2 defendant's face?

3 A. No, sir, I did not.

4 Q. Who removed the mask?

5 A. Mr. Prioleau did.

6 Q. Can you describe the manner in which he spit on you?

7 A. He just, you know, with very -- you know, momentum just
8 kind of reached his head back and spit forward. It got onto
9 my badge and part of my shirt.

10 Q. Was this mere drooling?

11 A. No, sir. No, this was -- this was blood. This was
12 spit.

13 Q. Was it intentional?

14 MR. COCHRAN: Objection.

15 THE COURT: Sustained.

16 Q. Sergeant Prosser, did you see the defendant spit blood
17 on Officer Slager?

18 A. Yes, I did.

19 Q. And where on his uniform did it get?

20 A. Center mast on his uniform, on his chest.

21 Q. Was it a big mess?

22 A. The uniforms are dark. I could see the wet stains on
23 his shirt. And, you know, I was concerned about, you know,
24 as supervisor I am in charge of a lot of things out on that
25 scene. I've got several officers.

1 I've got one who had an injury to his hand trying to
2 get Mr. Prioleau calm onto the gurney. I've got another
3 officer who has blood on himself after being spit on.

4 So there is a whole lot of things that I'm trying to
5 assess all at one time. I'm trying to make sure Mr.
6 Prioleau stays safe and that we were able to get him some
7 help and my officers maintain safety and that they can go
8 home.

9 Q. Where did the blood get on you?

10 A. It got on my badge and on my shirt.

11 Q. Approximately how far away from y'all was the
12 defendant?

13 A. Well, we were standing right next to the gurney at the
14 time, so ---

15 Q. Okay.

16 A. --- just a couple of feet.

17 Q. After this incident what happened?

18 A. We were able to get Mr. Prioleau onto the gurney, get
19 him secured on. They were to re-secure the mask onto his
20 face. And as they were wheeling him to the ambulance Mr.
21 Prioleau said to me I'm sorry Sarge, you know I would never
22 mean to hurt you.

23 Q. Did you say this in response to a question?

24 A. No, sir. I was just walking with EMS with him to the
25 bus. I was not talking to him.

1 Q. To whom did he direct this at?

2 A. To me being the only sergeant there.

3 MR. WARING: Court's indulgence.

4 Please answer any questions the defense has.

5 SERGEANT PROSSER: Yes, sir.

6 MR. COCHRAN: Thank you, Your Honor.

7 **CROSS-EXAMINATION BY MR. COCHRAN OF SERGEANT PROSSER:**

8 Q. So Mr. Prioleau was already in the back of the vehicle
9 when you arrived, correct?

10 A. Yes, sir.

11 Q. Okay. And those vehicles are equipped with video
12 cameras, correct?

13 A. Yes, sir.

14 Q. Did you personally see Mr. Prioleau's injuries?

15 A. Yes, sir, when I opened the back door.

16 Q. Okay. And there was a large amount of blood on his
17 face?

18 A. Yes, and that is why I was trying to calm him down.

19 Q. Okay. And he had longer hair at the time, correct?

20 A. Correct.

21 Q. Did you see blood in his hair?

22 A. I don't recall. I don't remember if his hair was still
23 long.

24 Q. Okay. And this was a burglary call originally you
25 said, right?

1 A. Correct.

2 Q. And when you later investigate or respond to burglaries
3 or crime scene generally you can take photographs, correct?

4 A. Correct.

5 Q. And you said that blood got on the front of your
6 uniform and your badge, correct?

7 A. Correct.

8 Q. And on the front of Officer Slager's uniform as well,
9 correct?

10 A. Correct.

11 Q. And there were no photos taken of those uniforms,
12 correct?

13 A. No.

14 Q. These were not processed ---

15 A. No.

16 Q. --- for evidence, ---

17 A. No, sir.

18 Q. --- correct? And there were EMS nearby, when Avis was
19 thrashing around on the gurney you say the blood splattered
20 on you and Officer Slager; there was EMS nearby as well?

21 A. When he spit on us, yes, they were nearby. But they
22 were not in the line of fire so to speak of the spit so.

23 Q. Okay. And it got on you and Officer Slager but not
24 Sergeant Woods -- or Officer Woods; correct?

25 A. Correct. He was on the other side.

1 Q. Were -- and you were not present when Mr. Prioleau was
2 placed in handcuffs?

3 A. I was not.

4 Q. You said that you spoke with the resident of the house
5 and that that was Mr. Prioleau's mother?

6 A. Correct.

7 Q. And as a result of your questions and investigation
8 there was no charge for burglary made, correct?

9 A. She indicated she only wanted malicious injury to
10 property charged on him. She did not want the burg- -- I
11 did not feel comfortable with the case to charge him with
12 burglary because it was his mother's home. He did come
13 there from time to time.

14 However, the malicious injury was requested by her due
15 to the damage to her property and she was afraid her
16 landlord would be upset and that it was not the first time
17 that he had done that.

18 Q. And he -- there was a broken banister and a broken
19 window, correct?

20 A. Correct.

21 Q. And she did not own this house, correct?

22 A. According to her that's correct.

23 Q. You said that a spit mask - you referred to it as a
24 spit mask - was placed on Mr. Prioleau, correct?

25 A. Correct.

1 Q. Okay. But that was placed on him before you say he
2 even spit?

3 A. Well, when they put him onto the gurney that is one of
4 the first things EMS did in reference to protecting themself
5 from any blood getting on them, yes.

6 Q. But he had not spat at that point, correct?

7 A. Correct.

8 Q. And this mask was placed on him because of the amount
9 of blood that was on his face and the fact that he was
10 moving around a lot, correct?

11 A. Through the fact that he was screaming and yelling,
12 that is why they had to place it on. The blood itself was
13 not the reason they put it on. It was the fact that he was
14 screaming and yelling which was propelling the blood towards
15 others around him.

16 Q. Okay. So in the act of screaming it was propelling
17 blood?

18 A. Correct.

19 Q. Okay. And you said I believe you said blood was
20 getting everywhere, correct?

21 A. Correct.

22 Q. And that was prior to him spitting, correct?

23 A. Correct.

24 Q. As they were wheeling him away he apologized to you?

25 A. Correct.

1 Q. So that was I guess in the same act of getting him on
2 the gurney and getting him into the ambulance or ...?

3 A. After -- after the spitting incident and we've actually
4 gotten him calmed down, got him secured to the gurney, and
5 as we were wheeling him -- because I was walking with him.
6 And as we were walking they were about to put him into the
7 ambulance and that's when he looked at me and made the
8 apology to me.

9 Q. ... and he apologized.

10 MR. COCHRAN: Okay. No more questions, Your Honor.
11 Thank you.

12 MR. WARING: Just a few questions, Your Honor.

13 **REDIRECT EXAMINATION BY MR. WARING OF SERGEANT PROSSER:**

14 Q. Sergeant Prosser, why weren't photos taken?

15 A. At that time based on the fact that we had a malicious
16 injury to property there was no need. We had the resident
17 at the time that was willing and wanting to press charges.

18 In reference to our uniforms I think our initial
19 intention was just to get these uniforms off and get them
20 into the wash. We do go home to our families. And a fear
21 that we have to go home to our families with bloody uniforms
22 and not knowing.

23 Q. And how did blood get on you?

24 A. We were spit on.

25 Q. By whom?

1 A. Avis Prioleau.

2 Q. Did you stumble onto the blood?

3 A. No, sir.

4 Q. Did the defendant apologize?

5 A. Yes, sir, he did.

6 MR. WARING: No further questions, Your Honor.

7 MR. COCHRAN: Just briefly.

8 **RECROSS-EXAMINATION BY MR. COCHRAN OF SERGEANT PROSSER:**

9 Q. In the normal course of business for law enforcement
10 bloody clothes aren't collected for evidence, correct?

11 A. No, not in law enforcement.

12 Q. In law enforce -- law enforcement officers ---

13 A. As far as us if ---

14 Q. Law enforcement officers do not collect bloody clothes?

15 A. Our clothes. In that case we did not collect our
16 clothes.

17 Q. In this case. But in some cases you do?

18 A. Oh, yes, of course.

19 Q. Okay.

20 THE COURT: Thank you, ma'am.

21 MR. WARING: The State rests, Your Honor.

22 THE COURT: Ladies and gentlemen, I just ask you to go
23 to the jury room for a few minutes. Don't talk about the
24 case. Continue to keep an open mind. Thank you.

25 (WHEREUPON, jury leaves the courtroom October 28, 2014,

1 4:04 p.m.)

2 THE COURT: All right. Any motions at this stage?

3 MR. COCHRAN: Your Honor, I would move for a directed
4 verdict at this time. My first motion would be based just
5 on the simple fact that I think there is no evidence that
6 this was not an accident.

7 The first officer that testified did testify that blood
8 got on him only by accident. The other two officers
9 testified to blood getting everywhere and blood incidentally
10 getting all over the place when my client is screaming.
11 That would be my first basis for the motion.

12 I would also move for a directed verdict on the basis
13 that even if he did intentionally spit and resist in this
14 case that would have been justified due to the fact that
15 this was an unlawful arrest.

16 Mr. Prioleau was placed under arrest for a burglary
17 that was not a burglary. All of his actions were as a
18 result of that mistaken arrest, and he would be entitled
19 under the law to resist an arrest of that kind.

20 All of the officer's testimony -- or at least the first
21 two officers testified that he was placed under arrest in
22 the front yard for burglary. No burglary charge was ever
23 made. And everything from -- everything following that was
24 post-arrest and incidental to that arrest, and we would
25 argue that the arrest was unlawful.

1 THE COURT: Thank you.

2 MR. WARING: Thank you, Your Honor. Just briefly. We
3 believe that it puts it in the light most favorable to the
4 non-moving party, which is the State; we think there is
5 enough evidence to submit it to the jury, Your Honor.

6 Heard multiple witnesses saying that clearly the
7 defendant had a willful and intentional act of spat on them,
8 that this was not something unintentional.

