

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN ARTHUR THOMAS,

APPELLANT

APPELLATE CASE NO. 2015-000720

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT	1
OPENING STATEMENT BY MR. POULOS.....	1
OPENING STATEMENT BY MR. SHELTON	7
TESTIMONY	
MICHAEL RICHARD CORTTE, II	
Direct Examination by Mr. Poulos	13
Cross Examination by Mr. Shelton.....	16
Redirect Examination by Mr. Poulos.....	20
WILLIAM KENNETH MELTON	
Direct Examination by Mr. Patterson	22
Cross Examination by Mr. Shelton.....	31
ALTON EUGENE MORGAN, JR.	
Cross Examination by Mr. Shelton.....	50
Redirect Examination by Mr. Poulos.....	51
MISTY WATTS	
Direct Examination by Mr. Patterson	52
Cross Examination by Mr. Shelton.....	57
DEBBIE HUNTLEY	
Direct Examination by Mr. Poulos	60
Cross Examination by Mr. Groeber.....	63
JOSEPH HUNTLEY	
Direct Examination by Mr. Patterson	74
Cross Examination by Mr. Shelton.....	76
DENISE GIBBY	
Direct Examination by Mr. Patterson	78

STEVEN AUSTIN FANN	
Direct Examination by Mr. Poulos	81
Cross Examination by Mr. Shelton	88
Redirect Examination by Mr. Poulos	93
Recross Examination by Mr. Shelton	93
JOHN ARTHUR THOMAS	
Direct Examination by Mr. Shelton	108
Cross Examination by Mr. Poulos	155
DEBBIE HUNTLEY	
Direct Examination by Mr. Groeber	174
Cross Examination by Mr. Poulos	175
Redirect Examination by Mr. Groeber	176
LUTFUL RONJON	
Direct Examination by Mr. Shelton	176
LAWRENCE J. BRODIE	
Direct Examination by Mr. Shelton	177
Cross Examination by Mr. Poulos	185
CLOSING ARGUMENT BY MR. PATTERSON	212
CLOSING ARGUMENT BY MR. SHELTON	217
CLOSING ARGUMENT BY MR. PATTERSON	225
CHARGE OF THE COURT	235
VERDICT	256
TESTIMONY	
FRANKLIN ALEX MYERS	
Direct Examination by Ms. Wilson	260
Cross Examination by Mr. Groeber	276
INDICTMENT	301
DEFENDANT'S EXHIBIT #1 (RECEIPT)	303
DEFENDANT'S EXHIBIT #3 (RECEIPT)	304
DEFENDANT'S EXHIBIT #6 (RECEIPT)	305
COURT'S EXHIBIT #1 (JURY NOTE)	306

COURT'S EXHIBIT #2 (JURY NOTE) 307

CERTIFICATE OF COUNSEL 308

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #3 (CD)**

1 interest, the bias of the witness, the prejudice of
2 the witness, the opportunity for that witness to
3 have seen and heard the things about which the
4 witness testifies, as well as the way the witness
5 acts on the witness stand. That means it's your
6 duty to pay close attention, please do not let your
7 thoughts wander, so at the end of the testimony
8 after you have heard arguments of counsel and I have
9 instructed you on the law applicable to this case,
10 you will be in a position to determine what the true
11 facts are and apply the law to those facts.

12 Ladies and gentlemen, please give your strict
13 attention.

14 Mr. Poulos.

15 OPENING STATEMENT

16 **MR. POULOS:** Thank you.

17 Good morning. On November 4, 2013, at about
18 eight o'clock in the evening, William Melton, known
19 by some as Kenny, known by others as Bo, was at a
20 bar in the town of Cross called The Monkey Business.
21 He was there with a friend having a beer, having
22 some casual conversation. There were some other
23 folks there as well. The defendant, John Thomas,
24 was there. The defendant's roommate, Misty Watts,
25 was there. Denise Gibby, the bartender, was there.

1 Joe Huntley and Debbie Huntley were there.

2 And you're going to see a video in the course
3 of this trial that shows exactly what happened.
4 Most of the witnesses that were there are going to
5 tell you pretty much the same thing, but what
6 happened that night no one expected, least of all
7 Kenny Melton.

8 You're going to hear that John Thomas came to
9 the bar with Misty Watts. You're going to hear that
10 Kenny was there, that John Thomas doesn't care for
11 Kenny. He doesn't like Kenny, and he doesn't like
12 that Kenny was talking to Misty Watts. He doesn't
13 like that Misty Watts refused to leave the bar with
14 him and instead chose to sit down next to Kenny
15 Melton and have a conversation.

16 You're going to hear that at one point in the
17 evening, John Thomas got upset and decides to leave
18 without Misty Watts, but he came back. And you'll
19 see that when he came back, Kenny was still sitting
20 on a bar stool drinking beer a few feet from the
21 door. John Thomas opens the door, pulls out a
22 knife, walks straight to Kenny Melton, grabs him by
23 the back and puts a knife in his chest, without
24 hesitation, unprovoked.

25 You're going to see that Kenny jumped up,

1 stumbled a few feet away to get away from John
2 Thomas and John Thomas comes back at him again with
3 the knife. You're going to see Kenny run to the
4 other side of the bar, hide behind a pool table and
5 John Thomas comes at him again and stands with the
6 long blade of his knife pointing at Kenny Melton as
7 the blood starts pouring out of Kenny Melton's
8 chest.

9 Now, the witnesses that were there will tell
10 you that they don't recall any argument between the
11 two men that evening before this happened. They're
12 going to tell you John Thomas came in and went
13 straight to Kenny as he was sitting on the bar
14 stool. Kenny didn't stand up and confront him
15 before he got stabbed.

16 And Kenny will tell you that, fortunately, he
17 was able to flee the bar and jump in his truck and
18 get out of there, but he didn't get very far before
19 he realized how badly he was bleeding. He'll tell
20 you that when John Thomas came into the bar, he
21 thought he was aiming for his heart, but,
22 fortunately, he was able to move so that the knife
23 went into the left part of his chest.

24 Kenny only got a little ways down the road
25 before he realized that he was bleeding badly, and

1 he stopped at a convenience store called the Canal
2 One Stop where he applied pressure to the wound to
3 try to get it to stop bleeding. His friend applied
4 pressure to try to stop the bleeding. They called
5 EMS. They came and applied pressure. They took him
6 to Cross High School where he was flown to MUSC by
7 helicopter.

8 When he gets there, he meets with a trauma
9 surgeon named Dr. Fann. And Dr. Fann will come and
10 testify. He'll tell you about the location of the
11 injury in the area of the body called the box.
12 He'll tell you that in the box, you have the heart,
13 you have the lungs, you have major arteries, and
14 that a stab wound to the box can be fatal. He'll
15 tell he you he ordered several sets of x-rays,
16 echocardiograms, and, fortunately, for Kenneth
17 Melton, the injury proved not to be life
18 threatening. And I expect the defense to emphasize
19 that to you.

20 We don't dispute the injury wasn't serious,
21 but, ladies and gentlemen, the charge here is
22 attempted murder. The evidence will show that John
23 Thomas tried to stab Kenny in the heart and the fact
24 that he failed is not a defense.

25 I want to talk to you about attempted murder.

1 The law of this state says a person who, with intent
2 to kill, attempts to kill another person with malice
3 aforethought, either expressed or implied, commits
4 the offense of attempted murder. So you have intent
5 to kill, attempt to kill and malice aforethought.

6 We know that John Thomas intended to kill Kenny
7 because when he came back, he had a knife. He
8 didn't come back looking for a fistfight. He could
9 have come in, punched him in the face, knocked him
10 down, kicked him. He came back with a knife. He
11 didn't just want to hurt him. After he stabbed him
12 the first time, he came at him again and again
13 because he didn't just want to hurt him, he wanted
14 to kill him.

15 Well, we know he attempted to kill him by the
16 very act of putting that knife in his chest. We
17 know he did it with malice aforethought because we
18 know he made this plan before he ever came back to
19 the bar. Why else would he bring a knife?

20 And you'll see that he approaches Kenneth
21 Melton without hesitation. Why is that important?
22 He didn't hesitate because he knew what he was going
23 to do. He had formed that plan in his mind. He
24 didn't come in and confront and have a conversation
25 that got out of hand. He came in, went straight to

1 the victim.

2 You'll also hear that before he came back, he
3 sent a text message to Misty Watts and that message
4 said, There will be blood. There will be blood. He
5 knew what he was going to do before he did it.

6 Now, I expect you to hear some things about
7 Kenneth Melton you might not like. Twelve years
8 ago, he committed a burglary. Six years ago, he
9 committed assault and battery of a high and
10 aggravated nature, which is a misdemeanor. The
11 defense is going to parade witnesses in here to tell
12 you that Kenny Melton's a bad guy with a bad
13 reputation, he's done bad things.

14 There's been made baseless claims that in the
15 past, Kenny has stolen from John; in the past, Kenny
16 has threatened John. I expect the defense to get up
17 here and tell you that John Thomas acted in
18 self-defense or that John Thomas was enacting a
19 citizen's arrest. And I want you to think very hard
20 about that as you watch the video and as you watch
21 John Thomas walk up to Kenny Melton as he sits on
22 that bar stool and stabs him in the chest unprovoked
23 and ask yourself, where is the self-defense?

24 I expect them to drag Kenny Melton through the
25 mud, they'll throw everything they can at him,

1 including the kitchen sink, but I'm asking you to
2 focus on what this case is about. This case is
3 about John Thomas walking into a bar and stabbing a
4 man in the chest without provocation.

5 You might not like Kenny Melton. It doesn't
6 matter. It doesn't matter if you like him. It
7 doesn't matter if you think he is a good person. It
8 doesn't matter if you think he is a bad person.
9 What matters is what happened that night in that
10 bar. And at the end of the day, all I ask is that
11 you pay careful attention to the evidence and you
12 follow the law as the Judge gives it to you and you
13 render a verdict that's supported by both,
14 regardless of your personal feelings about either of
15 the parties, and I submit to you that is a verdict
16 of guilty to attempted murder.

17 **THE COURT:** Mr. Shelton.

18 **MR. SHELTON:** Thank you, Your Honor. May it
19 please the Court.

20 This case is about the heart. It's about John
21 Thomas' heart. The State has alleged attempted
22 murder. Attempted murder requires malice heart.
23 But they only want you to focus on one minute of
24 John's life. They only want you to focus on one
25 minute of the interaction between John and Kenny.

1 What I intend to do is show you the history of John
2 and Kenny. I intend to show you the history,
3 because you can't judge somebody's heart based off
4 one minute, you need to know their history, you need
5 to know their life.

6 One of -- we just had Christmas. One of my
7 favorite things to do on Christmas day, other than
8 opening presents, is watching the Christmas Story.
9 That's the one with Ralphie and he wants a BB gun
10 and he keeps getting told, You're going to shoot
11 your eye out.

12 Well, in that story, there's a bully that
13 follows that group of kids around, Ralphie and his
14 friends. He is making fun of them, throwing
15 snowballs at them. Farkus, that's his name. He's a
16 bully. Well, one day the bully throws a snowball at
17 Ralphie, starts making fun of him, asking him, Are
18 you going to cry? Ralphie stands up to that bully.

19 No one would say that Ralphie had a malicious
20 heart. He didn't -- he wanted a Red Ryder BB Gun to
21 fight imaginary criminals. He wore a pink bunny
22 outfit. He looked to his mailbox every day for a
23 decoder ring just to find out that he was decoding
24 an advertisement for Olvantine. His mom didn't
25 punish him because he didn't have a malicious heart.

1 Forty-nine out of 50 states, everything except
2 -- every state except Minnesota, have passed
3 anti-bullying laws. As a civil -- as a society, we
4 have determined that bullying is bad and we don't
5 punish the person that was bullied. We don't punish
6 the person that stands up to bullies.

7 And Kenny Melton is a bully. He took advantage
8 of John before that day, took advantage of John that
9 night and took advantage of John after that and
10 continues to take advantage of John. He threatened
11 him, showed violence towards John. I'm going to
12 show you at least five incidents where he threatened
13 violence and showed John -- and bullied John, at
14 least five.

15 John, no doubt, you're going to see the video,
16 he cut him. There's going to be people from the bar
17 that are going to say that he cut him, that he was
18 cut. You'll see that. There's no doubt about that.
19 But they're also going to say that this isn't the
20 type of person John is. They're also going to say
21 that Kenny has a violent reputation.

22 So John and Kenny, they knew each other. They
23 got started -- they got along when they first met
24 each other. John, he worked at an electronic place
25 for over ten years doing electronics. That company

1 gives back to the community. John gives back to the
2 community. And how John met Kenny was through
3 Kenny's girlfriend. Kenny's girlfriend's son needed
4 a job. John helped him out with getting a job. And
5 they got along.

6 They had some common interests. They love
7 fishing, so -- but John quickly realized that they
8 had different hearts. John, hard worker. Kenny,
9 takes advantage of people. John would give you the
10 shirt off his back. Kenny would take that shirt and
11 try to find a way to keep it. John, it's not in his
12 character. Kenny has a malicious heart; John does
13 not.

14 So those prior incidents, he didn't report it.
15 They're in a small community. They're in Cross. He
16 let it go. Those were things that John -- Kenny
17 took advantage of John, to himself, to John.

18 So what makes November 4th, 2013, different?
19 Kenny stole items from John, from his company.
20 John's at the bar. He doesn't like Kenny, and
21 you'll hear all that. He leaves and he sees that
22 all his stuff is gone. His equipment from his work
23 is gone. He goes to look for it. He looks in
24 Kenny's truck, sees a gun.

25 Based off the prior incidents, he knows that

1 Kenny carries a gun. He knows he has a gun. He
2 knows he carries a knife. He knows he's a violent
3 person. He knows he's threatened him. So he gets
4 his knife, nothing substantial, just a pocket knife,
5 and he goes to confront about getting his stuff
6 back.

7 Before he could have a chance to talk about
8 getting his stuff back, there's a scuffle. You'll
9 see the video. I don't think it's very clear. A
10 lot of people drinking that night. It was at a bar.
11 You can make a determination of where he got cut,
12 when he got cut. Was it when he was sitting at the
13 bar or was it later on when they're tussling a
14 little bit? Because John never wanted to kill him.
15 He never wanted to hurt him. He accidentally cut
16 him. He didn't know what Kenny was carrying on him
17 at that time.

18 Then you'll hear that John ran out the back
19 door. Well, that was after, and you'll see it on
20 the video, that was after Kenny ran out the front
21 door towards that truck towards that gun. John had
22 to get away. He had to escape from Kenny, a violent
23 person. He didn't know he was cut bad. He didn't
24 know how bad it was. And it wasn't bad. The
25 Solicitor just admitted it in opening. It wasn't

1 serious, a couple stitches. They're in Cross.
2 There's no emergency room. There's no 24-hour
3 Doctor Care. He had to get medevacked, yes, but
4 it's midnight.

5 John looks forward to this day. He wants you
6 to hear the history. He wants you to make a
7 determination of what's justice, what is fair
8 because that's what your job is, to determine what's
9 justice, what is fair. I'm going to ask you not to
10 put the blinders on, not do what the State does and
11 only look at the one minute of John's life and make
12 a determination of what's in his heart, but look at
13 the history and don't let the State continue to
14 allow Kenny to take advantage of John because that's
15 what they're doing right now. And I ask you not
16 to --

17 **MR. POULOS:** Objection.

18 **THE COURT:** What's your objection?

19 **MR. POULOS:** Do you want us to approach, Your
20 Honor?

21 **THE COURT:** Ladies and gentlemen, as I
22 indicated to you, what's contained in opening
23 statements, as well as closing arguments is merely
24 the attorneys' contention as to what the evidence
25 will show you. I will instruct you on the law

1 applicable to this case.

2 Mr. Shelton.

3 **MR. SHELTON:** Thank you, Your Honor.

4 I'm confident if you don't put the blinders on,
5 that you'll come to a just and fair result, and
6 that's all we ask. Thank you.

7 **THE COURT:** Call your first witness.

8 **MR. POULOS:** State calls Detective Cortte.

9 MICHAEL RICHARD CORTTE, II,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Please be seated. State your full
12 name, spell your last name for the record.

13 **THE WITNESS:** Michael Richard Cortte, II. And
14 my last name is spelled C-O-R-T-T-E.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 **Q** Good morning, Detective.

18 **A** Good morning.

19 **Q** Detective, where do you work?

20 **A** I work for the Berkeley County Sheriff's
21 Office.

22 **Q** How long have you worked there?

23 **A** I began my career with the sheriff's office in
24 March of 2007.

25 **Q** What's your current title there?

1 **A** I'm a detective.

2 **Q** How long have you been in the detective
3 division?

4 **A** Approximately five years.

5 **Q** Detective Cortte, did you respond to an
6 establishment called the Monkey Business Bar and
7 Grill in Cross on November 5th, 2013?

8 **A** Yes, I did.

9 **Q** Why?

10 **A** I was requested to assist in an ongoing
11 investigation from the incident the night before.
12 And my part in that was to collect a copy of the
13 establishment's security video surveillance footage.

14 **Q** Did you collect that video?

15 **A** I did.

16 **MR. POULOS:** May I approach, Your Honor?

17 **THE COURT:** You may.

18 BY MR. POULOS:

19 **Q** Detective, I'm showing you what's been
20 premarked as State's Exhibit 3. Do you recognize
21 that disk?

22 **A** Yes, sir, I do.

23 **Q** What is it?

24 **A** It's a disk that contains a copy of that video
25 that I collected from the establishment.

1 **Q** Have you had an opportunity to view that video?

2 **A** I have.

3 **Q** Does it appear to be a video of an incident at
4 the Monkey Business Bar and Grill?

5 **A** It does. And I recognize my initials on here
6 where I viewed it.

7 **Q** Is the video date stamped?

8 **A** Yes, sir, it is.

9 **Q** For November 4th?

10 **A** Correct, 2013.

11 **Q** Does the defendant appear in the video?

12 **A** He does.

13 **Q** Does the victim appear in the video?

14 **A** Yes, he does.

15 **Q** Does the video depict what occurred on November
16 4th as you'd come to understand it through the
17 course of your investigation?

18 **A** Yes, it does.

19 **MR. POULOS:** I'd ask that State's 3 be admitted
20 in evidence, Your Honor.

21 **THE COURT:** Any objection?

22 **MR. SHELTON:** No objection.

23 **THE COURT:** State's 3 into evidence without
24 objection. You may publish.

25 (State's Exhibit Number 3, video, admitted

1 into evidence.)

2 **MR. POULOS:** Thank you, Your Honor. Beg the
3 Court's indulgence, Your Honor.

4 (Pause.)

5 (Whereupon, State's Exhibit Number 3 was
6 played for the jury.)

7 **MR. POULOS:** Your Honor, I have no further
8 questions for Detective Cortte.

9 **THE COURT:** Mr. Shelton.

10 CROSS-EXAMINATION

11 BY MR. SHELTON:

12 **Q** Detective Cortte, when were you actually able
13 to view the video?

14 **A** In part, I was able to view a portion of it on
15 the scene as it -- in order to obtain a copy, I
16 brought along a thumb drive, and it had to be
17 searched for that particular segment. But more in
18 its entirety, I viewed it yesterday morning.

19 **Q** So yesterday was the first time you were able
20 to see this video?

21 **A** In its entirety.

22 **Q** Okay. So there's more to this video than what
23 we just saw?

24 **A** A portion more that -- roughly, approximately,
25 ten minutes long.

1 **Q** Okay. And you also talked with Mr. Melton that
2 night or the next day; correct?

3 **A** Could you rephrase your question? I'm sorry.

4 **Q** You talked with Mr. Melton the night of the 5th
5 or the day of the 5th?

6 **A** Correct. I had the opportunity to -- I was in
7 the area of -- the business is located in the Cross
8 area of Berkeley County, South Carolina. I checked
9 back in with my direct supervisor, inquired while I
10 was up that way, is there anything else that needed
11 to be done? And the victim's residence -- or where
12 the victim was going to be at that time was also in
13 Cross, the Cross area. So I was requested to
14 respond there and took a written statement from him
15 and also obtain copies of his medical documentation
16 from injuries that he sustained apparently during
17 the incident.

18 **Q** Okay. At some point in time, you were informed
19 that Mr. Thomas was in the bar prior to this
20 incident?

21 **A** I'm sorry. I'm not understanding your
22 question.

23 **Q** So we have the -- we have this incident where
24 Mr. Thomas comes into the bar that we just saw;
25 correct?

1 **A** Correct.

2 **Q** At some point in time, you, in your
3 investigation, you came across information that John
4 was in the bar prior to that incident?

5 **A** Respectfully, Counselor, not to pass the buck,
6 so to speak, but this was actually not a case
7 assigned to me. My part in it was rather minimal,
8 just in an assistance capacity, and I'm not
9 comfortable to speak on the full -- I don't have a
10 full understanding of the entire case.

11 **Q** But you were the only officer that went and --
12 the only detective that went to go get the video and
13 help make a copy of the video. Was there another
14 detective that did that?

15 **A** I obtained the copy of the video we just viewed
16 onto a thumb drive on the 5th, the day after the
17 incident, and then I submitted that into evidence.

18 Admittedly, I'm probably one of our least
19 technical people in the whole sheriff's office.
20 When I returned to the sheriff's office and
21 attempted to view the video there, there were some
22 apparent technical issues. I informed my supervisor
23 of this, and also we have our IT department. The
24 way it was explained to me is there's several
25 different viewers of sorts that were not available

1 on the copy that I had to play it and there had to
2 be arrangements made, and I was not privilege to
3 making those arrangements.

4 **Q** Okay. But it was your -- you're the one that
5 made the decision not to have the earlier part of
6 the night copied on your USB drive?

7 **A** I made the decision to copy the portion of the
8 incident. When I arrived on the scene and spoke
9 with the staff at the bar who was able to help us
10 define the timeframe that we're looking at, we
11 didn't want to -- the thumb drives -- again, I'm not
12 very technical, so I apologize if I'm phrasing
13 things incorrectly. My understanding is there's a
14 limited space capacity on the thumb drives. I'm not
15 knowledgeable enough to know exactly what that is.
16 So I requested that -- the portion depicting the
17 incident and then, you know, just a little bit
18 before and a little bit after, which, approximately,
19 ten minutes worth is what I was able to request to
20 be on there.

21 **Q** So based off space and space issues, we don't
22 have the very -- earlier part of the night when John
23 was in the bar earlier?

24 **A** Not to my knowledge.

25 **Q** Okay. Were you able to see that part of the

1 video?

2 **A** You're referring to earlier in the --

3 **Q** When they were earlier there?

4 **A** No, I was not.

5 **Q** Okay. You didn't search for that?

6 **A** I did not.

7 **Q** Okay.

8 **MR. SHELTON:** Beg the Court's indulgence.

9 (Pause.)

10 **Q** And you're with the sheriff's office, the
11 Berkeley County Sheriff's Office?

12 **A** Yes, the Berkeley County Sheriff's Office.

13 **Q** You have more than one USB drive at the
14 sheriff's office?

15 **A** I'm sorry?

16 **Q** You have more than one USB drive at the
17 sheriff's office?

18 **A** (No response.)

19 **Q** You could have copied more if you wanted to, if
20 you could?

21 **A** I imagine so.

22 **MR. SHELTON:** Okay. No further questions.

23 REDIRECT EXAMINATION

24 BY MR. POULOS:

25 **Q** Detective, is this the video that was given to

1 you by the owner of the bar?

2 **A** Yes.

3 **Q** And how did you request it?

4 **A** I requested that I could obtain a copy onto the
5 thumb drive that I had brought along with me.

6 **Q** Did you request a video of the incident?

7 **A** Yes, I did.

8 **Q** Okay. The remaining ten minutes before and
9 after, what does it show?

10 **A** Respectfully, it's somewhat boring. It
11 shows --

12 **MR. SHELTON:** Objection, Your Honor; best
13 evidence.

14 **THE COURT:** Overruled. You may answer.

15 **THE WITNESS:** Thank you, Your Honor. I was
16 saying, respectfully, it's somewhat boring. It's
17 just a lot of footage of -- you can see the victim
18 sitting at the bar, apparently talking with friends,
19 some other patrons that are there, and appears to
20 just be there minding his own business until, you
21 know, for some time until that portion we just saw
22 where the defendant clearly comes in, and I feel,
23 you know, speaks for itself.

24 **MR. POULOS:** Nothing further, Your Honor.

25 **THE COURT:** Mr. Shelton.

1 **MR. SHELTON:** Nothing further, Your Honor.

2 **THE COURT:** You may step down. Thank you.

3 **THE WITNESS:** Thank you, Your Honor. Am I
4 excused back to duty?

5 **THE COURT:** You are excused, but feel free to
6 stay with us if you'd like to. Thank you.

7 **THE WITNESS:** Thank you, Your Honor.

8 **THE COURT:** Call your next witness.

9 **MR. PATTERSON:** Thank you, Your Honor. May it
10 please the Court. The State calls Kenny Melton.

11 WILLIAM KENNETH MELTON,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please be seated. State your full
14 name, spell your last name for the record.

15 **THE WITNESS:** My name is William Kenneth
16 Melton, M-E-L-T-O-N.

17 **THE COURT:** Mr. Patterson.

18 **MR. PATTERSON:** Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. PATTERSON:

21 **Q** Kenny, how long have you lived in Berkeley
22 County?

23 **A** Approximately 40 years.

24 **Q** And where in Berkeley County do you live
25 currently?

1 **A** In Cross, South Carolina, [REDACTED] Long Point Road.

2 **Q** And is that where you were living at the time
3 of this incident?

4 **A** Yes, sir.

5 **Q** And what kind of work do you do or have you
6 done in the past?

7 **A** At the time, I was self-employed running a
8 rollback service, towing service, Seaside Towing and
9 Recovery. I've done some construction work,
10 administrative work, mostly construction management.

11 **Q** And where were you on the night of November
12 4th, 2013?

13 **A** At the local pub, Monkey Business.

14 **Q** And where is that bar located?

15 **A** Between Highway 45 and Highway 6.

16 **Q** Is that in Cross?

17 **A** Yes, sir.

18 **Q** And why did you go to the bar that night?

19 **A** Actually, we had been working in the yard all
20 day -- when I say we, it was Eric Singletary and
21 myself -- was carrying him home and just stopped by
22 to grab a burger and a cold beverage to pay his wage
23 for the day.

24 **Q** And who else was at the bar that night?

25 **A** I remember Misty Watts. I remember John

1 Thomas; Joe and Debbie Huntley; the bartender,
2 Denise Gibby; and Eric Singletary was with me.
3 That's about all I remember as far as patrons goes.

4 **Q** Did you talk with the defendant that night?

5 **A** Yes, I did.

6 **Q** What did y'all talk about?

7 **A** We had some discussion about an upcoming
8 fishing tournament that we priorly talked about
9 fishing the year previous and was unable to. So we
10 wanted to check with each other again and see if we
11 could do it again this year.

12 **Q** Did you think there was -- was there an
13 argument?

14 **A** No, sir.

15 **Q** Did you feel like there was any animosity
16 there?

17 **A** No, sir. We had probably a 15-minute
18 conversation, 10, 15 minute.

19 **Q** Did the defendant leave the bar?

20 **A** Yes, he did.

21 **Q** Did he come back to the bar?

22 **A** Yes, he did.

23 **Q** About how long was he gone for?

24 **A** Approximately five or ten minutes.

25 **Q** Kenny, I'm going to show you what's already

1 been admitted into evidence as State's Exhibit 3.

2 If you could, just describe the people that we're
3 looking at here.

4 (Whereupon, State's Exhibit Number 3 was
5 played and the following occurred during the playing
6 of State's Exhibit Number 3.)

7 **A** Looks like Eric Singletary is on the far left
8 looking this way. The next person in line -- he's
9 looking directly at me and he and I are talking.
10 The next lady is Misty Watts with her back to me.
11 She is talking to, I'm pretty sure it's Debbie
12 Huntley. The lady behind the bar is Denise Gibby,
13 the bartender.

14 **Q** And that's you in the middle?

15 **A** Yes, sir, with the black hat on.

16 **MR. SHELTON:** Your Honor, can we approach?

17 **THE COURT:** You may.

18 (Whereupon, a bench conference was held off
19 the record, in the presence of the jury, but out of
20 the hearing of the jury.)

21 (Whereupon, State's Exhibit Number 3 was
22 continued and the following occurred during the
23 playing of State's Exhibit Number 3.)

24 BY MR. PATTERSON:

25 **Q** Now, who is that that just walked in the bar?

1 **A** That's John Thomas, the defendant.

2 **Q** And is the defendant, John Thomas, here in the
3 courtroom today?

4 **A** Yes, he is.

5 **Q** And can you point him out for the jury?

6 **A** Right there {indicating}.

7 **Q** What is he wearing?

8 **A** He's wearing a white shirt with glasses between
9 his attorneys.

10 **MR. PATTERSON:** Let the record reflect that the
11 victim has pointed out the defendant.

12 **THE COURT:** It will.

13 **BY MR. PATTERSON:**

14 **Q** What -- at this point, did the defendant say
15 anything to you?

16 **A** He said he was going to cut me, cut and kill
17 me.

18 **Q** Now, what we're seeing, have you already been
19 stabbed at this point?

20 **A** Yes, sir.

21 **Q** And if you could, just show us where exactly
22 you were stabbed, just point it out on your chest,
23 just look at the jury so we can see.

24 **A** I'll stand if that's okay?

25 **Q** Yeah.

1 **A** I was stabbed right here {indicating}.

2 **Q** Now, what are you trying to do right here?

3 **A** Get away from him and assess the damage.

4 **Q** Now, at this point, were you in fear for your
5 life?

6 **A** Yes, I was.

7 **Q** And why were you trying to get away?

8 **A** I had just been stabbed, maybe in the heart.
9 I'm not a doctor, so -- I had just been injured and
10 attacked.

11 (State's Exhibit Number 3 was concluded.)

12 **MR. PATTERSON:** Court's indulgence.

13 **THE COURT:** Take your time.

14 (Pause.)

15 BY MR. PATTERSON:

16 **Q** I'm going to ask you again to look at the
17 video.

18 (Whereupon, State's Exhibit Number 3 was
19 played.)

20 **Q** Now, Kenny it looked like maybe you threw
21 something at him. What was that?

22 **A** The first thing I could get my hands on was a
23 beer that was sitting somewhere. I was trying to
24 get him distracted and away from me.

25 **Q** Were you armed? Did you have any other

1 weapons?

2 **A** No, sir.

3 **Q** Is he saying anything to you at this point?

4 **A** Telling me he's going to kill me.

5 **Q** Now, you leave the bar. Where did you go?

6 **A** Went down -- when I was able to leave the bar,
7 there were a few seconds there where we kind of
8 meandered around the pool table, him chasing me and
9 me obviously keeping the pool table between he and
10 I, just that split second I realized that the blood
11 had already ran down to my trousers. I realized I
12 had to get help. So I made a fake to the left side
13 actually to draw him away from the door, the
14 entrance, so I could make my break to the truck.

15 **Q** Who did you leave with?

16 **A** Eric Singletary that was with me came out and
17 drove the truck so we could flee the scene because I
18 was afraid he was going to come back around the edge
19 of the building.

20 **Q** And where did you end up going?

21 **A** We went to a little place called Canal One Stop
22 about a quarter mile down the road.

