

# VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM MARION COUNTY

D. Craig Brown, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RICHARD ALLEN WOODBURY,

APPELLANT

APPELLATE CASE NO. 2014-000390

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RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**  
**STATE'S EXHIBIT NOS. 1 THROUGH 22 (PHOTOGRAPHS)**  
**DEFENSE EXHIBIT NOS. 1 THROUGH 5 (PHOTOGRAPHS)**  
**DEFENSE EXHIBIT NOS. 8 THROUGH 13 (PHOTOGRAPHS)**

1 an expert in some art, science, profession, or  
2 calling may state an opinion as to a relevant and  
3 material matter in which the witness claims to be an  
4 expert and may also state the reasons for the  
5 opinion. You should consider any expert opinion  
6 received in evidence in this case and like any other  
7 evidence give it the weight you think it deserves.

8 If you decide that the opinion of an expert witness  
9 is not based on sufficient education and experience  
10 or if you conclude that the reasons given in support  
11 of the opinion are not sound or that the opinion is  
12 outweighed by other evidence, you may disregard the  
13 opinion entirely. Furthermore, an expert witness'  
14 testimony is to be given no greater weight than that  
15 of other witnesses simply because the witness is an  
16 expert. Further, you are not required to accept an  
17 expert's opinion even though it is not contradicted.

18 Ladies and gentlemen, I instruct you and  
19 emphasize the fact that the defendant did not  
20 testify is not a factor to be considered by you in  
21 any way in your deliberations and in your  
22 consideration on the question of the guilt or  
23 innocence of the defendant. It must not be  
24 considered by you in any manner whatsoever. A  
25 defendant has the constitutional right to remain

1 silent, and the assertion of this right must not be  
2 considered by you in your deliberations. I repeat,  
3 under your oath you are to draw no conclusions  
4 whatsoever from the fact that the defendant in this  
5 case did not testify. The fact that this defendant  
6 did not testify should not even be discussed in the  
7 jury room. The burden of proof as I have stated to  
8 you is on the State. The Defendant is not required  
9 to prove his innocence. The burden of proof remains  
10 on the State to prove guilt beyond a reasonable  
11 doubt.

12 Now ladies and gentlemen, in order to  
13 establish criminal liability criminal intent is  
14 required. For example, the mental state required to  
15 be proven by the State for a particular crime might  
16 be purpose, intent, knowledge, recklessness or  
17 criminal negligence. Criminal intent must be proven  
18 by the State beyond a reasonable doubt. Criminal  
19 intent is always a matter that must be determined by  
20 the jury from the circumstances surrounding the  
21 situation. There is no way to prove intent to a  
22 mathematical certainty. There is no way that  
23 medical science can dissect a person's brain and  
24 determine what the person had in mind so the law  
25 says that criminal intent may be inferred from the

1 circumstances shown to have existed. This is how  
2 you make a determination of whether or not the  
3 element requiring intent was present.

4 It is not necessary to establish intent by  
5 direct and positive evidence, but intent may be  
6 established by inference in the same way as any  
7 other facts by taking into consideration the acts of  
8 the parties and all the facts of the case. Criminal  
9 intent is a mental state, a conscious wrongdoing.  
10 It is up to you to determine what the defendant  
11 intended to do based on the circumstances shown to  
12 have existed. Criminal intent can arise from action,  
13 or a failure to act. It may arise from negligence,  
14 recklessness, or an indifference to duty or to  
15 consequences that is considered by the law to be the  
16 equivalent of criminal intent.

17 Now the defendant, ladies and gentlemen,  
18 is charged with murder. The State must prove beyond  
19 a reasonable doubt that the defendant killed another  
20 person with malice aforethought. Malice is hatred,  
21 ill will, or hostility towards another person. It  
22 is the intentional doing of a wrongful act without  
23 just cause or excuse and with an intent to inflict  
24 an injury or under circumstances that the law will  
25 infer an evil intent. Malice aforethought does not

1 require that malice exists for any particular time  
2 before the act is committed, but malice must exist  
3 in the mind of the defendant just before and at the  
4 time of the act is committed. Therefore, there must  
5 be a combination of the previous evil intent and the  
6 act. Malice aforethought may be expressed or  
7 inferred. These terms, expressed and inferred, do  
8 not mean different kinds of malice but merely the  
9 manner in which malice may be shown to exist. That  
10 is either by direct evidence or by inference from  
11 the facts and circumstances which are proved.  
12 Expressed malice is shown when a person speaks words  
13 which express hatred or ill will for another or when  
14 the person prepared beforehand to do the act which  
15 was later accomplished. For example, lying in wait  
16 for a person or any other acts of preparation going  
17 to show that the deed was within the defendant's  
18 mind would be expressed malice. Malice may be  
19 inferred from conduct showing a total disregard for  
20 human life.

21 Now if you find that the State, ladies and  
22 gentlemen, has failed to prove beyond a reasonable  
23 doubt that the defendant committed murder you may  
24 consider whether the State has proved beyond a  
25 reasonable doubt that the defendant committed the

1 lesser included offense of voluntary manslaughter.  
2 To prove voluntary manslaughter the State must prove  
3 beyond a reasonable doubt that the defendant took  
4 the life of another in the sudden heat of passion  
5 based on sufficient legal provocation. Both heat of  
6 passion and sufficient legal provocation must be  
7 present at the time of the killing to constitute  
8 voluntary manslaughter. Sudden heat of passion may  
9 for a time affect a person's self control and  
10 temporarily disturb a person's reason. The sudden  
11 heat of passion must be the type that would make an  
12 ordinary person unable to coolly reflect on his  
13 actions and would produce an uncontrollable impulse  
14 to do violence. Sufficient legal provocation must  
15 be the type that would make a person of ordinary  
16 reason and caution become enraged and to lose  
17 control temporarily. The provocation needed for  
18 voluntary manslaughter must come from some act of or  
19 related to the victim. Words alone, however,  
20 however vulgar or insulting are not enough to be  
21 legal provocation. Where death is caused by the use  
22 of a deadly weapon the words must be accompanied by  
23 some overt threatening act which could have produced  
24 the heat of passion. The exercise of a legal right  
25 no matter how offensive it is to another is never

1 sufficient legal provocation for voluntary  
2 manslaughter. If the heat of passion had cooled or  
3 if there was enough time between the provocation, if  
4 any, and the killing for the passion of a reasonable  
5 person to cool the killing would not be voluntary  
6 manslaughter.