9 Furthermore, he was detained not just necessarily for
10 the burglary, he was detained for disorderly conduct and
11 malicious injury for kicking out the window and for yelling
12 profanities at 6:00 a.m. in the morning and for being
13 uncooperative and combative, Your Honor. We would ask that
14 the motion be denied.

15 THE COURT: Wasn't he arrested for public intoxication
16 too? Did I not hear ---

17 MR. WARING: I believe so too, Your Honor.

18 THE COURT: All right. I respectfully deny the motion.
19 Looking at it in the light most favorable to the State there
20 is enough evidence in the record to survive the standard as
21 set forth in Rule 19.

22 All right. Mr. Prioleau, let me ask you a question.
23 Raise your right hand, sir.

24 (WHEREUPON, Mr. Prioleau was duly sworn.)

25 THE COURT: I just want to make sure you understand

1 that we have reached the stage of the trial where you have
2 the right to present any evidence you wish to, including
3 your own testimony, and if you chose to testify you would
4 go up on the stand and you would be subject to being
5 cross-examined just as your lawyer has cross-examined the
6 State's witnesses; and the solicitor could ask you about
7 anything that might be relevant to this case or might bear
8 on your credibility.

9 I don't know if -- is there any prior record that you
10 would use to impeach?

11 MR. WARING: Your Honor, if the defendant decides to
12 take the stand we do have I believe -- court's indulgence,
13 Your Honor. He has got a shoplifting from 2012, Your Honor,
14 that we would like to use to impeach him on.

15 THE COURT: Well, if you were to take the stand the
16 jury might learn about that. Whereas, if you didn't take
17 the stand they would not learn about that.

18 But nevertheless, if you chose not to testify, sir, I
19 would tell the jury that you have the absolute right
20 guaranteed by the Constitution to remain silent and they
21 could not hold that against you or take it into account in
22 deciding whether you are guilty or not guilty. In fact they
23 couldn't even discuss it in the jury room if you didn't take
24 the stand. Do you understand that, sir?

25 MR. PRIOLEAU: Yes, sir.

1 THE COURT: And whether you wish to testify is a
2 personal choice. It is your right and no one else's. And
3 you will have to make a decision after discussing it with
4 your lawyers and considering strategy. And do you feel like
5 you have had enough time to decide whether you wish to
6 testify?

7 MR. PRIOLEAU: Yes, sir.

8 THE COURT: Have you understood all of my questions
9 about your right to testify and not testify and the
10 consequences of your choice?

11 MR. PRIOLEAU: Yes, sir.

12 THE COURT: And do you have any questions for me?

13 MR. PRIOLEAU: No, sir.

14 THE COURT: All right. Are you planning to testify?

15 MR. PRIOLEAU: Yes, sir.

16 THE COURT: Okay. All right. Well, let's take about a
17 five-minute break and we'll come back and we will have the
18 defense case. And I plan after that to break and we will
19 just do the closing arguments in the morning.

20 MR. COCHRAN: Thank you, Your Honor.

21 MR. WARING: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (WHEREUPON, break was had October 28, 2014, 4:10 p.m.)

24 (WHEREUPON, resumed October 28, 2014, 4:24 p.m.)

25 THE COURT: All right. Anything before we bring the

1 jury?

2 MR. WARING: Nothing from the State.

3 (WHEREUPON, the jury entered the courtroom.)

4 THE BAILIFF: The jurors are all present, Your Honor.

5 THE COURT: Ladies and gentlemen, as I earlier
6 indicated that we have reached the stage of the trial where
7 the State has completed their presentation of evidence.
8 They have rested their case. So now the defense has the
9 opportunity to present any evidence they wish to.

10 Mr. Cochran.

11 MR. COCHRAN: Thank you, Your Honor. May it please the
12 court.

13 The defense calls Avis Prioleau.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: State your name for the record and spell
16 your last name for the record as well.

17 MR. PRIOLEAU: Avis Cordell Prioleau, P-R-I-O-L-E-A-U.

18 **DIRECT EXAMINATION BY MR. COCHRAN OF MR. PRIOLEAU:**

19 Q. Avis, the first question I want to ask you is you are
20 using a walker, why -- why you have to use that?

21 A. I had an injury in the past. And that has nothing to
22 do with what is going on right now.

23 Q. Okay. It doesn't have anything to do with this
24 incident?

25 A. Yes.

1 Q. All right. Where were you born?

2 A. Charleston, South Carolina.

3 Q. And who raised you?

4 A. My mother and grandmother.

5 Q. And on April 19th, 2013, where were you living?

6 A. , ---

7 Q. Okay, and who ---

8 A. --- North Charleston, South Carolina.

9 Q. Who were you living with?

10 A. My mother.

11 Q. Okay. And the 18th leading up to the 19th what were
12 you doing that evening?

13 A. I was with friends. They was at my mom's house. I
14 received a phone call from another friend and I got dressed
15 and went out with them.

16 Q. Okay. And were you out pretty late?

17 A. Yes, sir.

18 Q. Okay. And did you get in contact with your mom at all
19 for the rest of the night?

20 A. I did. She -- I received a phone call from her around
21 maybe 11:00 or 12:00. And it was about her cell phone
22 missing. And I told her that I did not have it.

23 And the phone was on speaker and my friend was like you
24 should go back home because, you know, your mother doesn't
25 have a cell phone and that's the only way you can get in

1 contact with her so you should go home. So he took me back.

2 Q. Okay. And were the friends that were at your house at
3 that time still there?

4 A. No, sir, they already had left.

5 Q. Okay.. And what did you do then?

6 A. I got home and went looking for the phone. I did not
7 find it. And then I told my mom that I would be back. So I
8 left and locked the door and went to my friend's house to
9 get the cell phone because she said one of them must be had
10 it.

11 Q. Okay. And did you at any point go back to your mom's
12 house?

13 A. Later on that night after I did not find it. After I
14 did not found it I was with my friends.

15 Q. Okay. And what happened after you went to your mom's
16 house the second time?

17 A. When I went back the door was locked because I locked
18 myself out. And went I knocked on the door my mom I guess
19 she did not answer because she takes medication because
20 she's -- she had a mental breakdown. So her medicine -- her
21 medication makes her sleep. So I took it upon myself to
22 climb up on top of the banister and get in through the
23 window.

24 Q. Okay. And you say the banister. There is -- so you
25 were knocking at -- this is a two-story house?

1 A. Yes, sir.

2 Q. Okay. And the front door is on the first story?

3 A. Correct.

4 Q. Okay. So the officer said that there is an awning over
5 the front door; is that correct?

6 A. Yes, sir.

7 Q. Okay. And is that what you climbed up on top of?

8 A. Yes, sir.

9 Q. Okay. And why specifically did you climb up onto that
10 awning?

11 A. I was concerned more so for my mom because she was in
12 the house. And I knew we had a prior incident a couple of
13 days ago when the officers were called because of being a
14 burglary. Someone broke into the house. Because the door
15 was unlocked and open, wide open when we came back.

16 Q. Okay. So somebody had broken into that house on a
17 previous occasion?

18 A. Yes, sir.

19 Q. Okay. And what about that window, the window above the
20 front door at the awning; what did that lead in to?

21 A. My room.

22 Q. Okay. So you had your own bedroom in this house?

23 A. Correct.

24 Q. Okay. And so now you are up on the awning. Describe
25 to the jury what happened at that point.

1 A. That is when I noticed that the officers were coming
2 down. And when I saw them I lost my balance and slipped and
3 fell. My hands hit the window and I slid off and I hit
4 the -- before falling I hit the railing -- or the banister
5 and bust my face open and hit the pavement.

6 Q. Okay. And after you later on received medical
7 treatment did you come to learn what your injuries were?

8 A. Yes, sir.

9 Q. And what were your injuries?

10 A. A broken jaw. My chin was busted open. I was bleeding
11 from the nose, and I also -- my teeth ran through my bottom
12 lip. And I was bleeding from the gums, and my tongue was
13 cut up as well.

14 Q. Okay. And you mentioned you had seen a patrol car.
15 Did you have contact with the police?

16 A. What do you mean if I had contact with them?

17 Q. At that point after you fell off the awning did you
18 have contact with police officers?

19 A. Yes, they came at me. As soon as I fell they came
20 right at me, gun point, and arrested me and put me in a
21 patrol car.

22 Q. Okay. And describe to the jury what you were doing in
23 the patrol car?

24 A. I was crying because ---

25 Q. Were you -- were you handcuffed? I'm sorry.

1 A. Yes, sir, I was handcuffed. And I was crying because I
2 was in excruciating pain from my face being busted open from
3 the mouth and stuff. And I was crying. And when they
4 opened the door that is when I was coughing up blood.

5 Q. Okay. And were you screaming and yelling?

6 A. Yes, sir.

7 Q. Were you thrashing around?

8 A. Um, no, sir.

9 Q. Okay. At that point when you were in the car were
10 you -- I apologize. Were you taken -- was EMS there?

11 A. The EMS came and opened the door. And that is when
12 they came in to grab me. And I was coughing up blood. And
13 that's when they got me and put me on the thing, the
14 stretcher.