23 **Q** What is that?

24 **A** Just a convenience store.

25 **Q** Did -- did you call 9-1-1 or --

1 **A** Actually, I told the bartender at that point to
2 call 9-1-1 because I realized how bad things could
3 have been, but didn't really know exactly what it
4 was at that point. It happened so quick. By the
5 time she had called 9-1-1, we had already got into
6 the vehicle and I drove away from there.

7 **Q** At the Canal One Stop, did somebody call 9-1-1?

8 **A** Yes.

9 **Q** And who responded?

10 **A** The volunteer fire department was on the scene
11 first.

12 **Q** And what did they do?

13 **A** They assisted us, Mr. Singletary and myself, to
14 apply pressure on the wound as it was bleeding so
15 bad. It was unreal.

16 **Q** Did EMS also respond?

17 **A** Yes, they did.

18 **Q** And where did they take you?

19 **A** They took me to the local high school, Cross
20 High School, where medevac was staged to transport
21 me to MUSC.

22 **Q** And where did medevac take you?

23 **A** MUSC.

24 **Q** And what type of tests or treatment did you get
25 at MUSC?

1 **A** To the best of my knowledge, they did several
2 random tests, a echocardiogram of my heart, because
3 of the wound being so close to the heart, they
4 didn't know what else was damaged, the profuse
5 bleeding. They wanted to check it out top to bottom
6 to find out what injuries exactly were there.

7 **Q** Ultimately though, it ended up not being life
8 threatening?

9 **A** Ultimately. I got very lucky.

10 **Q** And did you get any stitches?

11 **A** Yes, sir.

12 **Q** And then were you able to be released?

13 **A** Yes, sir. They kept me overnight for
14 observation. I was released the next day.

15 **Q** And, Kenny, you've been in trouble before;
16 right?

17 **A** Yes, sir.

18 **Q** In fact, you have a previous burglary
19 conviction from 2003 and a misdemeanor ABHAN from
20 2009; is that correct?

21 **A** That's correct.

22 **MR. PATTERSON:** Nothing further from the State.

23 **THE COURT:** Mr. Shelton.

24 ****

25 ****

1 CROSS-EXAMINATION

2 BY MR. SHELTON:

3 Q Kenny, do you remember 4th of July of 2013,
4 around that time, an incident with a chain saw?

5 A Yes, sir.

6 Q Do you know -- do you remember John being
7 there?

8 A Yes, sir.

9 Q And do you remember John helping you in that
10 situation?

11 A I do.

12 Q Okay. And that was somebody was angry with
13 you; correct?

14 A Right.

15 Q And they pulled a chain saw on you; correct?

16 A Yes, sir.

17 MR. PATTERSON: Objection; relevance.

18 THE COURT: Counsel approach.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 THE COURT: All right. Sustained. Move on,
23 Mr. Shelton.

24 MR. SHELTON: Sorry, Your Honor, may we
25 approach?

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 BY MR. SHELTON:

5 **Q** Did you pawn some items November 16th, 2013?

6 **A** (No response.)

7 **Q** Would it help you to see the pawn receipt to
8 refresh your memory?

9 **A** Probably.

10 **THE COURT:** Did you answer, Mr. Melton?

11 **THE WITNESS:** Ma'am?

12 **THE COURT:** Did you answer that question?

13 **THE WITNESS:** Yes, ma'am. I said probably.

14 **THE COURT:** All right. Thank you.

15 (Defendant's Exhibit Number 1, pawn receipt,
16 marked for identification.)

17 (Witness reviewing document.)

18 BY MR. SHELTON:

19 **Q** Did you pawn those items on November 16th,
20 2013?

21 **A** I'm looking for my signature.

22 Apparently so.

23 **Q** Are those your items?

24 **A** Yes, they were.

25 **Q** And you said your job was what?

1 **A** I use a rollback and a towing service.

2 **Q** So --

3 **A** Worked on some rental houses.

4 **Q** And so you had access to commercial items?

5 **A** Yes.

6 **Q** Commercial electronic items?

7 **A** Yes.

8 **Q** And you sell cell phones?

9 **A** I have in the past, yes.

10 **Q** Okay. And did you try to sell some cell phones
11 to Mr. Lutjon {sic}? Do you know Mr. Lutjon?

12 **A** Hmm...

13 **Q** Ronjon, I think, is what he goes by?

14 **A** Yeah, I do know Ron.

15 **Q** Did you try to sell some cell phones to Ron?

16 **A** I asked him maybe --

17 **MR. PATTERSON:** Objection; again, relevance.

18 **THE COURT:** Mr. Shelton, are you going to make
19 this relevant?

20 **MR. SHELTON:** That's as far as I'm going to go
21 in the line of questioning.

22 **THE COURT:** All right. Thank you.

23 BY MR. SHELTON:

24 **Q** You gave a statement about the incident,
25 correct, to the police?

1 **A** Yes.

2 **Q** And in that statement -- have you reviewed your
3 statement?

4 **A** Yes.

5 **MR. PATTERSON:** Your Honor, may we approach?

6 **THE COURT:** You may.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 BY MR. SHELTON:

11 **Q** Do you remember how you described Misty? How
12 you gave your first description of Misty when you
13 gave your statement?

14 **A** No, sir, not right offhand.

15 **Q** Okay. Would it be helpful to review your
16 statement?

17 **A** Sure.

18 (Defendant's Exhibit Number 2, victim's
19 statement, marked for identification.)

20 **Q** Could you review that and -- about the sixth
21 line down?

22 **A** Uh-huh.

23 **Q** Just read to yourself. Do you remember how you
24 described her?

25 **A** Uh-huh.

1 Q And so what was the description you gave?

2 A A female -- a white female with dark hair named
3 Misty.

4 Q Okay. But you knew Misty from before then,
5 this day?

6 A Yes, sir.

7 Q Okay. You also say in your statement that
8 prior to John leaving, he said something to you?

9 A Yes, sir.

10 Q Okay. And what was that?

11 A Well, I noticed that he and Misty had got into
12 a little tiff behind me. As you can see on the
13 video, my back was turned to -- to Misty.

14 Q Oh, I thought you said he didn't get into any
15 argument before he left.

16 A No, not he and I, her and him.

17 Q Okay.

18 A Seemed like they were getting heated because he
19 was sitting directly behind me when he first came
20 in, that's the part of the video the jury did not
21 see. He asked me very abruptly was I going to be
22 here for a few minutes. I thought nothing about it
23 due to -- per our earlier conversation about the
24 fishing tournament, so I said, Sure.

25 Q You didn't put that in your statement, though,

1 did you?

2 **A** (Witness reviewing document.)

3 **Q** John knows where you live; correct?

4 **A** Right. Yes, sir.

5 **Q** And your home is off of -- what road is your
6 home on?

7 **A** Long Point Road.

8 **Q** Is there a lot of lights or street lights on
9 that road?

10 **A** Yes. And if I may digress to the last
11 question --

12 **Q** Okay.

13 **A** -- did I put that in my statement. Yes, I did.
14 It says, John hastily (sic) grabbed his belongings,
15 phone, keys, et cetera, and started to ask -- I
16 started -- and I stated -- and stated -- he stated
17 to me -- I'm sorry -- Are you going to be here for a
18 minute? I'll be right back. That he had something
19 for me. I did put that in the statement.

20 **Q** He stated that he was going to be here -- are
21 you going to be here for a minute? He asked that
22 question?

23 **A** Yes.

24 **Q** And that's right there in your statement?

25 **A** Yes.

1 Q Does your statement not say, Stated to me to
2 stay here; he was going to be right back?

3 A Yes, it does, but he also said that, too.

4 Q But he knows where you live; correct?

5 A Yes.

6 Q Okay. And there's not much out by where you
7 live? It's Cross?

8 A Right.

9 Q It's a rural area; right?

10 A Uh-huh.

11 Q There's not much lights? It's dark in that
12 area?

13 A It's pretty lit up and we have cameras all the
14 way down the road.

15 Q Okay. It's dark outside Monkey Business;
16 correct?

17 MR. PATTERSON: Objection; relevance.

18 THE COURT: Counsel approach.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 BY MR. SHELTON:

23 Q You had a gun in your truck; correct?

24 A No, sir.

25 Q But you have access to guns?

1 **A** No, sir.

2 **Q** You own guns?

3 **A** No, sir. I'm a convicted felon.

4 **Q** Right.

5 (Defendant's Exhibit Number 3, pawn receipt,
6 marked for identification.)

7 **A** (Witness reviewing document.)

8 **Q** You pawned a gun; correct?

9 **A** Yes, sir.

10 **Q** So you owned a gun?

11 **A** No, sir.

12 **Q** So you pawned something you didn't own?

13 **A** Yeah, I pawned something I didn't own for a
14 friend that didn't have an ID.

15 **Q** You understand that's against the law?

16 **A** No, sir, I didn't.

17 **Q** Okay.

18 **A** He asked me to hold the gun. I told him I
19 couldn't hold the gun. It was not Thomas. I didn't
20 want anything to do with the gun.

21 **Q** Do you remember talking with -- do you remember
22 giving your history and social history to the nurses
23 in the hospital?

24 **A** Briefly, yes.

25 **Q** Okay. Do you remember telling them that you

1 had access to guns?

2 **A** No. We never had that discussion.

3 **Q** Okay.

4 **A** They don't talk about guns at the hospital.

5 **Q** Did they -- they asked you how you felt about
6 this incident?

7 **A** No.

8 **MR. PATTERSON:** Objection; relevance.

9 **THE COURT:** I'll give you a little leeway,
10 Mr. Shelton.

11 BY MR. SHELTON:

12 **Q** They asked you if you were going to harm --

13 **MR. PATTERSON:** Objection.

14 **THE COURT:** Sustained.

15 **MR. SHELTON:** Your Honor, could we approach?

16 **THE COURT:** You may.

17 (Whereupon, a bench conference was held off
18 the record, in the presence of the jury, but out of
19 the hearing of the jury.)

20 BY MR. SHELTON:

21 **Q** Eric Singletary, can you give us a little bit
22 of background information that you know about Eric?
23 Does he live in the area?

24 **A** I think he has relocated at this point.

25 **Q** Did he live there at that time?

1 **A** Yes, he did.

2 **Q** Okay. But you guys arrived in your truck;
3 correct?

4 **A** Yes.

5 **Q** At some point in time when you, John, Misty
6 were at the bar, Eric leaves; correct?

7 **A** No.

8 **Q** You don't remember Eric leaving?

9 **A** No, Eric didn't leave. He rode with me.

10 **Q** Right.

11 **A** And he never left.

12 **Q** You don't remember him leaving for a short
13 period of time?

14 **A** No.

15 **Q** In your truck?

16 **A** Not that I'm aware of. I don't remember, no.

17 **Q** And then he had come back by the time John had
18 already left?

19 **A** No.

20 **Q** You don't remember that?

21 **A** No, sir, I do not.

22 **MR. PATTERSON:** Objection; asked and answered.

23 **THE COURT:** Overruled.

24 **THE WITNESS:** I don't remember that.

25 BY MR. SHELTON:

1 **Q** You were drinking that night?

2 **A** We had just stopped and actually was waiting on
3 our food. So we had only been there, like, five
4 minutes, six minutes to wait on the food, probably
5 five minutes prior to that to order the food, maybe
6 ten minutes.

7 **Q** But you were intoxicated?

8 **A** No.

9 **Q** You had mentioned that there was a fishing
10 tournament that you guys were talking about?

11 **A** Right.

12 **Q** From, the best, 2013; correct? Because this is
13 November 2013.

14 **A** (Witness nodded head.)

15 **Q** That there was something that occurred from the
16 fishing tournament in 2012?

17 **A** (No response.)

18 **Q** That you guys weren't able to --

19 **A** I don't recall, but I do remember something
20 about we had talked about fishing in a tournament
21 that year and we were unable to.

22 **Q** Okay. Do you remember being stuck out on the
23 lake with John?

24 **MR. PATTERSON:** Objection; relevance.

25 **THE COURT:** Mr. Shelton.

1 **MR. SHELTON:** It goes to their history, Your
2 Honor.

3 **THE COURT:** Mr. Shelton, please approach.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 BY MR. SHELTON:

8 **Q** Do you remember being stuck out on the lake
9 with John? There was a storm, I think.

10 **A** I think so.

11 **Q** And you were out on your pontoon boat?

12 **A** Yes, sir.

13 **Q** Okay. And you both were just kind of stuck out
14 there in the middle of the lake?

15 **A** We really wasn't stuck. It just got rough all
16 of a sudden.

17 **Q** And you ran out of gas?

18 **A** No.

19 **Q** No. Did you have to call somebody to come help
20 you out?

21 **A** No.

22 **Q** Okay.

23 **A** Not that I recall, no. I'm pretty familiar
24 with that area.

25 **Q** Okay. And you didn't run out of gas?

1 **A** No, sir.

2 **Q** You didn't have to call your mom or another

3 friend to come out there?

4 **A** Not that I can remember, no.

5 **Q** Okay. Did you have a crossbow with you at that

6 point in time?

7 **A** I did.

8 **Q** And did that get lost?

9 **A** Yes, it did.

10 **Q** And you blamed John for that one?

11 **A** We really didn't know what happened to it. I

12 didn't blame him.

13 **Q** Okay.

14 **A** We discussed it.

15 **Q** Yeah. And you had -- he had some fishing

16 poles?

17 **A** Right.

18 **Q** From that time you guys were out on the lake?

19 **A** Yeah, we were fishing that night.

20 **Q** And you kept those as payment for the bow?

21 **A** No.

22 **Q** So you gave those poles back to John?

23 **A** We unloaded the boat together. He took his and

24 I took mine.

25 **Q** So you didn't have a discussion about you

1 keeping his poles?

2 **A** No.

3 **Q** And you didn't have a discussion about there
4 being -- pointing out a gun that you had in your
5 car?

6 **A** No.

7 **Q** And that you were going to keep those poles?

8 **A** No.

9 **Q** Do you remember a time, about early summer of
10 2013, where you came to John's house wanting to go
11 hunting?

12 **A** I remember asking him about hunting. I don't
13 know the exact date.

14 **Q** Okay. And you showed up with your girlfriend?

15 **A** I'm not sure who was with me. I can't remember
16 that far back.

17 **MR. PATTERSON:** Objection for relevance again.

18 **THE COURT:** I'm giving him a little leeway on
19 this one. Overruled.

20 **THE WITNESS:** I mean, it's so far back, I can't
21 even remember who was with me, but I do remember
22 asking him about hunting.

23 BY MR. SHELTON:

24 **Q** Absolutely. I understand that. And if you
25 don't remember, you don't remember. But you

1 remember John not letting you want to hunt on the
2 place that he was renting?

3 **A** No. He actually told me I could.

4 **Q** He told you you could?

5 **A** Yes.

6 **Q** And that day he told you you could?

7 **A** Yes.

8 **Q** Okay. Do you remember shooting a gun over his
9 head?

10 **A** We did not shoot a gun.

11 **Q** Okay.

12 **A** I was hunting with a bow.

13 **Q** Okay.

14 **A** That's why I had a crossbow.

15 **Q** You remember a couple weeks prior to November
16 of 2013 and John had a boat ramp or a boat trailer
17 stuck?

18 **A** Yes, sir.

19 **Q** You remember that?

20 **A** Yes, sir.

21 **Q** And you offered to help him out?

22 **A** Actually, he called me and asked for a favor
23 and I said, Sure.

24 **Q** And you wanted to buy some cell phones from
25 John?

1 **A** No. I wanted to help him pull his boat out of
2 a ramp.

3 **Q** Well, prior to that, you wanted to buy some
4 cell phones?

5 **A** I have dealt with him in the past over cell
6 phones, yes, sir.

7 **Q** Okay. And you weren't able to get the boat out
8 of the mud?

9 **A** No, I don't think we were able to. It was too
10 -- it was too soft.

11 **Q** Okay. But you still -- you demanded payment?

12 **A** No.

13 **Q** And you pulled a gun out on John, did you not?

14 **A** No.

15 **Q** And he gave you cell phones?

16 **A** No.

17 **Q** You've talked with an attorney about this case?

18 **A** I did?

19 **Q** Yes. Correct?

20 **MR. PATTERSON:** Objection; relevance.

21 **THE COURT:** I'm going to give him a little
22 leeway on that one. Overruled.

23 **THE WITNESS:** For civil reasons, yes.

24 BY MR. SHELTON:

25 **Q** For civil reasons?

1 **A** Yes.

2 **Q** Okay. And you're threatening to sue the bar?

3 **MR. PATTERSON:** Objection again.

4 **THE COURT:** Sustained.

5 BY MR. SHELTON:

6 **Q** Do you remember a Pam?

7 **A** Yes.

8 **Q** Is that how you met John?

9 **A** Yes.

10 **Q** These pawn records, they're a fair and accurate
11 depiction of you pawning these items?

12 **A** I would say, yes.

13 **Q** And that would be Defendant's 1 and Defendant's
14 3. And what was the date on the firearm that you
15 pawned?

16 **A** It says 14/14.

17 **Q** Is that what it says right there?

18 **A** It says 14/14.

19 **Q** Is there a number right ahead of the --

20 **A** I can't make it out. I might need my reading
21 glasses.

22 **Q** January 2014 sound --

23 **A** Yeah, the date makes no sense to me, but that
24 seems about right.

25 **MR. SHELTON:** Your Honor, at this time, I

1 introduce Defendant's 1 and 3.

2 **THE COURT:** Any objection?

3 **MR. PATTERSON:** Just our previous objection
4 regarding 404 and relevance.

5 **THE COURT:** Defendant's 1 and 3 into evidence
6 over your objection.

7 (Defendant's Exhibit Numbers 1 and 3, pawn
8 receipts, admitted into evidence.)

9 **MR. SHELTON:** Nothing further.

10 **MR. PATTERSON:** Nothing further from the State,
11 Your Honor.

12 **THE COURT:** You may step down. Thank you.

13 Ladies and gentlemen, we've reached an
14 appropriate time to take a morning break. Please do
15 not begin your deliberations, do not discuss this
16 case amongst yourself. You may leave your notepads
17 right where they are.

18 Please rise for the jury.

19 (The jury retires to the jury room.)

20 **THE COURT:** Mr. Shelton, I will allow you to
21 place the few issues, if you need to place anything
22 else, about the incident involving the chain saw.

23 **MR. SHELTON:** Your Honor, just that it was
24 going to show that my client does not have a
25 malicious heart towards William Melton, that he

1 actually cut off the chain saw that this person was
2 going to attack Mr. Melton. I wasn't going to get
3 into why they were going at each other. It was just
4 that he cut this chain saw off and helped out
5 Mr. Melton and going towards his -- doesn't have a
6 malicious heart towards Mr. Melton, Your Honor. So
7 that was the basis for that line of questioning.

8 **THE COURT:** Anything else involving the pawn
9 records, Mr. Shelton?

10 **MR. SHELTON:** I don't think so, Your Honor.

11 **THE COURT:** Anything you wish to place on the
12 record concerning those two rulings?

13 **MR. PATTERSON:** In reference to the first, the
14 State's initial objection, I think, was noted
15 contemporaneously. In reference to the pawnshop
16 records, the State would just, again, for the
17 record, say that it's inadmissible 404 character
18 evidence. And if admissible, it's still
19 inadmissible under 403 as being more prejudicial
20 than probative and also irrelevant.

21 **THE COURT:** Anything before we take a break?

22 **MR. PATTERSON:** Nothing from the State, Your
23 Honor.

24 **MR. SHELTON:** No, Your Honor.

25 **THE COURT:** Thank you. We're at ease for ten

- 1 **Q** You also were involved in arresting John?
- 2 **A** Yes, sir, I was.
- 3 **Q** Okay. When was that?
- 4 **A** Probably a couple of days after.
- 5 **Q** Okay. And where was he?
- 6 **A** He was at home.
- 7 **Q** At his house?
- 8 **A** Yes, sir, in Eutawville.
- 9 **Q** In Eutawville. And he was injured?
- 10 **A** Yes, sir, he was.
- 11 **Q** And so you had to actually take him to the
- 12 hospital?
- 13 **A** Yes, sir. I wanted to make sure he was all
- 14 right because he got injured that night and he'd
- 15 been in bed for that long.
- 16 **Q** He had been in bed the whole time since that
- 17 night?
- 18 **A** Yes, sir.
- 19 **Q** You don't know exactly what the injuries were?
- 20 **A** I believe it was to his back or side area. I
- 21 don't recall.
- 22 **Q** Do you know if he had any head injury or
- 23 anything?
- 24 **A** No, sir, I don't.
- 25 **Q** Do you remember that the -- that you had made a

1 notation that Mr. Melton had been using alcohol?

2 **A** Is it on my report?

3 **Q** Would it help to refresh your memory?

4 **A** Yes, sir.

5 **Q** (Mr. Shelton hands document to witness.)

6 **A** Yes, sir, I did make that notation.

7 **Q** Thank you.

8 **A** Yes, sir.

9 **MR. SHELTON:** No further questions.

10 **THE COURT:** Mr. Poulos, redirect.

11 **MR. POULOS:** Yes, please.

12 **REDIRECT EXAMINATION**

13 **BY MR. POULOS:**

14 **Q** First of all, Officer, is the Monkey Business
15 Bar in Berkeley County?

16 **A** Yes, sir, it is.

17 **Q** Thank you. You testified that you did not see
18 blood on the bar top; is that correct?

19 **A** Yes, sir.

20 **Q** Do you recall what Mr. Melton was wearing when
21 you arrived at the Canal One Stop?

22 **A** No, sir, I don't.

23 **Q** Do you recall if his clothes were soaked in
24 blood?

25 **A** There was blood on him.

1 **Q** Do you know how John Thomas got injured; do you
2 recall?

3 **A** My understanding was that he got injured
4 leaving the bar area.

5 **Q** Do you know how specifically?

6 **A** I was told he fell down a hole.

7 **Q** Where was the hole?

8 **A** That I don't know.

9 **MR. POULOS:** No further questions.

10 **MR. SHELTON:** No further questions.

11 **THE COURT:** You may step down. Thank you.
12 Call your next witness.

13 **MR. PATTERSON:** Your Honor, the State calls
14 Misty Watts.

15 MISTY WATTS,
16 having been duly sworn, testified as follows:

17 **THE CLERK:** Have a seat and state your name and
18 spell your last name for us.

19 **THE WITNESS:** My name is Misty Watts,
20 W-A-T-T-S.

21 DIRECT EXAMINATION

22 BY MR. PATTERSON:

23 **Q** Misty, how are you today?

24 **A** I'm good. Thank you. How are you?

25 **Q** Good. What type of work do you do?

1 **A** I'm a chef and I do fishing on the side, tours.

2 **Q** And where do you currently work?

3 **A** I work part time at Page's Okra Grill, I'm head
4 chef there, and part time at the Old Miner Shrine in
5 Mount Pleasant and also at Pawleys.

6 **Q** And where were you living back in November of
7 2013?

8 **A** In, I think it was, Eutawville.

9 **Q** And who were you living with?

10 **A** Partially John Thomas whenever he was there.

11 **Q** And do you remember an incident at the Monkey
12 Business on November 4th, 2013?

13 **A** Yes, I do.

14 **Q** And who were you at the bar with that night?

15 **A** John and I went there to get dinner.

16 **Q** And who else was there?

17 **A** There was Debbie and her husband, Joe, I
18 believe a man named JJ, I'm not sure of his last
19 name, and John Thomas and I and Bo and his friend, I
20 think, and Niecy obviously.

21 **Q** And who's Niecy?

22 **A** Niecy is the bartender.

23 **Q** And when you say Bo, do you mean the victim,
24 Kenny Melton?

25 **A** Yes, Kenny. I'm sorry.

1 **Q** That's okay. If you know him as Bo, that's
2 fine. How did you know the defendant, John Thomas?

3 **A** I met John when I had worked at the Monkey part
4 time. I was a cook and a bartender there. And he
5 used to come in before and after work.

6 **Q** And was the defendant, John Thomas, talking
7 with Bo at all?

8 **A** You mean that evening or prior?

9 **Q** Yeah, that evening.

10 **A** Yes, they were talking.

11 **Q** Do you know what they were talking about?

12 **A** I remember we were all talking about a fishing
13 trip that was coming up and I think they were
14 discussing that.

15 **Q** And did the defendant, John Thomas, leave the
16 bar?

17 **A** Yeah, just for a period of time, for about, I
18 think, 10 to 15 minutes.

19 **Q** And why did he leave?

20 **A** He was just flustered with the situation. I
21 think he was just angry at, you know, Bo about that
22 or had something to do with the money issue about
23 putting forth the money out for the fishing trip and
24 then I think he -- something went wrong with that.
25 But he was just flustered, said he wasn't feeling up

1 to staying any longer, he didn't want to be around
2 anyone and he wanted to go home.

3 Q And did John Thomas come back to the bar?

4 A Yes, he had come back.

5 Q And what happened when he came back?

6 A That is when the incident happened.

7 Q What happened?

8 A Okay. We were all sitting at the bar. John
9 Thomas had come back in through the front door. We
10 were eating, drinking, cutting up at the bar, and
11 before I knew it, commotion. Bo had come up out of
12 his chair. I remember Joe running to try to split
13 it up, which I thought was just a scuffle at first.
14 But he had him by the back of him, had stabbed him
15 and went out the back door and that was pretty much
16 it. It was really fast.

17 Q Did Kenny do anything to provoke that?

18 A No. I mean, they were best friends or they are
19 -- they were bickering back and forth, but not
20 anything more than friends would do.

21 Q Well, I mean, when John Thomas came in, Kenny
22 didn't jump up or anything?

23 A He stood up out of his chair, but he was still
24 standing at the bar until I think -- I'm not sure
25 what was said. I couldn't tell you.

1 **Q** And how did John Thomas appear during this
2 incident?

3 **A** He was uneasy about something. I mean, prior
4 to that, he was, but he was very angry after --
5 well, the second time he came back in.

6 **Q** During the stabbing, how did he appear?

7 **A** Not hisself at all, just -- I really can't
8 explain that, I mean, just very angry, aggressive.

9 **Q** Did you get any text messages from John Thomas?

10 **A** I didn't know at the time, but afterward -- you
11 don't get very good reception in there nor Cross,
12 period, itself. There was one that said, you know,
13 I think afterward I had read -- Niecy had read it to
14 me. It said, you know, you need -- if you want to
15 come now, I'm going to go home, you know. And then
16 the second one was something along the lines of
17 there will be bloodshed. And I don't recall the
18 rest of it. That just stood out to me. But that's
19 about it.

20 **MR. PATTERSON:** Court's indulgence.

21 (Pause.)

22 **MR. PATTERSON:** Nothing further at this time.

23 **MR. SHELTON:** Court's indulgence.

24 **THE COURT:** Take your time.

25 (Pause.)

1 CROSS-EXAMINATION

2 BY MR. SHELTON:

3 Q Misty, you and John were roommates?

4 A Yes.

5 Q And you did have a boyfriend or somebody else
6 that you were seeing at the time?

7 A Yes.

8 Q Quattlebaum?

9 A David Quattlebaum, uh-huh.

10 Q So you and John weren't dating?

11 A No.

12 Q And he was helping you get on your feet?

13 A Yes.

14 Q He helped you with a job?

15 A (Witness nodded head.)

16 Q And you needed a place to stay?

17 A Yes.

18 Q Now, you mentioned that he seemed angry about a
19 fishing trip. Did you know about the fishing trip
20 in 2012?

21 A The one prior to that?

22 Q Yes.

23 A Yes. We had talked about it a couple times.

24 Q And that was the money situation?

25 A Yeah.

1 **Q** Okay. And so did you -- during when you were
2 in the bar with John and Bo, he had a friend with
3 him?

4 **A** Who? Bo?

5 **Q** Yes.

6 **A** Yes. I forget that gentleman's name.

7 **Q** Eric?

8 **A** Eric. There you go.

9 **Q** Did you know Eric?

10 **A** No, sir.

11 **Q** Did you see, at some point in time, Eric
12 leaving when you and John and Bo were in the bar?

13 **A** I remember him taking Bo to the gas station
14 after the incident happened, but I don't remember
15 him leaving.

16 **Q** In the middle -- in the middle of the bar?

17 **A** No, sir, I don't.

18 **Q** And the text messages, you said you didn't see
19 those that night?

20 **A** We did afterward. I had had my phone on the
21 charger behind the counter in the corner and I
22 didn't get them until after we had went outside when
23 the police officers had came and taken the report,
24 then they came up on the phone.

25 **Q** And you had no idea what he meant by any of the

1 text messages?

2 **A** Not at the -- well, obviously, because I didn't
3 see them afterward. I figured he'd just meant he
4 was really pissed off about Bo owing him money.

5 **Q** But you don't know?

6 **A** No, I don't really know, sir.

7 **Q** Okay. Did the police ever try to download
8 those text messages?

9 **A** I offered my phone to them twice and they never
10 took it. I could not tell you the officers' names.
11 It's been over a year and a couple months now. But
12 I've not had that phone since that...

13 **Q** But no one took any pictures of the text
14 messages, so we don't know --

15 **A** Not at all.

16 **Q** -- what the context was or anything with those
17 text messages?

18 **A** Correct, sir.

19 **MR. SHELTON:** No further questions.

20 **MR. PATTERSON:** Nothing further from the State,
21 Your Honor.

22 **THE COURT:** You may step down.

23 Call your next witness.

24 **MR. PATTERSON:** State calls Debbie Huntley.

25 *****

1 DEBBIE HUNTLEY,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat. State your name and
4 spell your last name for us, please.

5 **THE WITNESS:** Debbie Huntley, H-U-N-T-L-E-Y.

6 DIRECT EXAMINATION

7 BY MR. POULOS:

8 **Q** Good afternoon, Ms. Huntley. Can you tell us
9 where you currently reside?

10 **A** 115 Price Lane in Cross, South Carolina.

11 **Q** How long have you lived in Cross?

12 **A** Approximately 12 years.

13 **Q** I'm sorry. How long?

14 **A** Approximately 12 years.

15 **Q** Ms. Huntley, what do you do for work?

16 **A** Bartender.

17 **Q** Where?

18 **A** , Monkey Business, Village Park Campground.

19 **Q** How long have you been a bartender?

20 **A** How long total?

21 **Q** Yes.

22 **A** About 30 years.

23 **Q** So you're familiar with the establishment
24 called Monkey Business in Cross?

25 **A** Yes.

1 **Q** Were you at the Monkey Business on the evening
2 of November 4th, 2013?

3 **A** Yes.

4 **Q** Who else do you recall being there?

5 **A** As far as everybody?

6 **Q** Yes.

7 **A** Myself, my husband, the bartender, John Thomas,
8 Kenny Melton, his friend, several others,
9 acquaintances.

10 **Q** Before the incident occurred, how was the
11 atmosphere at the bar?

12 **A** It was good.

13 **Q** What were people doing?

14 **A** Having a good time, playing pool, listening to
15 music.

16 **Q** Do you recall any sort of arguments or
17 disputes?

18 **A** Not at that particular time, no.

19 **Q** Did there come a time when John Thomas left the
20 bar?

21 **A** Yes.

22 **Q** And do you recall if he returned?

23 **A** Yes.

24 **Q** And, please, tell us what happened when he
25 returned.

1 **A** When he returned, he was -- looked upset.