7 Now in deciding whether a reasonable  
8 person would have had enough time to cool off you  
9 should consider all the circumstances surrounding  
10 the killing. You may consider the nature of the  
11 provocation, if any, the defendant's mental and  
12 physical state, and the circumstances and  
13 relationships between the parties.

14 Now the defendant, ladies and gentlemen,  
15 is also charged with attempted murder. In order to  
16 prove this crime the State must prove beyond a  
17 reasonable doubt that the defendant attempted to  
18 kill another person with malice aforethought either  
19 expressed or implied. Malice is, as I have  
20 explained earlier in this charge. Furthermore,  
21 malice aforethought may be expressed or inferred as  
22 I have also explained earlier in this charge. If  
23 facts are proved beyond a reasonable doubt  
24 sufficient to raise an inference of malice to your  
25 satisfaction, this inference would be simply an

1 evidentiary fact to be considered by you, the jury,  
2 along with the other evidence in the case and you  
3 may give it it weight you decide it should receive.  
4 A specific intent is not an element of attempted  
5 murder but there must be a general intent to commit  
6 serious bodily injury. Intent means intending the  
7 result which actually occurs not accidentally or  
8 involuntarily. Intent may be shown by acts and  
9 conduct of the defendant and other circumstances  
10 from which you may naturally and reasonably infer  
11 intent. Evidence of the character of the act, the  
12 character of the instrument used, the manner in  
13 which it was used, the purpose to be established,  
14 and the resulting wounds or injuries may be  
15 considered in determining the intent with which the  
16 act was committed. Intent may also be inferred when  
17 it is demonstrated that the defendant voluntarily  
18 and willfully commits an act, the natural tendency  
19 of which is to destroy another's life.

20           If you find that the State has failed to  
21 prove that the defendant committed the offense of  
22 attempted murder you may then consider whether the  
23 State has proved beyond a reasonable doubt that the  
24 defendant committed the lesser included offense of  
25 assault and battery of a high and aggravated. A

1 person commits the offense of assault and battery of  
2 a high and aggravated nature if the person  
3 unlawfully injures another person and great bodily  
4 injury to another person results or the act is  
5 accomplished by means likely to produce death or  
6 great bodily injury. Great bodily injury means  
7 bodily injury which causes a substantial risk of  
8 death or which causes serious permanent disfigurement  
9 or protracted loss or impairment of the functions of  
10 a bodily member or organ.

11 Now the defendant in this case, ladies and  
12 gentlemen, has raised the defense of self-defense.  
13 Self-defense is a complete defense; and if it is  
14 established, you must find the defendant not guilty.  
15 The State has the burden of disproving self-defense  
16 by proof beyond a reasonable doubt. If you have a  
17 reasonable doubt of the defendant's guilt after  
18 considering all of the evidence including the  
19 evidence of self-defense, then you must find the  
20 defendant not guilty. On the other hand, if you  
21 have no reasonable doubt of the defendant's guilt  
22 after considering all of the evidence including the  
23 evidence of self-defense, then you must find the  
24 defendant guilty.

25 Now the following elements are required to

1 establish self-defense. First the defendant must be  
2 without fault in bringing on the difficulty. If the  
3 defendant's conduct was the type which was  
4 reasonably calculated to and did provoke a deadly  
5 assault, the defendant would be at fault in bringing  
6 on the difficulty and would not be entitled to an  
7 acquittal based on self-defense. If the defendant  
8 voluntarily participated in mutual combat for  
9 purposes other than protection, the killing of the  
10 victim would not be self-defense. This is true even  
11 if during the combat the defendant feared death or  
12 serious bodily injury. However, if before the  
13 killing is committed the defendant withdraws and  
14 tried in good faith to avoid further conflict and  
15 either by word or act makes that fact known to the  
16 victim, he would be without fault in bringing on the  
17 difficulty. Now for mutual combat there must be a  
18 mutual intent and willingness to fight. This intent  
19 may be shown by the acts and conduct of the parties  
20 and the circumstances surrounding the combat. In  
21 addition, it must be shown that both parties were  
22 armed with deadly weapon, with a deadly weapon.

23 Now the second element of self-defense is  
24 that the defendant was actually in imminent danger  
25 of death or serious bodily injury or the defendant

1 actually believed he was in imminent danger of death  
2 or serious bodily injury. If the defendant was  
3 actually in imminent danger, it might be shown that  
4 the circumstances would have warranted a person of  
5 ordinary firmness and courage to strike the fatal  
6 blow to prevent death or serious bodily injury. If  
7 the defendant believed he was in imminent danger of  
8 death or serious bodily injury it must be shown that  
9 a reasonably prudent person of ordinary firmness and  
10 courage would have had the same belief. In deciding  
11 whether the defendant actually was or believed he  
12 was in imminent danger of death or serious bodily  
13 injury, you should consider all the facts and  
14 circumstances surrounding the crime including the  
15 physical condition and characteristics of the  
16 defendant and the victim.

17 Now the defendant, ladies and gentlemen,  
18 does not have to show that he was actually in  
19 danger. It is enough if the defendant believed he  
20 was in imminent danger and a reasonably prudent  
21 person of ordinary firmness and courage would have  
22 had the same belief. The defendant has the right to  
23 act on appearances even though the defendant's  
24 belief may have been mistaken. It is for you to  
25 decide whether the defendant's fear of immediate

1 danger of death or serious bodily injury was  
2 reasonable and would have been felt by an ordinary  
3 person in the same situation.