15 Q. Okay. So they put you on a stretcher. And did they
16 put a mask on you?

17 A. Yes, sir, because I -- yes, sir, they did.

18 Q. Okay. And what happened then?

19 A. From them -- from me being on the stretcher leaning
20 back, the blood from my -- I was bleeding from my nose and
21 my mouth so it was draining down my throat. And that's when
22 I was choking on my blood and I took the mask off ---

23 Q. Okay.

24 A. --- and I hurried up and spit.

25 Q. Okay. And so you did pull the mask off?

1 A. Correct.

2 Q. Okay. And you were bleeding at that time?

3 A. Yes, sir.

4 Q. Okay. Avis, did you intentionally spit on the
5 officers?

6 A. No, sir.

7 Q. Okay. Did you intentionally spit on any of the police
8 officers or EMS workers that night?

9 A. No, sir.

10 Q. Do you recall apologizing to Officer Prosser for
11 anything later that night?

12 A. I apologized for my behavior because I knew I was kind
13 of loud and you know. Because I was in pain. That was the
14 only reason ---

15 Q. Okay. Avis ---

16 A. --- due to me falling from, you know, 12 feet or more.

17 Q. Okay. Thank you, sir. And please answer any questions
18 the prosecutor has for you.

19 THE COURT: Cross-examination.

20 MR. WETMORE: Thank you, Judge.

21 THE COURT: Mr. Wetmore.

22 MR. WETMORE: Burns Wetmore for the State.

23 **CROSS-EXAMINATION BY MR. WETMORE OF MR. PRIOLEAU:**

24 Q. Mr. Prioleau, how old are you now?

25 A. Twenty-two.

1 Q. And when this happened how old were you then?

2 A. That was a year-and-a-half ago, so I was 20- -- 21.

3 Q. So 21?

4 A. Yes, sir.

5 Q. Did you live your whole life in the North Charleston
6 area?

7 A. No, sir. Tell me about where you -- I mean where are
8 you from; where did you come from?

9 A. I'm originally from James Island.

10 Q. Okay.

11 A. Born and raised.

12 Q. Okay.

13 A. Because I had just moved out of North Charleston for
14 about a month.

15 Q. Just a month before that?

16 A. Yes, sir.

17 Q. Okay. But you were 21 at the time and you were living
18 with your mother?

19 A. Correct.

20 Q. Okay. Did you go to school; did you work; did you do
21 anything like that during the days?

22 A. Yes, sir.

23 Q. What did you do?

24 A. I was studying for my GED to go to school for nursing,
25 and also I was working at Captain D's and Piggly Wiggly on

1 James Island.

2 Q. Okay. So you were taking classes and having a
3 part-time job?

4 A. Yes, sir.

5 Q. Okay. Now tell me now - your lawyer touched on it a
6 little bit - what were you doing before all of this
7 happened, the night I guess of the 18th going into the early
8 morning of the 19th; you said you were out with some
9 friends; what were y'all doing?

10 A. We were at a club. We were drinking. We had a few
11 drinks.

12 Q. Okay. What club were you at?

13 A. It is a club off of Ashley Phosphate..

14 Q. What is name of the club?

15 A. I don't actually know the name.

16 Q. How did you get to the club?

17 A. My friend picked me up.

18 Q. Okay. What kind of club is it?

19 A. A social bar.

20 Q. Okay. And you admit you were drinking that night?

21 A. Yes, sir.

22 Q. Were you drinking a good bit, just a little bit; how
23 would you describe it?

24 A. I would just say I had a few drinks.

25 Q. A few means different things to different people. I

1 mean did you have, you know, two or three; or did you
2 have ---

3 A. Yes, sir, about one or two.

4 Q. Just one or two drinks?

5 A. Yeah, because I'm small, ---

6 Q. Okay.

7 A. --- so I don't drink a lot.

8 Q. Okay. So just one or two drinks during the course of
9 that whole night?

10 A. Yes, sir.

11 Q. Okay. So were you under the influence when this
12 happened?

13 A. No, sir.

14 Q. Okay. So you were sober according to you?

15 A. Yes, sir.

16 Q. Didn't feel like you were under the influence of any
17 kind of alcohol at all?

18 A. No, sir.

19 Q. Okay. What about drugs or anything like that?

20 A. No, sir.

21 Q. And so you went to this club and then how did you get
22 back to the residence at , ,

23 how did you get back to that place?

24 A. My friend had brought me -- brought me back home.

25 Q. Okay. Now what time was it when you got back home or

1 got back to the residence there?

2 A. Maybe like 1:00 or 2:00-ish in the morning.

3 Q. Okay. So what happened from 1:00 or 2:00-ish until
4 6:00 a.m.?

5 A. Like I say, I went looking for the phone. Did not find
6 it. And that's when I told my mom I was going to come back.
7 And that's when I locked the doors and then went to my
8 friend's house and went looking for the phone and they
9 didn't have it. And that's when I came back, and that's
10 when the doors was locked. I was knocking on the door. I
11 got no response. And like I told you, she takes medication
12 so.

13 Q. Okay. So after the club you spend four or five hours
14 trying to find the phone, your mom's phone?

15 A. No, not that much. I didn't spend that much time.

16 Q. Okay. Well, this incident as I understand happened
17 about 6:00 a.m. And you said you got back about 1:00 or
18 2:00. And so from that period of time I am just trying to
19 figure out what -- what you were doing. Can you tell me?

20 A. I don't follow. I mean

21 Q. Well, you just testified that you went out to a club
22 and were drinking and then you got home you said you think
23 around 1:00 or 2:00 a.m.?

24 A. Yes, sir.

25 Q. The way I understand it you were ---

24 Q. Okay. So you lived there in the past and you are
25 living there that day April 19th?

- 1 A. Yes, sir.
- 2 Q. Okay. You had a room there?
- 3 A. Yes, sir.
- 4 Q. You had your personal stuff there?
- 5 A. Yes, sir.
- 6 Q. Okay. And you are aware that that place had been
- 7 burglarized before?
- 8 A. Correct.
- 9 Q. And the police had come out?
- 10 A. Yes, sir.
- 11 Q. You just told us about that, right?
- 12 A. Yes, sir.
- 13 Q. All right. Did you -- you have told us that you were
- 14 staying there. Did you have a key to that place?
- 15 A. Yes, sir.
- 16 Q. Okay. So why then would you have locked yourself out
- 17 when you went out to the club?
- 18 A. I locked the bottom lock because I know we live in a
- 19 bad area.
- 20 Q. Okay. But you didn't have a key to that?
- 21 A. I had my keys, but I left my keys; and I thought I had
- 22 them on me.
- 23 Q. Okay. So when you say you locked yourself out you mean
- 24 you accidentally locked yourself out?
- 25 A. (Witness nods head.)

1 Q. Okay. So when you realized that you were accidentally
2 locked out did you try to knock on the door, wake your mom
3 up?

4 A. Yes, sir.

5 Q. It was about six o'clock in the morning. You didn't
6 think to just wait until she woke up?

7 A. No, sir.

8 Q. Okay. But you tried to knock. Did you try to yell out
9 mom wake up?

10 A. I did.

11 Q. So you tried all these things first and you couldn't --
12 you couldn't get her to come to the door?

13 A. No.

14 Q. So at that point that's when you decide to climb -- or
15 tried to climb up into the window?

16 A. (Witness nods head.) Yeah.

17 Q. Okay. Tell me now exactly how you did -- you got on
18 like a little awning roof like a hip roof over the front
19 door?

20 A. Yes, sir.

21 Q. You climbed on the banister up on the roof and then you
22 were trying to get into the window?

23 A. That is like what I said.

24 Q. Okay. I mean look I am just trying to make sure I
25 understand it. And if I'm not -- if that's not right, tell

1 me. I am just trying to figure out. So you were standing
2 on the little awning roof above the front door?

3 A. Correct.

4 Q. Is that right?

5 A. Climbed over, yes, sir.

6 Q. Okay. And then you were trying to from that position
7 trying to break in and get into the window?

8 A. No, I was -- my window was unlocked and I was upping
9 it, and when I was upping it that's when I noticed the
10 police and that's when I lost my balance and fell.

11 Q. Oh, so you were trying to open the unlocked window?

12 A. Yes, sir.

13 Q. Okay. So how did the window get broken?

14 A. From when I lost my balance my hands hit the window,
15 and that's why I have these cuts -- a lot of cuts on my hand
16 right now.

17 Q. Okay. And you had that fall when you saw the police
18 arriving?

19 A. Correct.

20 Q. When you saw that it was the police you obviously
21 recognized it was police officers?

22 A. Yes, sir.

23 Q. Did you tell them hey I'm glad you guys are here, I'm
24 locked out of my own home?

25 A. No, sir, because I was on the ground.

1 Q. So you didn't tell them anything, you -- that's when
2 you fell?

3 A. I fell.

4 Q. Okay. So you don't have a chance to explain much to
5 them?

6 A. I didn't explain anything at all.

7 Q. So you just -- you know, you saw them and that's when
8 you fell?

9 A. (Witness nods head.)

10 Q. Okay. And you had indicated they approached you kind
11 of fast; they ran up on you; is that right?

12 A. Correct.

13 Q. They thought you were obviously another burglar
14 breaking into that same place; is that -- is that -- makes
15 sense?

16 A. Yes, sir.

17 Q. So they ran up to you. Obviously they were concerned
18 about the burglary. But they had just watched you fall; and
19 so that -- I mean they were concerned about your fall; is
20 that correct; does that seem right to you?

21 A. I assume. I assume so.

22 Q. But they didn't strike you or anything violent, they
23 just ran up quickly to you; correct?

24 A. They ran up to me at gunpoint, grabbed me, picked me up
25 and dragged me into the car.

1 Q. Okay. So they put you in one of their police cars?

2 A. Yes, sir.

3 Q. Okay. What were you saying -- what were you saying or
4 doing while they were picking you up off the ground and
5 putting you in the police car?

6 A. Nothing.

7 Q. You were just standing there?

8 A. Because I had just already just fell from 12 feet or
9 more. When I hit the ground I was just out of it.

10 Q. All right. So you were just standing there and then
11 they led you to the car and you sat in the car? Do you
12 remember yelling at all and screaming and such that the
13 neighbors from the neighborhood all came out to see what was
14 happening?

15 A. Yes, sir, because I was in excruciating pain.

16 Q. Okay. So you weren't standing; you were yelling; that
17 is fair to say; right?

18 A. In the car, correct.

19 Q. You were yelling out on the street or just in the car?

20 A. I remember yelling out in the car.

21 Q. Okay. But you didn't yell out ---

22 A. Finally EMS came and opened the door.

23 Q. Okay.

24 A. And I was coughing up blood.

25 Q. Okay. But do you remember yelling and screaming out in

1 the street in front of the house?