2 **Q** How do you mean, if you can describe for us?

3 **A** Just didn't look like himself.

4 **Q** What did he do when he came in the bar?

5 **A** Are you talking about the incident with Kenny?

6 **Q** Yes.

7 **A** He approached Kenny, looked like he leaned over

8 his shoulder. Kenny spun around and kind of fell

9 out of his chair, approached the pool table, said

10 something about him dying, I'm dying. And then I

11 noticed the blood.

12 **Q** Where did you see the blood?

13 **A** I'm not sure, I think the left side, but I'm

14 not sure. It happened so quick.

15 **Q** What happened after he went to the pool table?

16 **A** John Thomas approached him again. Kenny backed

17 off and that's when my husband ran over and said,

18 No, John, no, John, think about what you're doing.

19 And the look came over John's face like he was

20 coming to, like he was getting clarification, and he

21 stopped.

22 **Q** Where did Kenny go at that point?

23 **A** He was still right there by the pool table.

24 **Q** Did there come a time when Kenny left?

25 **A** Yes.

1 **Q** Where did he leave?

2 **A** To the front door of the bar with his friend
3 because my husband told him, You need to get him to
4 the hospital now.

5 **Q** Where did John Thomas go at that point?

6 **A** Out the back door.

7 **Q** Do you recall how long John Thomas had been
8 gone before he initially came back?

9 **A** I would say approximately 20 minutes.

10 **Q** Did you see Kenny Melton confront John Thomas
11 at any point before the incident?

12 **A** I wouldn't say confront him, but it looked like
13 they had a few words.

14 **Q** Did Kenny make any acts of aggression towards
15 John Thomas before the incident?

16 **A** Not that I recall.

17 **MR. POULOS:** I have no further questions.

18 CROSS-EXAMINATION

19 BY MR. GROEBER:

20 **Q** Good afternoon, Ms. Huntley.

21 **A** Good afternoon.

22 **Q** You've got a nice accent?

23 **A** Thank you.

24 **Q** That's not all Cross, is it?

25 **A** No.

1 **Q** No. What else --

2 **A** It's British.

3 **Q** British, okay. You grew up in England?

4 **A** Yes, born and raised.

5 **Q** Are you nervous about testifying today?

6 **A** Just a little bit.

7 **Q** Why is that?

8 **A** Never done this before.

9 **Q** How long have you been involved in and around
10 or hanging around the Monkey Business?

11 **A** Approximately 12 years.

12 **Q** Okay. And is all that -- during all that time,
13 have you worked there?

14 **A** Yes. On and off, yes..

15 **Q** Okay. And how much were you working there --
16 the night in question, you weren't working that
17 night, were you?

18 **A** Correct.

19 **Q** How often were you working there around that
20 time do you think?

21 **A** All the time, at least five nights a week.

22 **Q** Okay. So it's safe to say that you're familiar
23 with the people that were in the bar that night?

24 **A** Yes.

25 **Q** Were you drinking that night?

1 **A** Yes.

2 **Q** Okay. And what did you have to drink that
3 night?

4 **A** I, approximately, had one beer and probably two
5 shots, which took about a two hour -- two and a half
6 hour period.

7 **Q** Okay. What time do you think you got there?

8 **A** I'm not sure, approximately 8:30.

9 **Q** All right. And then do you remember about what
10 time all this happened?

11 **A** No.

12 **Q** Okay. All right. And you were there with your
13 husband?

14 **A** Yes.

15 **Q** Where were y'all sitting in the bar?

16 **A** To the very end where the cash register is.

17 **Q** Okay. How far away would you say that is from
18 where Mr. Melton was sitting?

19 **A** Approximately 15 to 20 feet.

20 **Q** Okay. And how far -- so maybe another ten feet
21 to the door from there?

22 **A** Correct.

23 **Q** I want to talk to you a little bit about what
24 you observed that night. You saw John and Misty
25 come in together?

1 **A** Yes.

2 **Q** And was John drinking that night?

3 **A** He was eating.

4 **Q** Okay. So -- but did you see him drink any

5 alcohol?

6 **A** I believe he had maybe one or two.

7 **Q** Okay. And --

8 **A** But usually when he eats, he doesn't drink.

9 **Q** Okay. And you -- so you're not really sure

10 whether or not he had anything to drink?

11 **A** I saw him have one.

12 **Q** Okay. At some point, you saw John and Misty

13 talking; right?

14 **A** Yes.

15 **Q** And it's fair to say that you would not call

16 that any kind of argument?

17 **A** No, not at all.

18 **Q** And you overheard John talking about leaving?

19 **A** Yes.

20 **Q** And Misty said at that time -- I think the

21 first time, that she was okay with leaving; right?

22 **A** Yes.

23 **Q** And then who came in after that?

24 **A** Mr. Kenny Melton.

25 **Q** All right. And do you know him as Kenny or

- 1 does he go by anything else?
- 2 **A** Bo.
- 3 **Q** Bo?
- 4 **A** Yes.
- 5 **Q** Okay. What do you normally call him?
- 6 **A** Bo.
- 7 **Q** All right. So Bo comes in. What would you say
8 was Bo's demeanor when he came into the bar?
- 9 **A** Normal.
- 10 **Q** Okay. And when you say normal, what does that
11 mean?
- 12 **A** Just kind of bouncing around, like, hey, y'all.
- 13 **Q** Okay. Fairly gregarious?
- 14 **A** Yes.
- 15 **Q** Okay. And you've seen him interact with John
16 before; right?
- 17 **A** Yes.
- 18 **Q** And you saw them interact that evening?
- 19 **A** Yes.
- 20 **Q** And would you describe their interactions as a
21 fight?
- 22 **A** No.
- 23 **Q** Or an argument? And I'm talking about
24 initially, before John comes back.
- 25 **A** I would say it looked like they were having

1 words.

2 **Q** Okay. And did you hear any threats made at
3 that time?

4 **A** No.

5 **Q** Where -- after Bo came in, what did Misty do?

6 **A** She got up and went to the -- actually, she
7 stood up, said she didn't want to leave and then she
8 went to the jukebox.

9 **Q** Okay. So she changed her mind?

10 **A** Yes, when Bo walked in.

11 **Q** And then who went to talk to her over at the
12 jukebox?

13 **A** Bo.

14 **Q** You didn't see anything about John's demeanor
15 that saw that he was upset about this at that time,
16 did you?

17 **A** Not really. He just wanted to pay his tab. He
18 was ready to go.

19 **Q** And he actually did, at that time, ask for his
20 tab; right?

21 **A** Yes.

22 **Q** And then he did leave?

23 **A** Yes.

24 **Q** And he didn't look at Misty and scream at her?

25 **A** No.

- 1 Q He didn't look at Bo and scream at him?
- 2 A Not at all.
- 3 Q Now, when John came back in, you noticed when
- 4 he came back in; right?
- 5 A Yes.
- 6 Q And that's because you have been a bartender
- 7 for a long time; right?
- 8 A Yes.
- 9 Q And one of the things about being a bartender
- 10 is you always notice the door?
- 11 A Yes, always.
- 12 Q And so you saw John come in; right?
- 13 A Yes.
- 14 Q And you also heard him say something before he
- 15 touched Bo, didn't you?
- 16 A Yes.
- 17 Q What did he say?
- 18 A Something to do with money.
- 19 Q You didn't hear him say, I will cut you?
- 20 A No, not at all.
- 21 Q You didn't hear him say, I will kill you?
- 22 A No.
- 23 Q Was Bo drinking that night?
- 24 A Yes.
- 25 Q Would you say that he was intoxicated?

1 **A** I'm not sure.

2 **Q** Okay. Did you see him drink?

3 **A** Yes.

4 **Q** Have you seen him drink before?

5 **A** Yes.

6 **Q** And is he -- is it normal for him to come into
7 the bar already intoxicated?

8 **MR. PATTERSON:** Objection.

9 **THE COURT:** Sustained.

10 **THE WITNESS:** I have witnessed --

11 **THE COURT:** You can't answer that one.

12 **THE WITNESS:** Oh, I'm sorry.

13 BY MR. GROEBER:

14 **Q** Do you remember talking with me last week?

15 **A** Yes.

16 **Q** Do you remember telling me then that Bo was
17 intoxicated?

18 **A** Yes.

19 **Q** So do you recall he was intoxicated?

20 **A** I believe he had been drinking. I don't know
21 about intoxicated.

22 **Q** Okay. Fair enough.

23 **A** Yes.

24 **Q** I want to talk to you a little bit about Bo.

25 How long have you known Bo?

1 **A** Approximately, at least, 11, 12 years.

2 **Q** Okay. And how did you kind of come to know him
3 at first?

4 **A** I originally met him when I was working at
5 another small bar and grocery store that's in Cross,
6 and then I ended up moving next door to him.

7 **Q** Okay. Would you describe Bo as a friend?

8 **A** At that time, yes.

9 **Q** Okay. And how about now? Is he still a
10 friend?

11 **A** More of an acquaintance.

12 **Q** Okay. Do you believe that you have a good
13 sense of what his reputation is in the community?

14 **A** Yes.

15 **Q** All right. What would you say that his
16 reputation is for violence?

17 **A** He has --

18 **MR. PATTERSON:** Objection.

19 **THE COURT:** Approach.

20 (Whereupon, a bench conference was held off
21 the record, in the presence of the jury, but out of
22 the hearing of the jury.)

23 **THE COURT:** Sustained at this time.

24 BY MR. GROEBER:

25 **Q** What would you say Bo's reputation for honesty

1 is, for truthfulness?

2 **A** (No response.)

3 **Q** Would you say he's a truthful person, an honest
4 person?

5 **A** I think he tries to be.

6 **Q** Okay. Do you remember -- but he has problems
7 with that?

8 **A** Yes.

9 **Q** And that would be his reputation in the
10 community?

11 **A** Yes.

12 **Q** That he's not truthful?

13 **A** (Witness nodded head.)

14 **MR. GROEBER:** One moment, Your Honor.

15 **THE COURT:** Take all the time you need.

16 BY MR. GROEBER:

17 **Q** Let's talk a little bit about John. You've
18 known John for how long?

19 **A** Approximately eight or nine years.

20 **Q** Okay. And he's lived in Cross, the Cross area,
21 all that time, too?

22 **A** Yes.

23 **Q** And so fair to say that you have a good
24 understanding of his reputation in the community?

25 **A** Yes.

1 **Q** And how about his character for truthfulness?

2 **A** I think he's a good man. He's kind to others,
3 very even keel, always see him as the same.

4 **Q** Okay. And so would you think that his {sic}
5 opinion in the community is that he's a truthful
6 person?

7 **A** Yes.

8 **MR. GROEBER:** One moment, Your Honor.

9 (Pause.)

10 **MR. POULOS:** Your Honor, we'd have an objection
11 as well.

12 **MR. GROEBER:** I don't have any further
13 questions.

14 **MR. POULOS:** I'll withdraw the objection, Your
15 Honor.

16 **THE COURT:** All right. Thank you. Redirect.

17 **MR. POULOS:** No, Your Honor.

18 **THE COURT:** You may step down. Please stay
19 with us. All right, thank you.

20 Call your next witness.

21 **MR. PATTERSON:** State calls Joe Huntley.

22 **MR. GROEBER:** Your Honor, may we approach
23 briefly?

24 **THE COURT:** You may.

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury, but out of
2 the hearing of the jury.)

3 JOSEPH HUNTLEY,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat. State your name and
6 spell your last name for us.

7 **THE WITNESS:** Joseph Huntley, last name
8 H-U-N-T-L-E-Y.

9 **THE COURT:** Mr. Patterson.

10 **MR. PATTERSON:** Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. PATTERSON:

13 **Q** Joe, how are you doing today?

14 **A** I'm doing good.

15 **Q** What type of work do you do?

16 **A** I'm a plumber.

17 **Q** And who do you work for?

18 **A** Lonnie Thorns with All Plumbing.

19 **Q** And how long have you been in that kind of
20 business?

21 **A** Going on a year and a half now.

22 **Q** And do you remember an incident at the Monkey
23 Business on November 4th, 2013?

24 **A** Yes, sir.

25 **Q** And who was there at the bar that night?

1 **A** John Thomas, Kenny Melton, Niecy, Debbie, a
2 couple other people, I don't remember their names.

3 **Q** And did John Thomas leave at some point?

4 **A** Yes, sir.

5 **Q** And did he come back?

6 **A** Yes.

7 **Q** And what happened when John Thomas came back to
8 the bar?

9 **A** I was on the left side of the bar near the cash
10 register. I looked to my right. I seen a
11 commotion. I wasn't sure what was going on. And
12 next thing I know, you have Kenny over here at --
13 ran on the side of the pool table and then John was
14 over there. They was keeping the pool table in
15 between them. And I just remember going over there
16 telling John, No, John. And I remember hearing Bo
17 -- well, Kenny said he was stabbed. He was holding
18 his chest right about here {indicating}. That's all
19 I remember.

20 **Q** Did you see John have a knife?

21 **A** I didn't see Kenny get stabbed, but I seen the
22 knife when I went over there to the pool table.

23 **Q** And what did John look like?

24 **A** Didn't look like John.

25 **Q** And were you -- when you were trying to get his

1 attention, were you concerned at all for your
2 safety?

3 **A** I really didn't think about it at that moment.
4 I just was going up there trying to stop what was
5 going on, but afterwards I thought about I could
6 have got in the middle of that, you know, and could
7 have got, you know, maybe hurt, I'm not sure,
8 between the both of them. I don't know.

9 **MR. PATTERSON:** Nothing further.

10 **THE COURT:** Mr. Shelton.

11 CROSS-EXAMINATION

12 BY MR. SHELTON:

13 **Q** Joe, this happened pretty quick at the bar?

14 **A** Yeah.

15 **Q** Do you remember anything that John said?

16 **A** No.

17 **Q** But he was -- was he yelling when he came in?

18 **A** I just heard noise at that moment. It just --

19 **Q** Just happened really quick?

20 **A** Yeah, it happened real fast.

21 **Q** And do you know Kenny personally?

22 **A** Yeah, I know Kenny. I know John.

23 **Q** How long have you known Kenny?

24 **A** Maybe nine or ten years.

25 **Q** Okay.

1 **A** Been a while.

2 **Q** What would you say is his reputation for
3 truthfulness?

4 **A** He's always -- has a knack of getting in
5 trouble, you know, but, you know.

6 **Q** And how long -- you've known John for a while?

7 **A** Yeah.

8 **Q** What would you say is John's character for
9 truthfulness?

10 **A** John, I've never had a problem with John. I
11 mean, he's always helped me out. He's always been
12 there, you know. You know, he even helped Kenny out
13 because there was an incident where this guy had a
14 chain saw --

15 **MR. PATTERSON:** Objection.

16 **THE COURT:** Sustained.

17 **THE WITNESS:** You know --

18 **THE COURT:** Sustained. Please stop talking.

19 Thank you..

20 **THE WITNESS:** All right.

21 **MR. SHELTON:** No further questions.

22 **MR. PATTERSON:** Nothing further from the State,
23 Your Honor.

24 **THE COURT:** You may step down. Thank you.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Call your next witness.

2 We're checking on lunch. As soon as it gets
3 here, we'll take our break.

4 Call your next witness.

5 **MR. PATTERSON:** The State calls Denise Gibby.

6 DENISE GIBBY,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat. State your name and
9 spell your last name.

10 DIRECT EXAMINATION

11 BY MR. PATTERSON:

12 **Q** Denise, if you would, just state your name and
13 spell your last name.

14 **A** Denise Gibby, G-I-B-B-Y.

15 **Q** Denise, how are you today?

16 **A** I'm good.

17 **Q** And where do you work?

18 **A** I work at the Monkey Business.

19 **Q** And what type of job do you have there?

20 **A** I'm sorry?

21 **Q** What type of job do you have at the Monkey
22 Business?

23 **A** I'm the bartender.

24 **Q** And how long have you been working at the
25 Monkey Business?

1 **A** Going on seven years.

2 **Q** Do you recall an incident at the Monkey

3 Business on November 4th, 2013?

4 **A** Part of it I remember.

5 **Q** Who was at the bar that night?

6 **A** The people that was in the bar was John, Kenny,

7 Kenny's friend, Debbie, Joe and Misty.

8 **Q** And was there any type of argument between

9 Kenny or John?

10 **A** Not that I know of.

11 **Q** And did John Thomas leave the bar?

12 **A** He just came to me saying he need his tab and

13 got up and left.

14 **Q** And did he come back to the bar?

15 **A** Yes, he did.

16 **Q** And about how long was he gone for?

17 **A** Maybe 30 minutes or so.

18 **Q** And what happened when he came back?

19 **A** He came in. He went straight for Kenny, saw

20 him push him and then got up, knocked the table and

21 chairs down, I remember. And then he was by the

22 door and that's when I saw he got stabbed.

23 **Q** And did you ever see the knife?

24 **A** I'm sorry? No, I didn't see the knife.

25 **Q** Was the victim bleeding?

1 **A** I didn't know he was bleeding until I saw the
2 blood dripping.

3 **Q** And did John Thomas say anything to Kenny
4 during this whole thing?

5 **A** I'm sorry?

6 **Q** Did John Thomas say anything to Kenny during
7 this altercation?

8 **A** He didn't say anything really.

9 **Q** And where did John Thomas run?

10 **A** If John Thomas what?

11 **Q** Where did he leave to? After it was over,
12 where did he go?

13 **A** When he ran -- when I was out there trying to
14 stop -- get them separated, he ran out the back
15 door.

16 **MR. PATTERSON:** Court's indulgence.

17 **THE COURT:** Take your time.

18 (Pause.)

19 **MR. PATTERSON:** Nothing further, Your Honor.

20 **MR. SHELTON:** One moment, Your Honor.

21 **THE COURT:** Take your time.

22 (Pause.)

23 **MR. GROEBER:** One moment, Your Honor.

24 (Pause.)

25 **MR. GROEBER:** Just a few questions, Your Honor.

1 **THE COURT:** Did every member of the jury panel
2 comply with the Court's instructions? If you did,
3 please raise your right hand.

4 Thank you. All 14 jurors have complied with
5 the Court's instructions.

6 Call your next witness.

7 **MR. POULOS:** The State calls Dr. Steven Fann.

8 STEVEN AUSTIN FANN,
9 having been duly sworn, testified as follows:

10 **THE CLERK:** Have a seat and state your name and
11 spell your last name for us, please.

12 **THE WITNESS:** My name is Steven Austin Fann,
13 F-A-N-N.

14 DIRECT EXAMINATION

15 BY MR. POULOS:

16 **Q** Good afternoon, Dr. Fann. Tell us what you do
17 for living, please.

18 **A** I am an acute care and general surgeon at MUSC.

19 **Q** What are your responsibilities in that
20 position?

21 **A** I attend the trauma bank while on-call duty for
22 MUSC. I staff and address all general surgery
23 consults for the emergency department. I round and
24 give patient care to patients admitted to our
25 service and then conduct other elective general

1 surgery cases.

2 **Q** Have you previously worked for other hospitals
3 or universities or medical professional companies?

4 **A** Yes.

5 **Q** Can you please tell us about that?

6 **A** I was employed by the University of South
7 Carolina Department of Surgery prior to
8 matriculating to MUSC, and that's in Columbia, South
9 Carolina.

10 **Q** What kind of medical training do you have in
11 the area of trauma surgery?

12 **A** So I'm a board-certified general surgeon. I
13 have an additional certification in surgical
14 critical care and an additional board in
15 neurocritical care.

16 **Q** Are you a member of any committees or
17 professional associations?

18 **A** I'm a member of the American College of
19 Surgeons. I am chair of the South Carolina State
20 Committee on Trauma. And I am the Trauma Advisory
21 Committee chair currently for the State of South
22 Carolina.

23 **Q** Doctor, approximately, how many patients have
24 you treated or evaluated in an emergency trauma
25 situation?

1 **A** Many. If you start that tally when I began my
2 training in 1998 as a surgical resident and with ten
3 years of career as an attending surgeon, it would
4 number in the thousands.

5 **Q** Have you previously been qualified as an expert
6 in this state in trauma surgery?

7 **A** Yes, sir.

8 **MR. POULOS:** Your Honor, at this time, the
9 State moves that Dr. Fann be qualified as an expert
10 in the field of emergency medicine and surgery based
11 on his background and experience.

12 **MR. SHELTON:** No objection.

13 **THE COURT:** Ladies and gentlemen, normally, a
14 person cannot give opinion testimony. They must
15 testify as to either what they heard or saw or
16 sensed by smell or something of that nature. There
17 are exceptions in our law if someone is qualified
18 because of their education and experience. They are
19 permitted to give their opinion in certain areas if
20 they are qualified as an expert. I will qualify Dr.
21 Fann as an expert in emergency medicine and surgery
22 to give opinion testimony in that area. That does
23 not mean that you must accept his opinion. It is
24 simply testimony and evidence for you to use in any
25 way that you see fit.

1 Mr. Poulos.

2 **MR. POULOS:** Thank you, Judge.

3 BY MR. POULOS:

4 **Q** Dr. Fann, on November 4th and 5th of 2013, did
5 you treat a patient named Kenneth Milton {sic}?

6 **A** Yes, I did.

7 **Q** I'm sorry, Kenneth Melton. Have you had an
8 opportunity to review your records in relation to
9 that treatment?

10 **A** Yes, I have.

11 **Q** Do you recall how Mr. Melton was transported to
12 the emergency room?

13 **A** He was brought in emergency medical services.

14 **Q** What does that mean? Ambulance?

15 **A** That's an ambulance, yes, sir.

16 **Q** What injuries did he complain of when he
17 arrived?

18 **A** He had sustained a stab wound to the anterior
19 chest at about the level of the midclavicular line
20 just inferior to the clavicle, which would be the
21 collarbone.

22 **Q** Thank you. In layman's terms, can you put that
23 right side, left side, height?

24 **A** So, the collarbone would be here. So about the
25 midpoint between the shoulder and the notch at the

1 top of your breastbone and just in that area up high
2 here {indicating}.

3 Q Thank you. What is the significance of that
4 area of the chest on the human body?

5 A So, penetrating chest trauma is difficult to
6 ascertain at face value given you do not know the
7 direction of the device, be it a sharp object or
8 even bullets, that traverse the chest. It's hard to
9 ascertain exactly at what path those bullets or
10 injuries, mechanisms, always take. With proximity
11 to the midclavicular line, between those two lines
12 from the top of the breastbone to the bottom of the
13 breastbone, we are concerned for the potential for
14 injury to the heart, the sack that contains the
15 heart and the great vessels around the heart.

16 Q Is there a terminology for that area of the
17 body?

18 A So, in trauma critical care circles, that would
19 be referred to as the box or an injury to the box.

20 Q Doctor, can you give us a rough estimate of how
21 many patients you've treated with injuries to the
22 box?

23 A It would number in the hundreds.

24 Q In your medical opinion, Doctor, is it possible
25 for a stab wound from a five-inch bladed knife to

1 potentially cause life-threatening injuries to that
2 area?

3 **A** It is possible.

4 **Q** Based on your observations of this injury, did
5 you order any tests?

6 **A** So, given the location of the injury within an
7 Advanced Trauma Life Support based algorithm of
8 care, he received a chest x-ray in the trauma bay.
9 There was subcutaneous air in and about the injury
10 which prompted an observation. We did serial chest
11 x-rays to make sure that the lung remained up and
12 did not collapse and that he did not collect any
13 fluid in his thoracic or chest cavity. And we
14 ordered an echocardiogram to evaluate the heart and
15 to check for fluid or other evidence of injury
16 around the heart.

17 **Q** And I'm sorry, Doctor, let me back up for just
18 a second. You said a stab wound to that area of the
19 body is potentially life threatening. What could a
20 stab wound to that area do? What type of damage
21 could it cause?

22 **A** It could puncture the sack that contains the
23 heart which would cause bleeding into that space,
24 which is a condition known as cardiac tamponade.
25 You basically choke the heart off and that blood

1 fills the cavity and the heart cannot expand and
2 fill. I've seen direct injuries to the heart as a
3 result of injuries with this pattern. You can
4 lacerate the arch of the aorta. You can hit the
5 pulmonary vessels as they exit or enter the hilum or
6 the central portion of the lung, things of that
7 nature.

8 **Q** And is it possible for a stab wound from a
9 five-inch bladed knife to go deeper than five
10 inches?

11 **A** So, a motivated individual with a lot of force,
12 the chest wall can deflect, and so you can achieve
13 greater distances than you would anticipate based on
14 blade length alone.

15 **Q** And a wound to either side of the heart, is it
16 possible to have a trajectory that could reach the
17 heart from, approximately, where Mr. Melton's injury
18 was?

19 **A** And so that's the reason for the boundaries of
20 the box. If you're at the midclavicular or to the
21 center, from the top of the sternum to the bottom,
22 we have concern for the potential for cardiac injury
23 or other injuries as I've described.

24 **Q** Doctor, what did the tests ultimately reveal?
25 What was the diagnosis?

1 **A** So, he had a stab wound would be his diagnosis.
2 We found no evidence of a collapsed lung, no
3 evidence of blood in the chest cavity either on the
4 serial films. And there was no evidence of injury
5 to the heart or structures adjacent to the heart by
6 the echocardiogram.

7 **MR. POULOS:** No further questions at this time,
8 Judge.

9 **THE COURT:** Mr. Shelton.

10 CROSS-EXAMINATION

11 BY MR. SHELTON:

12 **Q** Dr. Fann, it's safe to assume in your practice,
13 you see a lot of patients?

14 **A** Yes.

15 **Q** Okay. And so what you're testifying here,
16 you're relying on medical records?

17 **A** Predominantly.

18 **Q** Okay. Are you familiar about how those medical
19 records are kept?

20 **A** They're photographic copies typically, and
21 we've transitioned to an electronic medical record.
22 And so those are now stored via an electronic
23 medical record.

24 **Q** Okay. And so it's -- if you -- if a nurse or
25 if somebody's taken down history, it's all written

1 down and then it's on the computer and saved?

2 **A** Correct.

3 **Q** Okay. And that's regularly conducted? That's
4 a regular activity?

5 **A** Yes.

6 **Q** And you rely on those notes and you're relying
7 on those notes to testify here today?

8 **A** Yes.

9 **Q** And you rely on other people's notes also?

10 **A** Correct.

11 **Q** The -- the puncture wound was two centimeters?

12 **A** I'd have to look for a reference in the chart
13 for the exact dimensions.

14 It's a two centimeter documented puncture slash
15 stab wound to the anterior chest on the trauma H and
16 P.

17 **Q** What would be a laceration? What would the --
18 and that's using a puncture/stab wound. What would
19 be a laceration, if that term is used?

20 **A** So, typically, a laceration is a rip or tearing
21 of the tissue. An incision would be a clean cut.
22 And a puncture would be something that had punctured
23 in a traditional sense. A lot of those terms are
24 used interchangeably.

25 **Q** Okay. So it wouldn't surprise you if

1 laceration was used as a term, at some point in
2 time, in the medical records?

3 **A** It would not surprise me, no.

4 **Q** Because it didn't puncture -- it didn't go into
5 the lung, it didn't go into the heart, it didn't hit
6 any arteries?

7 **A** There was record of bleeding at the scene, but
8 so far as injury to the great vessels, injury to the
9 heart, an injury to collapse the lung, no, we did
10 not see any evidence of that on our evaluation.

11 **Q** Were there any other injuries that were noted?

12 **A** I recall reading that during a tertiary survey,
13 which would be a final evaluation, a burn injury was
14 discovered that had occurred prior to the incident.

15 **Q** On his arm?

16 **A** I think that's correct.

17 **Q** Were -- was psych called?

18 **A** Yes. He had a psychiatric evaluation.

19 **Q** Okay. And you're familiar with those records
20 from -- the psychiatric evaluation records?

21 **A** I know in the discharge summary from our
22 service, he was deemed safe for discharge and that
23 follow-up had been established as an outpatient. I
24 do recall reviewing a psych note.

25 **Q** Do you recall that he mentioned he had access

1 to guns?

2 **MR. POULOS:** Objection.

3 **THE COURT:** What's the basis? He didn't finish
4 his question.

5 **MR. POULOS:** May we approach, Your Honor.

6 **THE COURT:** You may.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 **THE COURT:** Sustained.

11 BY MR. SHELTON:

12 **Q** Dr. Fann, the -- Mr. Melton, he required
13 stitches?

14 **A** There's reference to a follow-up in my office
15 for suture removal. So, yes, I think he had a few
16 stitches.

17 **Q** Okay. He didn't have any permanent
18 disfigurement or protractive loss or impairment of a
19 function of a body member?

20 **A** Other than the scar from the injury, there was
21 no evidence of rib fractures or clavicular fractures
22 or any other --

23 **Q** He didn't lose a finger?

24 **A** No.

25 **Q** He didn't have -- he wasn't permanently

1 disfigured?

2 **A** No.

3 **Q** He didn't lose the ability to use a body
4 member?

5 **A** No evidence of injury to the neurovasculature
6 of the arm, if that's your question.

7 **Q** And he didn't lose the ability to -- there was
8 nothing that happened to any organ system other than
9 the skin?

10 **A** Probably skin in the musculature of the chest
11 wall, but no deep injury.

12 **Q** And no permanent loss from that?

13 **A** Not that we could tell.

14 **Q** Okay. You didn't require any treatment to -- I
15 think you answered that -- any treatment to the
16 organ system other than the skin or muscles?

17 **A** He had a repair of the laceration and the
18 evaluation for, so that would have been his
19 treatment.

20 **Q** Which that would have been just to the skin or
21 muscles?

22 **A** Skin or muscles where the injury's found.

23 **Q** Okay. There wasn't anything complex about
24 doing sutures?

25 **A** It would have been a simple closure with just

1 reapproximation of the skin.

2 Q And surgery wasn't required?

3 A He did not require an operative intervention.

4 MR. SHELTON: Beg the Court's indulgence.

5 No further questions.

6 REDIRECT EXAMINATION

7 BY MR. POULOS:

8 Q Doctor, you testified that the term laceration
9 can be used in medical records when appropriate; is
10 that correct?

11 A That's correct.

12 Q The term used for Mr. Melton's injury was stab
13 or puncture wound; is that correct?

14 A The references that I have readily available
15 describe it as a puncture/stab wound.

16 MR. POULOS: Nothing further.

17 RECROSS-EXAMINATION

18 BY MR. SHELTON:

19 Q Would it just be easier to show you what page
20 I'm referring to?

21 A I'm fine with that.

22 Q Okay.

23 A Looking at the -- this is a nursing flow sheet,
24 if I'm not mistaken, and there's a designation of
25 the injury on the left and it is labeled as

1 laceration.

2 **Q** And your name is on the bottom, I guess,
3 ordering maybe some x-rays?

4 **A** Yeah. Again, I think this is the nursing
5 narrative of the care and my name is down for
6 performing the FAST scan and ordering the x-rays.

7 **Q** So it's -- is it referred in this medical
8 report as a laceration?

9 **A** That nursing note records it as a laceration.

10 **Q** Is that your signature on the bottom?

11 **A** No.

12 **Q** Okay. I can't read it, so.

13 **A** So, there's an L at the point or a line, it's
14 hard to say, and then a B on the forearm.

15 **Q** And an L would be common to refer to as
16 laceration?

17 **A** That would be something you might would require
18 or encounter in a medical record, yes.