4 Now the final element of self-defense is  
5 that the defendant had no other probable way to  
6 avoid the danger of death or serious bodily injury  
7 than to act as the defendant did in this particular  
8 instance. The defendant had no duty to retreat if  
9 by doing so the danger of being killed or suffering  
10 serious bodily injury would increase. If a  
11 defendant is justified in defending himself then a  
12 defendant is also justified in continuing to defend  
13 himself until it is apparent that the danger of  
14 death or serious bodily injury has completely ended.

15 A person cannot be required to make an  
16 exact calculation as to the degree or amount of  
17 force which may be needed to avoid death or serious  
18 bodily injury. Therefore, in self-defense the  
19 defendant has the right to use the force needed to  
20 avoid death or serious bodily injury. The force  
21 used in self-defense does not have to be limited to  
22 the degree or amount of force used by the victim.  
23 The defendant has the right to use as much force as  
24 appeared to be necessary for complete self  
25 protection in which a person of ordinary reason and

1 firmness would have believed to be needed to prevent  
2 death or serious bodily harm.

3 Now ladies and gentlemen, I am now drawing  
4 near the end of my charge, and I want you to clearly  
5 understand that you are not partisans or advocates  
6 for the State of South Carolina or the defendant.  
7 It is your duty by your joint deliberations to  
8 determine the truth in this case giving to the  
9 defendant the benefit of every reasonable doubt on  
10 each and every issue. Then to the facts which you  
11 determine to be true you should take and apply the  
12 law which has been given to you by this Court and  
13 this arrive at a verdict which speaks the truth in  
14 this case. In fact, the word verdict which has a  
15 Latin derivative means a true saying. Thus, when  
16 you have accomplished these responsibilities you  
17 will have satisfied your oath as jurors and you will  
18 have discharged your duty to this Court.

19 Once you retire to the jury room the  
20 bailiff will give the verdict form to the forelady.  
21 When you, the jury, arrive at a verdict as to the  
22 offenses charged in this case the forelady will  
23 select the verdict as to the charge on the verdict  
24 form. If the State has failed to prove the guilt of  
25 the defendant beyond a reasonable doubt your verdict

1 will be not guilty. Likewise, if the State has  
2 proven the guilt of the defendant beyond a  
3 reasonable doubt your verdict will be guilty. Once  
4 a decision has been made the forelady will check  
5 whichever chose is the verdict of the jury as to the  
6 charge. Now the verdict that you render in this  
7 case, ladies and gentlemen, must be the verdict of  
8 each and every juror. It must be your unanimous  
9 verdict. All twelve jurors must agree on the  
10 verdict which you authorize the forelady to write  
11 for the jury. Ladies and gentlemen, I want you to  
12 further understand that the order in which the  
13 choices of verdict appear on the verdict form are  
14 not suggestive of any verdict on the part of this  
15 court. The verdict in this case is to be determined  
16 by you, the jury, not the Court. Furthermore,  
17 ladies and gentlemen, please understand that even  
18 though I will give the verdict form to the forelady,  
19 it is not her verdict alone. It is the verdict of  
20 all twelve of you, and I emphasize again, it must be  
21 unanimous.

22 I am also going to give you a copy of  
23 these instructions in written form. During your  
24 deliberations you may refer to the instructions to  
25 guide your decision making. You must consider,

1 ladies and gentlemen, the instructions as a whole  
2 and not follow some and ignore others. Please  
3 return these instructions to the Court at the time  
4 that your verdict is rendered. Now I am going to  
5 ask that you all retire to the jury room but do not  
6 begin your deliberations. The law requires that I  
7 consult with the attorneys to make sure that I have  
8 not left anything out of these instructions. After  
9 I've checked with the attorneys the bailiff will  
10 bring in a copy of these instructions to you along  
11 with the items of evidence and will instruct you to  
12 begin your deliberations.

13 Now, should you have any questions during  
14 your deliberations, Madam Forelady, it will be your  
15 responsibility to write any questions that you all  
16 may have. Write them out on a piece of paper which  
17 will be back there for you all. Sign and date it,  
18 knock on the door, and let the bailiff know and the  
19 bailiff will get the question to me and I'll answer  
20 it how I deem appropriate, okay. After you all have  
21 reached a verdict fill out the verdict form. I am  
22 going to go through this real quickly, the verdict  
23 form with you. The first question as to the charge  
24 of murder of Ian Gause, we, the jury, unanimously  
25 find the defendant Richard Woodbury not guilty or

1 guilty. If you find the defendant guilty of murder  
2 you do not answer item two, question two. It tells  
3 you to skip to item number three. However, if you  
4 find the defendant not guilty of murder then you  
5 proceed to question number two, or item number two,  
6 and answer that question. After you go to question  
7 two then you're instructed to go to question three.  
8 As to the charge of attempted murder of Rishawn  
9 Gause, we, the jury, unanimously find the defendant  
10 Richard Woodbury -- if your verdict is not guilty,  
11 then you go to question four and answer question  
12 four. If your verdict as to item three is guilty,  
13 you sign and date, let the bailiff knock on the door  
14 and let the bailiff know you've reached a verdict  
15 and we'll get you back in the courtroom as quickly  
16 as possible.

17 Now I am going at this time going to ask  
18 you all to step to the jury room, all of you. Do  
19 not begin your deliberations until you're instructed  
20 do so.

21 (WHEREUPON, the jury was removed from the  
22 courtroom at 11:46 a.m., and the following  
23 proceedings commenced in open court.)

24 THE COURT: As the jury is exiting can the  
25 lawyers come up and look at the items of evidence

1 please.

2 (Attorneys review exhibits.)

3 THE COURT: Any exceptions or objections  
4 to the charge by the State?

5 MR. CLEMENTS: Your Honor, I apologize, I  
6 thought the transferred intent was in there. I  
7 think that's an important charge as to the attempted  
8 murder charge.

9 THE COURT: Any exception or objection by  
10 the Defense counsel?

11 MR. WILSON: Judge, I just had a question  
12 more than anything else. In regards to the charges,  
13 are you gonna submit the written charges to the  
14 jury, a copy?