2 A. No, sir.

3 Q. Okay. Do you remember loudly and in cuffs and saying
4 nasty stuff out in the street in front of the house?

5 A. I remember saying that my face was messed up to the
6 EMS, and as I was telling him that I was coughing blood.

7 Q. I am talking about between the fall and the police car
8 you don't remember yelling or cussing or raising cane or
9 anything like that?

10 A. No, sir.

11 Q. So the police officers that you heard testify all
12 afternoon that you were doing that were obviously either
13 wrong or not being truthful?

14 A. Correct.

15 Q. Okay.

16 A. Because I was not yelling.

17 Q. Okay. So it is your testimony then that you weren't
18 yelling, you weren't cussing; if they said that then they
19 were being untruthful or mistaken?

20 A. I was -- like I say, I was in excruciating pain; and,
21 you know, from having that kind of trauma falling from who
22 knows what, eight or more, I mean who could be calm at a
23 time like that.

24 Q. I don't doubt it was a bad fall. But from the fall to
25 the police car you don't remember doing or saying or yelling

1 or cussing?

2 A. I was yelling, screaming.

3 Q. Okay. So you were yelling and screaming?

4 A. I was yelling and screaming, but I was not -- I don't
5 remember any profanity.

6 Q. Okay. Now were the police trying to help you with your
7 injuries?

8 A. I just remember the EMS coming to the car door and
9 grabbing me and ---

10 Q. Did you call the EMS or did any -- I mean who called
11 EMS; do you know?

12 A. No.

13 Q. Were you surprised to learn that the police called EMS
14 to treat you?

15 A. You say were I -- was I surprised?

16 Q. Would it surprise you to learn that the police called
17 EMS to take care of you?

18 A. Yes.

19 Q. That would surprise you?

20 A. Yeah, because I thought I was being arrested for
21 burglary like you say out here.

22 Q. But you know that they are the ones that called the
23 medical people to help you, right?

24 A. Now I do from what -- from being here and being told
25 that today.

1 Q. Was anybody else trying to help you besides the police
2 officers and the medical workers that they called?

3 A. Not that I recall.

4 Q. You were there at your mom's house. Was mom trying to
5 help you?

6 A. I remember her coming to the car. I just remember her
7 coming out and talking to one of them.

8 Q. But she didn't come over and try to help you, your own
9 mother?

10 A. I mean what could she do. I was cuffed and I was in
11 the police vehicle.

12 Q. So she didn't do anything, didn't try to -- what about
13 the neighbors that had come out from around the street?

14 A. I don't remember that.

15 Q. So the only people who were trying to help were the
16 police officers and the EMS workers that they called; is
17 that fair to say?

18 A. Uh-huh.

19 Q. I mean did you think too to thank anybody and say hey
20 thank you for helping me, my mouth was busted open?

21 A. I couldn't really talk. I was in excruciating pain.
22 And the only thing I pretty much got out was my mouth messed
23 up and I was coughing up ---

24 Q. But you later apologized to Sergeant Prosser?

25 A. Yes.

1 Q. You knew who she was?

2 A. Uh-huh, I recognized her.

3 Q. All right. You recognized her from the neighborhood?

4 A. I think it was that or I think she was the officer that
5 came to that burglary that was called ---

6 Q. Okay.

7 A. --- a couple days before.

8 Q. Okay. Do you remember apologizing to her?

9 A. No, sir.

10 Q. You don't remember doing that?

11 A. No, sir.

12 Q. So again, if she said that you did she would be either
13 mistaken or untruthful?

14 A. That's what she said so.

15 Q. So you don't admit doing that and you don't remember
16 doing that?

17 A. No, sir, I don't remember saying that.

18 Q. All right. Now so after you were sitting in the police
19 car that is when the EMS arrived with the stretcher; is that
20 right?

21 A. Yes.

22 Q. Now when you got out of the police car the EMS people
23 were trying to get you on the stretcher; did they put the
24 mask on you?

25 A. Can you repeat that, please?

1 Q. When they got you out of the police car and the EMS
2 workers were there, the medical workers, they put a mask on
3 your face; is that right?

4 A. Yes, sir.

5 Q. Okay. Did you remove that mask?

6 A. Yes, sir, because of the blood.

7 Q. Okay. So certain blood is kind of -- it is kind of,
8 you know, run down your throat?

9 A. Causing me to choke.

10 Q. So that is why you took the mask off?

11 A. Correct.

12 Q. Because you are having a hard time. Did you tell them
13 hey I can't breathe?

14 A. No, sir.

15 Q. Did you tell them hey I can't do the mask, too much
16 blood?

17 A. No, sir.

18 Q. So they were there trying to help you. Did you tell
19 them your symptoms what you were going through so they could
20 better help you?

21 A. The only thing I was able to talk to EMS was my face
22 was messed up because my injuries are visible.

23 Q. Okay. But you didn't tell them you know hey I can't
24 have this mask on; you don't remember telling them anything
25 like that?

1 A. No, sir.

2 Q. All right. You have been in here this afternoon. You
3 have heard now I think it was two police officers who have
4 said that you intentionally when you took that mask off you
5 didn't say anything in terms of help me out here; what you
6 did was that you said, you know, f-you to them and you spit
7 blood on them. Okay. You have had -- you have heard two
8 people say that. Again, you know, is it your testimony that
9 they are mistaken or being untruthful ---

10 MR. COCHRAN: Objection. Pitting witnesses.

11 THE COURT: Sustained.

12 Q. When you pulled the mask off what did you say?

13 A. When I pulled the mask off I turned and spit; because
14 like I told you, I was choking.

15 Q. Did you say the words f-you?

16 A. I don't recall saying that.

17 Q. Okay. So your testimony is that you didn't do that?

18 A. I don't recall saying that, sir.

19 Q. When you spit the blood did you spit it on the police
20 officers?

21 A. I did not see who was next to me or anything. I just
22 took it off and (sound) and spit. Instinctly just took it
23 off.

24 Q. Okay. But you knew obviously the police officers were
25 standing there helping you?

1 A. I could not see them from where I was positioned on the
2 bed.

3 Q. Okay. And so you didn't say anything and you just
4 spit; is that right?

5 A. I took it off and spit because I was choking.

6 Q. But you don't admit to saying f-you to the police
7 officers ---

8 A. I don't recall saying that.

9 Q. Mr. Prioleau, I would ask you to ask you --

10 MR. WETMORE: And Judge, I don't know if we need to
11 approach. May we approach?

12 THE COURT: Sure.

13 (WHEREUPON, bench conference occurred October 28, 2014, 4:53
14 p.m. to 4:54 p.m.)

15 MR. WETMORE: Judge, thank you for that.

16 Q. Now Mr. Prioleau, today is not your first time involved
17 in the criminal system is it?

18 A. No, sir.

19 Q. Okay. Have you ever been arrested or convicted of a
20 crime involving honesty such as lying or stealing; something
21 like that?

22 A. Yes, sir.

23 Q. Tell me about that.

24 A. Shoplifting. That was it.

25 Q. So you have been convicted of shoplifting. When did

1 that happen?

2 A. Sometime I think in 2012.

3 Q. Okay. It looks like you maybe did a little time and
4 got time served; is that right?

5 A. (Witness nods head.)

6 MR. COCHRAN: Objection.

7 THE COURT: Sustained.

8 Q. No other arrests or convictions for anything involving
9 honesty?

10 A. No, sir, not that I -- not that I recall.

11 MR. WETMORE: Court's indulgence.

12 No further questions, Your Honor.

13 THE COURT: All right. Redirect?

14 MR. COCHRAN: No redirect.

15 THE COURT: All right. Thank you, sir. You can step
16 down, Mr. Prioleau.

17 MR. COCHRAN: And, Your Honor, the defense rests.

18 THE COURT: Okay.

19 All right. Ladies and gentlemen of the jury, just come
20 back in the jury room tomorrow at 9:15. We will start the
21 case up then and we will have the closing arguments and
22 instruction on the law.

23 Don't talk about the case and continue to keep an open
24 mind. Thank you very much. Be back at 9:15.

25 (WHEREUPON, jury exits courtroom October 28, 2014,

1 4:55 p.m.)

2 THE COURT: All right. We will see y'all back at 9:15.

3 Thank you.

4 (WHEREUPON, recess was had October 28, 2014, 4:56 p.m.)

5 (WHEREUPON, the trial resumed October 29, 2014, 9:44 a.m.)

6 THE COURT: Okay. Anything before we bring the jury
7 in?

8 MR. WARING: Your Honor, just one thing that I think
9 the court should be aware of. One of our assistant
10 solicitors in the office yesterday unbeknownst to him
11 stumbled upon a juror that is on our -- on our jury, Your
12 Honor. And he is in here this morning in case you have any
13 questions for him. I don't believe any -- he didn't speak
14 about the case or anything like that. But I just wanted to
15 bring it to the court's attention.

16 (WHEREUPON, Mr. Prioleau enters the courtroom.)

17 THE COURT: All right. I'm sorry, Mr. Prioleau is
18 present now. And yes, sir, tell me what your concern is.

19 MR. WARING: Your Honor, I just wanted to bring it to
20 the court's attention: Mr. Condon, one of our fellow
21 attorneys, in the office yesterday unbeknownst to him he
22 stumbled upon a conversation with a juror. He didn't
23 realize the person was a juror. And I do not believe they
24 spoke about the case. As soon as he realized that he was a
25 juror he broke off communication. But I wanted to bring it

1 to the court's attention.

2 MR. COCHRAN: I don't think there is any issue. I
3 spoke to Mr. Condon.

4 THE COURT: You talked to Mr. Condon about it?

5 MR. COCHRAN: Yes, and it seemed pretty innocuous.

6 THE COURT: All right. Thank you, Mr. Condon.

7 MR. CONDON: Appreciate it.

8 (WHEREUPON, Mr. Condon exits the courtroom.)

9 THE COURT: Okay. Are y'all ready for the jury?

10 MR. COCHRAN: Yes, Your Honor. In terms of should we
11 do requesting jury charges after the closings or ...?

12 THE COURT: No, you can go ahead and do that now, sir.

13 MR. COCHRAN: The only things I was going to ask for
14 were -- we have got a case that did provide a charge, right
15 to resist and unlawful arrest. I think just based on the
16 issue that we did raise in terms of whether or not there was
17 a basis for the arrest we should get that charge.