19 **Q** Okay.

20 **MR. SHELTON:** No further questions.

21 **MR. POULOS:** Nothing further from the State,
22 Your Honor.

23 **THE COURT:** All right. You may step down, Dr.
24 Fann. Thank you.

25 Call your next witness.

1 **MR. PATTERSON:** At this time, Your Honor, the
2 State rests.

3 **THE COURT:** Ladies and gentlemen, at this time,
4 there's a matter of law that I must take up outside
5 of your presence. Do not begin your deliberations,
6 do not discuss this case amongst yourselves.

7 Please rise for the jury.

8 (The jury retires to the jury room.)

9 **THE COURT:** Any motions or matters?

10 **MR. SHELTON:** Yes, Your Honor. At this time,
11 the defense moves for a directed verdict,
12 specifically, on attempted murder. Your Honor,
13 there's been no evidence of malicious heart. I
14 mean, the -- there's circumstantial evidence at
15 best. There's nothing to indicate that my client
16 was malicious in this assault and I ask that the
17 attempted murder be dismissed or a directed verdict
18 be handed to attempted murder.

19 **MR. PATTERSON:** Thank you, Your Honor. May it
20 please the Court. The State believes that a
21 directed verdict in this case is not appropriate.
22 We believe we've met -- that there's been evidence
23 that's come in indicating the intent to kill with
24 malice aforethought.

25 The video was shown. It indicated the

1 defendant walked in directly to the victim, had a
2 knife in hand and then tried to stab him in the
3 chest. The victim suffered a stab wound to the
4 chest which can be life threatening; ultimately, it
5 ended up not being. There was testimony about a
6 text message while the defendant was gone saying
7 there will be blood to -- some version of that, and
8 then the defendant comes back with a knife to stab
9 the victim, which shows premeditation and malice.

10 There was testimony that there was some type of
11 -- maybe there was an argument about fishing and --
12 which will go to motive that he was angry about
13 something. I think one of the witnesses testified
14 that it might have been because of the girl, Misty.

15 But I think the fact that he leaves, has time
16 to think about this whole thing and then comes back
17 indicates -- because malice can be expressed or
18 implied. So even if you don't have the text message
19 and you don't have any statements, he's got a knife
20 in hand, he goes directly for the victim, stabs the
21 victim. And I think the fact that he had the time
22 to cool off and made the decision to come back
23 straight for that bar is at least implied malice, if
24 not expressed. And I think the text message makes
25 it expressed. So we think that the State's met its

1 burden for a directed verdict.

2 **THE COURT:** Anything further, Mr. Shelton?

3 **MR. SHELTON:** No, Your Honor.

4 **THE COURT:** As you know in ruling on a motion
5 for a directed verdict, I'm concerned with the
6 existence or nonexistence of the evidence viewed in
7 the light most favorable to the State as the
8 nonmoving party. The State must prove for attempted
9 murder that the defendant attempted to kill another
10 person with malice aforethought, either expressed or
11 implied. Based upon the testimony that has been
12 presented, I deny your motion for a directed
13 verdict.

14 Any other motions or matters, Mr. Shelton?

15 **MR. SHELTON:** Any motions or matters -- Your
16 Honor, just to put on the record, the -- want to get
17 into the medical records or --

18 **THE COURT:** The psychological note?

19 **MR. SHELTON:** Yes, Your Honor. Just that
20 our -- my reading of 613(b), as Your Honor knows,
21 Extrinsic evidence of a prior inconsistent statement
22 by a witness is not admissible unless the witness is
23 advised of the substance of the statement, the time
24 and place -- which I asked the victim on the stand
25 about his access to guns and mentioning it to the

1 nurse, he denied it -- The time and place it was
2 allegedly made -- mentioning it to the nurse -- And
3 the person to whom it was made and is given the
4 opportunity to deny the statement -- which he denied
5 it.

6 If the witness does not admit that he has made
7 the prior inconsistent statement, extrinsic evidence
8 of such statement is admissible. However, if the
9 witness admits, then it's inadmissible.

10 So he denied it -- of making that statement. I
11 wanted to introduce the extrinsic evidence of him
12 making that statement. And, specifically, I went
13 through the business records as far as the doctor is
14 concerned and he said that they were regularly
15 conducted -- it was a regular course of business, he
16 had knowledge of how they were done and the
17 reliability he relies on. As an expert, he was
18 relying on those records. And so, Your Honor, based
19 off that -- those reasons, I wanted to ask a
20 question about his access to guns in which he
21 admitted to -- that he had access to guns.

22 **THE COURT:** All right. I think it's preserved
23 for the record. Anything further?

24 **MR. SHELTON:** No, Your Honor.

25 **THE COURT:** Ms. Evelyn, would you place the

1 defendant under oath, please?

2 JOHN ARTHUR THOMAS,

3 having been duly sworn, testified as follows:

4 **THE COURT:** Mr. Thomas, at this time, I'm going
5 to explain to you certain of your rights. If you do
6 not understand anything that I say, please let me
7 know, and if you need me to explain anything in
8 further detail, please let me know. Do you
9 understand?

10 **DEFENDANT:** Yes, ma'am.

11 **THE COURT:** We've reached the stage of the
12 trial where you may present your defense. You have
13 the right to claim the protections given to you by
14 the Fifth Amendment to the Constitution of the
15 United States. This amendment states in part that
16 no person shall be compelled in any criminal case to
17 be a witness against himself. This means that you
18 cannot be required to testify.

19 You have the right to testify on your own
20 behalf. No one can make you testify. This is a
21 personal right and no one can waive this right
22 except for you. If you decide to testify, you will
23 be subject to the same rules that govern other
24 witnesses and you may be examined and cross-examined
25 on any relevant issue in this case.

1 If you have any convictions involving
2 dishonesty or false statement or for crimes
3 punishable by imprisonment for more than one year
4 and I determine that the probative value outweighs
5 its prejudicial effect to you, the Solicitor will be
6 able to introduce your record to attack your
7 credibility.

8 Mr. Poulos, what convictions were you
9 indicating -- or will this be your witness,
10 Mr. Patterson?

11 **MR. PATTERSON:** We have the -- in 2005, he was
12 convicted of manufacturing meth, and then in -- that
13 was in Berkeley County. In -- oh, excuse me, this
14 was March of 2006, he pled to manufacturing meth.
15 And then in October of 2005, he pled to possession
16 of meth in Dorchester.

17 **THE COURT:** If you decide to testify, this
18 decision on your part must be freely, voluntarily
19 and intelligently made with the knowledge of the
20 protections given to you by the Fifth Amendment and
21 the consequences of your decision to testify.

22 If you decide not to testify, I will instruct
23 the jurors that they cannot give the fact that you
24 did not testify any consideration whatsoever and
25 there should be absolutely no prejudice to you

1 because you did not testify.

2 It is left entirely up to you. You may talk
3 with your attorney, either together or separately,
4 you may talk to your family, your friends or anyone
5 else, but the final decision is yours. Do you
6 understand what I've explained to you?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Do you have any questions about
9 what I've explained to you?

10 **DEFENDANT:** No, Your Honor.

11 **THE COURT:** Have you discussed with your lawyer
12 whether or not you should testify?

13 **DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Do you need to talk to your lawyer
15 anymore about this matter at this time?

16 **DEFENDANT:** No, ma'am.

17 **THE COURT:** Do you wish to testify?

18 **DEFENDANT:** Yes, ma'am.

19 **THE COURT:** All right. You may have a seat.
20 And we'll just need to address, do you agree
21 that those are both felony convictions?

22 **MR. SHELTON:** Not the possession, but --
23 possession is a misdemeanor.

24 **THE COURT:** It was just a possession?

25 **MR. PATTERSON:** That's correct.

1 **MR. SHELTON:** The first one.

2 **THE COURT:** I'm sorry. The 2005, I heard a
3 possession with intent, I'm sorry. So you would
4 agree that the 2006 is a felony?

5 **MR. SHELTON:** Yes, ma'am.

6 **THE COURT:** All right. And that will be able
7 to be used as a felony conviction to attack his
8 credibility.

9 **MR. SHELTON:** Yes, Your Honor. I would just
10 say that it's more prejudicial than probative. And
11 it's a drug charge. It has nothing to do with his
12 credibility.

13 **THE COURT:** But it's a felony conviction,
14 that's all that -- you'll just be allowed --

15 **MR. SHELTON:** In 2006 has a felony conviction.

16 **THE COURT:** 2006 you have a felony conviction.

17 **MR. SHELTON:** Absolutely.

18 **THE COURT:** Do you have any other witnesses?

19 **MR. SHELTON:** Your Honor, we're trying to get
20 -- Denise, who's here. We're trying to get a hold
21 of Lee. He indicates maybe two hours he can get
22 here.

23 **THE COURT:** I don't know how long your other
24 witnesses are here, but I'm not waiting.

25 **MR. SHELTON:** Your Honor, one of our witnesses

1 is stuck downtown. He has car trouble. He can't
2 get from downtown at this time. The boss is on his
3 way, Mr. Brodie is on his way. I'm not sure how
4 long that's going to take. We're trying. We didn't
5 anticipate it going this quick, Your Honor. I
6 mean --

7 **THE COURT:** Mr. Shelton, we've had this -- I
8 had the same conversation with the State. I told
9 them they needed to get their witnesses here. I had
10 the same conversations with you. This was no
11 surprise how we were going today. I've indicated to
12 you we were going to work through lunch in order to
13 make up the time for yesterday. Are you ready with
14 one witness?

15 **MR. SHELTON:** We can be ready with Mr. Thomas
16 if we can get, like, a ten-minute break, Your Honor.

17 **THE COURT:** All right. We'll take a ten-minute
18 break. So we'll be back at 2:30. Thank you.

19 **MR. POULOS:** Your Honor, there's one brief --
20 in light of his decision to testify, there's one
21 brief matter I'd just like to address with the
22 Court. If he does testify inconsistently with his
23 video taped statement, we would seek to impeach him
24 with portions of that video taped statement. It's
25 our position that that is --

1 **THE COURT:** We've had this discussion at least
2 two separate times in chambers conferences, so this
3 shouldn't be no surprise to Mr. Shelton, but we'll
4 have that conversation before you have the
5 opportunity.

6 **MR. SHELTON:** We would just request that it all
7 play.

8 **MR. POULOS:** Well, that's the issue, Your
9 Honor.

10 **THE COURT:** Well, he hasn't opened the door
11 yet, so.

12 **MR. PATTERSON:** Right. We can address it
13 contemporaneously --

14 **MR. POULOS:** We were just trying to head it off
15 before it happened for convenience for the Court.

16 **THE COURT:** Well, tell me what you want me to
17 do, Mr. Poulos.

18 **MR. POULOS:** Well, Judge, it's our position
19 that the impeachment material is not substantive
20 evidence so it's not subject to rule of
21 completeness. And we have a case, Your Honor, State
22 v. Kelsey which states -- and it's a five sentence
23 paragraph that I'll read to the Court -- Generally,
24 where a part of a witness' prior inconsistent
25 statement has been introduced to impeach that

1. witness, the entire statement is admissible in
2 rebuttal to explain the inconsistency. However, the
3 mere mention of a conversation or statement does not
4 automatically entitle the opponent to bring up other
5 parts. Portions which are not relevant or material
6 to explain the inconsistency are not admissible.

7 So our position is that all the ancillary
8 issues that are mentioned in the statement, in not
9 paying taxes and being violent, all those things,
10 are not relevant to explain the inconsistency in the
11 statements from the stand that we are impeaching him
12 with. So those portions should not --

13 **THE COURT:** We'll address that depending upon,
14 I think, it'll -- it will make a determination as to
15 what Mr. Thomas says, if anything, when he
16 testifies.

17 **MR. POULOS:** Thank you. Your Honor.

18 **THE COURT:** All right. Thank you. 2:30.

19 (Brief Recess.)

20 **THE COURT:** Anything before we bring in the
21 jury?

22 **MR. PATTERSON:** Nothing from the State, Your
23 Honor.

24 **MR. SHELTON:** Your Honor, Mr. Ronjon, we had
25 subpoenaed him. He's saying he is now on his way.

1 He's not a willing witness for us, Your Honor, so he
2 doesn't really want to testify, but we have
3 subpoenaed him to be here. We've told him that we
4 want him here this afternoon. He's giving different
5 excuses. He's now said he will be here. We may
6 need a deputy to help in bringing him here.

7 **THE COURT:** Give me a copy of your subpoena and
8 tell me where he is.

9 (Pause.)

10 **THE COURT:** Who served this?

11 **MS. PAGE:** Yes, I did.

12 **MR. SHELTON:** Ms. Page, Your Honor, our
13 investigator.

14 **THE COURT:** Where do you think he is?

15 **MS. PAGE:** When I spoke to him earlier on the
16 phone, he stated -- earlier he stated he was in
17 Charleston. Then when I called him back and said
18 that we were not waiting till tomorrow morning, he
19 said he was in Summerville. And when he called --
20 when I called back to tell him that I needed an
21 address to come pick him up or a deputy to come pick
22 him up, he got irate and said he will be on his way.
23 So I don't have an address for him right this
24 moment.

25 **THE COURT:** I need --

1 **MS. PAGE:** The store where I served him is
2 usually where he's at during the day.

3 **THE COURT:** Where is that?

4 **MS. PAGE:** That address, in Cross on Highway
5 45.

6 **THE COURT:** What's the name of the store?

7 **MS. PAGE:** It used to be Quattlebaum's Grocery,
8 but I'm not sure the name of it now.

9 **THE COURT:** Ms. Page, would you step outside
10 and let him know that we are going to be sending the
11 sheriff, and so it would probably be in his best
12 interest if he would let you know where he is so
13 that we could circumvent that from happening?

14 (Pause.)

15 **MR. SHELTON:** As far as the other witnesses,
16 Mr. Brodie is here. So -- Mr. Fowler is -- he has
17 one job left to do at his work and will be here as
18 soon as he finishes that job. We've indicated that
19 we would tell Your Honor he would be showing up in
20 his work outfit, if Your Honor's okay with that.

21 **THE COURT:** I don't know what his work outfit
22 is.

23 **MR. SHELTON:** He works at Santee Cooper.

24 **THE COURT:** I don't know what that means. So
25 if he's dressed appropriately for court, he may

1 testify. If he's not, then you need to make sure
2 you have other arrangements made. Thank you. So do
3 you have a witness now?

4 **MR. SHELTON:** Mr. Thomas will testify.

5 **THE COURT:** All right. Let's bring in the
6 jury.

7 (The jury returns to the courtroom.)

8 **THE COURT:** Call your first witness.

9 **MR. SHELTON:** Thank you, Your Honor. The
10 defense calls John Thomas.

11 JOHN ARTHUR THOMAS,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Have a seat. State your name and
14 spell your last name for us.

15 **THE WITNESS:** My name is John Thomas,
16 T-H-O-M-A-S.

17 DIRECT EXAMINATION

18 BY MR. SHELTON:

19 **Q** John, how are you?

20 **A** I'm fine.

21 **Q** John, tell the jury what do you do for a
22 living.

23 **A** I work for L&S Electronics. I'm the senior
24 service tech.

25 **Q** And how long have you worked with them?

1 **A** This time about ten years.

2 **Q** Okay. And just tell us a little bit about what
3 that work entails.

4 **A** I do stuff like provide quotes to existing
5 customers, coordinate service for fire alarm
6 systems, IT systems, network systems, TV systems,
7 any of the electronic systems that we do at
8 commercial establishments, as well as I handle all
9 of our electronic laptops and phones and stuff like
10 that, desk tops.

11 **Q** And is there any -- so you work with the
12 community?

13 **A** Yes. I work with people like Berkeley County
14 School District, their maintenance department.
15 There's a guy there named James Steindeckler that I
16 coordinate, transfer database and information with
17 him because he does maintenance on the stuff that we
18 install for them. We do work at Boeing, Bosch,
19 MUSC, all over the state really.

20 **Q** Okay. And you do security systems and stuff,
21 too?

22 **A** Yes. We do some security work, access control
23 locking systems, CTV system cameras, closed-circuit,
24 all that sort of stuff, any type of low voltage
25 facility and low voltage electronics.

1 **Q** Did you actually help with the security system
2 at Monkey Business?

3 **A** I've worked on it for them, helped show them
4 how to use it. It was put in by the initial owner,
5 I don't really remember her name, before the people
6 that have it -- had it during this incident took it
7 over, and, you know, they didn't know how to use it
8 and I showed them. I knew where the cameras were
9 and all of that.

10 **Q** Okay. And do you also sell cell phones?

11 **A** Yes. I've sold phones to Vicky that owns the
12 place, as well as Lee who was -- I don't know if
13 he's the manager. I think the liquor license is in
14 his name.

15 **Q** And in the community, do you sell cell phones
16 sometimes?

17 **A** Yes. Because our company's costs got so high
18 with Verizon, Nextel, my boss had me research
19 alternative use of our company cell phones which
20 numbered at times up to 40, 30 to 40 cell phones,
21 another 10 to 15 tablets. So we became a dealer for
22 Page Plus Cellular. What they are is they're what
23 they call an MNOV {sic}. They're a mobile virtual
24 operator. They act as a cell phone company that
25 uses towers of the bigger companies like Verizon.

1 So we became a dealer solely to try to cut our costs
2 and be able to manage our phones more efficiently.

3 In the meantime, we realized we could get
4 phones a lot cheaper with no contract. So we -- my
5 boss allowed me to buy phones not just for the
6 company, but also to sell them and the company would
7 keep the monthly -- the profit on the monthly
8 service. They allowed me to make a few dollars on
9 the phones.

10 **Q** And what's the significance of that in Cross?

11 **A** Well, that way -- there's really no service
12 that works well except for Verizon, where if you're
13 on Verizon's towers or one of their MNVOs {sic}, you
14 can get fairly decent service out there compared to
15 everybody else.

16 **Q** Do you help people find jobs?

17 **A** Yes. I've helped many people find jobs at
18 times, you know, a lot of contractors, electrical
19 contractors, as well as our company.

20 **Q** Is that how you met Kenny?

21 **A** Yes. A girl that was the mother of someone, I
22 knew her. I met her a time or two.

23 **Q** What's her name?

24 **A** And I met her through him. I helped her -- she
25 asked me to help her son get a job because he was in

1 trouble.

2 Q What was her name?

3 A Pam Aikman.

4 Q And so what was the relationship between Pam
5 and Kenny?

6 A She was his girlfriend.

7 Q And so that's when you first met Kenny?

8 A Yes.

9 Q Do you know about how long ago that was?

10 A About maybe three and a half years ago, three
11 years ago, something like that.

12 Q How long have you been in the community?

13 A About four years in Cross. Well, four years up
14 until this incident.

15 Q And how long, you been working with L&S?

16 A Ten years this time. I had worked with them
17 about three and a half years prior to that, but I
18 left for a couple of years.

19 Q Okay. And when was it -- the first time that
20 you realized you and Kenny -- you didn't really want
21 to be Kenny's friend anymore?

22 A Well, it started kind of compiling when I got
23 calls from Pam Aikman after I'd hired her son and we
24 became a little better friends. She would call me
25 at -- I got a call from her one night, I remember

1 distinctly, about one o'clock in the morning. And
2 she said she had to walk a couple miles to get a
3 phone signal and please come pick her up, that she
4 had been -- Kenny and her had been out and he kicked
5 her out of his truck.

6 **MR. POULOS:** Objection.

7 **THE COURT:** What's the basis?

8 **MR. POULOS:** It doesn't pertain to the
9 defendant. It's irrelevant.

10 **THE COURT:** What's the relevance?

11 **MR. SHELTON:** Incidents of violence, Your
12 Honor.

13 **THE COURT:** Counsel approach.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury, but out of
16 the hearing of the jury.)

17 **THE COURT:** Sustained.

18 BY MR. SHELTON:

19 **Q** Was Kenny violent towards you?

20 **A** Yes, on several occasions.

21 **Q** Okay. Tell us about the first time.

22 **A** The first time was in November 2012 --
23 actually, it was prior to November. In August,
24 there was a tournament coming up in November, a
25 fishing tournament.

1 **Q** Fishing.

2 **A** Catfish tournament for Hills Landing. We
3 had -- I had decided to fish in it and I had
4 mentioned that. And he said, Well, we can fish out
5 of my boat, it's a pontoon boat. It's bigger than
6 your boat. We can do better, this, that and the
7 other. And I thought about it. Then I told him I
8 guess we could do that. So I paid the entrance fee.

9 And then as time went on getting ready coming
10 up to the tournament, he didn't have the proper
11 lights on his boat, he didn't have an anchor, he
12 didn't have a lot of stuff, no inverter to run the
13 LED lights that I like to use. So I wound up
14 purchasing all of that stuff for his boat.

15 And then we went out one night to go practice
16 to check out the lights and stuff. We went out
17 toward -- it was after dark, which is usually when
18 we try to go catch fish. And when we went out in
19 the boat, we caught one fish. We were drift
20 fishing. The wind started really getting up and it
21 got rough even for a pontoon boat, really rough.

22 So we headed back in, and we got within sight
23 of the -- we got almost out of the rough water and
24 the boat run out of gas. And I had to pump the
25 ball. I kept pumping the ball and we'd get a little

1 closer and it'd quit again. We'd basically drift in
2 the opposite direction toward Bonneau. And the boat
3 was really rocking hard.

4 **Q** Does it scare you?

5 **A** Yeah, I was very scared. You know, being in
6 that big boat, I felt like maybe we'd be okay, but
7 -- and he had called his mother to come get us, told
8 her to call another friend of his to help her get
9 his boat and get the battery, his bass boat, and
10 come get us.

11 In the meantime, I started pumping that ball
12 again. And we got back toward where we were trying
13 to get to, which it was in sight, but we're still
14 out in the bigger water and the boat kept surging
15 forward. I actually got on the back of the pontoon
16 and pumping the ball, pumping the ball trying to get
17 -- tilt the gas can up and we got a little closer,
18 and, at that point, it quit again and I threw the
19 anchor out.

20 Well, for some reason, he got mad at me for
21 throwing the anchor out. I had bought the anchor.
22 And it didn't catch, but it slowed us down. And
23 when it did finally catch, I had to cut it off when
24 they'd come to tow us in, cut the rope, because it
25 was blowing so hard I couldn't even pull us against

1 it. It was hung up. But I wasn't worried about the
2 anchor. I was just wanting to get out of there.

3 **Q** How long do you think you were out there?

4 **A** We were out there for -- altogether or just
5 after --

6 **Q** How long were you out there that night?

7 **A** About three hours.

8 **Q** Okay. And so what happened next?

9 **A** Well, then they finally got the boat in the
10 water. His mom got his friend. And he kept calling
11 her and he was screaming at her and carrying on.
12 And I, you know, I kept trying to tell him, Calm
13 down, why are you talking like that to your mother?
14 And he got mad at me then and was talking angry to
15 me. And so then I just didn't say anymore to him.
16 And he kept calling them and finally they got there.
17 And was -- just his friend came. I think his mother
18 stayed at the dock if I remember correctly. And
19 then I got the rope and tied it off and he got us
20 in.

21 Well, when we got in, we were so exhausted that
22 we just tied the boat up to the dock. We had put it
23 in at S&S Campground in Cross and he knew the
24 people, so he just left it tied up to the dock. And
25 I was so drained from all of that, and he was still

1 screaming at his mother and carrying on, that I just
2 left. You know, when I got to my car, I left. And
3 I left all my stuff on the boat and I told him I'll
4 get it tomorrow.

5 **Q** So what happened when you came back the next
6 day?

7 **A** Well, the next day I went over there to get it
8 and he told me he had a crossbow on the boat, and I
9 remember seeing the crossbow on the boat. I don't
10 know why he had it on his boat unless he was fishing
11 with it or something at a previous time. And he
12 said that I kicked it off the boat.

13 And I told him, I said, There's no way I kicked
14 it off the boat. There's a three-foot railing with
15 a 20-inch aluminum panel that goes all the way
16 around the boat. It would be pretty hard to kick it
17 off the boat. I said, Maybe somebody stole it
18 during the night. And he said, No, nobody stole it.
19 You kicked it off the boat. And he was angry with
20 me about it.

21 **Q** So you confronted him about this? You
22 questioned him about this?

23 **A** Yeah. We had a disagreement about it. He
24 insisted that I stole -- or I kicked his thing. And
25 I was saying, Well, maybe somebody stole it. He

1 said, No, that ain't what happened to it. And he
2 said --

3 **Q** So how did he react to that?

4 **A** Well, he was like, Nobody stole your fishing
5 poles and this and that and they were still there.
6 Why would they just take that and not take your
7 fishing poles?

8 His fishing poles were there, too. They didn't
9 take any of that or whatever happened to it. I
10 really don't know.

11 Well, whenever I said, well -- you know, he was
12 getting angry. And I went to -- my poles were
13 sitting right there on his porch. It was an
14 enclosed porch. And when I went to get them, he
15 told me I couldn't have them, that he was keeping
16 them for his crossbow, as well as everything on the
17 boat. And so when I went to go grab my stuff, he
18 told me -- there was a gun sitting in the corner,
19 some kind of rifle -- he told me, he said, I'll
20 shoot you with that gun if you take anything off
21 this porch.

22 And at that point, I just left. And I thought
23 about that and thought about it and I decided that
24 it's best just to let it go. It was a couple
25 hundred dollars worth of fishing poles, just let it

1 go. If he thinks I kicked his crossbow off the
2 boat, then it's not worth all the trouble of either
3 going to the police about it or whatever. I just
4 let it go. I had other fishing poles.

5 **Q** And did you take that as a real threat?

6 **A** Yes. I mean, he was very, very adamant about I
7 wasn't going to have my poles and stuff.

8 A couple weeks later when the tournament come
9 up, he called me like, we're still going to fish and
10 all that, and I thought about it and thought about
11 it. And then I'm like, well, you know, I paid all
12 that money and I was thinking I really wanted to
13 fish in the tournament. Well, at that point, I
14 didn't even make up my mind whether I was or not, he
15 called me back and he said, well, he's sick, he's
16 not going to fish in the tournament. So -- and we
17 had paid under his name because he owns the boat
18 and, you know, that's the way the rules are. So I
19 went and registered again and paid another entry fee
20 and fished in that tournament out of my boat with
21 someone else.

22 Then on the day -- first day of the tournament,
23 he shows up there with two people there under my
24 money and all my stuff on his boat, my lights, my
25 fishing poles. And they -- I don't know if they had

1 my fishing poles, but they still had my lights and
2 all of my stuff that I put on the boat to be able to
3 fish at night and stuff.

4 **Q** And so did you -- did your relationship change
5 with Kenny --

6 **A** After that point, I decided I'd pretty much
7 just let things go and just not really be one to be
8 social other than if I see him here and say, how you
9 doing, all right, good, and move on, not -- but not
10 be involved with him on a good friendship level like
11 fishing in a tournament or something like that
12 anymore or going to his house or anything like that.

13 **Q** But you would still see him?

14 **A** Yeah. Cross is a small community. He still
15 was coming around my place being pushy all the time,
16 you know, about he was still my friend and let's --
17 how did he put it -- Let's just squash this. But I
18 still, at that point, I was scared of him already.
19 I mean, I'd seen other things that he'd done to
20 other people.

21 **Q** And he'd tell you certain things?

22 **A** And things he told me about how bad he beat
23 this one or that one or --

24 **MR. POULOS:** Objection, Your Honor.

25 **THE COURT:** Sustained.

1 BY MR. SHELTON:

2 Q Let's get to around 4th of July of 2013. You
3 helped Kenny out that day?

4 A Yes. Me and Joe Huntley, we were going
5 fishing. Joe had wanted to go fishing. We were
6 going in the canal because it was windy on the lake
7 and we had my boat hooked up. We decided we would
8 get something to eat before we go. It was in the
9 evening before dark and we were going cat fishing.
10 We stopped by the Monkey Bar to get a hamburger and
11 then we were going fishing.

12 Well, when we stopped there -- like I say, it
13 was 4th of July. I think I was off the next day.
14 We were going fishing. And when we stopped there,
15 before -- I don't remember if it was when I got out
16 of the car or I'd went in and ordered a hamburger
17 and then they came, but, at some point, Kenny and
18 his girlfriend came up and then there were some
19 other people come up. There was a lot of people
20 there. It was 4th of July.

21 Q And you don't have to get into the specific
22 details, but at some point in time, a chain saw --

23 A He got in an altercation with somebody, and he
24 had ripped his shirt off and was thumping on his
25 chest.

1 **MR. POULOS:** Objection.

2 **THE COURT:** Sustained.

3 BY MR. SHELTON:

4 **Q** But you stopped the chain saw?

5 **MR. POULOS:** Objection.

6 **THE COURT:** Counsel approach.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 BY MR. SHELTON:

11 **Q** You assisted Kenny with an incident?

12 **A** Yes.

13 **Q** Around the 4th of July?

14 **A** Yes.

15 **Q** And he had done stuff to you before. Why did
16 you assist him?

17 **A** It just seemed like the right thing to do. The
18 guy was trying to crank up that chain saw and I was
19 standing right there and I just reached around and
20 was going --

21 **Q** You don't have to talk about the actual chain
22 saw --

23 **A** Okay.

24 **Q** -- but just...

25 **A** Because, I mean, even with what went on between

1 us, I didn't want anybody to get hurt.

2 Q Okay. The -- what's the next thing you
3 remember in the summer of 2013?

4 A In September --

5 Q Was there a hunting incident?

6 A No, there wasn't a hunting incident. It was --
7 he had come to my house -- well, he had come there
8 previously and asked to hunt and I told him no.
9 Then a week or two later -- it wasn't even really
10 hunting season. And a week or two later he came
11 with his new girlfriend, I don't remember her name,
12 and they came up in the yard and they got out. They
13 had some guns, some rifles, I don't know what kind
14 they were, shotguns or rifles or whatever, one of
15 them had a scope, the other one seemed to be a
16 little short rifle. And he asked me if they could
17 shoot them on my property and I told him no.

18 I said, To my knowledge, you're not supposed to
19 have a gun and I don't want a gun around here. And,
20 at that point, she looked at me and, excuse my
21 language, she said, Don't be such a pussy. And he
22 looked at me and laughed and fired a bunch of rounds
23 off up in the air, got all over my awning and into
24 the trees.

25 Q Did that scare you?

1 **A** Yes, that scared me. The gun was that far from
2 my face.

3 **Q** What about -- what about this incident with the
4 boat and the boat being stuck?

5 **A** It's like the third week of September, my boss,
6 the owner of our company, the big boss, had bought a
7 boat lift, it was down in Key West, off of Craig's
8 List. And he wanted -- he offered to pay me to go
9 get it and I could make some extra money and get a
10 little trip out the deal too.

11 That's right along the time when Misty started
12 staying with me because she went through a problem
13 with her ex-boyfriend. And I told her -- I let her
14 stay there because she didn't have a place to stay.
15 She was trying to make some money to get back on her
16 feet. She had been fired from the Monkey Bar. So I
17 said, The boss will pay you to help go down if you
18 want to help me drive.

19 So we had to get a trailer. The trailer had my
20 boss' pontoon on it. We had to have the trailer to
21 haul it. He has a friend who owns Design Flooring
22 in Moncks Corner, his name is Warren, that lives
23 real close to me in Eutawville. He lives on
24 Fountain Lake, which is a landlocked lake. He has a
25 little homemade-like boat ramp in his backyard.