15 THE COURT: Yeah, I mean that, that was  
16 what I sent you last night. I mean, I always do  
17 that unless I hear anything. My experience has been  
18 when I practiced in federal court they always sent  
19 it back in federal court as you well know. When I  
20 came on the Bench at State court level I initially  
21 did not start doing that; and every time I did not  
22 do it, I would always have a question. I'd have to  
23 bring them right back out here and charge them one  
24 particular section of my charge so after that I  
25 started sending it back with them. And I clearly

1 state within my instructions that you are not to  
2 consider some and ignore others. And so therefore,  
3 I have always, it has been my policy unless prior to  
4 me charging them somebody raises an issue, has any  
5 concern about it, and that's the reason I send the  
6 charge to. I don't think all the judges send the  
7 charges out for the lawyers to look at; but I do, I  
8 do, and that's one of the reasons.

9 MR. WILSON: Can I have one second.

10 (Pause.)

11 THE COURT: Mr. Wilson, any -- I think  
12 he's exactly right; it should have been in there.

13 MR. WILSON: I don't have any objection to  
14 transferred intent. Is that what you're --

15 THE COURT: Yeah.

16 MR. WILSON: I only always hate it out of  
17 order everything else is because then it kind of  
18 brings the jury --

19 THE COURT: Well, what I'm going to do is  
20 I'm going to read them transferred intent after  
21 attempted murder. I will re-read attempted murder  
22 and I will read transferred intent rather than just  
23 come back in here and read transferred intent.

24 MR. WILSON: Yes, sir. My --

25 THE COURT: And I'll tell them transferred

1 intent applies to the charge of attempted murder.

2 MR. WILSON: My only concern, Your Honor,  
3 is that -- and I'm, you know, I'm really struggling  
4 with how to do it because my concern is if we  
5 re-read attempted murder, then I don't want them to  
6 think that somehow that's something they need to be  
7 concerned about or they need to refocus on. And I'm  
8 not sure that if that doesn't bring attention back  
9 to that again.

10 THE COURT: What I'm gonna tell them is  
11 that I left something out of the charge that was  
12 supposed to be in there but it's not supposed to be,  
13 that it should have been in there, it was my  
14 mistake. It was brought to my attention after.

15 MR. WILSON: Is there a way, Your Honor,  
16 to read transferred intent without going back to  
17 revisit attempted murder?

18 THE COURT: Well, I can just tell them  
19 that transferred intent was supposed to be read to  
20 you after attempted murder charge; therefore, I'm  
21 gonna read transferred intent to you, it's  
22 applicable in this case. Is that sufficient?

23 MR. WILSON: Yes, sir, that's much better.

24 THE COURT: Any objection?

25 MR. CLEMENTS: We're fine with that, Your

1 Honor.

2 THE COURT: All right.

3 MR. CLEMENTS: Is -- when you submit the  
4 written it's gonna be with it, right?

5 THE COURT: It will absolutely be with --  
6 it will be attempted murder, transferred intent, and  
7 then ABHAN as a lesser included. Any objection to  
8 that, Mr. Wilson?

9 MR. WILSON: Not, not to that.

10 THE COURT: All right, let me say this,  
11 the old transferred intent charge had, you know,  
12 assault and battery with intent to kill was the  
13 prior lesser included. Now it's attempted murder is  
14 the lesser included of murder as opposed to ABIK so  
15 I'm gonna change the language. It will read  
16 defendant would be guilty of -- I'm gonna read the  
17 entire transferred intent portion please. Listen  
18 carefully. If the defendant with malice  
19 aforethought attempts to kill another person but by  
20 mistake injures or kills a different person the  
21 defendant still has the intent to kill. The intent  
22 to kill is merely transferred from the original  
23 person to defendant attempted to kill to the actual  
24 person killed or injured. The defendant would be  
25 guilty of attempted murder just as if the attempt

1 had resulted in the death or injury of the person  
2 the defendant attempted to kill. That's the way it  
3 should read now.

4 MR. WILSON: Yes, sir. And Your Honor, I  
5 will just ask that if you want to give that  
6 instruction that in the end you say, you charge them  
7 that still giving the defendant benefit of any doubt  
8 that they may have as to that issue.

9 THE COURT: As to what?

10 MR. WILSON: That when they're considering  
11 transferred intent that any doubt that they have,  
12 that they give the defendant the benefit of that  
13 doubt.

14 THE COURT: Mr. Clements?

15 MR. CLEMENTS: Your Honor, I think you've  
16 got that in there for everything so.

17 MR. WILSON: Yeah, but it is in there,  
18 Your Honor, in general but now we're going back and  
19 we're adding this and I just want to be clear that  
20 that still applies even to this and that this is not  
21 an exception to anything.

22 THE COURT: Okay. I'm gonna bring the  
23 jury back in while we get this thing printed. Any  
24 objection by the State?

25 MR. CLEMENTS: No, Your Honor.

1           MR. WILSON: Judge, I, you know, I know  
2 the Court sent these charges to us last night and,  
3 you know, and the Solicitor is right, the Court did  
4 not charge this, you did not. There's no question  
5 about it in the inference. But my concern is that  
6 rules are, I mean, it would seem to me that he has  
7 waived his right to ask for this at this point under  
8 the rules. I mean, I'm looking at Rule 20 Section  
9 B, and I mean, it says notwithstanding any request  
10 for legal instruction party shall be given the  
11 opportunity to object to giving, failing to give an  
12 instruction before the jury retires but out of the  
13 hearing of the jury. Any objection so distinctly  
14 the matter objected to and grounds of the  
15 objections. Failure to object in accordance with  
16 the rules shall constitute a waiver.

17           MR. CLEMENTS: Your Honor, I thought we  
18 talked about, mentioned transferred intent when we  
19 talked about all additional things that Mr. Wilson  
20 wanted to add and all those got added in. I assumed  
21 transferred intent did as well.