18 I would also ask for a charge on intent that the State
19 would require intent ---

20 THE COURT: Okay. Have you got a proposed charge?

21 MR. COCHRAN: I'm sorry?

22 THE COURT: Do you have the proposed charge on the
23 issue of resisting arrest?

24 MR. COCHRAN: Yes, sir. I'm sorry, we have got it on
25 our phone here.

1 MS. ANDREWS: Your Honor, it is State versus Bethune,
2 B-E-T-H-U-N-E. And the citation is 112 S.C. 100. And that
3 is from 1919.

4 THE COURT: What is the language?

5 MS. ANDREWS: The language is I charge you that a man
6 has the right to defend himself in an unlawful arrest and
7 for the purpose of so protecting himself he has the right to
8 use whatever force is necessary even to the taking of life,
9 the life of him who is seeking to make the unlawful arrest,
10 if that be apparently necessary, and if it would have been
11 apparently necessary to a man of ordinary courage in the
12 circumstances.

13 THE COURT: What is the State's position on that?

14 MR. WARING: Your Honor, I do not believe that the
15 facts support a charge like that just because multiple
16 officers testified that the defendant though initially was a
17 burglary suspect ultimately he was under arrest for and
18 detained for disorderly conduct, malicious injury, and
19 public intoxication. So I think it was established he
20 wasn't under arrest unlawfully, Your Honor.

21 THE COURT: I mean what evidence is there that he
22 wasn't unlawfully under arrest for those offenses?

23 MR. COCHRAN: Your Honor, my understanding from the
24 testimony was that he was immediately arrested for burglary
25 and when he was placed in the patrol vehicle he was under

1 arrest for burglary. And it was under that assumption that
2 the alleged acts were committed and that arrest ended up
3 dissolving. He was never charged with burglary.

4 And we would argue that that was an unlawful arrest
5 because they had not determined that he was burglarized --
6 that had not developed probable cause that he was
7 burglarizing the house at that point.

8 THE COURT: Why do you say they didn't have probable
9 cause?

10 MR. COCHRAN: Just him falling off the roof I would
11 argue did not arise to probable cause for that.

12 THE COURT: Well, didn't they have other information?

13 MR. COCHRAN: They did have a call -- it was a burglary
14 call, yes, Your Honor.

15 THE COURT: From the owner of the house?

16 MR. COCHRAN: Yes -- or the resident, yes.

17 THE COURT: Okay. I decline to charge that.

18 MR. COCHRAN: Yes, Your Honor.

19 THE COURT: I think ---

20 MR. COCHRAN: Thank you.

21 THE COURT: I don't think there is a basis for
22 disputing the lawfulness of the arrest for burglary or
23 anything else at the point the officers placed him into
24 custody.

25 Okay. Anything further?

1 MR. WARING: Not from the State, Your Honor.

2 MR. COCHRAN: No, Your Honor.

3 THE COURT: All right. You can bring the jury in.
4 Thank you.

5 (WHEREUPON, a break was had October 29, 2014, 9:50 a.m.)

6 (WHEREUPON, the jury entered the courtroom 9:52 a.m.)

7 THE BAILIFF: All jurors are present, Your Honor.

8 THE COURT: All right. Thank you. Good morning,
9 ladies and gentlemen. We concluded yesterday with a witness
10 from the defense. Does the defense have any further
11 witnesses?

12 MR. COCHRAN: No, Your Honor. We close.

13 THE COURT: All right. So at this stage we are going
14 to have closing arguments. And after you have heard the
15 closing arguments I will instruct you on the law and then
16 you will be able to begin your deliberations. So yes, sir,
17 Mr. Cochran.

18 MR. COCHRAN: Thank you, Your Honor.

19 **CLOSING BY MR. COCHRAN:**

20 One of the really interesting things about this trial
21 ended up being how many facts and how many circumstances
22 Avis and the police officers agreed. They agreed on a lot
23 of what the most important aspects of this trial were.

24 First that there was originally a call for a burglary,
25 which turned out to be a mistake and that the original

1 arrest for burglary of Avis was done under a mistake. In
2 good faith by the officers. They were called there for a
3 burglary, saw somebody falling off the roof, made a
4 reasonable inference from what was going on and placed him
5 under arrest.

6 They also agreed that Avis suffered from a pretty
7 violent fall. When he saw the officers coming down the
8 street he fell off of about a 12-foot awning and suffered a
9 broken jaw and other serious face injuries that caused a lot
10 of bleeding.

11 They agreed that during the course of flipping him
12 over, placing him in handcuffs, taking him to the car,
13 taking him out of the car, putting him on the gurney that he
14 was yelling, screaming. Everybody agrees on that.

15 They also agree that regardless of his actions just the
16 mere fact of touching him, putting him in handcuffs, they
17 got blood on themselves. They got blood on their hands.
18 They got blood on their uniforms. And by the act of him
19 screaming in pain, in frustration that blood was projecting
20 out of his mouth and off of his person and getting on them.
21 Everyone agrees on that.

22 Detective -- or Sergeant Prosser testified to that.
23 And Officer Woods testified to that. That it was
24 accidental, incidental blood getting on them throughout this
25 process of arresting him. And everybody agrees on that.

1 And I thought that that was probably the most important
2 aspect of this case was that during the course of this
3 arrest blood was getting everywhere.

4 And the standard that you use when you evaluate this
5 case is reasonable doubt, whether you could reasonably
6 believe that this blood was getting on them accidentally.
7 And I would argue to you that that is a very reasonable
8 inference and that that is the most probable.

9 The other thing that everybody agreed on was that Avis
10 pulled the mask off of his own face. Avis took the stand
11 and told you yes I did pull the mask off of my own face.

12 When they laid him back down he had blood running down
13 back into his throat and had a mask placed over his nose and
14 mouth and that he grabbed it and whipped his head back and
15 forth and blood splattered potentially on the officers. He
16 didn't see where it went. The officer said that they got
17 blood on their uniforms.

18 That is the most important part of this case, how much
19 they agree on and how much blood got on them accidentally.

20 You heard Avis take the stand and get cross-examined.
21 I do want to talk about his cross-examination from the
22 State's attorney.

23 A lot of focus was made for some reason on what Avis
24 was doing that night, what club he was at, how late he was
25 out, what he was doing between the hours of 2:00 a.m. and

1 6:00 a.m. That doesn't matter. That doesn't have anything
2 to do with why we are here today.

3 Why we are here today is to determine his intent while
4 he was getting arrested and how the blood got on the
5 officers whether he intentionally got blood on them. None
6 of those things matter. I don't know why he was getting
7 cross-examined about those things. He also got examined --
8 cross-examined about how much he had been drinking.

9 And I would point out to you that Avis did go to the
10 hospital and the State could have submitted to you his
11 toxicology for how much alcohol was in his blood system.
12 They didn't give that to you. If they wanted to prove to
13 you that he was heavily intoxicated they could have done
14 that, but they didn't have that evidence to put before you.

15 He was also cross-examined about the police officers
16 helping him. I think it is important to look at that
17 through Avis's perspective.

18 This is a person that is on his own property at his own
19 house trying to climb into his own bedroom window, falls
20 off, has a violent fall, injures his head, injures his face.
21 He is in a lot of pain. Split -- teeth went through his
22 bottom lip, broke his jaw, and immediately has guns pulled
23 on him and is flipped over.

24 So if you are looking at this from his perspective you
25 can see how he did not necessarily think that the police

1 officers were there to help them. And it was a big point on
2 cross-examination that the officers were there to help him
3 to call EMS. That is not why the officers were there. The
4 officers were there to arrest him for burglary, the charge
5 that he never ended up receiving.

6 EMS was not called because of his injuries, but the
7 officers did not respond in order to help Avis. I think
8 that is a very important point in this case.

9 So the big question is why are we here. The reason we
10 are here is because of a mistaken call, and the reason we
11 are here is that the officers had to go in and execute this
12 messy or bloody arrest getting blood and saliva all of them
13 by arresting Avis.

14 They're frustrated. It is late at night. It ends up
15 being a call that was for no reason. And they want to
16 charge him with something. And I think it is indicative of
17 that they just wanted to charge him with anything that they
18 also charged him - you heard the officers say - with
19 malicious injury to property, maliciously injuring his own
20 bedroom window and a wooden railing that he fell on from 12
21 feet on accident.

22 He wasn't maliciously injuring any of this property;
23 but there are probably charges on him because they couldn't
24 charge him with what they originally came there for, a
25 burglary.

1 The same thing with this spitting. This is blood that
2 they are getting on them just by virtue of arresting him,
3 and they charge him with intentionally doing that when there
4 was no intent.

5 And what is a very important missing piece of evidence
6 in this case, pictures of their uniforms to show the pattern
7 of blood, the location of the blood that you were never
8 shown, because they didn't take any pictures.

9 They could have taken pictures of themselves. They
10 made excuses for not taking them. They could have taken
11 those pictures. And you should hold them accountable for
12 that.

13 They could have flipped on the video camera in their
14 car showing what was going on in front of the squad car and
15 what was going on in the back seat of the squad car. They
16 decided not to do that, and you should hold them accountable
17 for that. Because that would have shown Avis's behavior and
18 it would have potentially shown whether he was acting
19 intentionally or not intentionally that night.

20 This is going to be my last chance to talk to you.
21 This solicitor is going to get a change to response to
22 everything I say. I don't get to respond to what he says.
23 I just want to ask you to use your common sense in
24 evaluating this.

25 Remember that Avis has a perspective too, that he was

1 seeing this in a very different light than the way the
2 officers were seeing it that night.

3 And remember that police officers are people too. That
4 when they go out on calls like this they can get frustrated,
5 they can get annoyed with people, and sometimes pile charges
6 on people because of that when they didn't have any reason
7 to be there to be arresting. They got frustrated and they
8 put these bogus charges on him.