1 It's just dirt. It's not concrete. We had a hard
2 time -- he said we could tie the boat on his dock.
3 It was real close to me and I was planning on
4 leaving that day to go to Florida with the trailer.

5 But the boat got -- the trailer and truck -- we
6 got the boat off finally that night. The trailer
7 was stuck. We bogged down in the mud. He couldn't
8 pull me out with his four-wheel drive. He was
9 really tearing up the yard.

10 **Q** And how did it get that he was helping you?

11 **A** The next morning I was waiting on, you know, to
12 come -- it was like 7:30. I was waiting on, like,
13 eight o'clock because we were supposed to leave the
14 night before, the evening before, and -- so I could
15 find somebody close by that could come winch it out
16 because we already determined it was going to have
17 to be winched out. There was no way to pull it out,
18 we tried with a four-wheel drive. It was really
19 mired in the mud.

20 So about that time I got a phone call from
21 Kenny wanting to buy a phone. He had broke his
22 phone. And I said, You owe me for that phone for
23 over a year; you never paid me. If -- and he
24 actually asked for two phones because he had been --
25 his girlfriend had been wanting one, too, and I told

1 him he had to pay me for that one. And he said,
2 Well, if I pay you for that one, can I get two more
3 on credit? I said, No, you haven't paid me in over
4 a year. You can buy two phones if you pay me for
5 the other phone, I gave him a price.

6 And then the thought came on to me he had a
7 wrecker. I said, Is your wrecker working with your
8 winch? I'll pay you to come get me out. You can
9 put that toward the phone. So he said, Yeah. I
10 told him where I was. I don't think he knew that I
11 had just recently moved from Cross and bought that
12 place in Eutawville. So I told him where I was. He
13 came up there, but he didn't have no wrecker or
14 winch. He had his four-wheel drive truck, which
15 is --

16 **Q** And long story short, he wasn't able to get it
17 out?

18 **A** No. He wasn't able to get it out.

19 **Q** And so what happened once that --

20 **A** Well, after he wasn't able to get it out with
21 the four-wheel drive, which he insisted on trying, I
22 said, We done tried that. He said -- I said, Is
23 your wrecker working? Can you bring it with your
24 winch? And he said, yeah, but he would need \$40 for
25 gas because it didn't have no gas in it. So I gave

1 him \$40.

2 He leaves and about 40 minutes later, he shows
3 back up with a trailer with a little -- not a yard
4 tractor, but -- not a big farm tractor, more like a
5 big size yard tractor. And I'm like, That's not
6 going to get it out, we need a winch. And he
7 insisted on trying. So we tried that. He still
8 didn't get it out.

9 So I -- at that point, I told him, I'll just
10 call somebody else that's got a winch, this, that
11 and the other. And he walked over by the door of
12 his truck and opened his truck. He had a rifle
13 laying across the seat. He said, You've got to pay
14 me. I said, You haven't done anything, I done give
15 you \$40 for gas. He said, You've got to pay me or
16 I'm going to shoot you. And he was dead serious.

17 And at that point, I said, Well, I'll tell you
18 what, you need a cell phone, yours is broke, I'll
19 give you a cell phone, because I had one in the
20 truck that was an old refurbished smartphone that we
21 had had repaired. I gave him that, he left. I
22 called Stricks {phonetic}. They come got me out and
23 we were on our way to Florida.

24 While we -- while I was on my way to Florida,
25 he called several times irate saying that phone is a

1 piece of junk, this, that and the other, he wants
2 another one. By then, I was away from him and I
3 wouldn't answer the phone after the first couple of
4 calls.

5 Q Were you scared?

6 A Yes, I was very scared.

7 Q And you took that as a serious threat?

8 A I was very relieved that I was going to be gone
9 for two weeks, maybe he'd calm down and I wouldn't
10 hear -- it would be the end of it.

11 Q So let's get to November 4th, 2013. So what
12 were you doing during the day?

13 A Working. I worked till about -- I got home
14 about 6:30.

15 Q And so what did you do after that?

16 A Well, you know, I had been planning on fishing
17 in that same fishing tournament that comes up in
18 November every year, again, because I enjoy it. And
19 when I got home, Misty was there. She had been gone
20 to her boyfriend's for, like, three days. She had a
21 new boyfriend. And she had been gone. He brought
22 her home some time during that day to my house. And
23 she wanted -- she had been saying something about
24 fishing in a tournament, but I didn't think she was
25 serious, but then -- apparently, you know, she did

1 want to fish. So I said, Okay, it doesn't cost
2 anything. It's per boat. Me and my brother-in-law
3 next door were going to fish.

4 **Q** And let's go to the Misty part. Did it bother
5 you that she was with her boyfriend for three days?

6 **A** No. I was hoping she -- he'd let her move in
7 with him. I mean, I was helping her and I felt
8 sorry for her, but, you know, it was kind of a
9 strain on my life to have to deal with her and take
10 care of her. She wasn't working. She had no car.

11 And, you know, like I said, it was just -- she
12 would stay with him when he wasn't working, he
13 worked at Santee Cooper like four days on/three days
14 off, three days on/four days off, so during those
15 days he was off. But he never, for some reason,
16 whenever he went to work, he wouldn't leave her at
17 his house, he would bring her back to stay at mine.
18 But I was hoping that their relationship would get
19 better and he would allow her to move in with him
20 and I would be off the hook.

21 **Q** So you went and signed up for this fishing
22 tournament? Let's go back to --

23 **A** And she went with me. When we went there, got
24 -- signed up, we got a shirt and she put her shirt
25 on. She was proud she was going to fish in the

1 fishing tournament. I think it come with it on a --
2 I think maybe I bought them, I don't remember, but I
3 paid for the tournament because the deadline was
4 that next day. When I got home, I called them, they
5 said, We'll be here till 7:30. So we went and
6 signed up, which is right there -- you go by the
7 Monkey Bar to get to that.

8 When we signed up, we left there and she said
9 she wanted to stop at the Monkey Bar. I said, Well,
10 I could eat some wings. So we stopped and I ordered
11 some wings. And we were in there about -- when we
12 first got there, she walked over to the side and was
13 on her phone. I didn't know who she was talking to.
14 I figured it was David Quattlebaum or somebody, I
15 didn't care. Well, I ordered some wings and a beer
16 and then she come up there and she ordered something
17 and she was talking to Joe and Debbie.

18 And the next thing I know Kenny walked in
19 behind me with some guy I had never met before,
20 never seen. And he walked over there and he seen
21 her shirt and he said, Oh, y'all are fishing in the
22 fishing tournament. Oh, yeah, we ain't fishing in
23 it this year.

24 And then there was nothing ever about him
25 fishing with me again because I think he realized

1 wasn't no sense in fishing -- asking to fish with
2 me. I already had it signed. And my boat was not
3 that big anyway for that many people.

4 **Q** And so what did you notice about his friend?

5 **A** When my wings came -- well, I just noticed -- I
6 never knew him. He was sort of a six-foot, real,
7 real skinny guy. And I was eating my wings and I
8 could see -- they got glass doors like in a door --
9 with shelves in it behind the bar and I could see
10 their reflection. She was over there at -- clear at
11 the corner by the jukebox and him and her were
12 talking. Then he came and sat down beside me and
13 she grabbed my keys off the bar and went out the
14 back door.

15 I didn't even see her get the keys, but when
16 she -- I seen her go out -- come sit down and then
17 turn and talked to him, he asked me -- introduced me
18 to his friend, talking about he was my friend and
19 all this. And when I turned back around, she was
20 gone. I looked and she was going out the back door
21 and my keys were gone.

22 And two days before that when we got back from
23 Florida, she borrowed my tablet, she was on
24 Facebook. I had seen where he friended her on
25 Facebook and sent her a message asking her to get

1 two phones for him. Didn't see any response from
2 her.

3 I don't know that she even seen it because she
4 had used my tablet and when she'd laid it down and
5 went to bed or whatever, it locked up. And when I
6 turned it back on, she was still logged into her
7 Facebook because it had a lock pattern. It was
8 still -- and I seen where she'd sent him -- or he'd
9 sent her that message, but she hadn't responded. I
10 don't know that she seen it then, but I just laid
11 the tablet back down because she's got Facebook on
12 her phone device and she could have seen it later.

13 **Q** So let's go back to you see after -- you see
14 Misty come back into the bar?

15 **A** Yes. She came back in. I'm eating my wings.
16 At this point, I'm suspicious about what's going on
17 because of the message I seen. I see him. He had
18 come sit down beside me. His friend was on the
19 other side. She was sitting on this side. When she
20 came back in and laid my keys back down on the bar,
21 then I realized she was the one that definitely had
22 my keys.

23 And I seen it all. I was eating like I wasn't
24 paying attention and I could see in the glass.
25 Well, she stands up, reaches around me and taps

1 Kenny on the shoulder and does that number
2 {indicating}. That immediately set off an alarm in
3 my head because of the two phones. I had just got a
4 big order of phones that my boss had had me order
5 because we're getting some new employees, plus I
6 ordered some to sell. They were in a case in my
7 truck and I was wor -- she knew they were there.
8 And I was worried that she got him a couple of
9 phones.

10 **Q** And so when you noticed that, did you see this
11 Eric Singletary?

12 **A** Well, at that point, when she motioned like
13 that, she walked toward the door and was doing that
14 to Kenny. When he turned around looked at her, he
15 seen me immediately, because I immediately reacted,
16 and he just sat right there and acted like he didn't
17 see her, but then he leaned over and whispered to
18 his friend and handed him his keys.

19 **Q** And he left the bar at that point in time?

20 **A** Yeah. When he got up and left, that's when I
21 immediately told Niecy, Denise Gibby, the bartender,
22 I want to pay my tab. Well, Misty started trying to
23 delay me, Where are you going; why you going home?
24 I said, I'm just going home. I really wanted to see
25 where he was going and what was going on with my

1 phones.

2 Well, then I got up to leave. Once she got my
3 tab and got out of there, Misty followed me outside
4 and just kept on like, Don't leave, don't leave me
5 here. I said, Well, I'll come back to get you
6 later. I said, I'm just going to go down to
7 Sportsman. I was just telling her anything so I
8 could go see where he went because he had taken
9 Kenny's truck and left. And, at that point, I got
10 in my truck. I went straight to Kenny's house,
11 drove by the Sportsman. It's about three miles
12 maybe.

13 Q Did you notice anything missing at that point
14 in time?

15 A No. At that point, I hadn't had a chance to
16 check. The dome light wasn't working in my truck.
17 But I just wanted to -- I figured he went to Kenny's
18 house because I had suspicions of what was going on.
19 So when I rode by Kenny's house, his truck wasn't
20 there. So I'm like, well, hell, he must have went
21 somewhere else.

22 Q And how far away is Kenny's house?

23 A It's about three miles, give or take, depending
24 on which way you go. The way I went, by Cross High
25 School, it's about three miles. He lives just past

1 the post office just off the main road. The Monkey
2 Bar is up there past Cross High School and turn back
3 toward the bridge.

4 Q Was it nighttime?

5 A Yes, it was nighttime. It was dark by then.

6 Q Was Kenny's road, is it pretty dark?

7 A Yeah, it's a fairly dark road. There's no
8 street lights out there, if that's what you mean.
9 There's no street lights or nothing.

10 Q And so what did you do after you went to
11 Kenny's house and you didn't see his truck?

12 A Well, when I turned around -- I didn't turn in
13 his driveway, I turned around in his mama's
14 driveway, which is the next driveway. And I didn't
15 see any vehicles or any -- not his vehicle or any
16 vehicle that just doesn't normally sit in his yard
17 not running. So I backed out and immediately headed
18 back toward the bar. Well, when I turned the corner
19 by the Sportsman, like you're going back toward the
20 high school on Highway 6, I stopped. I decided I
21 was going to look and see what phones, if any, was
22 missing.

23 Well, when I turned around and looked behind
24 the seat, I can't remember right where and when I
25 stopped, I think it was near the Sportsman because

1 there's some light right there, there's a light on
2 those dispense ice machines, and pretty sure that's
3 where I stopped, when I turned around and looked,
4 the whole tote was gone, which has company meters,
5 all sorts of -- there were some new iPhones in
6 there, some Galaxy S3s, all brand new stuff. There
7 was a bunch of stuff in that tote.

8 **Q** How much would you say that stuff's worth?

9 **A** Just the phone order I had made that previous
10 week was about 1800. There was a couple of meters
11 in there worth 3- or 400 a piece.

12 **Q** So over \$3,000?

13 **A** My boss said -- he added it all up because from
14 what I -- once I was able to get with him, he said
15 about over 3,000.

16 **Q** And so is that when you were sending some --
17 maybe some texts to Misty?

18 **A** Well, I think the texts was kind of coming when
19 I was on my way there. She had text me about, you
20 going to the Sportsman -- like she was really
21 interested in where I was going -- and, why don't
22 you come back here? And I'm like, at that point, I
23 was kind of like revealing that I know something was
24 going on with the stealing, and I was sending texts
25 while I was driving. I don't recall exactly all --

1 there were several texts that she sent me and I sent
2 her.

3 She was wanting me to come back and get her.
4 At first, I was saying, Yeah, I'll come back, I'm
5 just going to the sportsman, just because I was
6 hoping to catch up to him. And I think after I got
7 there and he wasn't there, then I started sending
8 some texts that if she's wanting me to come back,
9 that if I come back there, you know, there may be
10 trouble, you know.

11 **Q** And you admit that the text mentioned something
12 about there would be blood?

13 **A** I don't know that it said exactly spilled blood
14 or whatever it was the words she used, but there was
15 something that I was talking about blood, you know,
16 there could be blood because there's apt to be a
17 fight because I was not going to, you know, I had
18 already made up my mind. This was company property.
19 It meant my job was on the line. I was scared of
20 him from all the previous things he'd done. I know
21 he carried a knife all the time and, you know.

22 **Q** And so what -- so what happened when you got
23 back to the bar? What happened --

24 **A** When I pulled up to the bar, his truck was
25 there. It was back. There was no other vehicles in

1 that parking lot. Debbie and Joe rode a motorcycle.
2 Niecy's car was there and that was it. And --
3 actually, no, it wasn't her car. It was broke down.
4 Her car wasn't even there that day. I think her
5 boyfriend had her car. His car was broke down.
6 Debbie was -- someone would give her a ride.

7 So when I seen his truck in there, I
8 immediately jumped out of my truck, went over there
9 and looked to see if the tote was in his truck.

10 **Q** And did you see it there?

11 **A** No, it wasn't in there, but there was a rifle
12 laying across the seat.

13 **Q** And, at that point in time, what did you see?

14 **A** I was determined that I was going to confront
15 him about the phones and ask him where he went with
16 the phones. And whether or not he told me or
17 whatever, I wanted to call 9-1-1, but I was
18 determined not to let him get out that door to get
19 to where that rifle was or pull his knife out on me.

20 **Q** And did you think he'd be able to get away if
21 you let him out that door?

22 **A** It was only like 30 steps or less to his truck.
23 If he would have got out that front door, I felt
24 sure that I was going to get shot or shot at.

25 **Q** Did you think that you would ever be able to

1 get your stuff back?

2 **A** I was hoping that I could. If I would have
3 seen where they took them and then realized what
4 they took, I could call 9-1-1 without raising any
5 suspicion on their part, tell them where they -- who
6 took them and where they went.

7 **Q** And so why didn't you call 9-1-1 at this point?

8 **A** Because I really didn't know where the phones
9 went, you know. At this point, I didn't want to
10 call 9-1-1 and --

11 **Q** But you knew he took them?

12 **A** There was no other way they went.

13 **MR. POULOS:** Objection.

14 **THE COURT:** What's your objection?

15 **MR. POULOS:** Speculation.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** There was no other way that --
18 where they could have went with what was going on.

19 BY MR. SHELTON:

20 **Q** You had them before you got to the bar?

21 **A** I'm positive I had them before I got to the bar
22 because, you know, I look at them a lot. When we
23 went to -- when we went down to Hills Landing to
24 register, somebody asked me about a phone. I told
25 them that -- they wanted to know if I had a screen.

1 Well, I had some parts in that case, too. And I
2 looked; I didn't have a screen. So I knew they were
3 there when we left Hills Landing to go to the Monkey
4 Bar.

5 Q So, at that point, you're going to confront
6 him. What was -- what was your hope? What were you
7 hoping was going to happen?

8 A I was hoping that he would tell me where my
9 phones was, where they took them.

10 Q And if he didn't do that, then what would you
11 have done?

12 A I was planning on calling 9-1-1 regardless.

13 Q So why did you feel that you needed a knife?

14 A I didn't feel I needed the knife till I seen
15 the gun across the seat of his truck. And then, in
16 my head, I knew he carried a knife all the time,
17 too. And I had seen when I tried to confront him
18 before about my fishing poles and stuff of how
19 violent acting he got and how he threatened me, as
20 well as other incidences, many other incidences.

21 Q And so you know that he carries a weapon?

22 A He carries a weapon -- during hunting season,
23 that rifle is always in his truck. Everybody in
24 Cross knows that.

25 Q What about Eric? Do you know anything about

1 him?

2 **A** I never met that man before in my life.

3 **Q** And so, at that point, we've all seen the
4 video, you come into -- come into the bar and you go
5 straight to Kenny?

6 **A** Right. And the only thing I said to him is --
7 I was trying to get out, where's my stuff. He was
8 -- I put my hand on his shoulder and when he turned
9 around, I held the knife up to show him -- I was
10 trying to show I wasn't scared, but I was, okay, and
11 just maybe make him tell me where my stuff was and
12 to sit still.

13 Well, he immediately jerked me and lunged at me
14 and he went around and he tried to go for that front
15 door. And I, at that point, I was holding the knife
16 back in the video, you know, and then when he jerked
17 on me again, he was falling down. He jerked on me
18 again and I just held it out there because I didn't
19 know if he was going to pull out a knife or try to
20 get that knife or -- and I don't know at what point
21 he got cut.

22 **Q** And you've seen the video?

23 **A** Pardon?

24 **Q** You've reviewed the video?

25 **A** Yes, sir.

1 **Q** And would you say the video is really clear?

2 **A** It was kind of blurry. I kept trying to sell
3 them new cameras because those cameras were very
4 cheap.

5 **Q** There are some screen shots. Could you review
6 those?

7 (Defendant's Exhibit Numbers 4 and 5,
8 photographs, marked for identification.)

9 Would you review those exhibits? What are
10 those?

11 **A** These are screen shots from the video that
12 night.

13 **Q** And are they a fair and accurate depiction of
14 that night?

15 **A** They're blurry, hard to tell really. I mean,
16 yeah, that's when I came in and confronted him.

17 **MR. SHELTON:** Your Honor, at this point, we ask
18 that 4 and 5 be admitted in evidence.

19 **MR. POULOS:** No objection.

20 **THE COURT:** Defendant's 4 and 5 into evidence
21 without objection.

22 (Defendant's Exhibit Numbers 4 and 5,
23 photographs, admitted into evidence.)

24 BY MR. SHELTON:

25 **Q** Let's look at 4. Where is Kenny at that point

1 in time?

2 **A** He was sitting second from the end of the bar
3 closest to the door.

4 **Q** Okay. And where are you in that --

5 **A** Standing behind him with my hand on his
6 shoulder. He was turning around looking at me.

7 **Q** And, at that point, how far away is your hand
8 from Kenny?

9 **A** Left hand or right hand?

10 **Q** Right hand.

11 **A** My right hand was holding the knife up about
12 this far from him and my hand was on his shoulder.

13 **Q** And he -- your hand wasn't near his left side
14 of his chest?

15 **A** No. I was just holding it up like that
16 {indicating}.

17 **Q** Okay. And look at -- let's look at Defendant's
18 5?

19 **A** At what?

20 **Q** Defendant's 5 on the back. So you see -- you
21 see you and Kenny, are you guys up in the corner?

22 **A** Yeah.

23 **Q** And so --

24 **A** Can't really see him. I can see me. Yeah, I
25 see him now, okay. It's kind of dark.

1 **Q** What do you see in there?

2 **A** Me and him tussling.

3 **Q** And where is your right hand there?

4 **A** My right hand is -- at that point, I'm not
5 sure. It looks like maybe it's on his shoulder.

6 **Q** Okay. Does it look like it's right near, next
7 to his left side of his shoulder?

8 **A** Yeah. It looks like I've got both hands on his
9 shoulder with the knife in my hand.

10 **Q** Okay. And so -- look at your feet in that one.
11 Are you off balance?

12 **A** Yeah. I'm standing on one foot trying to push
13 back.

14 **Q** Did you mean to cut Kenny?

15 **A** Absolutely not.

16 **Q** Did you want to cut Kenny?

17 **A** Absolutely not.

18 **Q** Would you consider it an accident?

19 **A** It was an accident in the fact that I was just
20 trying to protect myself because I was scared.

21 **Q** That's why you got the knife?

22 **A** Yes, sir.

23 **Q** So what happened as Kenny's going around the
24 pool table?

25 **A** I didn't hear you.

1 Q What was happening as -- what happens next?

2 Kenny goes around the pool table --

3 A Well, he went around the pool table and he had
4 a chair. I think he threw something at me, I don't
5 know what it was, but something clanged around. And
6 I was more dodging him. I mean, I had a knife. I
7 could have run right up to him, but I was staying
8 opposite of him because I didn't know what he was
9 going to do. And when he made for that door, first
10 thought come to my mind is that gun. So I run out
11 the back and run in the woods dodging every step of
12 the way because I was expecting gunshots any minute.

13 Q And it was dark?

14 A Very dark.

15 Q What happened when you're in the woods?

16 A Well, the road runs like that {indicating}.
17 And I thought I was running through the woods and I
18 actually cut the corner. And the ditch right there
19 is like 12-foot deep. It's a real deep ditch there.
20 They had just cleaned it out. And I just went over
21 in that ditch blindly and hit my head, went head
22 first against the other bank of the ditch. It kind
23 of knocked me out for a little spell.

24 And when I come to, I hurt real bad and
25 couldn't hardly breathe. I had a knot on my head.

1 And I was thinking I needed to get to my truck and
2 get out of there because I didn't know where he was
3 at, what he was doing. I had no idea or know how
4 bad he was hurt, anything like that. So I walked
5 the ditch line until I could see the parking lot.
6 There was nothing there but my car.

7 Q And so what happened to the knife?

8 A Somewhere between running in the woods or
9 whatever, I lost my knife, my glasses, and I believe
10 my cell phone, that's when it got lost, too. I
11 never did see the cell phone again. I don't know if
12 it was stolen from my house afterwards with all the
13 other stuff that got stolen or what.

14 Q Is that when you fell -- when you fell in the
15 woods, you lost it? Your eye -- the cell --

16 A My glasses and the knife -- I know I had my
17 glasses on and the knife and they were gone, so I
18 assumed they were in that ditch. I never was able
19 to go back and look for them.

20 Q So what happened next once you came to?

21 A I made my way down the ditch line because it
22 was, like I said, it had just been cleaned out.
23 There was no water in it. It was dry. And when I
24 seen nothing but my truck at the -- still parked in
25 front of the Monkey Bar, I decided I was going to

1 get in my truck and go home. I figured that they'd
2 left or maybe he was looking for me. I really
3 didn't know.

4 Then when I walked up out of the ditch behind
5 the first camper there, you know, I was really
6 hurting. And I was -- I couldn't -- I had trouble
7 breathing because the wind had been knocked out of
8 me, my ribs were broke. And I'd seen red emergency
9 lights at the Canal One Stop down the road, and then
10 I just went on and got in my car and went home.

11 Q Now, if --

12 A My truck.

13 Q And let's go back a little bit. If Kenny would
14 have stayed in the -- stayed in the bar, you were
15 putting away your knife, you saw in the video with
16 Joe, he calmed you down?

17 A You talking about with Joe?

18 Q Joe.

19 A Yeah, when Joe -- Joe calmed me down, I put
20 away -- I folded the knife up and put it in my
21 pocket.

22 Q If Kenny would have stayed there at that point
23 in time, what would you have done?

24 A I would have stayed right there and waited, you
25 know, if he was hurt bad and called the police or

1 whatever. I wouldn't have run. I only run because
2 he got out that front door, which one of my
3 intentions was not letting him get to his truck
4 because I seen that gun.

5 **Q** And -- so now we'll go -- you saw the
6 emergency, and we'll go further on. You go home?

7 **A** Uh-huh.

8 **Q** What happens when you go home?

9 **A** Well, the pain of the busted ribs really
10 started to set in. And, I mean, it was all I could
11 do just to lay down. And I'd try to cough, I
12 couldn't cough. I was having trouble breathing.
13 And, you know, I wanted to get up, but as a, you
14 know, it took, like, an effort just to roll over. I
15 was really hurting bad.

16 At some point, I was able to finally get up
17 with some effort. I remember I had some Percocets,
18 but I don't think I found them at that point, but I
19 found some ibuprofen, then I had some Percocets from
20 when I had my tooth pulled a month or two before.
21 But at some point, I finally laid back down. I was
22 in and out of it. And then I remember Misty and
23 Denise come -- Niecy come to the house.

24 **Q** Do you remember when the police came?

25 **A** The police came the next day. At some point, I

1 think when -- I think it was when Niecy and them
2 came, Misty went in there and got the Percocet,
3 there was two of them left over in the bottle, and I
4 took them. And I told her I probably needed to go
5 to the hospital. And she asked me where my truck
6 keys was and they were laying on the table. I said,
7 They're on the nightstand. I said, They're right
8 there.

9 **MR. POULOS:** Objection; relevance, after the
10 incident.

11 **THE COURT:** Sustained.

12 BY MR. SHELTON:

13 **Q** But you didn't run from the police when they
14 came?

15 **A** No. They told me and -- when they came that
16 night that Kenny -- they took him in a helicopter
17 and he was bleeding. They didn't know much more
18 than that, but -- and --

19 **Q** But when the police showed up at your house,
20 you didn't run or try to --

21 **A** No.

22 **Q** -- try to leave?

23 **A** No. My sister had come there. I couldn't find
24 my phone when I was able to get up the next day and
25 mustered -- roll over real easy and ease on the

1 floor. I couldn't find my phone, but I found that
2 same tablet that she had used and I was able to use
3 my e-mail to send her a text through e-mail.

4 **Q** Who is that?

5 **A** My sister. And when she got there, she bring
6 me some cigarettes. I told her I didn't have
7 nothing to eat. I was probably going to be in
8 trouble. I needed to go to the hospital and go to
9 the sheriff's office. And when she came -- she
10 didn't think I was serious. She thought I was
11 joking with her or something because she knew that
12 wasn't me. And when she came, she came with half a
13 sub and some cigarettes. And then she realized I
14 was hurt, but it wasn't -- she wasn't there four
15 minutes, three minutes when the knock come on the
16 door. And she said who's at -- I said, Who's that?
17 She said, It's the sheriff's office; they got guns.

18 And there was Orangeburg County there with
19 Officer Morgan. And he come in and immediately seen
20 I was hurt. I wasn't, you know, I didn't try to
21 resist or anything.

22 (Defendant's Exhibit Number 6, invoice,
23 marked for identification.)

24 **Q** Can you describe what Defendant's 6 is?

25 **A** Pardon?

1 **Q** Can you describe what that is? I'm sorry.

2 **A** This is a copy of an invoice of some
3 electronics I bought from a commercial wholesaler
4 that we have an account with in Charleston.

5 **Q** And can you explain a little bit about those
6 items?

7 **A** All of these items on here were bought for
8 customers or jobs with the exception of the fifth
9 item on this invoice. It was a LVPRO3.

10 **MR. POULOS:** Objection as to relevance, Your
11 Honor.

12 **THE COURT:** What's the relevance?

13 **MR. SHELTON:** May we approach?

14 **THE COURT:** You may.

15 (Whereupon, a bench conference was held off
16 the record, in the presence of the jury, but out of
17 the hearing of the jury.)

18 BY MR. SHELTON:

19 **Q** LVPRO3, that's a -- is it a unique item?

20 **A** It's an item that we saw was being previewed at
21 a show that me and my boss, at that time, went to in
22 Orlando, Florida, in, I think it was, late August --
23 early August of that year, that same year, 2013.

24 **Q** And is that available to the general public?

25 **A** I mean, it's like anything today, it's

1 available on the Internet, but, at this time, that
2 meter was just coming out. It was a meter that
3 displaced three other meters. It was used in our
4 trade. It does IT work, helps you identify network
5 jacks. It helps you analyze camera -- Internet
6 camera systems, as well as digital TV systems and
7 stuff like that. It helps you troubleshoot and do
8 stuff that our company does. It was a unique meter
9 because it did what three meters that we had in the
10 past done. We wanted one of them. We wanted to
11 check it out, figure out how it works.

12 They were on backorder. The show told us we
13 could order it from Silmar. And we said, Well,
14 we've got an account with them. They sell only to
15 dealers. We got an account with them in Charleston.
16 He said, Well, get with them when you get back home,
17 see if, you know, we're shipping now.

18 Well, when we talked to them, they were on
19 backorder, took us like -- they said the list was
20 getting longer every day. So we got on the list and
21 we finally got one some time in September. They
22 called and said, Hey, we got one of those meters for
23 you. We said, Well, can we get two? And they said,
24 No, it's a month backorder now. So we went -- I
25 went and I picked it up with this other stuff, which

1 was parts, electronic parts, for some security
2 stuff.

3 **Q** And that low meter, was it -- low voltage
4 meter, was that in that box of equipment the night
5 that --

6 **A** That tote is where I kept everything that was,
7 more or less, electronic or fragile items, like the
8 cell phones. I had some tablets in there. I had
9 this meter and another meter in there that was just
10 a regular voltage meter you can buy from Lowe's. I
11 kept them in there versus in with my heavier tools
12 because they get damaged when they bang around. So
13 I had them all in that tote to protect them, and it
14 was -- always stayed right behind my seat because
15 most of that was the most expensive stuff that I
16 kept in my truck.

17 **Q** And look at Defendant's 1. Do you see that low
18 voltage meter on that list of items that were
19 pawned?

20 **A** Yes. It's the first item listed, Electrical
21 meter low voltage pro, LVPRO3.

22 **Q** And you're certain that was yours?

23 **MR. POULOS:** Objection.

24 **THE COURT:** What's your basis?

25 **MR. POULOS:** Speculation.

1 **THE COURT:** If he knows, he can answer.

2 **THE WITNESS:** Yes, it was my meter. It was 11
3 days after I was arrested.

4 BY MR. SHELTON:

5 **Q** And you were still in jail on November 16th --

6 **A** Yes, I was in jail for four months.

7 **Q** Go back briefly to the bar. When you got to
8 the bar, who was in the bar?

9 **A** Debbie, Joe and Niecy.

10 **Q** And that is when you first got there?

11 **A** Yes. Oh, there was another couple there, but
12 they left shortly after we came there and before
13 Kenny came.

14 **Q** Okay. And did those -- any of the people other
15 than -- did you know the couple?

16 **A** I vaguely knew the girl. I recall her name
17 being Carla. I don't know her last name. I vaguely
18 knew her, but she come to my house I know, when I
19 was in jail, saying Misty stole her purse that
20 night.

21 **Q** Did -- was there anybody else that could have
22 stolen those items?

23 **A** No.

24 **MR. POULOS:** Objection, Your Honor.

25 **THE COURT:** What's the basis?