22           THE COURT: Well, we did talk about  
23 transferred intent and I told both lawyers at the  
24 the -- before I gave the charge before I ever  
25 brought the jury back in here today that I'd give

1 each of you an opportunity to make any further  
2 objections or exceptions to the charge after I  
3 charge the jury. There was no objection by either  
4 party at that time.

5 MR. WILSON: That's correct.

6 THE COURT: All right. So I am going to  
7 bring them back out and charge them this. Go ahead  
8 and bring me the jury please.

9 THE OFFICER: Your Honor, can I approach.

10 THE COURT: Mr. Clements, can y'all  
11 approach just a second.

12 (WHEREUPON, counsel approached the Bench  
13 for an off-the-record discussion.)

14 (WHEREUPON, the jury was returned to the  
15 courtroom at approximately 11:58 a.m., and  
16 the following proceedings commenced in  
17 open court.)

18 THE COURT: Ladies and gentlemen, this is  
19 why we do it the way we do it. I sent you back  
20 there, told you I wanted to check with the lawyers  
21 to make sure we hadn't left anything out, and there  
22 was one part of the charge that was left out that I  
23 wanted to bring you back in here and charge you on.  
24 With regards to the charge of attempted murder let  
25 me instruct you with regards to this. If the

1 defendant with malice aforethought attempts to is  
2 kill another person but by mistake injures or kills  
3 a different person the defendant still has the  
4 intent to kill. The intent to kill is merely  
5 transferred from the original person the defendant  
6 attempted to kill to the actual person killed or  
7 injured. The defendant would be guilty of attempted  
8 murder just as if the attempt had resulted in the  
9 death or injury of the person the defendant  
10 attempted to kill. That particular charge is  
11 referred to as the transferred intent, transferred  
12 intent and is applicable to the offense of a charge  
13 of attempted murder. Okay. And that will be in the  
14 charge that I send back to you all.

15 Anything from the State at this time?

16 MR. CLEMENTS: No, Your Honor.

17 THE COURT: Defense counsel?

18 MR. WILSON: Nothing further, Your Honor.

19 THE COURT: All right. Return to the jury  
20 room. Don't start your deliberations till you're  
21 told to do so, I apologize. Please step to the jury  
22 room.

23 (WHEREUPON, the jury was removed from the  
24 courtroom at 12:01 p.m., and the following  
25 proceedings commenced in open court.)

1           THE COURT: Did you all look at all items  
2 of evidence?

3           MR. WILSON: Yes, sir.

4           THE COURT: Y'all have them all together,  
5 Mr. Wilson, Mr. Clements?

6           MR. WILSON: Yes, sir.

7           MR. CLEMENTS: Yes, Your Honor.

8           THE COURT: Y'all want to send the Ninja  
9 sword back?

10          MR. WILSON: I don't.

11          THE COURT: You don't want the sword to go  
12 back?

13          MR. CLEMENTS: Judge, I'd like for it to  
14 go back but I would defer to your wisdom.

15          THE COURT: I'm gonna do this. When they  
16 take these other items in along with the verdict  
17 form, I'm gonna tell them, allow the bailiff to tell  
18 them that's gonna -- it will be retained in here,  
19 but if they want to see it we'll bring them back in  
20 here and let them see it.

21          MR. CLEMENTS: That's fine with us, Your  
22 Honor.

23          THE COURT: Bring Ms. Pee and Ms. Tisdale  
24 back to me please.

25          Tell them to begin their deliberations.

1 (Jury began their deliberations and alternates were  
2 returned to the courtroom.)

3 THE COURT: Ms. Pee and Ms. Tisdale, I  
4 wanted to bring y'all in to thank you for your  
5 service. The law does not allow you to stay back  
6 there once this case goes to the jury. I appreciate  
7 your service this week. I appreciate your  
8 attentiveness throughout the trial of this case.

9 (Alternates were excused.)

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: I received a note from the  
12 jury and have shown this note to Mr. Clements,  
13 Mr. McEachin, and Mr. Wilson back in chambers. The  
14 note simply asks, was from the jury, can we get a  
15 better understanding of assault and battery of high  
16 and aggravated. After consulting with Mr. Clements  
17 and Mr. Wilson in chambers each of them have agreed  
18 to allow the Court to write this response on the  
19 note and return this note to the jury. The note  
20 reads, my response reads: I have instructed you on  
21 the law of assault and battery of a high and  
22 aggravated nature and provided you with the law as  
23 to this offense. And I've signed it and dated it  
24 today. Any objection, exception from the State?

25 MR. CLEMENTS: No, your Honor.

1 THE COURT: Mr. Wilson?

2 MR. WILSON: I don't have any objections.

3 THE COURT: All right, I'm gonna give this  
4 back to the bailiff at the door and allow him to  
5 provide this back to the jury with the instructions  
6 that they are not to dispose of this. I'm gonna  
7 make it a Court exhibit, regardless of what happens  
8 it's gonna be a Court exhibit, okay.

9 MR. WILSON: Yes, sir.

10 THE COURT: Thank you.

11 (Note was sent to the jury.)

12 (WHEREUPON, a recess was taken from the  
13 proceedings.)

14 (WHEREUPON, counsel approached the Bench  
15 for an off-the-record discussion.)

16 THE COURT: I have a note sent out by, I  
17 assume, the forelady. It's not signed. Again, I'll  
18 get her to sign it when they come back out here. It  
19 says, what happens if we can't agree on a verdict.  
20 And with consent of Mr. Clements and Mr. Wilson I  
21 have written on here, please continue to deliberate,  
22 and I've signed, dated it. They've not said -- I'll  
23 again make this a Court exhibit at a later time. I  
24 will send this back and tell them to not dispose of  
25 it but make sure it's retained. The note said, they

1 can't reach a verdict, and that's the basis of my  
2 telling them to continue to deliberate. Anything  
3 from the State?

4 MR. CLEMENTS: No, sir.

5 THE COURT: Mr. Wilson.

6 MR. WILSON: No, sir.

7 (WHEREUPON, a recess was taken from the  
8 proceedings.)