9 Use your common sense. This was a misunderstanding.
10 And I think that that was indicated when Sergeant Prosser
11 testified to you that as they were really Avis away on the
12 gurney he apologized to her. I'm sorry but I didn't mean to
13 cause you any harm is what she said he said.

14 I think that indicated that he did not have any intent
15 to injure anybody. He was upset. He was yelling and
16 screaming. He admits that. He got one of them, but it was
17 without any intent.

18 And you will hear from the judge that intent is a
19 specific requirement of this case, that he had to
20 intentionally get blood on them. An accident is not a
21 crime. Screaming is not a crime. Using profanity is not a
22 crime. And Avis Prioleau did not commit any crime that
23 night, and I ask you to find him not guilty. Thank you.

24 THE COURT: Thank you, Mr. Cochran.

25 Mr. Waring.

1 MR. WARING: Thank you, Your Honor. May it please the
2 court.

3 **CLOSING BY MR. WARING:**

4 Good morning. At the beginning of the trial I
5 mentioned to you the two words that best described the
6 defendant's actions in this case were degrading and
7 disrespectful.

8 Let's go back through some of the evidence that proves
9 the defendant is guilty. First you heard Officer Woods who
10 testified that when he showed up on the scene he saw the
11 defendant falling off of the roof of the house. He noticed
12 the busted out window near where the defendant had been
13 standing. He talked about how the defendant was being
14 uncooperative and they were able to get the cuffs on him and
15 how the defendant was bleeding profusely. All the while the
16 defendant was being combative, yelling cuss words. He was
17 being disorderly. He smells of alcohol.

18 At that point Officer Woods testified this defendant
19 was under arrest. He was detained originally from burglary.
20 He was under arrest for disorderly conduct, malicious
21 injury, and public intoxication.

22 You have heard Office Woods talk about how we saw the
23 defendant intentionally pull off the mask himself and spit
24 blood directly onto Officer Slager and Sergeant Prosser.

25 Next you heard from Officer Slager who testify to

1 similar things that Officer Woods did. He also talked about
2 how when they got the call out this was a burglary call;
3 they were in stealth mode; they didn't come in with the
4 sirens flashing with the lights on with the sirens because
5 they were in stealth mode; therefore, the camera, the in-car
6 camera didn't activate so it caught all of this stuff.

7 You heard Officer Slager talk about how the defendant
8 pulled off the mask himself and deliberately spat blood all
9 over him and spat blood on Sergeant Prosser. Officer Slager
10 talked about how he had to literally physically dive out of
11 the way. That's because this was intentional.

12 You heard Sergeant Prosser get on the stand and testify
13 to the same things that the other two did. Also, she talked
14 about how the defendant apologized to her after pulling down
15 the mask and spitting on her. He apologized. That
16 indicates that he did something wrong. Well, of course he
17 did; he had just spat blood on her.

18 Lastly, you heard from the defendant himself who
19 admitted he was the one who pulled the mask down and then he
20 did spit blood, though he says he didn't intentionally do
21 that.

22 At the beginning of the trial I also mentioned to you
23 elements the State has to prove beyond a reasonable doubt in
24 order for y'all to find him guilty of this crime. Just to
25 go over those again, the State has to prove beyond a

1 reasonable doubt that the defendant was in custody or
2 detained and that he spat bodily fluid which includes blood
3 on a law-enforcement officer.

4 So let's apply those elements to the facts. What
5 happened in this case: The defendant was in custody and
6 detained on multiple offenses including malicious injury,
7 disorderly conduct, and public intoxication. He spat blood,
8 which is a bodily fluid, on two North Charleston police
9 officers. By definition that constitutes throwing bodily
10 fluids.

11 Now the defendant would like to dupe you into believing
12 that this was somehow unintentional, that it, somehow during
13 this spit just happened to get on them unintentionally.

14 I submit to you that that is a facade. He intently did
15 this. The officers had to dive out of the way to avoid
16 being hit. Officer Slager was spattered all over with
17 blood. That is just not spit. That is not just somebody
18 spitting on him. That is somebody intentionally trying to
19 spit on him.

20 Now in a little bit when you go back in the jury room I
21 challenge you to see through this facade and seek the truth
22 in this case. And the simple truth is you have three North
23 Charleston Police Department officers who are here this
24 morning, who care about this case, telling the truth. You
25 have the defendant trying to mislead you.

1 These officers put their necks on the line on a daily
2 basis and deal with a lot of dangerous individuals. Give
3 them the justice they deserve. I challenge you and I urge
4 you to find the defendant guilty of two counts of throwing
5 bodily fluids, one count for each victim.

6 THE COURT: Thank you.

7 MR. WARING: Thank you, Your Honor.

8 THE COURT: All right. Ladies and gentlemen, you have
9 heard all of the evidence you are going to hear in the case.
10 And it is now my duty to charge you on the law that applies
11 to the facts of this case. And it is your duty to determine
12 the facts from the evidence of this case and then apply the
13 law that I am about to give to you to those facts and you
14 will ultimately reach a verdict.

15 Now that means you must decide this case solely on the
16 evidence and not be influenced by any personal likes or
17 dislikes or prejudices or undue sympathy. And that means
18 you must decide this case according to the evidence and
19 according to the law. And you will recall you took an oath
20 to do just that when we began this case yesterday.

21 Now in considering my instructions you should not
22 single some out and ignore others, because they are all
23 equally important. And please do not read into any of these
24 instructions or into anything I may have said or done during
25 this trial as any indication as to what I think the facts

1 are or what I think your verdict should be, because as I
2 told you at the outset you and you alone are the sole and
3 exclusive judge of the facts of this case.

4 I am certainly not going to intrude on your
5 constitutionally guaranteed right to determine what the
6 facts are, just as I know you are not going to intrude on my
7 constitutionally guaranteed right to tell you what the law
8 is.

9 So how do you weigh and evaluate the evidence in this
10 case: It is a mental process and you simply weigh and
11 evaluate the evidence by using your good common sense, your
12 life experiences, and your sense of logic and reason; and
13 you bring those things to bear on the evidence you have
14 heard during this trial and you will be able to determine
15 the facts of the case.

16 Now as I told you at the beginning, in deciding what
17 the facts are you may consider and only consider the
18 evidence. And evidence consists of two sources, sworn
19 witness testimony and exhibits.

20 I believe in this case we've only had testimony. There
21 aren't any exhibits. So you will have to define -- confine
22 your decision as to what the facts are to the testimony you
23 have heard.

24 And that means that you will also have to determine the
25 credibility of each witness who testified. In other words,

1 the believability of what they said on the stand. And you
2 can consider and believe everything a witness says or you
3 may not believe one word a witness says. You can believe
4 parts of a witness's testimony and disbelief other parts.
5 You can believe one witness over several or several over
6 one. But it is up to you to determine the credibility of
7 the witnesses. And that is part of your prerogative as a
8 judge of the facts.

9 I know you are not going to do that arbitrarily, but
10 instead you will have a sound basis for making the decisions
11 about credibility that you do.

12 Now ladies and gentlemen, this is a criminal case. And
13 I've already told you several times about some of these
14 principals of criminal law. But I must remind you that the
15 mere fact that Mr. Prioleau was charged and indicted doesn't
16 constitute evidence of anything or even create a suspicion
17 of guilt.

18 The indictment is simply the notice by which a citizen
19 is given information about what he is charged with, but it
20 is not evidence so you cannot consider that in determining
21 the facts of this case. Mr. Prioleau pled not guilty to
22 that indictment and that put the burden of proof on the
23 State.

24 Furthermore, any citizen charged with a crime is
25 presumed innocent no matter what the crime may be and is

1 never required to prove himself innocent or not guilty.

2 The presumption of innocence is not a legal
3 technicality. It is a substantial and important right that
4 we all have. And the presumption of innocence does not end
5 when you begin your deliberations but it follows the
6 defendant and accompanies him throughout the trial unless
7 and until you reach a verdict of guilty based on the
8 evidence of satisfying you of that guilt beyond a reasonable
9 doubt.

10 Now what is a reasonable doubt. Reasonable doubt is
11 the kind of doubt that would cause a reasonable, sincere,
12 honest, and conscientious person to hesitate to act in an
13 important matter in their own affairs. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of the defendant's guilt.

16 In criminal cases the law does not require proof that
17 overcomes every possible doubt. If based on your view of
18 the evidence you are firmly convinced that Mr. Prioleau is
19 guilty of the crime charged, you must find him guilty.

20 On the other hand, if you think there is a real
21 possibility that he is not guilty you must give him the
22 benefit of that doubt and find him not guilty. And a
23 reasonable doubt may arise from the evidence or from a lack
24 of evidence. And a defendant is entitled to every
25 reasonable doubt that may arise in the case. And that

1 simply means that if as to any issue of fact that is
2 essential to a conviction you have some reasonable doubt as
3 to how that issue should be resolved it is your
4 responsibility to resolve it in favor of Mr. Prioleau.

5 Now in this case there are two counts of throwing
6 bodily fluids on a police officer. And in order to convict
7 Mr. Prioleau of that crime the State must prove beyond a
8 reasonable doubt, first, that Mr. Prioleau was an inmate,
9 detainee, a person taken into custody or a person under
10 arrest, and second, that he attempted to throw or did throw
11 bodily fluids and including but not limited to urine, blood,
12 feces, vomit, saliva, or semen on a law enforcement officer.
13 Those are the elements of the crime the State must prove
14 beyond a reasonable doubt.

15 Now any time the State seeks to convict someone of a
16 crime they must also prove beyond a reasonable doubt
17 criminal intent. Criminal intent is a matter that must
18 always be determined by the jury from the circumstances.

19 There is no way to prove intent to a mathematical
20 certainty. We certainly can't dissect someone's brain and
21 determine what they had in mind at a certain point in time,
22 and the law understands that so the law says that criminal
23 intent may be inferred from the circumstances.