1 **MR. POULOS:** Speculation.

2 **THE COURT:** Sustained. Please disregard the
3 answer to that last question.

4 **MR. SHELTON:** No further questions.

5 **THE COURT:** Mr. Poulos, now would be a good
6 time to take a break if y'all needed a break.

7 Mr. Hill, anyone need a break?

8 All right. Thank you.

9 CROSS-EXAMINATION

10 BY MR. POULOS:

11 **Q** Mr. Thomas, you have also been convicted of a
12 felony here in Berkeley County, haven't you?

13 **A** Yes, sir.

14 **Q** Let's talk about those prior incidents you just
15 testified about. You started in August 2012, that's
16 over a year before the incident at the Monkey Bar?

17 **A** Must have been mistaken about the date. It was
18 the same -- just prior to the incident, I was in
19 jail for four months and then been out. So I guess
20 I meant to say 2013. Yeah, because that's the date
21 on both of these in 2013. I'm sorry about that.

22 **Q** So it was three months prior to the incident at
23 the Monkey Bar?

24 **A** That's right.

25 **Q** And that argument was essentially about your

1 fishing poles, his anchor, his crossbow?

2 **A** Oh, excuse me. You're referring back to the
3 fishing or to this?

4 **Q** I'm referring back to the very first incident
5 you testified --

6 **A** That was in 2012.

7 **Q** 2012. So over a year before the incident at
8 the Monkey Bar?

9 **A** Yes, sir.

10 **Q** Okay. And, again, that was essentially about
11 your fishing poles and Kenny's anchor and Kenny's
12 crossbow. That was the basis of the dispute
13 basically?

14 **A** That and I'd said something to him about the
15 way he was so angry at his mother.

16 **Q** Okay. You told Mr. Shelton that you took it as
17 a real threat from him?

18 **A** Yes, sir.

19 **Q** You didn't call the police?

20 **A** No, sir.

21 **Q** Why not?

22 **A** I just decided it wasn't worth all of that
23 trouble and that I would just -- I had decided I
24 would just stay away from him, but that became
25 increasingly harder.

1 **Q** Well, you didn't stay away from him, though;
2 isn't that true, Mr. Thomas?

3 **A** I never went to his house again.

4 **Q** You never went to his house?

5 **A** He came to my house.

6 **Q** Let's talk about that. Summer of 2013, he came
7 to your house with hunting rifles?

8 **A** Yes, sir. I guess, they were hunting rifles.

9 **Q** And he fired some rounds in the air?

10 **A** Yes, sir.

11 **Q** He never threatened you; correct?

12 **A** I felt threatened.

13 **Q** But he never threatened you?

14 **A** Not at that time he never said anything
15 threatening other than what she said and his
16 laughter and then shooting a gun off in the air very
17 close to my head after I asked him not to.

18 **Q** So he laughed and shot a gun in the air?

19 **A** Very close to my head.

20 **Q** How many months prior to the incident at the
21 Monkey Bar is that?

22 **A** That would have been in the summer. That was
23 probably, because it wasn't yet hunting season, but
24 it was getting close, so it was probably late July
25 or early August.

1 **Q** So this was before or after the incident with
2 the fishing poles and the crossbow?

3 **A** It was after.

4 **Q** Okay. So then we come to September of 2013,
5 again, still two months before the Monkey Bar;
6 right?

7 **A** Yes, sir.

8 **Q** Okay. You testified that he threatened you in
9 August, you felt threatened later in August, but yet
10 when your trailer got stuck in September, you again
11 asked Kenny to come help you pull it out?

12 **A** I was trying to -- I'm the kind of person, I
13 try not to hold a grudge. Everybody deserves
14 another chance. I was just trying to help him
15 without really being his friend. He called. He was
16 available. He had a wrecker with a winch. I was
17 stuck in the mud. He was needing a phone. He was
18 needing to make some money.

19 **Q** Mr. Thomas, you previously testified you didn't
20 want to have anything to do with Kenny Melton at
21 that point; correct?

22 **A** Yeah. I pretty much had decided I didn't want
23 nothing to do with him, but I was in a bind. I was
24 ready to get -- needing to go to Florida.

25 **Q** And you had felt threatened by him in the past

1 is what you said?

2 **A** Yes.

3 **Q** But yet here you are asking Kenny Melton to
4 pull you out of the mud. You could have called some
5 other company?

6 **A** Well, I was going to, but he called me prior to
7 anything being open that morning and I knew he had a
8 wrecker. And I made a mistake really. I wish I
9 would've never asked him to come do it, but it's one
10 of them things, I made a mistake. I shouldn't have
11 done it.

12 **Q** And that's when you say you again saw a hunting
13 rifle in his truck?

14 **A** Yeah. He had a rifle laying across his seat.
15 When he sat down, he put his hand on it.

16 **Q** Let's talk about the incident in November of
17 2013. Mr. Thomas, you gave testimony about Misty
18 Watts taking your keys, tapping Kenny Melton on the
19 shoulder, et cetera, et cetera. You didn't say any
20 of those things when you spoke to the detectives,
21 did you?

22 **A** I believe I told the detectives they were
23 stealing from me.

24 **Q** You never told Detective Ramsey, whom you met
25 with a few days later, that Misty Watts had taken

1 your keys, you noticed your keys were gone, you saw
2 her tapping on Kenny's shoulder and doing a motion
3 with her head. You never said any of that?

4 **A** No, because at that point, they had already
5 told me I was being charged with attempted murder
6 and I was leery about giving them a lot of details,
7 especially when it was going to involve somebody
8 that I felt was -- she was manipulated, and I was
9 trying to help her. You know, I felt he was
10 responsible for the whole thing. And I told them --
11 I believe that I did say in my statement to them, my
12 video statement, that they were stealing from me. I
13 believe that's what I said.

14 **Q** You were leery of giving the police details
15 that would aid your defense?

16 **A** At that point, I didn't feel like I was being
17 defended. And if it was in a defense, they done
18 told me I was being charged with attempted murder, I
19 had no attorney, I had waived my Miranda rights, I
20 was leery about saying too much.

21 **Q** Mr. Thomas, you testified that Misty Watts told
22 you not to leave?

23 **A** Told me what?

24 **Q** Told you not to leave the Monkey Bar?

25 **A** She was trying for me not to leave.

1 **Q** You heard the other witnesses testify that

2 Misty Watts told you she did not want to leave and

3 you heard Misty Watts testify to that; correct?

4 **A** No. When I got up to leave, she asked me not

5 to leave and she kept on. And then I told her, I'm

6 leaving; if you want to go, I'm leaving. I did not

7 ask her if she wanted to leave or to leave or

8 whatever. And she said, Well, I got no ride. And

9 I'm like -- then she's the one that said Niecy will

10 bring her home, because I wasn't going home. I was

11 just saying that. I was going to see where the

12 other guy went.

13 **Q** It's fair to say you were angry at Kenny based

14 on your suspicions?

15 **A** Yeah.

16 **Q** And after you left the Monkey Bar, you admit

17 you sent that text message to Misty Watts about

18 there being blood?

19 **A** Yes, sir.

20 **Q** You came back to the Monkey Bar -- well, let's

21 back up. You told Mr. Shelton that you already made

22 up your mind, you knew there was going to be a

23 fight?

24 **A** Yes, sir.

25 **Q** And that's when you decided to arm yourself

1 with a knife and go back to the Monkey Bar?

2 **A** I knew that he would be aggressive to me if I
3 told him he was going to stay there and I was going
4 to call 9-1-1 or anything like that, that he was
5 going to try to get his knife, hit me, get to that
6 gun I seen in that truck.

7 **Q** So you were fairly sure there was going to be a
8 fight?

9 **A** Yes, sir.

10 **Q** And you testified you were scared of Kenny
11 Melton?

12 **A** Yes, sir.

13 **Q** But you went back to the bar without calling
14 the police; correct?

15 **A** Yes, sir.

16 **Q** You could have called the police to come with
17 you to the bar?

18 **A** Well, you know, my experiences with the police
19 when they come to Cross, unless I can say where their
20 phones were, what they did with them, who all was
21 involved and they'd go and find them, I would be
22 wasting my time.

23 **Q** Mr. Thomas, you didn't call the police on any
24 of these incidents?

25 **A** No, but I've been out there in Cross many times

1 when the police was called and it took an hour, an
2 hour and 30 minutes to come even on an armed robbery
3 at the store.

4 **Q** You stated when you arrived back to the Monkey
5 Bar, you looked in Kenny's truck, you didn't see
6 your duffle bag or it wasn't there?

7 **A** It wasn't a duffle bag. It was a tote.

8 **Q** A tote bag, excuse me. It wasn't there?

9 **A** It wasn't a tote bag. It was a plastic tote,
10 interlocking.

11 **Q** Okay. It wasn't --

12 **A** And it wasn't black.

13 **Q** It wasn't in his --

14 **A** No, it wasn't in his truck.

15 **Q** You said you saw that hunting rifle on the
16 seat?

17 **A** Yes.

18 **Q** So you knew he didn't have a gun with him?

19 **A** What do you mean I knew he didn't have a gun
20 with him? It was in his truck laying on the seat.

21 **Q** Kenny was in the bar; right?

22 **A** Yes.

23 **Q** You saw the gun in his truck?

24 **A** That's 30 feet away.

25 **Q** So he didn't have the gun with him?

1 **A** I don't know if he did or not. I know there
2 was a gun in his truck, a rifle.

3 **Q** The rifle you had seen him with prior was in
4 the truck before --

5 **A** I don't know if it was the one I seen him with
6 prior or not. I just know there was a rifle laying
7 across the seat in his truck.

8 **Q** And you saw that in his truck before you went
9 into the bar?

10 **A** Yes.

11 **Q** And after seeing that rifle was in his truck,
12 then you went into the bar with your knife?

13 **A** Yes.

14 **Q** You didn't see anyone take your phones; right,
15 Mr. Thomas?

16 **A** No, sir.

17 **Q** You didn't see Kenny Melton take your phones?

18 **A** No, sir.

19 **Q** You didn't see Kenny Melton in possession of
20 your phones at any point?

21 **A** No, sir.

22 **Q** The two invoices Mr. Shelton showed you there,
23 one is a pawn receipt and one is a purchase receipt;
24 is that correct?

25 **A** One is an invoice from Silmar Electronics in

1 Charleston.

2 Q And the invoice doesn't contain the serial
3 number?

4 A No.

5 Q So you don't know that the item that was pawned
6 was the item that you purchased?

7 A I know. I believe it to be a fact.

8 Q How do you know?

9 A I mean, it's not hard to see.

10 Q There's no way to match up the serial numbers?

11 A Well, there is a serial number, but the problem
12 is is I didn't know it had a serial number. But the
13 pawn company does list the serial number on this.

14 Q Right. There's a serial number on the pawn
15 receipt and not a serial number on the invoice?

16 A Right. We didn't know it had a serial number.

17 Q So you can't say the item that was purchased is
18 the item that was pawned?

19 A I can say that they were very hard to get and
20 you have to be an electronics dealer with an account
21 with a wholesaler to buy one of them, especially at
22 that time because they'd just came out. Now,
23 sometimes stuff will appear on the Internet when
24 it's been stolen on eBay, but they hadn't been out
25 long enough for many of these to be sold at that

1 time.

2 Q Okay. When you went into the bar, you said
3 Kenny lunged at you?

4 A After I grabbed him on his shoulder and was
5 hollering at him about where my stuff was, he kind
6 of lunged to go around me toward the door.

7 Q So he was trying to get away from you?

8 A I think he was trying to get to that gun.

9 Q You -- by your --

10 A I wasn't sure. He might have been trying to
11 grab the knife. It was just so quick. It was a
12 tussle of pushing and pulling and he got cut.

13 Q And by your own testimony, you walk into the
14 bar, you walk up to Kenny and you put a knife in his
15 face you said?

16 A Not in his face.

17 Q In front of him?

18 A In front of him.

19 Q And so you fought Kenny for trying to get away
20 from you when you have a knife in front of him?

21 A I don't know that I fought him for it. I mean,
22 if I knew I'd stole somebody's stuff and they
23 approached me like that, I wouldn't have tried to
24 get away, I would've give them their stuff back.

25 Q You just testified you didn't see anything in

1 Kenny's truck?

2 **A** In my heart, I know they stole my stuff.

3 **Q** In your heart.

4 **A** There's no way it could have went anywhere.

5 **Q** So you made up your mind before you went back
6 to the Monkey Bar --

7 **A** I made up my mind when I looked for the two
8 phones I thought they stole that he wanted and the
9 whole case was gone.

10 **Q** So you made up your mind before you went back
11 to the bar that he had stolen your stuff?

12 **A** Yes.

13 **MR. POULOS:** Can I have just a moment, Your
14 Honor.

15 (Pause.)

16 **MR. POULOS:** Your Honor may I approach?

17 **THE COURT:** You may.

18 BY MR. POULOS:

19 **Q** Now, you've seen Defendant's Exhibit 4;
20 correct? That's you and Mr. Melton?

21 **A** Yes.

22 **Q** You're the -- Mr. Melton's the person sitting
23 down?

24 **A** Uh-huh.

25 **Q** His back is slightly turned to you?

1 **A** Yes.

2 **Q** Wouldn't you agree, Mr. Thomas, that this photo
3 shows you reaching around with your arm in the
4 vicinity of his chest?

5 **A** No, sir.

6 **Q** It does not?

7 **A** No, sir.

8 **Q** That's your testimony about this photograph
9 right here?

10 **A** I don't believe that's what it shows because
11 that ain't what I did.

12 **Q** Okay. And you would agree that this photo
13 depicts one second of the video that we all watched?

14 **A** I don't know how many seconds it is. I don't
15 know what the frame rate is on those cameras.
16 They're very cheap.

17 **Q** There were things that happened before this and
18 things that happened after this?

19 **A** They didn't get the video on the stuff that
20 happened before.

21 **Q** There were things on the video we watched that
22 happened before this and after this?

23 **A** Things that happened before that, yeah, I guess
24 when they were -- what they showed today, it was a
25 few minutes before that. I don't know. Me walking

1 in the door, yeah.

2 Q When you walk in the door, you pull out a
3 knife; correct?

4 A Yes.

5 Q You pulled out a knife before you even reached
6 Kenny?

7 A Yes.

8 Q And, at the time, he was sitting on a bar
9 stool?

10 A Yes.

11 Q With his back turned to you?

12 A He had looked back my way when I walked through
13 the door.

14 Q He had looked back your way and made no motion
15 toward you; correct?

16 A No.

17 Q You also testified that once Mr. Melton ran to
18 the pool table, you were dodging him; correct?

19 A Pretty much.

20 Q You recall in the video when you stand at the
21 pool table with your knife and you point it at
22 him --

23 A Uh-huh. Because he was running around this
24 way. I thought he was coming on around. I didn't
25 know how bad he was hurt.

1 **Q** You thought he was coming after you at that
2 point?

3 **A** Yes.

4 **Q** Isn't it true that when you entered the bar,
5 you approached him?

6 **A** Yes.

7 **Q** And when he stumbled a few feet away, you
8 approached him?

9 **A** Once he resisted me wanting to know where my
10 phones went, and I was just going to try to hold him
11 there, I was going to call 9-1-1 was my intention
12 going through my mind, once he resisted that, I just
13 wanted to get out of there.

14 **Q** Once he resisted being stabbed in the chest; is
15 that your testimony?

16 **A** No. I didn't say nothing about that. That's
17 not what I said.

18 **Q** Kenny ran to the pool table first; correct?

19 **A** I actually backed up I think and then he
20 scrambled around toward the pool table, past the
21 door, and I was standing there holding the knife.
22 And then he threw something at me and I dodged that.
23 And he went around this way of the pool table and I
24 went around this way and then he run out the door.

25 **Q** So he ran to the area of the pool table before

1 you did?

2 **A** That's the way I remember it, yes.

3 **Q** And so you followed him to the area of the pool
4 table?

5 **A** The place is very small. The pool table takes
6 up the whole area beyond the bar.

7 **Q** He was there first; you were there second?

8 **A** I don't remember exactly who was first and
9 second. I know he went out the door and I went out
10 the back and run through the woods because he was --
11 his truck was only 30 feet away.

12 **Q** You watched the video; correct?

13 **A** Yes.

14 **Q** You don't remember who ran to the pool table
15 first?

16 **A** I don't remember the exact detail. I know it
17 was just -- it happened so fast. He kind of fell
18 into a table and went back, and I was off balance
19 and I was backing up. And I think he scrambled up
20 and run over by the pool table and then I went
21 around the other side of the pool table. I didn't
22 chase him around that side of the pool table, not
23 that I remember.

24 **Q** You said if Kenny had stayed, you would have
25 stayed; correct?

1 **A** Yeah. Well, if he hadn't -- if things hadn't
2 happened the way it is and he didn't run out the
3 door, I wouldn't have went anywhere.

4 **Q** So if Kenny had stayed in the bar that you had
5 just stabbed him in, then you would have stayed and
6 been fine; is that your testimony?

7 **A** If he'd have stayed in the bar that I cut him
8 in or that he got cut in, I would have stayed right
9 there if he wasn't acting violent toward me,
10 throwing stuff at me. Obviously, he was hurt.

11 **Q** You stated that after Kenny left, you left
12 because you were running for your life?

13 **A** That's correct, sir.

14 **Q** And you fell in a ditch?

15 **A** Yes, sir.

16 **Q** At no point after this did you call the police;
17 correct?

18 **A** At some point -- I don't know what happened to
19 my phone. My phone was gone. My glasses was gone.
20 I couldn't see.. I can't see too good without my
21 glasses, and I was hurt.

22 **Q** You sent someone a text message from your
23 tablet?

24 **A** That was before I got back to -- Oh, the next
25 day?

1 **Q** Uh-huh.

2 **A** I sent them a text from my e-mail on my tablet.

3 **Q** You didn't ask them to call the police for you;
4 correct?

5 **A** No. I told her to come -- asked my sister to
6 come get me and take me to the hospital and then I
7 would go to Berkeley County because by then I knew
8 that he'd been taken to the hospital. I was
9 planning on going to turn myself in to see what was
10 up, and before that could happen, they showed up.
11 It was the very next day. It hadn't even been -- it
12 was like two o'clock, three o'clock the next day.

13 **MR. POULOS:** I have no further questions, Your
14 Honor.

15 **MR. SHELTON:** No questions, Your Honor.

16 **THE COURT:** You may step down. Thank you.
17 Call your next witness.

18 **MR. GROEBER:** Can we approach, Your Honor,
19 briefly?

20 **THE COURT:** You may.

21 (Whereupon, a bench conference was held off
22 the record, in the presence of the jury, but out of
23 the hearing of the jury.)

24 **MR. GROEBER:** Your Honor, we would recall
25 Debbie Huntley.

1 **THE COURT:** Ma'am, I'd remind you that you're
2 still under oath. You may have a seat.

3 **THE WITNESS:** Yes, ma'am.

4 **THE COURT:** Mr. Groeber.

5 **MR. GROEBER:** Thank you, Your Honor. May it
6 please the Court.

7 DEBBIE HUNTLEY,
8 having been previously duly sworn, resumed the
9 witness stand and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GROEBER:

12 **Q** Ms. Huntley, we discussed earlier your
13 knowledge of, specifically, of the reputation for Bo
14 in the community; correct?

15 **A** Correct.

16 **Q** And you have knowledge of his reputation based
17 upon knowing him for nine to ten years?

18 **A** Yes.

19 **Q** And I'm going to ask you now, we've had to
20 clear some procedural issues, and now the question
21 is, again, what do you believe that his reputation
22 for violence is in the community?

23 **A** I've known of his reputation for violence
24 against women.

25 **MR. POULOS:** Objection.

1 **THE COURT:** Counsel, what's the relevance for
2 this one?

3 **MR. GROEBER:** I'm not asking for specifically,
4 any instances.

5 **THE COURT:** Thank you.

6 BY MR. GROEBER:

7 **Q** The question is do you think that his opinion
8 -- the opinion of the community is that he's a
9 violent person?

10 **A** Yes.

11 **MR. GROEBER:** Thank you. No further questions.

12 CROSS-EXAMINATION

13 BY MR. POULOS:

14 **Q** Good afternoon, Ms. Huntley. You just
15 testified for Mr. Groeber that you believe he has a
16 reputation for violence?

17 **A** Yes.

18 **Q** However, earlier you testified that on the
19 night of November 4th, 2013, John Thomas was the
20 aggressor?

21 **A** Correct.

22 **Q** After John Thomas entered the bar, Kenny Melton
23 did not make aggressive acts or moves towards John
24 Thomas?

25 **A** Correct.

1 **MR. POULOS:** Thank you.

2 **MR. GROEBER:** Just to follow up.

3 REDIRECT EXAMINATION

4 BY MR. GROEBER:

5 **Q** That you know of?

6 **A** That I know of.

7 **MR. GROEBER:** Thank you.

8 **THE COURT:** Anything further, Mr. Poulos?

9 **MR. POULOS:** No, Your Honor.

10 **THE COURT:** You may step down. And you are
11 free to leave. Thank you so much.

12 Call your next witness.

13 **MR. SHELTON:** Your Honor, at this time, we call
14 Lutful Ronjon.

15 LUTFUL RONJON,

16 having been duly sworn, testified as follows:

17 **THE CLERK:** Have a seat. State your name and
18 would you spell that for us?

19 **THE WITNESS:** Sure. Lutful Ronjon, L-U-T-F-U-L
20 R-O-N-J-O-N.

21 DIRECT EXAMINATION

22 BY MR. SHELTON:

23 **Q** Mr. Ronjon, how are you?

24 **A** Fine. Thank you.

25 **Q** I appreciate you being here. You don't really

1 Brodie.

2 LAWRENCE J. BRODIE,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Have a seat and state your name and
5 spell your last name for us.

6 **THE WITNESS:** My name is Lawrence J. Brodie.

7 **THE COURT:** Please spell your last name, sir.

8 **THE WITNESS:** B-R-O-D-I-E.

9 **THE COURT:** Thank you.

10 DIRECT EXAMINATION

11 BY MR. SHELTON:

12 **Q** Mr. Brodie, how are you?

13 **A** Pretty good.

14 **Q** I'm Chad. I think we talked on the phone once.
15 What do you do?

16 **A** I owned an electronics company for 42 years.

17 **Q** And what's the name of that electronic --

18 **A** L&S Electronics.

19 **Q** And so are you John's boss?

20 **A** Actually, I own the company. He's got another
21 guy he works for. I'm the overall CEO and owner of
22 the company.

23 **Q** And you owned it for how long?

24 **A** Forty-two years.

25 **Q** Can you just give us a little bit of background

1 information on the job and the work that you do,
2 your company does?

3 **A** We do low voltage and sound communications, put
4 in fire alarms, nurse call systems, little bit of
5 TV, satellite, some telephone and
6 telecommunications.

7 **Q** And you work with companies and commercial --

8 **A** Yes, sir.

9 **Q** Local companies?

10 **A** Yes.

11 **Q** How long have you known John?

12 **A** About probably almost 20 years.

13 **Q** Okay. And how long has he worked with you?

14 **A** On and off, probably 12 or 13.

15 **Q** Okay. And other than work, do you know -- how
16 do you know John other than work?

17 **A** I met him first time about 20 years ago when he
18 was in a similar satellite, TV business and I'd met
19 him then. And then he came to work for us, I think,
20 one time back in the early 2000s and left and then
21 came back again after that. And he's been with us
22 probably about 10 or 11 years.

23 **Q** Does he -- the place he lives, are you familiar
24 with where he lives?

25 **A** Yes, sir.

1 **Q** And how are you familiar with where he lives?

2 **A** The trailer that John was buying actually
3 belonged to one of my sisters.

4 **Q** And so he's renting from your sister?

5 **A** Yeah. He's renting to own.

6 **Q** Now, in your business and with John, do you
7 allow him to sell cell phones?

8 **A** Yes, sir. We've got a -- probably 20 to 25
9 cell phones that the company operates within the
10 company, plus my wife and family members all have
11 cell phones also. John handles all the cell phone
12 business, takes care of procuring the phones and
13 also signing up the -- all the monthly fees for all
14 the phones and stuff like that. Besides doing my
15 company stuff, I allow him to sell the phones on the
16 side. He pays me the cost for the phone and does
17 that on his, you know, for him on the side, for him
18 to make more money.

19 **Q** And do you have family members and all that
20 that you refer him to?

21 **A** Yes.

22 **Q** Do you remember November 4th, 2013?

23 **A** Yes.

24 **Q** When was the first time you heard about it?

25 **A** I got a call that night from somebody telling

1 me that John had been in an altercation and that the
2 police had come and were involved and that he had
3 been arrested. And then the next day I got a couple
4 more calls in the morning from other people telling
5 me, basically, there had been a problem and that
6 John has been arrested and he's at the Berkeley
7 County Jail.

8 Q Do you know Bo or Kenny Melton at all?

9 A Yeah. I knew Kenny as Kenny. I didn't know Bo
10 and Kenny were the same person at the time.

11 Q Okay. And did you ever meet Kenny?

12 A I had met Kenny before the altercation one time
13 and then he had come down with John to do some yard
14 work at my house. And then after the event
15 happened, I was up at John's house. I had bought a
16 storage unit from him and was up there picking it
17 up. And he showed up probably within 20 minutes to
18 half hour of me getting up there to pick the unit up
19 and --

20 Q And that's in Eutawville?

21 A Yes, sir. Uh-huh. It was actually at his
22 trailer over in Cross.

23 Q That was John's trailer?

24 A Yes, sir.

25 Q Let me show you what's been marked as

1 Defendant's Exhibit 6. Are you familiar with that?

2 **A** Yes. It's one of the companies we deal with,
3 Silmar Electronics. We buy a lot of electronic
4 parts and stuff from them. This is a copy of one of
5 the invoices from them.

6 **Q** And the LV3 -- the LVPRO3, what can you tell us
7 about that?

8 **A** It's a specialty low voltage electronics test
9 meter. They had come out probably a month and a
10 half, two months before we'd actually purchased
11 this. You have to be a distributor for -- for the
12 company that sells these to be able to buy this.
13 And we had bought this meter to set up a electronic
14 systems downtown. And we bought the meter because
15 it was on special.

16 **Q** And that's a pretty unique item?

17 **A** Yes, sir. You don't get to buy this unless
18 you're a distributor for that company. Nobody, the
19 general public can't just go out and buy one.

20 **Q** At some point in time, you became aware of a
21 LVPRO that was pawned --

22 **A** Correct.

23 **Q** -- in November of 2013?

24 **A** Yes, sir.

25 **Q** Did you believe that to be yours?

1 **A** Yes. I actually called the company to see if
2 they sold any other of this same meter in the
3 Charleston or South Carolina area and they had not.
4 There's a cheaper meter that is priced right below
5 this that most companies buy. We bought the
6 upgraded version because it had just came out just
7 before that and it was on a special sale, that's why
8 we bought the little bit better meter.

9 **Q** Did you try and make a report of this?

10 **A** Yes. I wrote the Moncks Corner Police
11 Department to tell them that I had seen the pawn
12 ticket for it and I wanted them to go over there and
13 get my meter back. And they told me that they
14 couldn't get involved because it was an open case
15 for the Berkeley County Sheriff's Office and
16 referred them back to me. So I went back to the
17 Berkeley County Sheriff's Office who said that they
18 couldn't do anything because it was pawned in Moncks
19 Corner and that until this case was resolved, there
20 wasn't anything they could do about it.

21 **Q** So everybody was kind of giving you the
22 runaround?

23 **A** Yes, sir.

24 **Q** You saw John November 4th, 2013? You saw him
25 that day?

1 **A** Earlier, yeah.

2 **Q** And you saw what he had -- the equipment that
3 he had?

4 **A** Right.

5 **Q** Was that meter in there?

6 **A** Yeah. John was asking me to buy some more cell
7 phones. He had four or five cell phones that we had
8 just purchased. One of the cell phones was on a
9 special sale and he could buy four more of them at a
10 discounted price, so he was wanting me to buy four
11 more of them.

12 I told him I wanted to see the cell phone to
13 decide whether I wanted to take the risk for four
14 more or not. We went out to his truck. I'd seen
15 the cell phones. And he had a yellow and black
16 container that the phones were in, this meter was in
17 there, there was also a couple tablets in there,
18 and, of course, all of his work tools and stuff in
19 the truck.

20 **Q** And what would you say is the value of that
21 equipment that he had?

22 **A** Just the cell phones alone is probably a couple
23 thousand dollars. There was brand new cell phones
24 and there were some used cell phones and, of course,
25 this meter.

1 **Q** Okay. Over two --

2 **A** There's other equipment -- there's other
3 equipment in his truck, drills, all kind of other
4 electronic test meters and stuff like that also.

5 **Q** And you never saw that equipment after November
6 4th?

7 **A** No. The next time we seen the truck, the truck
8 had been ransacked. Everything in the truck had
9 been emptied out of it.

10 **Q** And that was while John was in jail?

11 **A** Yes, sir. I actually had gotten a call saying
12 the truck had showed back up at his house and I
13 immediately went up there. I wanted to find the
14 police there, that there was somebody else there
15 claiming something had gotten stolen from them. The
16 truck was parked around back behind a storage
17 building and --

18 **MR. POULOS:** Objection as to relevance.

19 **THE COURT:** Sustained.

20 **MR. SHELTON:** I'll move on.

21 BY MR. SHELTON:

22 **Q** John, you've known him for 20 years. What
23 would you say is his reputation for honesty?

24 **A** He's very honest. He transacts jobs for me in
25 tons of thousands of dollars, both cash and checks,

1 and nothing's ever turned up missing.

2 Q And trustworthiness?

3 A Yes, sir.

4 Q What about his reputation for violence?

5 A I've never seen John violent, never heard him
6 threaten anybody. He'll argue with you every now
7 and again.

8 MR. SHELTON: No further questions.

9 THE COURT: Mr. Poulos.

10 MR. POULOS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. POULOS:

13 Q Good afternoon, Mr. Brodie.

14 A Yes, sir.

15 Q The invoice that you just referenced which
16 contains the -- I'm sorry -- it's an LV3 voltage
17 meter?

18 A Yes, sir.

19 Q That doesn't contain a serial number; correct?

20 A Not on this invoice, no.

21 Q The pawn ticket that you were showed does
22 contain a serial number; correct?

23 A Yes, sir.

24 Q You stated that there was a time you became
25 aware of the pawn ticket. How did you become aware

1 of the pawn ticket?

2 **A** One of the court investigators had showed me
3 the pawn ticket.

4 **Q** Court investigators?

5 **A** She's sitting over there, I guess.

6 **Q** The investigator with the public defender's
7 office?

8 **A** Yes, sir.

9 **Q** Just to be clear, you weren't at the Monkey Bar
10 on November 4th, 2013?

11 **A** No.

12 **Q** Everything you know about the incident, you
13 know from what other folks have told you?

14 **A** Yes, sir.

15 **MR. POULOS:** Thank you.

16 **MR. SHELTON:** No further questions.

17 **THE COURT:** You may step down. Thank you.
18 Call your next witness.

19 **MR. SHELTON:** At this time, the defense rests,
20 Your Honor.

21 **THE COURT:** Reserving all motions and matters,
22 any rebuttal?

23 **MR. PATTERSON:** Nothing from the State.