9 THE COURT: Can the lawyers approach on  
10 the case of State v. Woodbury.

11 (WHEREUPON, counsel approached the Bench  
12 for an off-the-record discussion.)

13 THE COURT: In the case of the State of  
14 South Carolina versus Mr. Woodbury, Mr. Richard  
15 Allen Woodbury, the Court has been advised that a  
16 verdict has been reached. If you are not family of  
17 the defendant or family of the victim who has been  
18 in here in this courtroom during the trial of this  
19 case, I'm gonna ask you to leave. Court personnel  
20 can certainly stay in here and law enforcement is  
21 gonna remain in here. But if you're a defendant  
22 involved in another case and have not been in here  
23 during the trial of this case I'm gonna ask you to  
24 step outside while this matter is concluded. Do not  
25 leave. If you're here, your case is called and

1 you're not here when I open the doors to come back  
2 in bench warrant will be issued for you. Do not  
3 leave the premises.

4           Again, it's my understanding that a  
5 verdict has been reached. I would remind everybody,  
6 I understand this is a very emotional time for both  
7 families. I would remind you to keep your emotions  
8 in check regardless of what the verdict is,  
9 regardless of what the verdict is. Failure to do so  
10 could result in you being held in contempt of court,  
11 sentenced to a period of incarceration and/or a  
12 fine. I will remind you of that. If you do not  
13 believe that you can keep your emotions in check now  
14 is your time to leave this courtroom. Am I clear on  
15 that?

16                       (There was no response.)

17           THE COURT: Does anybody not understand  
18 that instruction?

19                       (There was no response.)

20           THE COURT: All right. Bring me the jury  
21 please, sir.

22                       (WHEREUPON, the jury was returned to the  
23 courtroom at approximately 3:17 p.m., and  
24 the following proceedings commenced in  
25 open court.)

1 CLERK OF COURT: Ladies and gentlemen of  
2 the jury, have you reached a verdict?

3 THE FORELADY: Yes, we have.

4 CLERK OF COURT: Hand me the verdict  
5 please. Thank you.

6 (Verdict form was tendered to the Court.)

7 THE COURT: Madam Clerk, you may publish  
8 the verdict.

9 CLERK OF COURT: Thank you, sir.

10 THE COURT: The defendant will stand with  
11 his counsel.

12 CLERK OF COURT: Court of General  
13 Sessions, indictment number 2013-GS-33-00069, the  
14 State of South Carolina, County of Marion. State of  
15 South Carolina versus Richard Woodbury, defendant.  
16 As to the charge of murder in the — of Ian Gause:  
17 we, the jury, unanimously find the defendant Richard  
18 Woodbury not guilty. As to the charge of voluntary  
19 manslaughter of Ian Gause: We, the jury, find the  
20 defendant Richard Woodbury guilty. As to the charge  
21 of attempted murder of Rishawn Gause: We, the jury,  
22 unanimously find the defendant Richard Woodbury not  
23 guilty. As to the charge of assault and battery of  
24 a high and aggravated of Rishawn Gause: We, the  
25 jury, unanimously find the defendant Richard

1 Woodbury not guilty. Signed Eunice White,  
2 foreperson, dated 2/21/14.

3 Is this your verdict say you one say you  
4 all? Respond with I will if it is.

5 (Jurors responded.)

6 THE COURT: Addition from Defense counsel  
7 at this time?

8 MR. WILSON: Nothing, Your Honor.

9 THE COURT: All right, you may be seated.

10 Ladies and gentlemen, I want to thank you  
11 for your service. I can't tell you the value of  
12 your service as jurors. There's no price that you  
13 can put on that. You all have fulfilled your  
14 responsibility as jurors, and I want to thank you.  
15 I watched each of you during the trial of this case  
16 and noticed how attentive each of you were  
17 throughout the trial of this case. I hope you  
18 realize this is not television, this is not  
19 television. You all, again, have fulfilled your  
20 responsibilities. You can't be summoned back up  
21 here for jury trial, not to circuit court at least  
22 for the next three years. Now if you get summoned  
23 for jury duty in federal court, city court, or  
24 magistrate court, there's not a thing I can do to  
25 help you on that. But if you get summoned back for

1 reached their verdict, and a verdict has been  
2 rendered. We have several members of Ian's family  
3 in the courtroom, his mother and father, and some of  
4 the siblings. You've already heard from Rishawn  
5 under oath, Your Honor. I'll ask if the mother or  
6 father wish to addressing the Court in regards to  
7 sentencing or any of the sisters.

8 (Pause.)

9 MR. CLEMENTS: They're fine, Your Honor.

10 (Pause.)

11 MR. CLEMENTS: Beg the Court's indulgence  
12 one moment. I think Ian's mother would like to  
13 address the Court, Your Honor.

14 THE COURT: She can stand right here.  
15 Please state your full name for the  
16 record.

17 MS. GAUSE: My name is Elizabeth Gause and  
18 I'm the mother of the deceased.

19 THE COURT: Please direct any comments to  
20 me, Ms. Gause. I'll be happy to hear from you.

21 MS. GAUSE: I hope that he gets the max,  
22 whatever the max is for him, because I have had a  
23 great loss every day since I lost my son and I have  
24 been the same, I miss him terribly. He had a  
25 child— he had an unborn child. Now the child is

1 born. This child will never know his father. I  
2 lost a daughter in 2011. Mr. Woodbury knew this; he  
3 was at the setting up. He and Ian was friends.  
4 They was cool with each other. So he misguided Ian.  
5 He misled Ian. Ian never saw it coming. Ian didn't  
6 know he would do something like this to him because  
7 I even made a statement about Mr. Woodbury, and Ian  
8 said he's a cool guy. I want him to get the max  
9 because his children will never have their father.  
10 His sisters and brothers will never have their  
11 brother with them again because of Mr. Woodbury. I  
12 think Mr. Woodbury could have handled the situation  
13 differently. I really, he's into martial arts. He  
14 could have handled it differently. He didn't have  
15 to take him away from his family, but he did. That  
16 was his choice. Thank you.