24 It is not necessary to establish intent by direct and
25 positive evidence, but intent may be established by

1 inference in the same way as any other fact by taking into
2 consideration the acts of the parties and all the facts and
3 circumstances.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It is up to you to determine what the defendant
6 intended to do based on the circumstances.

7 Now that covers all of the law that applies to this
8 case. And the verdict form is straightforward. I am going
9 to ask first of all when y'all go back in the jury room to
10 select someone as a foreperson and just let the bailiff know
11 and write the person -- that person's name down on a sheet
12 of paper so I can have it.

13 But whoever the foreperson is is not authorized to sign
14 this form until the verdict is unanimous. And it is very
15 straightforward. It just asks as to the charge of throwing
16 bodily fluids on a police officer and Indictment Number
17 2013-GS-10-05348, we the jury unanimously find the
18 defendant, Avis Prioleau, either guilty or not guilty. And
19 then it asks the same question as to the second count.

20 Now you must weight and evaluate the evidence as to
21 each count separately and individually and don't let your
22 decision on one influence your decision on the other because
23 Mr. Prioleau is entitled to separate and individual
24 consideration as to each indictment.

25 Now you weren't chosen in this case to be a partisan or

1 advocate for the State or for the defense. You were chosen
2 because both sides believe you can be fair and impartial and
3 you can decide this case based on the evidence and not any
4 kind of preconceived ideas or outside influence.

5 So you are judges, judges of the facts. And your sole
6 interest is to determine the facts from the evidence and
7 determine whether the State has met its burden of proof.

8 You each have a vote in this case, and I know you will
9 calmly and courteously discuss the evidence and deliberate
10 and ultimately be able to reach your decision and verdict in
11 this case.

12 The record is closed. So if there was something
13 referred to in this case that you don't have back in the
14 jury room with you I can't give it to you because the record
15 is complete at this point.

16 And I want to thank you for your attention to me. When
17 you get the verdict form after you tell me who your
18 foreperson is you can start deliberating. So if you would
19 just go back to the jury room now. And I would ask that the
20 alternate, Ms. Ciccarelli, if you will just stay behind,
21 ma'am. Thank you.

22 (WHEREUPON, the jury exited the courtroom October 29, 2014,
23 10:15 a.m.)

24 THE COURT: Okay. Any objections to the charge?

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

1 MR. COCHRAN: No, Your Honor.

2 THE COURT: Okay. We will find out who the foreperson
3 is and then we will send the verdict form back.

4 (WHEREUPON, alternate juror entered the courtroom.)

5 THE COURT: Okay. Yes, ma'am. You are free to go.
6 The law doesn't allow you to go back in the jury room now.
7 So we appreciate your service. Just call back tonight after
8 6:00. And thank you for your patience and cooperation.

9 Devorah Danielskranz is the foreperson. Just bring
10 this verdict form back to her. Do y'all want to look at
11 this real quick to make sure this is suitable?

12 MR. WARING: Looks good.

13 MR. COCHRAN: Yes, sir.

14 THE COURT: Okay. Thank you. We will be at ease until
15 we hear something from the jury. Thank you.

16 (WHEREUPON, recess was had October 29, 2014, 10:19 a.m.)

17 (WHEREUPON, proceedings resumed October 29, 2014, 10:30 a.m.
18 and a question from the jury was marked as Court's
19 Exhibit 1.)

20 THE COURT: Okay. Everybody is present. The question
21 is which officer is associated with GS-10-5438, GS-10-5439;
22 which is a rational question. And I can respond to it -
23 I can just write the names down next to the indictment
24 numbers on their question if that suits everybody.

25 MR. COCHRAN: Yes, Your Honor.

1 MR. WARING: Yes, Your Honor.

2 THE COURT: So that would be as to 5438 Slager; and the
3 other one is Prosser, right?

4 MR. COCHRAN: Yes, Your Honor.

5 THE COURT: I didn't send the indictments back. All
6 right. You can take this back to them, sir.

7 THE BAILIFF: Thank you.

8 THE COURT: Thank you.

9 THE BAILIFF: You're welcome.

10 (WHEREUPON, the exhibit was taken to the jury room and a
11 recess was had while the jury was deliberating. The court
12 will hear other matters.)

13 (WHEREUPON, proceedings resumed and a question from the jury
14 was submitted and marked as Court's Exhibit 2.)

15 THE COURT: All right. For the record, the question
16 that will be made a court's exhibit is, quote, may we have a
17 written definition of reasonable doubt as defined by the
18 law.

19 And the parties agreed the written definition can go
20 back. I find based on State v Turner it would aid the jury
21 who will incredulously decide. Clearly they are asking for
22 it, so we will send this back.

23 MR. COCHRAN: We can just attach this.

24 THE COURT: Mr. Prioleau, do you understand what is
25 going on?

1 MR. PRIOLEAU: Yes, sir.

2 THE COURT: They had a question and wanted a written
3 definition of reasonable doubt, and I discussed it with your
4 lawyer and the solicitor and they agreed I can send back the
5 written definition that I read to them; and that is what we
6 are going to do.

7 MR. PRIOLEAU: Thank you.

8 THE COURT: All right.

9 MR. WARING: Thank you.

10 MR. COCHRAN: Thank you, Your Honor.

11 (WHEREUPON, Court's Exhibit Number 2 was taken back to the
12 jury room at 11:10 a.m. and court was in recess.)

13 (WHEREUPON, proceedings resumed 11:38 a.m., October 29,
14 2014.)

15 THE BAILIFF: All jurors are present, Your Honor.

16 THE COURT: Thank you very much. Madam forelady, has
17 the jury reached a unanimous verdict?

18 MADAM FORELADY: Yes, we have, Your Honor.

19 THE COURT: All right. If you will hand it to the
20 bailiff we will receive it and publish it.

21 (WHEREUPON, the verdict was presented to the court.)

22 (WHEREUPON, the verdict was presented to the clerk.)

23 THE CLERK: In the Court of General Sessions, Tenth
24 Judicial Circuit, Indictment Number 2013-GS-10-05348 as to
25 the charge of throwing bodily fluids on a police officer we

1 the jury unanimously find the defendant, Avia Prioleau,
2 guilty. As to the charge of throwing bodily fluids on a
3 police officer, Indictment Number 2013-GS-10-05349 we the
4 jury unanimously find the defendant guilty. Signed
5 foreperson Devorah Danielskranz, October 29th of 2014.

6 Ladies and gentlemen of the jury, if this is your
7 verdict please raise your right hand.

8 (WHEREUPON, all jurors raised their right hands.)

9 THE CLERK: Thank you.

10 THE COURT: Okay. Any matters before the jury is
11 discharged?

12 MR. COCHRAN: We would just like a passive poll of the
13 jury, Your Honor.

14 THE COURT: All right. Please poll the jury.

15 THE CLERK: Ladies and gentlemen, when I call your
16 juror number and your name I am going to ask you two
17 questions: Is this your verdict, is this still your
18 verdict.

19 When I do, answer with yes or no.

20 (WHEREUPON, both questions were asked of each juror, and all
21 jurors responded to both questions in the affirmative.)

22 THE CLERK: Thank you.

23 THE COURT: All right. Any further matters or motions
24 before the jury is discharged?

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

1 MR. COCHRAN: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, thank you
3 for your service. Call back after 6:00 tonight, is that ---

4 THE CLERK: Yes, sir..

5 THE COURT: Okay. And they will let you know if there
6 will be any further cases during this term. If you want to
7 observe the sentencing portion of this, which will shortly
8 occur, you are welcome to do so. You don't have to, but you
9 can. And I am sure the bailiffs will be able to let you
10 come in and see that. So that is an option if you wish to
11 choose it. Otherwise, you are certainly free to go and just
12 call back at 6:00 p.m. tonight. Thank you.

13 (WHEREUPON, jurors exited the courtroom October 29, 2014,
14 11:41 a.m.)

15 THE COURT: Okay. Everybody ready for the sentencing?

16 MR. COCHRAN: Yes, Your Honor.

17 MR. WARING: Yes, Your Honor. Your Honor, did you need
18 sentencing sheets?

19 THE COURT: Yes, sir.

20 MR. WARING: May I approach?

21 THE COURT: Yes, sir.

22 THE COURT: Thank you.

23 MR. WARING: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. COCHRAN: If I may ---

1 THE COURT: Sure.

2 MR. COCHRAN: --- please the court, Your Honor. So
3 this occurred back April 19th of 2013. Mr. Prioleau was not
4 able to make bond until November of 2013, so he was in for
5 about seven months when he originally got arrested. The
6 case was called to trial in November but got continued and
7 the court gave him a PR bond after that continuance, Your
8 Honor.

9 Since then he was re-arrested. He has been in for
10 about 11 months on that re-arrest, Your Honor. So Mr..
11 Prioleau has done a significant amount of jail time, seven
12 months on his first arrest. He had little to no record. He
13 had that one shoplifting conviction Your Honor heard about
14 earlier.

15 Also Mr. Prioleau has some pretty serious health issues
16 at this time. We would ask the court to take that into
17 consideration.

18 And the fact that he does have family support. His
19 mother is actually living in Florence right now in an
20 assisted living facility, but his grandmother is still
21 local; and Mr. Prioleau has lived with his grandmother in
22 the past and would be able to live with her now.

23 Respectfully, Your Honor, because he did do seven
24 months on his original arrest with basically no record and
25 was suffering from serious health issues we would ask Your

1 Honor to give him credit for that time and place him on
2 probation. I think that Mr. Prioleau would be a very good
3 candidate for probation. He was gainfully employed at the
4 time of his first arrest and was taking classes.

5 You know, I think that this was an unfortunate incident
6 where things got out of hand after they probably shouldn't
7 have escalated to that point. And Mr. Prioleau definitely
8 takes responsibility in in part in terms of that escalating.

9 I understand that he asserted his innocence in terms of
10 intentionally spitting at anybody, but he did admit to
11 yelling and screaming and thrashing around and things like
12 that.

13 But he was severely injured on that -- on that day,
14 Your Honor. We would ask you to take that into
15 consideration as well.