24 **THE COURT:** Ladies and gentlemen, at this time,
25 you have heard all of the testimony received into

1 evidence, all the exhibits that'll be made part of
2 the record in this case. The next stage in the
3 trial is closing arguments on behalf of counsel and
4 then I will instruct you on the law applicable to
5 this case.

6 There's a matter of law that I must take up
7 outside of your presence, so please gather your
8 belongings. If you would, also, please let my
9 bailiff know if you are able to stay past 5:30 this
10 evening to continue this case. Thank you.

11 Please rise for the jury.

12 (The jury retires to the jury room.)

13 **THE COURT:** Motions or matters, Mr. Shelton?

14 **MR. SHELTON:** One second, Your Honor.

15 (Pause.)

16 **MR. SHELTON:** Your Honor, I think there was one
17 matter that we had at side bar about violence that
18 the defendant had witnessed, but it was not directed
19 towards him that we wanted to go into. I think that
20 was -- I think that was all -- the only side bar
21 issue that we had.

22 **THE COURT:** All right. Do you want to place
23 anything on the record?

24 **MR. SHELTON:** Your Honor, he would have
25 witnessed Pam Aikman, which would have been the

1 girlfriend of Ronny {sic} at the time, he would have
2 witnessed some violence that was directed towards
3 her and -- some physical violence that he would have
4 observed. And in addition, Your Honor, based off
5 the ruling on -- with Pam, there was also one other
6 incident that I didn't get into because I didn't
7 feel it was -- I felt it would have been
8 objectionable, but there was one other incident
9 that, and we can proffer it if we need to, Your
10 Honor, but -- that John witnessed at a Super Bowl
11 party, Mr. Melton punching out another person and
12 then bragging about it afterwards to John.

13 So those two incidents of violence he would
14 have noticed and he would have saw and would have
15 had an affect on him. And so those are two
16 incidents that we wanted to get into that was
17 objected to.

18 **THE COURT:** All right. Any motions or matters?
19 Anything else?

20 **MR. SHELTON:** Directed verdict motion, just
21 renew our directed verdict motion, Your Honor,
22 specifically as to now there's evidence of
23 self-defense and it hasn't been disproven. And
24 citizen's arrest, we feel that we have met all the
25 elements, according to statute, on that. And so we

1 move forward on the directed verdict on that, Your
2 Honor.

3 **MR. PATTERSON:** Your Honor, the State would
4 just rely on its previous argument regarding
5 directed verdict. We believe the State has
6 presented enough evidence to get past directed
7 verdict on this particular issue on the charge of
8 attempted murder.. However, we would like to address
9 Your Honor in regards to the jury charge for
10 self-defense and citizen's arrest.

11 **THE COURT:** All right. Let me hear from you.

12 **MR. PATTERSON:** The State doesn't believe that
13 there's been any evidence of self-defense in this
14 case outside of basic innuendo that the defendant
15 defended himself against his own attack which he
16 created. State v. Bryant, State v. Slater and State
17 v. Wigington, which I sent to Ramsey, all hold
18 basically the same thing, that any act of the
19 accused in violation of law and reasonably
20 calculated to produce the occasion amounts to
21 bringing on the difficulty and bars his right to
22 assert self-defense as a justification or excuse for
23 a homicide. These are murder cases; however, I
24 believe they're applicable to this case as well.
25 And that was State v. Bryant.

1 State v. Wigington, defendant did not show that
2 he was without fault in bringing on the difficulty
3 with the victim and thus was not entitled to a trial
4 for a murder -- to a jury instruction on
5 self-defense. State v. Slater goes on to basically
6 say the same thing and so does State v. Santiago.

7 And even by the defendant's own admission and
8 his own testimony, he went there with a knife, put
9 it in his face. He create -- I mean, even if you
10 just believe what the defendant said, he created
11 this whole situation. He was gone from the bar,
12 could have called 9-1-1, could have done anything
13 else other than showing back up at the bar. And
14 when he shows back up, he arms himself, pulls out
15 the knife.

16 And, obviously, the State's position and what
17 we believe the State's witnesses have testified to
18 is that the victim made no overt act towards the
19 defendant in any way to -- no provocation. This was
20 just an unprovoked attack. And the State would
21 object to a charge on self-defense based on those
22 cases.

23 And as far as citizen's arrest, I don't think
24 there's been any testimony that he was attempting to
25 arrest the victim. His own testimony was he was

1 trying to confront him to get his stuff back, not
2 that he was going to arrest him. If that had been
3 the case, he would have called the cops and brought
4 the cops with him and -- or after the fact, he would
5 have called the cops.

6 And, also, I believe the statute requires
7 notice of arrest. There has to be some form of the
8 defendant letting the victim know you're under
9 arrest, I'm here to -- there has to be some
10 reasonable notice, and that's in the statute and
11 there's some case law on that. There's no
12 particular words that have to be used, but there has
13 to be something that indicates he's making a
14 citizen's arrest. So we would object to a charge on
15 self-defense and object to a charge on citizen's
16 arrest.

17 **THE COURT:** All right.

18 **MR. SHELTON:** Your Honor, as to citizen's
19 arrest, which I'll start with, nowhere in the
20 statute does it say that you have to provide notice.
21 There's case law, State v. Nall, which states that
22 if it's for a misdemeanor, notice must be provided.
23 It does not state that if it's for a felony or
24 certain information that a felony --

25 **THE COURT:** What testimony was presented that

1 he was in there making an arrest?

2 **MR. SHELTON:** Your Honor, there's no words that
3 have to be given. All that you have to do is upon
4 view of a felony committed, certain information that
5 a felony has been committed or view of a larceny
6 committed, any person may arrest the felon or thief
7 and take them to a judge or magistrate. You don't
8 have to take them to the police, you don't have to
9 call the police --

10 **THE COURT:** And what level of certainty would
11 your client have needed to effectuate this arrest?

12 **MR. SHELTON:** Reasonable suspicion, Your Honor.
13 That is in State v. Cooney. It might be in Nall
14 also.

15 **THE COURT:** And what testimony was -- I do not
16 recall that your client said those -- that. And
17 then I don't know that he indicated that he -- what
18 I recall his testimony was, that he went back, got
19 the knife and approached him to scare him.

20 **MR. SHELTON:** And he testified that he intended
21 to confront him and call 9-1-1. That was his
22 testimony.

23 **THE COURT:** And so tell me how, in the
24 self-defense, how your client is without fault.

25 **MR. SHELTON:** That goes to State versus Dickey,

1 Your Honor. Obviously, State versus Dickey is --
2 they're saying there's a legal right to eject a
3 trespasser. And so that -- in that case, the person
4 was ejecting a trespasser, followed that person out
5 and then fired when they turned back on him. And so
6 he -- even though he had a gun and he confronted the
7 people, the court, as a matter of law, had
8 determined that he was lawful in confronting those
9 people because -- and he was without fault because
10 he was asserting a legal right.

11 And in our case, he's asserting a legal right,
12 a citizen's arrest, and so he is without fault in
13 bringing on the difficulty. And so we get by that
14 hurdle --

15 **THE COURT:** But at what point, Mr. Shelton? I
16 mean, at what point does your client or anyone have
17 to indicate that they are placing someone under
18 arrest? And at what point does the law allow for
19 someone to pull a weapon out in a place that he does
20 not lawfully have the right to brandish a weapon?

21 **MR. SHELTON:** Your Honor, A, there's no point
22 that you have to provide notice that you are
23 arresting somebody. There's no point in that. Case
24 law does not indicate that you have to say -- use
25 the words, you're under arrest.

1 He's going there to confront and then that's
2 when everything happened. It happened really fast
3 after all that. He didn't have a chance to. But he
4 said that he wanted to confront him and call 9-1-1.
5 He wanted to keep him from leaving the bar, getting
6 his gun, getting away with the items, that was his
7 testimony, and that he was going to keep him there
8 to call 9-1-1. And so whether the jury believes
9 that or not, you know, that's obviously an issue,
10 but he testified to it. He brought it out. There
11 is facts that lead to believe that.

12 And then as to the reasonableness to use the
13 force that he had, that is a jury question. And
14 it's based off his -- and that's State v. Coon
15 {sic}. Reasonableness was a force is that issue in
16 State v. Coon, Your Honor -- Cooney. And so that
17 was a jury issue that the court determined that --
18 they determined if that was enough -- if that was
19 reasonable force given all the circumstances and
20 given the history and what they believed, unless
21 there's no evidence to support a finding of
22 reasonableness.

23 And I believe that there's more than enough
24 evidence to support reasonableness in this case as
25 he -- the victim was violent to him; in previous

1 incidents, the victim had a gun according to
2 Mr. Thomas; the victim's known to carry knives
3 according to Mr. Thomas. And so it was reasonable
4 to use the knife in that regard, Your Honor, to
5 confront. And Mr. Thomas testified that he never
6 intended to cut Mr. Melton. It was an accident
7 and -- so, therefore, it was reasonable in his --
8 what he used at that point in time, Your Honor, the
9 force that he used at that time.

10 **THE COURT:** Anything further?

11 **MR. SHELTON:** Well, we do have an issue on an
12 ABHAN. We can discuss that.

13 **THE COURT:** All right. Let me hear you.

14 **MR. SHELTON:** Your Honor, there's testimony --
15 and the State made it clear that they wanted to
16 indicate that ABHAN was a misdemeanor. They asked
17 that twice, I believe, to the victim. Obviously,
18 we're asking for a lesser included of ABHAN. That
19 was under the old common law statute. Those were
20 different.

21 We would just ask for a instruction that these
22 are two different types of offenses in the -- what
23 the prior ABHAN carried, the amount of punishment
24 that the prior ABHAN carried, but that these are two
25 separate offenses as to if Your Honor gives him the

1 lesser included of ABHAN --

2 **THE COURT:** Are you requesting ABHAN?

3 **MR. SHELTON:** Yes, Your Honor. And I still --
4 I think I turned in -- I can give my marked up copy
5 of the jury requests.

6 **THE COURT:** I have yours.

7 **MR. SHELTON:** Yes, I would be requesting ABHAN,
8 assault and battery first, assault and battery
9 second, assault and battery third, self-defense with
10 the right to act on appearances, prior difficulties,
11 victim's violent reputation, prior threats by the
12 victim, prior violence of the victim, intoxication
13 of the victim.

14 I asked for citizen's arrest, a continuance
15 offense theory, which is the robbery is not over
16 until they have gone past the threat or
17 intimidation. So my argument is that Mr. Thomas was
18 stopping them in the middle of the argument -- or of
19 the robbery and so it hadn't been completed yet, and
20 so I would ask for a jury charge on continuance
21 offense theory. I would ask for a jury charge on
22 accident and on defendant's good character as it
23 relates to malicious heart, malicious intent. And I
24 pulled all those, Your Honor, from the judicial web
25 site.

1 **THE COURT:** All right. So, Mr. Shelton, in
2 order to get accident, your client had to have been
3 acting lawfully. I am still not convinced that he
4 was acting lawfully.

5 **MR. SHELTON:** Your Honor, I think that's a jury
6 question as to whether he was acting lawfully or not
7 and that's what they determined in State v. Nall.

8 **THE COURT:** Well, I have to make a
9 determination of whether or not, based upon the
10 evidence that was presented, that there's facts to
11 present to the jury.

12 **MR. SHELTON:** Well, Your Honor, he testified.
13 I mean, his testimony indicates that --

14 **THE COURT:** His testimony was, I went, I armed
15 myself with a knife in order to scare him.

16 **MR. SHELTON:** And I asked him what he would
17 have done if the confrontation wouldn't have gone to
18 where it was and he said that he would have called
19 9-1-1. I mean, I was kind of careful with the
20 questions I asked to elicit that, Your Honor.

21 **THE COURT:** All right. Mr. Patterson, what's
22 your position as to the lesser includedes?

23 **MR. PATTERSON:** The State's position in
24 reference to the lesser includedes is that based on
25 the evidence that was brought forth at trial, the

1 State understands that ABHAN and assault and battery
2 first are certainly appropriately charged as lesser
3 includeds. However, assault and battery second and
4 assault and battery third, the State's position is
5 that those would not be appropriate in this
6 particular situation because of the evidence that
7 was brought in at trial. There was a deadly weapon
8 used, it was -- the victim was stabbed in the chest
9 with that weapon. And the only offenses that could
10 logically stem from that are either attempted
11 murder, assault and battery of a high and aggravated
12 nature or assault and battery first.

13 Assault and battery second only requires
14 moderate bodily injury. And, in this case, I don't
15 see how this could have been moderate bodily injury.
16 The only thing it could have been is serious. And I
17 think assault and battery third is just simple
18 assault, and this is obviously more than just simple
19 assault. And that's the State's position on lesser
20 includeds.

21 **THE COURT:** All right. Anything further as to
22 the lesser includeds?

23 **MR. SHELTON:** As to the lesser includeds, Your
24 Honor, moderate bodily injury, I went through the
25 specific things that were required for moderate

1 bodily injury and great bodily injury with the
2 doctor. And I believe that the jury could determine
3 moderate bodily injury could have resulted. They
4 might not believe the doctor. I mean, just because
5 the doctor said what he did --

6 **THE COURT:** I thought the definition of
7 moderate bodily injury would be included except when
8 there's penetration of the skin, muscles, connective
9 tissue that requires surgical repair of a complex
10 nature or when treatment requires the use of
11 regional or general anesthesia, which I thought
12 that's what the testimony was.

13 **MR. SHELTON:** That there was not?

14 **THE COURT:** That there was. So because there
15 was, that's the exception, and so that would
16 preclude you from receiving -- even though you may
17 argue that it was moderate bodily injury, the fact
18 that there was the exception that required general
19 or regional anesthesia to a muscle or skin or
20 connective tissue, would preclude me from charging
21 under the law. Do you agree, Mr. Patterson?

22 **MR. PATTERSON:** I think I agree with your
23 position. Are you saying -- I think the doctor said
24 that he did not require any surgical procedures
25 other than the stitches. Is that what --

1 **THE COURT:** Are you telling me he did not
2 receive general or regional anesthesia in order to
3 receive the stitches?

4 **MR. PATTERSON:** I'm just trying -- I'm sorry.
5 His testimony was lengthy, so I was trying to
6 remember exactly what he said. I just want to make
7 sure that I'm representing to the Court exactly what
8 the testimony was. But I believe he did testify
9 that he received stitches and did receive some type
10 of anesthesia or treatment.

11 **MR. SHELTON:** Your Honor, I didn't hear that,
12 but moderate bodily injury means that, that's how I
13 read moderate bodily injury, means physical injury
14 and if we don't -- or treatment of the injuries
15 requires the use of regional or general anesthesia.
16 That's what moderate bodily injury means and so --

17 **THE COURT:** What about the phrase except when,
18 except when there's a penetration?

19 **MR. SHELTON:** I didn't hear any testimony about
20 regional or general anesthesia, Your Honor. I
21 didn't hear him testify to that. I specifically
22 asked about those things and I didn't hear him
23 testify to any of that, Your Honor. But I didn't
24 hear the regional or general anesthesia, Your Honor.
25 I didn't hear any evidence of that.

1 **THE COURT:** Anything else?

2 **MR. SHELTON:** No, Your Honor.

3 **THE COURT:** All right. We're going to argue
4 and charge tonight, so I'm going to take a short
5 break. Y'all get prepared, make any calls that you
6 need to make. Thank you. About ten minutes.

7 (Brief recess.)

8 (The Jury returns to the courtroom.)

9 **THE COURT:** Ladies and gentlemen, you indicated
10 that you wish to retire for the evening and so we're
11 going to start back in the morning. Please remember
12 all of my admonitions. While you may have heard all
13 the testimony in the case and received into evidence
14 all the exhibits, you have not heard the arguments
15 on behalf of counsel and I have not instructed you
16 on the law applicable to this case. So, ladies and
17 gentlemen, we're going to break for the evening.
18 Please be back in your jury room at 9:00 A.M. Once
19 all 14 of you are here, we will begin promptly.

20 Please also understand, and I know -- do any of
21 you have children that would be, if we had school
22 delays due to the weather, is that going to affect
23 anyone, please let me know?

24 So as of this time, regardless of what you
25 hear, if there's Berkeley County delays, that would

1 not apply to you. We will begin promptly at 9:00
2 A.M. And you have contact numbers for us, so if
3 something were to happen, I do not anticipate, but
4 you never know what's going to happen with the
5 weather. So stay warm, have a restful evening. And
6 when you come back, we'll hear closing arguments on
7 behalf of counsel, I will instruct you on the law
8 applicable to this case and then you'll retire to
9 consider your verdict. I'll see you in the morning
10 at 9:00 A.M.

11 Please rise for the jury.

12 (The jury was excused for the day.)

13 **THE COURT:** Anything before we break for the
14 evening?

15 **MR. PATTERSON:** Nothing from the State, Your
16 Honor.

17 **MR. SHELTON:** Just before -- can we have notice
18 on what's being charged?

19 **THE COURT:** You will. If you'll wait for just
20 a few moments, I'm going to go ahead and let Stacy
21 get on the road and then I'm going to work on the
22 verdict form. So if you'll give me just a few
23 minutes, we'll get that done, we'll just show you in
24 chambers, and then we'll put the ruling on the
25 record. Give me just a few minutes because I want

1 you to go over the verdict form.

2 Mr. Thomas, you are free to go. Please
3 remember all of my admonitions. Should you choose
4 not to be here tomorrow, do you understand what will
5 happen?

6 **DEFENDANT:** Yes, ma'am.

7 **THE COURT:** What will happen?

8 **DEFENDANT:** I will have a warrant issued for my
9 arrest. The trial will go on in my absence.

10 **THE COURT:** Correct. And that's the most
11 important thing for you to understand right now is
12 just deciding not to show up is not going to delay
13 the trial. Do you understand?

14 **DEFENDANT:** I'll be here.

15 **THE COURT:** All right. And you understand
16 we'll run on time whether or not?

17 **DEFENDANT:** Yes, ma'am.

18 **THE COURT:** All right. I'll see you in the
19 morning. Thank you.

20 All right. We're at ease.

21 (The proceedings were concluded for February
22 18, 2015.)

23 (The following proceedings were held on
24 February 19, 2015.)

25 **THE COURT:** Mr. Patterson, Mr. Shelton, I

1 received an e-mail over the evening hour -- I
2 actually received it this morning -- an e-mail
3 concerning the citizen's arrest and that you
4 provided additional case law and indicated that I
5 had believed that it was a very close call and I was
6 concerned about the notice requirement. Even though
7 the statute does not require, specifically indicate,
8 there is a -- case law indicating that there has to
9 be some reasonable notice given as to the purpose of
10 the arrest.

11 Reviewing the testimony as provided by the
12 victim and by the defendant, there was no
13 information that Mr. Thomas provided any reasonable
14 notice as to the arrest. And my indication this
15 morning was that I was not going to charge citizen's
16 arrest. Mr. Shelton wanted an opportunity to place
17 some additional argument on the record. I will
18 allow you to do that.

19 **MR. SHELTON:** Thank you, Your Honor. And I
20 also have, after discussing with co-counsel, some
21 more argument as to what we believe the defendant
22 did testify to, and that is that when he entered the
23 bar, he testified he had words asking about his
24 stuff, and Ms. Huntley is the witness that said that
25 she heard him asking about money, in addition to the

1 presentation of the knife, Your Honor. We believe
2 that that would be sufficient notice, if Your Honor
3 considers that notice is required.

4 The other argument, Your Honor, I think it's --
5 it all goes to reasonableness and if the jury
6 believes it, but there is testimony about it and
7 there's testimony that -- this happened really
8 quick, Your Honor. He said what he said he wanted
9 to do, what his intent was when he came in there and
10 -- so he had testimony of his intent of what he
11 said. There was a witness that corroborated that
12 and whether the jury believes it or not, it's up to
13 the jury, Your Honor. There was question of money
14 prior to that.

15 In addition, State v. Nall specifically says if
16 a -- In view of a felony. It's our contention that
17 he viewed a felony. Under the continuous offense
18 theory, which I provided to Your Honor prior to
19 trial as a potential jury charge, an offense is not
20 complete until the escape with the goods, until the
21 escape has been effectuated with the goods.

22 It's our contention that the defendant stopped
23 the escape and was attempting to stop the escape
24 with his goods. He was trying to find them. He was
25 trying to get those goods and trying to stop them

1 from escaping. The felony was ongoing. It was
2 still going on at the time that he confronted the
3 victim, and so, therefore, it's in view of a felony
4 and notice is not required in that regard, and
5 that's specifically the exception that State v. Nall
6 says. But we do believe that there is evidence that
7 a jury could find that he did give notice. And so
8 those are our arguments as to why citizen's arrest
9 is an appropriate jury charge.

10 **THE COURT:** Anything --

11 **MR. SHELTON:** Hold on a second, Your Honor.

12 And how accident relates to it all too, Your
13 Honor. We did request accident, which is
14 appropriate because he was acting lawfully under a
15 citizen's arrest. And he indicated that it was an
16 accident. He didn't mean to cut the -- Mr. Melton.
17 And so we believe accident relates to that and as a
18 jury charge also.

19 **MR. PATTERSON:** Just briefly, Your Honor. I
20 think the testimony from the defendant in his own
21 admission is that he went in there to -- if you
22 believe what the defendant said, he went in there to
23 scare him, that was his own testimony. He said
24 nothing about going in there to try and get his
25 stuff back.

1 And he testified on cross that he had no idea
2 who took his stuff, that's why he didn't call 9-1-1.
3 He was just certain that the defendant had done it
4 even though -- if there's any evidence that anybody
5 -- that he saw anybody take anything, it would have
6 been Misty or Eric, but he didn't even see them do
7 anything, which -- so he doesn't even meet the
8 certain information requirement. And he didn't see
9 anything. And by his own testimony, he was not
10 going in there to put this person under arrest.

11 **THE COURT:** Last word, Mr. Shelton.

12 **MR. SHELTON:** Your Honor, I disagree with that.
13 I believe that he did say that he didn't call 9-1-1
14 because he didn't have the goods and so he was going
15 to confront them to get the goods. He saw them all
16 act in concert together, what he believed them
17 acting in concert together, hand of one, hand of
18 all. And we have further proof that it actually did
19 occur because the victim had the items and pawned
20 those items 12 days after.

21 But, Your Honor, he testified to his intent and
22 his intent was to go and confront, to scare, to stop
23 him from leaving to escaping with his goods and he
24 was going to call 9-1-1, if -- but it happened
25 really quick. And, Your Honor, that's the testimony

1 and that was his intent, that was -- he testified to
2 that. If his testimony wasn't there, I'd agree, but
3 his testimony is there. The jury could find for
4 that. And if there's some evidence of it, I -- I
5 believe when -- we request that the Judge charge
6 that.

7 **THE COURT:** So is it your position that he
8 viewed a felony, Mr. Shelton?

9 **MR. SHELTON:** Yes, Your Honor, yes.
10 Absolutely. If there's testimony that the goods
11 were worth over three -- over \$2,000, which is a
12 felony --

13 **THE COURT:** And tell me what evidence was
14 presented that the victim participated in that.

15 **MR. SHELTON:** That Misty and him talked
16 beforehand. Misty then tapped him on the shoulder.
17 He then -- Mr. Melton -- Misty tapped Mr. Melton on
18 the shoulder. Mr. Melton then handed Eric the keys
19 to his car. Eric left from the place. And John --
20 and Misty tried to keep John there and then he came
21 back. And Eric was his friend. They were working
22 together. He then -- Mr. Melton has those goods 12
23 days later.

24 **THE COURT:** All right. Based upon those facts
25 and my recollection of the testimony, I will not be

1 charging citizen's arrest. I believe this is
2 accurately and adequately preserved for the record.
3 I note your exception to my ruling. I still will be
4 charging self-defense.

5 **MR. PATTERSON:** Your Honor, if I may briefly
6 just modify my power point briefly. It shouldn't
7 take more than a minute.

8 **THE COURT:** Is there anything else before I
9 bring in the jury?

10 **MR. POULOS:** One thing, Your Honor, as I was
11 walking in the building this morning, one of the
12 jurors asked me if I could let them in because it
13 was cold and I said I would get a guard. I just
14 want to make you aware of the interaction.

15 **THE COURT:** Do you recall which juror?

16 And, Mr. Shelton, do you need any further
17 inquiry as to which juror or anything of that
18 nature?

19 **MR. POULOS:** I believe it was --

20 **THE COURT:** Mr. Shelton is not requiring.
21 Thank you for bringing that to the Court's
22 attention.

23 We'll take a short comfort break because we're
24 going to go straight through until I charge. Thank
25 you. About five minutes.

1 (Brief Recess.)

2 **THE COURT:** Anything before we bring in the
3 jury?

4 **MR. PATTERSON:** Nothing from the State, Your
5 Honor.

6 **MR. SHELTON:** Your Honor, just to be clear on
7 the jury charges on self-defense, are you charging
8 the right to act on appearances, prior difficulties?

9 **THE COURT:** Yes.

10 **MR. SHELTON:** Violent reputation?

11 **THE COURT:** Yes.

12 **MR. SHELTON:** Threats by the victim?

13 **THE COURT:** Yes.

14 **MR. SHELTON:** Violence by the victim?

15 **THE COURT:** Yes.

16 **MR. SHELTON:** Intoxication?

17 **THE COURT:** Yes.

18 **MR. SHELTON:** Anything else?

19 **THE COURT:** I think I included the entirety of
20 the self-defense charge.

21 **MR. SHELTON:** Thank you, Your Honor.

22 **THE COURT:** All right. Thank you.

23 (The jury enters the courtroom at 10:00
24 A.M.)

25 **THE COURT:** Good morning, ladies and gentlemen.

1 There were matters unrelated to this case that I had
2 to take up outside of your presence. I apologize
3 for the delay.

4 Ladies and gentlemen, did every member of the
5 jury panel comply with the Court's instructions? If
6 you complied with my instructions over the evening,
7 please raise your right hand.

8 Thank you. All 14 jurors have complied with
9 the Court's instructions.

10 Ladies and gentlemen, as I indicated to you,
11 you will now hear closing arguments on behalf of
12 counsel. Just as I instructed you, what was
13 contained in opening statements is not to be
14 considered evidence, neither is what is contained in
15 their closing arguments. After you have heard
16 closing arguments, I will instruct you on the law
17 applicable to this case. At that time, you will
18 then retire to consider your verdict.

19 Please remember that the evidence that has been
20 admitted into evidence in this case will go back
21 with you to your jury deliberation room. So if the
22 attorneys are using some as demonstrative purposes
23 and you haven't had an opportunity to view those,
24 please understand those will go back with you.
25 Please give your strict attention.

1 Mr. Patterson.

2 **MR. PATTERSON:** Thank you, Your Honor. May it
3 please the Court.

4 CLOSING ARGUMENT

5 **MR. PATTERSON:** I'm going to speak with you
6 guys briefly about the law. Now, if anything I say
7 doesn't comply with what the Judge tells you later,
8 always defer to the Judge. She's the authority on
9 the law. So I'm going to take an opportunity to go
10 through the law that's applicable on this case and
11 then you're going to hear from Mr. Shelton and
12 you'll hear from me once more.

13 Section 16-3-29 is the statute in South
14 Carolina for attempted murder. A person who, with
15 intent to kill, attempts to kill another person with
16 malice aforethought, either expressed or implied,
17 commits the offense of attempted murder.

18 Now, the elements of this include intent to
19 kill. And intent to kill can be kind of an
20 amorphous type of thing, a mental state, a conscious
21 wrongdoing. There's no way to prove with
22 mathematical certainty what's in somebody's brain.
23 You can't see inside the defendant's brain to know
24 what he was thinking.

25 However, you can use your common sense, take

1 the facts and the circumstances and make inferences
2 from those circumstances about what the defendant
3 was thinking and use that to make a judgment about
4 whether or not he intended to kill the victim. And
5 I think when you walk into a bar and brandish a
6 knife and stab the victim in the chest, there's no
7 other way to take that other than he intended to
8 kill him. This can arise from action or failure to
9 act. It may arise from negligence, recklessness or
10 an indifference to duty or consequences.

11 Malice aforethought, it's somewhat similar to
12 intent to kill, but different. It talks about what
13 is in the defendant's heart, what he's thinking. It
14 can be expressed or inferred. It's a hatred, an ill
15 will, hostility towards another person, an
16 intentional wrongdoing of an act without just cause
17 or excuse and with the intent of inflicting an
18 injury or under circumstances that the law will
19 infer an evil intent.

20 There's no time limit for when malice must be
21 formed. So malice can be formed a split second
22 before the incident, that's when malice can be
23 formed. Malice can be formed a year before. Malice
24 can be formed at any time. And what you do is you
25 take the facts and circumstances and you make

1 logical inferences as to what those mean.

2 An example of expressed malice could be words
3 spoken to the victim that express a hatred or ill
4 will or preparation beforehand to commit the act.
5 He sends a text to Misty, There will be blood. He
6 admits to the text.

7 Malice can be inferred from conduct showing a
8 total disregard for human life. Whips out a knife,
9 goes for his chest. Malice can be inferred when the
10 act is done with a deadly weapon. A knife sure is a
11 deadly weapon.

12 You're going to hear about some lesser-included
13 offenses. One of those lesser-included offenses is
14 assault and battery of a high and aggravated nature.
15 This is when a person unlawfully injures another
16 person and great bodily injury to another person
17 results or the act is accomplished by means likely
18 to produce death or great bodily injury. And a
19 knife is -- stabbing somebody in the chest --
20 certainly an act accomplished by means likely to
21 produce death or great bodily injury.

22 Great bodily injury means bodily injury which
23 causes substantial risk of death or which causes
24 serious permanent disfigurement or protractive loss
25 or impairment of the function of a bodily member or

1 organ.

2 One of the other lesser includeds that you're
3 going to hear about is assault and battery first
4 degree. And there's a lot in this statute and not
5 all of it pertains to what the facts and
6 circumstances are of this case. What does pertain
7 is a person unlawfully offers or attempts to injure
8 another person -- and this is one, two, three, four,
9 five down on the bullet points -- with a present
10 ability to do so and the act is accomplished by
11 means likely to produce death or great bodily
12 injury. And, again, if you bring in a knife, you
13 stab the victim, you're doing an act with means
14 likely to produce death or great bodily injury.

15 You're also going to be instructed on the law
16 of self-defense. To be entitled to a claim of
17 self-defense, the defendant has to prove four
18 things. He must prove all four because proving one
19 is not enough to allow him to claim self-defense.

20 Now, it's the State's burden to overcome
21 self-defense beyond all reasonable doubt and we
22 accept that burden, and it's because he can't prove
23 the very first one: The defendant is without fault
24 in bringing on the difficulty. He was gone. He
25 came back to the bar, came in with a knife and went

1 straight for the victim, brought on the difficulty.

2 That's it. If he doesn't meet that one, it's over.

3 However, he doesn't meet any of the others
4 either: The defendant was in actual imminent danger
5 of losing his life or sustaining serious bodily
6 injury or he must have actually believed he was in
7 imminent danger of losing his life or sustaining
8 serious bodily injury; and if his defense is based
9 on his belief of imminent danger, the defendant must
10 show that a reasonably prudent person of ordinary
11 firmness and courage would have entertained the same
12 belief and would have struck the fatal blow in order
13 to save himself from serious bodily harm or loss of
14 his life; and number four, the defendant had no
15 other probable means of avoiding the danger. Easily
16 could have avoided the danger. He never had to go
17 back to the bar. If he doesn't meet any one of
18 those, he can't claim self-defense. He has to meet
19 all four.