17 THE COURT: Thank you, ma'am.

18 MR. CLEMENTS: Your Honor, my  
19 understanding was Ian had two children and one was  
20 unborn at the time of his death.

21 THE COURT: All right. Anything else from  
22 the State?

23 MR. CLEMENTS: Your Honor, this is a very  
24 egregious crime. I've never seen anyone killed like  
25 that with Ninja swords. And Your Honor, I would

1 hope you consider giving Mr. Woodbury the max on the  
2 manslaughter.

3 THE COURT: All right, Mr. Wilson, I'll be  
4 happy to hear from you, sir.

5 MR. WILSON: Thank you, Your Honor. Your  
6 Honor, Mr. Woodbury is 37 years of age. He has, I  
7 think, four years of college and he has no criminal  
8 history. I think the only thing he's ever had was  
9 an open container. Obviously all of this is tragic  
10 and tragic for both families. One is dead. The  
11 other one is going to prison for a substantial  
12 period of his life so there are no winners in this.  
13 I have a great deal of respect for jury verdicts. I  
14 respect this verdict. I'm not saying I agree with  
15 it, but I certainly respect it. And this jury did  
16 listen to the evidence and to the facts in this  
17 case, and they made a decision and we live with that  
18 decision.

19 And I simply say to the Court, Your Honor;  
20 that sometimes when you're in heat of the moment you  
21 make decisions, you wish you could change it, you  
22 wish you could go back, you can't. And I guarantee  
23 you that if he could go back to that night and do  
24 things differently he would have, and he would, but  
25 he can't. And nothing that I say is going to change

1 any of that. We just ask the Court to have mercy  
2 and to do what you have to do under the  
3 circumstances of this case.

4 THE COURT: How long has he been in jail,  
5 Mr. Wilson?

6 MR. WILSON: Since the night of the  
7 offense which would have been September 30th of  
8 2012.

9 MR. CLEMENTS: I think he got arrested the  
10 early morning hours of September 30th, 2012 like  
11 Mr. Wilson said.

12 Your Honor, the victim ---

13 THE COURT: Anything -- sir, go ahead.

14 MR. CLEMENTS: I'll wait, Your Honor, till  
15 you ask for me to say something.

16 THE COURT: Mr. Wilson, I'm sorry,  
17 anything else?

18 MR. WILSON: No, sir, but I think the  
19 defendant wants to be heard, Your Honor.

20 THE COURT: Well, let me say this, and I  
21 know you've advised him of this Mr. Wilson. I  
22 certainly want to hear from Mr. Woodbury if he so  
23 desires to speak but don't want him to certainly say  
24 anything that could be used against him on any  
25 appeal.

1 MR. WILSON: Yes, sir.

2 THE COURT: So having said that I'll be  
3 happy to hear from you, Mr. Woodbury.

4 MR. WILSON: Give me one second, Your  
5 Honor.

6 (Mr. Wilson confers with the defendant.)

7 THE DEFENDANT: First of all, I'm  
8 extremely sorry that this happened. I don't know  
9 martial arts. I do practice fighting and stuff like  
10 that because i used to be a corrections officer so I  
11 I always had to kind of stay alert and everything.  
12 And I have the deepest sympathy for the family. You  
13 know, if I could have avoided this situation I would  
14 have, but just, I'm not going to go into specifics  
15 into the case. I feel terribly sorry for what  
16 happened. I had to constantly go to church services  
17 every Sunday in jail to God just talk to me and show  
18 me, you know, how to deal with this because this was  
19 very, very traumatic for me, very traumatic because  
20 knowing something like this happened and it was not  
21 something that I planned, you see what I'm saying.

22 And to know that I'm gonna be spending a  
23 very long time in jail or prison because I was not  
24 acquit, a clear self-defense law in South Carolina,  
25 is very tragic also. But if I'm going to go, you

1 know, to prison for a long time I just would like to  
2 say to the family I'm terribly sorry. I'm more  
3 sorry than if I never get out I'll still be sorry,  
4 just something I got to live with till I die. And  
5 based on specifics as other things probably will  
6 never be as far as -- I can't go into that. But  
7 let's just truly, truly say that there's a lot more  
8 information out there as far as this case is  
9 concerned okay.. But -- okay, I'm not gonna go into  
10 the case. But I'm not really reiterating myself. I  
11 just can't really speak and want to speak and how I  
12 feel right now is almost, it's almost, it's almost  
13 amazing. I can't even believe that I -- it feels  
14 like I'm in a dream right now. It feels like I'm in  
15 a dream, feels like a bad dream I can't wake up  
16 from.

17           And I'm terribly sorry that the children  
18 are gonna grow up without a father and just very  
19 sorry for the fact that she lost her daughter, the  
20 other daughter, a few years before and everything.  
21 But if I could have prevented this, I mean, Lord  
22 knows I tried; but I would have, I really would  
23 have. It's okay, I'm calm.

24           MR. WILSON: Go ahead.

25           THE DEFENDANT: Let me get this out 'cause

1 I know I'm already ---

2 THE COURT: Let me ask this, Mr. Wilson.

3 I know his mother and father have been here all  
4 week. Do they wish to say anything? He can come to  
5 the rail right there.