16 So respectfully we would request that he get credit
17 for the time that he has served followed by a term of
18 probation.

19 THE COURT: Thank you, Mr. Cochran.

20 Mr. Waring, does the State wish to be heard or do any
21 of the victims wish to be heard?

22 MR. WARING: Yes, Your Honor, just briefly. He has got
23 a 2012 shoplifting. And I realize that for this trial, Your
24 Honor, excluding any testimony regarding the defendants
25 having HIV I would just like to point out to the court that

1 prior to this incident he did make an admission to an
2 officer that he had HIV. So though it didn't come out
3 during the trial, Your Honor, I think it is important to
4 note that during this incident it is the State's position
5 that he knew he had HIV when he spat blood on these
6 officers.

7 Testimony came out that the defendant yelled
8 profanities, yelled f-you to these victims right before he
9 spat on them. So I think it is pretty malicious, Your
10 Honor.

11 He has since the first incident been arrested for doing
12 the same thing, Your Honor, on a third throwing bodily
13 fluids incident at the jail. He spat on another officer.
14 So we -- we would argue that this is his weapon, Your Honor.

15 And HIV is a very serious and infectious disease. One
16 of the officers involved in this case underwent stringent
17 therapy to try to counteract getting HIV, Your Honor. And I
18 believe he will want to speak in a minute and the other
19 officers as well. But this is very serious case, Your
20 Honor.

21 I believe that something at the higher end of the
22 spectrum for the throwing bodily fluids statute would be
23 appropriate. It is not the most serious case out there; but
24 when it comes to this statute it is one of the most serious
25 cases, Your Honor. We would ask that a sentence at the

1 higher end of the spectrum would be appropriate. And I
2 believe some of the victims would like to speak.

3 THE COURT: Thank you, Mr. Waring.

4 Yes, sir, Mr. Slager.

5 (WHEREUPON, Officer Woods stood.)

6 THE COURT: Yes, sir, go ahead.

7 OFFICER WOODS: Just -- just wanted to basically say
8 that, you know, on the top of what Mr. Waring was stating
9 that, you know, I have had to go through some treatment
10 after coming in contact with the defendant's blood.

11 Although I wasn't the one being spat on, him knowing,
12 telling another one of my coworkers and who informed me that
13 he's -- she can pretty much guarantee that he is the one
14 that told him that -- told her that he had HIV put me at a
15 high alert.

16 When I found out that he came back positive for HIV I
17 had to go on some kind of strenuous medication. At one
18 point where I was on the scene with another officer I had to
19 go around my car just to vomit to go back on the scene. The
20 strenuous medication was to help insure the fact that I
21 wouldn't contract this HIV.

22 I did, you know, go through the treatment until they
23 told me to discontinue it. I've gone back for further
24 treatment and further testing to confirm whereas that I do
25 not have HIV, which is I am very thankful for. But just to

1 know that he has this weapon and he continues to use it.

2 Obviously there was ill will. There is no doubt in my
3 mind that there was ill will in reference to him what he was
4 doing. And then after getting out after seven months and
5 turn around and spit on another officer it is just I feel
6 like he's out to hurt someone and he is going to continue to
7 do this until he has. And my thing is I don't know how far
8 it is going to have to go until he realizes that what he is
9 doing is dangerous.

10 We put ourselves out there and we are in danger all the
11 time. And this is one thing that I don't want to have to
12 deal with: Am I going to get spit on by him again; is there
13 going to be another issue.

14 And if he was, you know, concerned about it he wouldn't
15 have done it again once he got out, you know, three weeks
16 later. And turn around knowing what he just spent seven
17 months in jail for he turns around and spits on another
18 officer with blood in his mouth and gets blood on this
19 officer. And when is enough enough? So that's all I really
20 have to say.

21 THE COURT: Thank you, Mr. Woods.

22 MR. WOODS: I appreciate it.

23 SERGEANT PROSSER: Just going off of what Officer Woods
24 said, we do understand there is a risk to this job. We
25 understood in helping Mr. Prioleau out there that he was

1 bleeding, and our first thought was to get him help once we
2 got the scene secured seeing how much damage he had. And as
3 law enforcement officers we really take accountability for
4 that risk that we take.

5 However, as the mother of a young son who has a husband
6 in Iraq I have responsibility to my child. For me to get
7 home and get that uniform off and wash it and not only
8 secure my safety but that of my child and make sure that my
9 son has his mother around knowing that he is already in fear
10 of his father losing his life overseas is something that I
11 take great umbrage to the fact that it was done.

12 I have no ill will towards Mr. Prioleau. I have
13 nothing but love for him, and I hope that he gets himself
14 straight and hope that his health improves. And I just wish
15 him the best and hope that he pulls himself together and
16 does right. That's all.

17 THE COURT: Thank you. All right. Anything further
18 from the State?

19 MR. WARING: No, Your Honor.

20 THE COURT: All right. Yes, sir.

21 MR. COCHRAN: I would like to address just one thing,
22 Your Honor. The second case did not involve any blood. I
23 just wanted to clarify, Your Honor. And in that case we are
24 still waiting on an intake video. It supposedly happened at
25 intake at the jail and we haven't received the video on that

1 yet. But Mr. Prioleau has been in for eleven months on that
2 case as well.

3 So the other thing I wanted to say, Your Honor, is that
4 we have indications from the medical records; and it's there
5 is a very good chance that Mr. Prioleau had no idea that he
6 had HIV at the time of this arrest. It sounds like the
7 office who thinks that he told her that might not even be
8 sure that it was him.

9 And furthermore, Mr. Prioleau has indicated to me that
10 he did get tested in Greenville and had a false negative for
11 HIV. So and that was why he when he got taken into the jail
12 he gave an indication to the jail that he did not have HIV.
13 So that was news to him when he did get arrested, Your
14 Honor.

15 So we would ask that the court not take that into
16 consideration in terms of being some kind of intent from his
17 part to infect other people. I do not -- I really do not
18 think that that had any -- anything to do with his actions
19 that night.

20 THE COURT: Thank you.

21 MR. COCHRAN: Thank you, Your Honor.

22 THE COURT: Mr. Prioleau, anything you would like to
23 say, sir?

24 MR. PRIOLEAU: Yes, sir. It was never my intentions to
25 put my bodily fluids on you or you (motioning). I really

1 didn't mean to do that. It was just because of the
2 situation I had fell and blood was coming out of me. I did
3 not intentionally spit on the officers. I would never ---

4 THE COURT: Hold on, sir. We are having a hard time
5 hearing you up here.

6 MR. COCHRAN: Talk to the judge.

7 THE COURT: Yeah.

8 THE COURT REPORTER: The microphone.

9 MR. COCHRAN: I would never -- I would never spit
10 intentionally to cause harm to anyone. That is unhumane and
11 that is not in my nature. I was raised -- I am not -- I am
12 not perfect. No one is perfect. But I ascribe to be.

13 And right is right, and wrong is wrong. And I wouldn't
14 do that to nobody. I wouldn't. That is not -- that is not
15 me.

16 I -- I was living on Charleston with my mom because my
17 mom had a mental breakdown. I was going to school. I was
18 working. I dropped everything to move up there to help take
19 care of my mom.

20 MR. COCHRAN: Thank you, Your Honor.

21 MR. PRIOLEAU: I just

22 THE COURT: How far did you go in school, sir?

23 MR. PRIOLEAU: Eleventh grade.

24 (WHEREUPON, pause for court's consideration and verdict.)

25 THE COURT: All right. Thank you for your patience. I

1 understand the jury's verdict. And I appreciate what the
2 officers said. We do ask them to serve and protect, and the
3 circumstances are often difficult and very dangerous.
4 However, there are certain things that occur that just
5 shouldn't happen in our society.

6 So the sentence is, Mr. Prioleau, you be committed to
7 the Department of Corrections for a period of seven years
8 suspended to three years and probation for eighteen months,
9 obtain your GED. And those are concurrent. Credit for time
10 served. Thank you. Good luck.

11 MR. COCHRAN: Thank you, Your Honor.

12 MR. WARING: Thank you, Your Honor.

13 (WHEREUPON, the trial concluded October 29, 2014,
14 11:59 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth 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 captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on October 28 to 29, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: June 7, 2015

Certified Transcript Provided For: _____
Certification Reference # 060715 ORIG SCCD

Phyllis Norton

TRW20130402931

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013013152

ARREST WARRANT NUMBER

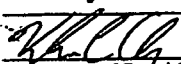
2013A1010202100

DATE OF ARREST

April 20, 2013

ACTION OF GRAND JURY

TRUE BILL

 ACTING FOREPERSON

Foreperson of Grand Jury

SEP 10 2013

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1005349

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

AVIS CREDELL PRIOLEAU

DOB:

Indictment for

Throwing Bodily Fluids on a Police Officer

147

FILED

11/22/2013 1:59:20 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Throwing Bodily Fluids on a Police Officer

That in Charleston County, South Carolina, on or about April 19, 2013, the Defendant, AVIS CREDELL PRIOLEAU, while he was an inmate, detainee, a person taken into custody, or person under arrest while removing the defendant from a police vehicle did throw or attempt to throw bodily fluids on Officer Prosser, an employee of the North Charleston Police Department; all in violation of Section 24-13-470 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


RICHARD WARING
ASSISTANT SOLICITOR

TRW20130402931

WITNESSES

North Charleston Police Department

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ARREST WARRANT NUMBER

2013A1010202098

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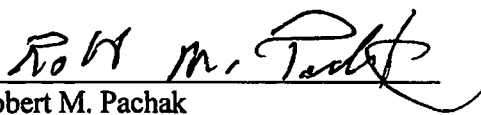
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


RICHARD WARING
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."

August 14, 2015


Robert M. Pachak
Appellate Defender

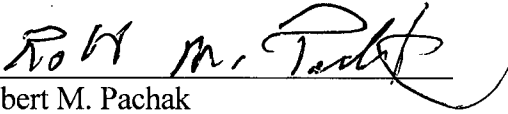
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ATTORNEY FOR APPELLANT

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