6 FATHER OF DEFENDANT: I'm the father of  
7 Richard Allen Woodbury.

8 THE COURT: Tell me your name, sir.

9 FATHER OF DEFENDANT: Robert Woodbury, Sr.

10 THE COURT: Yes, sir, I'll be happy to  
11 hear from you.

12 FATHER OF DEFENDANT: I'm also a pastor.  
13 He been in church from day one. We started  
14 preaching at the age of 12, and I did the best I  
15 could with him. He's my son. I know the family has  
16 a great loss and I feel sorry for the family and I'm  
17 hoping that we can put this behind us and God will  
18 forgive him, the family will forgive him, forgive  
19 each other, and we can go on and be strong. This is  
20 his mother here. I've seen nothing but great things  
21 out of Richard. He was in track and field at the  
22 age of 15 years old and he jumped 26 feet. He made  
23 headlines all over mainland. He wanted ---and we  
24 take him to school in Baldwin (ph), Kansas where he  
25 worked hard and could have went to the olympics. He

1. wanted to go to another school, it's a school that  
2. our church owned which is (inaudible) AME church in  
3. Columbia. He went to school there and he got his  
4. degree there. My memories of him is good memories.  
5. He worked hard. He always had one and two, three  
6. jobs. I don't know anything bad about him. He was  
7. always worked hard. It wasn't two jobs, it was  
8. three jobs. He worked in law enforcement,  
9. understand that because that's something that did  
10. not come out. He worked for Marion County. He was  
11. a jailer.

12. THE COURT: He said he was a detention  
13. officer, yes, sir.

14. THE DEFENDANT: I was a prison guard.

15. MR. WILSON: I thought it was a jailer.

16. THE DEFENDANT: Prison guard and a jailer.

17. FATHER OF DEFENDANT: All right.

18. THE COURT: Thank you. Anything else,  
19. Mr. Wilson?

20. MR. WILSON: No, sir.

21. THE COURT: Mr. Clements, you were gonna  
22. say something a minute ago?

23. MR. CLEMENTS: Your Honor, I was. I was  
24. going to say it just seems like a tragic  
25. testosterone prideful fueled event occurred and I

1 just hated to see it. Hated to see it for both  
2 families. I do pray I believe in merciful, graceful  
3 forgiving God. I do pray Mr. Woodbury reaches peace  
4 with the Lord. I know, I know that that is possible  
5 when he can. But the thing that disturbs me is this  
6 occurred and he went on his way, told law  
7 enforcement it happened down the street and then  
8 went on his way clubbing for a couple of hours and  
9 going to the club. And that kind of attitude really  
10 I find disturbing. That's all I wish to say, Your  
11 Honor.

12 THE COURT: All right. According to our  
13 calculations he's been in 510 days. Anything else  
14 from the State?

15 MR. CLEMENTS: That's all, Your Honor.

16 THE COURT: Defense counsel?

17 MR. WILSON: Nothing further, Your Honor.

18 THE COURT: Sentence on indictment  
19 2013-GS-3369 is that the defendant be sentenced to  
20 — committed to the State Department of Corrections  
21 for a period of 30 years, given credit for 510 days.

22

23 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

24

25

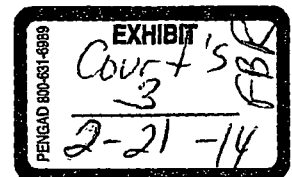
Can we get a better  
understanding of Assault and  
Battery of a high and aggravated  
nature?

Erin White  
2/21/14

I have instructed you on the law of  
Assault and Battery of a High and Aggravated  
Nature and provided you with the law  
as to this offense.

2-21-14

Judge Brown



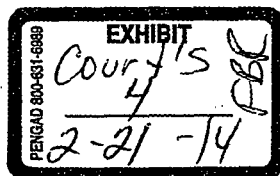
not happens if we can't agree on a verdict.

541

Ernest White  
2/21/14

Please continue to deliberate.

Judge Brown  
2-21-14



**WITNESSES**

TONY FLOWERS Marion Police Department

E. L. Clements, III

**ARREST WARRANT NUMBER**

2012A3320100112 2012A3320100113

**ACTION OF GRAND JURY**

True Bill

Foreperson of Grand Jury

Date: Jan 31, 2013

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-33-00069

The State of South Carolina

County of

MARION

**COURT OF GENERAL SESSIONS**

FEBRUARY

TERM

2013

**THE STATE**

vs.

**RICHARD ALLEN WOODBURY**

Indictment for

**MURDER;  
ATTEMPTED MURDER**

STATE OF SOUTH CAROLINA )  
COUNTY OF MARION )

INDICTMENT FOR  
MURDER  
ATTEMPTED MURDER

At a Court of General Sessions, convened on JANUARY 31, 2013 the Grand Jurors of MARION County present upon their oath:

**COUNT ONE- MURDER**

That RICHARD ALLEN WOODBURY did in Marion County, on or about September 29, 2012, willfully, feloniously, and intentionally kill the victim, Ian Gause, with malice aforethought, either express or implied, by means of stabbing, and the victim did die as a proximate result thereof on or about September 30, 2012 in Marion County, in violation of Section 16-03-0010, & 20, S. C. Code of Laws, 1976, as amended.

**COUNT TWO- ATTEMPTED MURDER**

That RICHARD ALLEN WOODBURY did in Marion County, on or about September 29, 2012, with malice aforethought attempt to murder one, Rayshawn Gause, by stabbing him with a knife, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



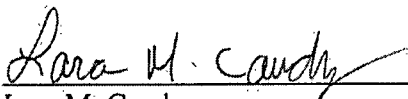
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**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

## 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."

July 2, 2015



Lara M. Caudy  
Appellate Defender

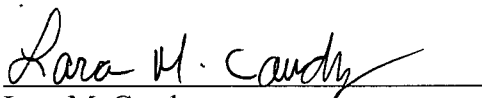
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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July 2, 2015



Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**RECEIVED**

JUL 02 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

 ORIGINAL

RECEIVED

JUL 02 2015

SC Court of Appeals  
RESPONDENT,

THE STATE,

V.

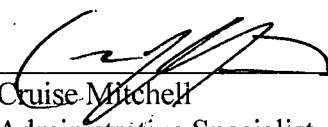
RICHARD ALLEN WOODBURY,

APPELLANT

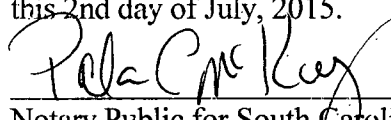
APPELLATE CASE NO. 2014-000390

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 2nd day of July, 2015.

  
Cruise Mitchell  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 2nd day of July, 2015.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022