20 Reasonable doubt, you're going to be charged on
21 reasonable doubt. What is reasonable doubt? You
22 hear it all the time, television, everywhere.
23 Reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act. It's
25 not proof beyond all doubt. There are very few

1 things in life that we know with absolute certainty.
2 Beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt.

4 Please listen to Mr. Shelton.

5 **THE COURT:** Mr. Shelton.

6 **MR. SHELTON:** Thank you, Your Honor.

7 Mr. Patterson, Mr. Poulos.

8 So one of the things he didn't give you up
9 there with the law is credibility. The Judge is
10 going to instruct you on credibility. That's
11 believability. That's what you believe from the
12 witness stand, how the person acted on the witness
13 stand, what they said, what they didn't say.
14 Credibility is another way of showing someone's
15 heart.

16 What about Kenny? How is his credibility? He
17 talks -- what happened when I showed him this Money
18 Man Pawnshop receipt? He sat up here, I showed him
19 this receipt and what did he do? Oh, man, they got
20 me. They know I lied. I stole from him. Maybe --
21 I don't see a signature, maybe I can get away with
22 it. Oh; there's a signature. Why did I say that?
23 He stole from him. His credibility.

24 The State, they didn't want you to know about
25 Kenny. They want you to ignore his credibility.

1 They want you to ignore his believability.

2 What about the threats of violence? He didn't
3 say anything about he had a gun, but he remembered
4 every single incident that John later testified to
5 where there was violence. He remembered those
6 incidents. He just took out the gun. Because what
7 did he tell you? He's a convicted felon. He's not
8 allowed to have a gun. So what?

9 Forgot about the paper trail, the Money Man
10 pawn receipt from January of 2014, two months after
11 this incident, where he pawned a rifle. What did he
12 say about that? Oh, I pawned it for somebody. Man,
13 I got caught again. But Lee testified he'd seen him
14 with guns several times. Believability,
15 credibility, Kenny has none. The State wants you to
16 put on the blinders. They want you to forget about
17 that.

18 But what's in John's heart? If you take those
19 blinders off, you look at the history, you can
20 realize -- the video can be deceiving. It shows a
21 minute, a moment in time of John, a moment in time
22 of the history between the two. And everybody came
23 up and testified about Kenny's credibility. He's
24 not trustworthy, he's violent, came about -- and
25 testified about John's credibility, his violence,

1 lack of it, talked about John's believability, his
2 trustworthiness, every single one.

3 And in viewing the video, you can tell that he
4 actually acted just like his personality, just like
5 his character. He acted peacefully. You might be
6 like, that's crazy, how are you saying that? He
7 went into a bar right at Kenny.

8 Well, let's think about this. If he wanted to
9 kill him, if that's what's in his intent -- in his
10 heart to kill him, why would he go in a public place
11 where everybody was, everybody knows him, he knows
12 there's cameras? Why would he do that if he wanted
13 to kill him? If he wanted to kill him, why would he
14 yell as he's coming in the door? If he wanted to
15 kill him, walk up to Misty, start talking to her and
16 then start stabbing him, if he wanted to. He didn't
17 want to kill him. He knew the people that were
18 there. That wasn't his intent. He told you what
19 his intent was. His intent was to confront him to
20 get his stuff back.

21 Why would you bring a knife to a gun fight?
22 Because he doesn't want to kill him. He doesn't
23 want to hurt him. He knows Kenny has knives. He
24 knows Kenny has guns. Take that gun, if he wanted
25 to kill him, he formed the intent outside that bar,

1 take the gun, wait for him to come out, then shoot
2 him if he had that intent, wait for him to get out
3 in the darkness away from everybody else. If he
4 wanted to kill him, he had other means. He didn't
5 -- that's not what his intent was. He didn't lie in
6 wait, instead he confronted him in a public place,
7 people that knew him, knows there's cameras, because
8 he didn't have anything to hide.

9 Is he naive? Maybe. He believes in the good.
10 He believes everybody's good. He believes everybody
11 has a good heart. He has a good heart.

12 A person -- and the State hit on it a couple
13 times: Well, why, if this is a person that was
14 violent towards you, this is a person that you saw
15 violence for, why would you then contact him about
16 helping out with a boat? But why would you also
17 help them when they're confronted and someone is
18 attacking them? Lee, Kenny himself and John
19 testified about the incident in July of 2013. All
20 three of them testified and agreed that Kenny
21 assisted -- that John assisted Kenny in that
22 confrontation. Why? Why would he do that? Because
23 he doesn't want anybody hurt.

24 And it doesn't matter how bad he thinks of
25 somebody, he doesn't want them hurt, or how bad a

1 person they are, he doesn't want to hurt them. He
2 believes in the good. Yeah, you're a violent
3 person, but you want something, I need help, I
4 believe you're still good. You're going to help me,
5 I'll help you out. I believe you're still good. He
6 believes in the good. Is that naive? Maybe, but I
7 would hope not to believe in the good in people.

8 Was he naive to think if I go and confront him,
9 he's going to give me my stuff back? Was that naive
10 to think that because of all the history? Maybe,
11 but John did what was done to him. He wanted to get
12 his fishing poles back. Kenny wanted his fishing
13 poles, Kenny wanted his equipment, so Kenny
14 threatened him. John said, okay. Kenny wanted to
15 be paid for not doing the work. Kenny wanted the
16 cell phones. Kenny threatened him. Okay. Was he
17 naive? Maybe. But did he have a malicious heart?
18 Did he do what he thought was right? Did he do what
19 he thought was lawful?

20 If there's a real chance that John is telling
21 the truth, you have to find him not guilty. If
22 there's a real chance that John doesn't have a
23 malicious heart, you have to find him not guilty.
24 If there's a real chance that John went there to
25 confront and not with that malicious heart, you have

1 to find him not guilty.

2 The State has the burden. John, he gets the
3 benefit of any doubt you have. If there was -- if
4 there's a real chance that John did not intend to
5 kill, you must find him not guilty. You have to
6 know in your heart that he is guilty. If there's a
7 hesitation, then that's reasonable doubt.

8 Now, the Solicitor most likely is going to
9 focus on a couple of things. He gets to come back
10 up here. I don't get to come back after him. He
11 kind of hit it in the law, the text messages. If
12 those were so important, where are they? Why didn't
13 they get them? What else was said? Did he talk
14 about the robbery? Did he talk about him stealing
15 from him? We don't know because they didn't get
16 them. Misty agreed they could have been taken out
17 of context. She didn't know what context those were
18 in, but she was willing to give them to the police.
19 Why didn't they copy them? Why didn't they get
20 them?

21 The video, it doesn't show everything. It
22 shows a confrontation. Every single person in the
23 bar, Denise, Debbie, Joe, Misty, they didn't see a
24 knife. I'm not saying he didn't have a knife, but
25 they didn't see it. It shows one perspective. The

1 video shows one perspective. It doesn't show what's
2 in John's heart.

3 They also might get up here and say that the
4 pawn records, Kenny's bad character, none of that
5 matters. That's them wanting you to put the
6 blinders on. They don't want you to know the
7 history. They don't want you to think that Kenny
8 was stealing things that night and pawning them 12
9 days later. Why not? Why don't they want you to
10 hear that? Why do they want you to put the blinders
11 on? Because there's a real chance that John is
12 telling the truth. There's a real chance that John
13 doesn't have malice in his heart.

14 The State went over some of the law, and the
15 Judge is going to tell you about the law again, but
16 talk about self-defense without fault, we're going
17 to hit on that, they already did. If you believe
18 that he had a right to confront, that he was acting
19 lawfully, then he was without fault.

20 You're going to hear about imminent danger.
21 You're going to hear that John can act on
22 appearances, doesn't have to show that he was
23 actually in danger. You can look at prior
24 difficulties between the parties. You can look at
25 the victim's reputation as a violent person. You're

1 allowed to look at that. You can look at prior
2 threats by the victim, prior violence by the victim
3 and intoxication. You can look at all of that.
4 There's no evidence that John was intoxicated.
5 Actually, Debbie said that he doesn't drink while
6 he's eating, and he was at work all day. And you
7 can consider the defendant's, John's, good behavior,
8 his good character. You can consider that.

9 When deciding and looking at assault and
10 battery of a high and aggravated nature, attempted
11 murder and assault and battery first, just remember
12 what we're talking about, two centimeters, stitches,
13 and whether that rises to the level that the State
14 wants to prosecute on and the State is asking for,
15 two centimeters, stitches.

16 All I can ask you to do, all John can ask you
17 to do is to do justice, do what's fair, that's all
18 we can ask. What's fair? Is judging somebody's
19 heart by one minute of video fair? Or is it more
20 fair to look at all the history, all the
21 circumstances surrounding this incident? Is that
22 more fair? What's justice? What's justice in this
23 case?

24 Is there a real chance that John is telling the
25 truth? If you feel in your heart that there's a

1 real chance that John is telling the truth, no one
2 can change your opinion.. If there's a real chance
3 that John is telling the truth, I ask that you find
4 him not guilty. Thank you.

5 **THE COURT:** Mr. Patterson.

6 **MR. PATTERSON:** Thank you, Your Honor.

7 There will be blood, that's what this case is
8 about. The video that they want you to conveniently
9 forget about, the video doesn't lie. The video
10 doesn't tell any lies. The video is the video.
11 They want you to focus on everything else but what
12 actually matters, which is what occurred at the bar.
13 This case is simple. The defendant went into the
14 bar, knife out, attacked the victim from behind and
15 stabbed him in the chest. That's what the video
16 shows.

17 The defense just talked about if you believe
18 John, well, then you can't find him guilty. Well,
19 even if you believe John and everything he said,
20 what that provides you with is motive. They're
21 trying to recategorize what motive is. He had
22 enough. He was there to end it.

23 The defendant just -- he didn't go after him
24 once. You've seen the video. You'll see it again.
25 He goes after him more than once. The victim tries

1 to get out of his chair, stumbles. The victim still
2 goes -- or defendant still goes after him around the
3 pool table.

4 (Whereupon, State's Exhibit Number 3 was
5 played for the jury.)

6 **MR. PATTERSON:** The defense's theory is that if
7 you dislike the victim enough, then you'll forget
8 about what you just saw. Is the victim a great
9 person? Maybe not. We told you he's got a criminal
10 record. The defendant, he's also got a criminal
11 record. But the State's not asking you to like the
12 victim. The State's asking you to follow the law.
13 And the law says you can't walk into a bar without
14 some sort of justification, as like self-defense,
15 and just stab somebody in their chest. That's what
16 the law is.

17 Attempted murder, we talked about this, the
18 intent to kill. The defendant knew what he was
19 doing. He didn't just get into a tussle and then
20 all of a sudden they got into a fight. He was gone.
21 And you heard from the witnesses he was gone from
22 anywhere from 5 to 30 minutes, everybody judges time
23 differently, but he was gone for a period of time
24 from that bar. What was he doing? Thinking about
25 things. He didn't have to come back. He knew what

1 he was doing. Intent.

2 He left the bar, time to think it through. He
3 went straight for the defendant, knife out. He told
4 you on the stand he came in, had the knife out. He
5 attacks from behind while the victim is still
6 sitting down. There's no self-defense. He knew the
7 victim was unarmed or he would not have brought a
8 knife to the gun fight. You heard defense counsel
9 talk about that. If he really thought John Thomas
10 had a gun, he's not bringing a knife. He's bringing
11 a knife because he knows he's not armed.

12 Malice aforethought, we talked about this,
13 hatred or ill will, hostility towards another,
14 intentional doing of a wrongful act without just
15 cause or excuse with the intent of inflicting an
16 injury or under circumstances the law will infer an
17 evil intent, no time limit for malice. However, he
18 had plenty of time. He thought about this decision.

19 Malice can be inferred from conduct showing a
20 total disregard for human life. I think it's a
21 pretty big disregard for human life when you come in
22 and attack somebody with a knife. Malice can also
23 be inferred when the act is done with a deadly
24 weapon. A knife's a deadly weapon. This is malice.
25 This is what malice is.

1 Defense counsel wants you to look inside John's
2 heart. You can't look into his heart. You have to
3 look at what the facts and circumstances of the case
4 are presented. And the video shows you his malice.
5 The text message shows you his malice. His
6 admission just sending the text message shows you
7 his malice.

8 **MR. SHELTON:** Your Honor.

9 **THE COURT:** Ladies and gentlemen, I will
10 instruct you on the law applicable to this case.
11 Y'all may need to approach.

12 **MR. SHELTON:** Yes, Your Honor.

13 **THE COURT:** Please take the slide down.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury, but out of
16 the hearing of the jury.)

17 **MR. PATTERSON:** The attack from behind
18 decreases the chance that the victim had time to
19 adequately defend himself. The defendant doesn't
20 just thrust the knife once. You can see him going
21 at him multiple times. The attack doesn't stop
22 immediately either. He goes after him once he gets
23 up and chases him around that pool table. The
24 victim wasn't chasing the defendant around the pool
25 table like the defendant said.

1 The injury doesn't matter. The defense would
2 have you believe that just because the injury
3 ultimately wound up with just some stitches, that
4 it's okay. If somebody points a gun at another
5 person and they pull the trigger and that bullet
6 only hits him in the arm and there's no real injury,
7 does that mean they weren't trying to kill him? No.
8 It just means that person had bad aim.

9 The defendant stabbed the victim in the chest
10 and by pure luck, it didn't cause any serious
11 injury. That doesn't mean the defendant wasn't
12 trying to kill him. It just means he didn't get to
13 finish the job.

14 Again, we talked about self-defense. To be
15 entitled to a claim of self-defense, the defendant
16 must prove four things, and he has to prove them all
17 because proving one is not enough: He has to be
18 without fault in bringing on the difficulty; he has
19 to be in actual imminent danger of losing his life
20 or sustaining serious bodily injury or he must have
21 actually believed he was in imminent danger of
22 losing his life or sustaining serious bodily injury;
23 and if his defense is based on his belief of
24 imminent danger, the defendant must show that a
25 reasonably prudent person of ordinary firmness and

1 courage would have entertained the same beliefs and
2 would have -- belief and would have struck the fatal
3 blow in order to save himself from serious bodily
4 harm or the loss of his life; and the defendant had
5 no other probable means of avoiding the danger.

6 The defendant came to the bar. He brought on
7 the difficulty. That right there, he can't claim
8 self-defense. Had a knife in hand, he attacked
9 without provocation. If the defendant didn't start
10 the attack, this incident would have never occurred.

11 And this kind of brings me back to what the
12 defense told you at the very beginning of this
13 trial. He likened this to the movie A Christmas
14 Story when Ralphie beats up the bully, Scott Farkus.
15 Well, there's some problems with that analogy.
16 Ralphie and Scott Farkus are ten-year-old kids in a
17 fictional movie, and Ralphie didn't stab Scott
18 Farkus in the chest. Scott Farkus got punched in
19 the face a couple of times and left with a bloody
20 nose. I'm sure that if the defendant had started a
21 fist fight with the victim, we wouldn't be here.
22 That's not what happened.

23 There's some things that the defendant said
24 that stood out when he's trying to claim his
25 self-defense. He says on cross -- or on direct that

1 the victim lunged at him. You just saw the video.
2 I didn't see the -- the video didn't show that the
3 victim lunged at the defendant. The victim was
4 trying to get away. He was trying to prevent
5 himself from getting stabbed.

6 The defendant said he thought the victim was
7 trying to get out the front door to get a gun. On
8 that video, the video shows the victim run past the
9 front door to get behind the pool table. If he was
10 really trying to get out that front door and John
11 Thomas, the defendant, was just trying to call
12 9-1-1, why didn't he go out the front door right
13 from the beginning? He left out the front door when
14 Joe Huntley had stepped in to separate them and the
15 victim was able to get out the front door. There's
16 no self-defense here. The defendant is the only one
17 who brought on this difficulty.

18 You don't meet the very first element. No
19 reasonable person, in regards to portions two and
20 three of this, is armed with a knife can fear for
21 their safety when the other person is unarmed and
22 trying to get away. If the victim had been armed,
23 I'm sure he would have done more than throw that
24 beer can. In the video, you can see him trying to
25 throw something. He picks up a chair. He's doing

1 anything because he doesn't have weapons.

2 No other -- no other probable means of avoiding
3 the danger. The defendant didn't have to come back
4 to the bar. He made that decision to come back. He
5 could have avoided this situation. Again, the
6 defense is trying to create some misdirection and
7 wants you to look at everything at the video but the
8 obvious.

9 You heard about the victim stealing fishing
10 poles from the defendant, but the defendant never
11 called the police. You heard the victim fired a gun
12 on the defendant's property and the defendant never
13 called the police. And then after all of this, the
14 defendant calls the victim for a tow and says the
15 victim threatened him and stole his phone, and,
16 again, he doesn't call the police.

17 Now, on the night in question, the defense
18 wants you to believe that the defendant went there
19 to confront the victim and he was going to call
20 9-1-1. Well, he's never done it in the past. Why
21 is he going to call 9-1-1 this time? He's never
22 called before. He's there because he's angry. He's
23 there to kill the victim.

24 All of these prior instances, they're not
25 relevant to what actually took place. They want you

1 to look over here so that you don't see what's going
2 on over here. What those prior instances are, if
3 they're anything, it's not a justification, it's
4 motive.

5 The text message, There will be blood. He knew
6 what he was coming back to do. He ran out the back
7 door and fled the scene. He didn't call 9-1-1.

8 Now, you're going to get instructed on some
9 lesser includeds. Assault and battery of a high and
10 aggravated nature is going to be one of those lesser
11 includeds: A person unlawfully injures another
12 person and great bodily injury to another person
13 results or the act is accomplished by means likely
14 to produce death or great bodily injury. We talked
15 about what great bodily injury is.

16 Now, the defendant, who's a person, he
17 unlawfully injured the victim, who's another person.
18 It was intentional. It wasn't in self-defense.
19 It's unlawful injury. He stabbed the victim in the
20 chest, that's the act, and doing it with a knife is
21 by means likely to produce death or great bodily
22 injury. So if you don't believe that he was
23 intending to kill the victim, he's certainly guilty
24 of ABHAN.

25 And we talked about assault and battery first

1 degree and that's a lesser included of attempted
2 murder and assault and battery of a high and
3 aggravated nature. Offer or attempt to injure. The
4 defendant brought the knife to the bar. He stabs
5 the victim. That's an offer or attempt to injure a
6 person. He had the present ability to do so. He
7 had the knife. He stabbed the victim. Present
8 ability to do so. It's an act accomplished by means
9 likely to produce death or great bodily injury.

10 He used the knife. The knife could have caused
11 -- you heard from the doctor, Dr. Fann, talk to you
12 about all the things that are contained inside this
13 box area of your chest. The doctor told you that
14 they order, first, x-ray. The first x-ray showed
15 subcutaneous air. They were concerned about a
16 punctured lung. They observed him, ordered a second
17 x-ray. They ordered an echocardiogram. He told you
18 about all of the different organs that are located
19 inside this area that could have been hit with that
20 knife. Knife can cause death or great bodily
21 injury.

22 Now, the State has the burden to prove beyond a
23 reasonable doubt and we accept that burden. The
24 State submits that if you watch that video, you
25 apply your common sense, then you will be firmly

1 convinced of the defendant's guilt of attempted
2 murder. Thank you.

3 CHARGE OF THE COURT

4 **THE COURT:** All right. Ladies and gentlemen, I
5 will now instruct you on the law applicable to this
6 case. Ladies and gentlemen, I typically do not give
7 a copy of my charge, so please listen carefully.

8 Mr. Foreman, you will be responsible for
9 writing the verdict. I'll give you further
10 instructions as I go over the verdict form with you.

11 I remind you that during this trial, you and I
12 have had certain duties to perform. As the trial
13 judge, it is my responsibility to preside over the
14 trial of this case. And I also have the duty to
15 rule on the admissibility of the evidence that was
16 offered before you.

17 You are to consider only the evidence before
18 you. If there was any testimony ordered stricken
19 from the record, you must disregard that testimony.
20 You are to consider only the testimony that has been
21 presented from the witness stand, the exhibits that
22 have been made part of the record of this case, as
23 well as any stipulations of counsel.

24 I also have the duty to charge you the law
25 applicable to this case. As the presiding judge, I

1 am the sole judge of the law of this case. It is
2 your duty to accept the law and apply the law
3 exactly as I state it to you now. If you have any
4 idea as to what the law is or what the law ought to
5 be and it does not agree with what I'm about to tell
6 you, you must abandon your own ideas because you are
7 sworn to accept the law and apply the law exactly as
8 I state it to you now.

9 In every case tried in this court before a
10 jury, the jury becomes the sole and exclusive judges
11 of the facts. A trial judge may not make any
12 comment regarding the facts in this case. Do not
13 think from anything that I have said or done
14 throughout the progress of this trial that I have
15 any opinion about the facts in this case. The law
16 does not allow me to have an opinion about the facts
17 in this case. This is solely a matter for you, the
18 jury, to determine.

19 Ladies and gentlemen, sometimes it gets warm in
20 here, so maybe just take a little stretch break.
21 Thank you.

22 The indictment in this case charges Mr. Thomas
23 with one count of attempted murder. I remind you
24 that the fact that Mr. Thomas was arrested, charged
25 and indicted in this case is not evidence and cannot

1 be considered by you as evidence or any presumption
2 of guilt. The indictment is simply the formal
3 document by which this case is brought into this
4 court.

5 Just as the indictment in this case is not
6 evidence, any terminology or labels used to refer to
7 the individuals involved in this case cannot be
8 considered as evidence. Example is the use of the
9 words victim or defendant are merely formal labels
10 and may not be considered by you as evidence in this
11 case.

12 Mr. Thomas has pled not guilty to this
13 indictment. A person charged with committing a
14 criminal offense in South Carolina is never required
15 to prove himself innocent.

16 I charge you it is an important rule of law
17 that the defendant in a criminal trial, no matter
18 what the seriousness of the charge may be, will
19 always be presumed to be innocent of the charge --
20 of the crime for which the defendant was indicted
21 unless guilt has been proven by evidence satisfying
22 you of that guilt beyond a reasonable doubt. This
23 presumption does not end when you begin your
24 deliberations, but it accompanies the defendant
25 throughout the trial until you reach a verdict of

1 guilt based upon the evidence satisfying you of this
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not mere legal
4 theory. It is not just a legal phrase. It is a
5 substantial right to which every defendant is
6 entitled unless you, the jury, are satisfied from
7 the evidence of the defendant's guilt beyond a
8 reasonable doubt.

9 The State has the burden of proving Mr. Thomas
10 guilty beyond a reasonable doubt. Some of you may
11 have served as jurors before in civil cases where
12 you were told that it is only necessary to prove a
13 fact is more likely true than not true, such as by a
14 greater weight or a preponderance of the evidence.
15 Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt.

17 There are very few things that we know with
18 absolute certainty in this world and, in criminal
19 cases, the law does not require the burden of proof
20 that overcomes every possible doubt. If, based upon
21 your consideration of the evidence, you are firmly
22 convinced that Mr. Thomas is guilty of the crime
23 charged, you must find Mr. Thomas guilty. If, on
24 the other hand, you think there is a real
25 possibility that Mr. Thomas is not guilty, you must

1 give Mr. Thomas the benefit of the doubt and find
2 him not guilty.

3 There are two types of evidence that are
4 generally presented throughout a trial, direct
5 evidence and circumstantial evidence. Direct
6 evidence proves the existence of a fact and does not
7 require deduction. Circumstantial evidence is proof
8 of a chain of facts and circumstances indicating the
9 existence of a fact. Crimes may be proven by
10 circumstantial evidence.

11 The law makes no distinction between the weight
12 or value to be given either direct or circumstantial
13 evidence; however, to the extent the State relies on
14 circumstantial evidence, all of the circumstances
15 must be consistent with each other and when taken
16 together, point conclusively to the guilt of
17 Mr. Thomas beyond a reasonable doubt. If these
18 circumstances merely portray Mr. Thomas' behavior as
19 suspicious, the proof has failed.

20 The State has the burden of proving Mr. Thomas
21 guilty beyond a reasonable doubt. This burden rests
22 with the State regardless of whether the State
23 relies on direct evidence, circumstantial evidence
24 or a combination of the two.

25 Necessarily, you must determine the credibility

1 of the witnesses who have testified in this case.
2 Credibility simply means believability. It becomes
3 your duty as jurors to analyze the facts and
4 determine which evidence convinces you of its truth.

5 In determining the believability of the
6 witnesses who have testified in this case, you may
7 believe one witness over several witnesses or
8 several witnesses over one witness; you may believe
9 a part of the testimony of one witness and reject
10 the remaining part of the testimony of that same
11 witness; you may believe the testimony of a witness
12 in its entirety or reject the testimony of a witness
13 in its entirety; you may consider whether the
14 witness has exhibited to you any interest, bias,
15 prejudice or other motive in this case; and you may
16 also consider the manner and appearance of the
17 witness while he or she was on the witness stand.

18 A witness who has a past criminal record or who
19 has committed a prior bad act is competent to
20 testify during a trial. A past record or a prior
21 bad act does not affect the ability of that witness
22 to testify. The past record or bad act may be
23 considered by you, if at all, in determining the
24 witness' believability. Remember you are the sole
25 judges of the facts in this case and of the

1 believability of any and all of the witnesses.

2 Mr. Thomas has presented evidence of his good
3 reputation and character to show that it would be
4 inconsistent with the defendant committing the
5 crime. The weight that you give that testimony like
6 all other testimony in this case is for you to
7 decide in your good judgment. You may consider
8 testimony of the defendant's good character along
9 with all other evidence in deciding whether or not
10 the defendant committed the crime.

11 You have heard evidence that Mr. Thomas was
12 convicted of a crime other than the one for which he
13 is now on trial. The evidence may be considered by
14 you, if you conclude it is true, only in deciding
15 whether the defendant's testimony is believable and
16 for no other purpose. You must not consider the
17 defendant's prior record as evidence of the
18 defendant's guilt of the charge we are trying today.

19 There has been evidence presented that
20 witnesses have made prior statements which are not
21 consistent with the witnesses' present testimony.
22 You may use this evidence in deciding whether to
23 believe the witness. You may also use evidence of
24 the earlier contradictory statements to determine
25 the truth of those statements. It is up to you to

1 decide whether to believe the earlier statements or
2 to believe the testimony given at trial.

3 If a witness is shown to have knowingly
4 testified untruthfully concerning any material
5 matter, you may consider this in determining whether
6 to trust the witness' testimony as to other matters.
7 You may reject all testimony of that witness or give
8 all or part of the testimony the weight that you
9 think it deserves.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify to opinions or to conclusions.
12 An exception to this rule exists for witnesses we
13 call expert witnesses. A witness who by education
14 and experience has become expert in some art,
15 science, profession or calling may state an opinion
16 as to relevant and material matter in which the
17 witness claims to be an expert and may also state
18 the reasons that that expert gave the opinion. You
19 should consider any expert opinion received in
20 evidence in this case and, like any other evidence,
21 give to it the weight you think it deserves.

22 If you decide the opinion of an expert witness
23 is not based on sufficient education and experience
24 or if you conclude that the reasons given in support
25 of the opinion are not sound or that the opinion is

1 outweighed by other evidence, you may disregard the
2 opinion entirely. An expert witness' testimony is
3 to be given no greater weight than that of other
4 witnesses simply because the witness is an expert.
5 Further, you are not required to accept an expert's
6 opinion even though it is not contradicted.

7 In order to establish criminal liability,
8 criminal intent is required. For example, the
9 mental state required to be proven by the State for
10 a particular crime might be purpose, intent,
11 knowledge, recklessness or criminal negligence.

12 Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is
14 always a matter for the jury to determine from the
15 circumstances surrounding the situation.

16 Because there is no way to prove intent to a
17 mathematical certainty, the law says that you can
18 look to the circumstances surrounding the situation.
19 This is how you would make a determination of
20 whether or not the intent -- the element requiring
21 intent was present. It is not necessary to
22 establish intent by direct and positive evidence,
23 but intent may be established by inference in the
24 same way as any other fact by taking into
25 consideration the acts of the parties and all the

1 facts and circumstances of this case.

2 Criminal intent is a mental state. It is a
3 conscious wrongdoing. It is up to you to determine
4 what the defendant intended to do based upon the
5 circumstances shown to have existed.

6 Mr. Thomas is charged with attempted murder.
7 In order to prove this crime, the State must prove
8 Mr. Thomas attempted to kill another person with
9 malice aforethought either expressed or implied.
10 Malice is hatred, ill will or hostility towards
11 another person. It is the intentional doing of a
12 wrongful act with just cause or excuse and with an
13 intent to inflict an injury or under circumstances
14 that the law will infer an evil intent.

15 Malice aforethought does not require that
16 malice exist for any particular time before the act
17 is committed, but malice must exist in the mind of
18 the defendant just before and at the time that the
19 act is committed; therefore, there must be a
20 combination of the previous evil intent and the act.

21 Malice aforethought may be expressed or
22 inferred. These terms, expressed or inferred, do
23 not mean different types of malice, but merely the
24 manner in which malice may be shown to exist, that
25 is either by direct evidence or by inference from

1 the facts and circumstances which are proved.

2 Expressed malice is shown when a person speaks
3 words which express hatred or ill will for another
4 person or when the person prepared beforehand to do
5 the act which was later accomplished. Malice may be
6 inferred from conduct showing a total disregard for
7 human life.

8 If facts are proved beyond a reasonable doubt
9 sufficient to raise an inference of malice to your
10 satisfaction, this inference would simply be an
11 evidentiary fact to be considered by you, the jury,
12 along with the other evidence in this case and you
13 may give it the weight you think it should receive.

14 A specific intent to kill is not an element of
15 attempted murder, but there must be a general intent
16 to commit serious bodily injury. Intent means
17 intending the result which actually occurs not
18 accidentally or involuntarily. Intent may be shown
19 by acts and conduct of the defendant and other
20 circumstances from which you may naturally and
21 reasonably infer intent.

22 Evidence of the character of the act, the
23 character of the instrument used, the manner in
24 which it was used, the purpose and the resulting
25 wounds may be considered in determining the intent

1 with which the act was committed. Intent may also
2 be inferred when it is demonstrated that the
3 defendant voluntarily and willfully commits an act,
4 the natural tendency of which is to destroy
5 another's life.

6 If you find that the State has failed to prove
7 beyond a reasonable doubt that Mr. Thomas committed
8 attempted murder, you may also then consider whether
9 the State has proved beyond a reasonable doubt that
10 Mr. Thomas committed the following lesser-included
11 charge: A person commits the offense of assault and
12 battery of a high and aggravated nature if the
13 person unlawfully injures another person and great
14 bodily injury to another person results or the act
15 is accomplished by means likely to produce death or
16 great bodily injury. Great bodily injury means
17 bodily injury which causes a substantial risk of
18 death or which causes serious permanent
19 disfigurement or protractive loss or impairment of
20 the functions of a bodily member or organ.

21 If you find that the State has failed to prove
22 beyond a reasonable doubt that Mr. Thomas committed
23 attempted murder or ABHAN, you may consider whether
24 the State has proven beyond a reasonable doubt that
25 Mr. Thomas committed the lesser-included offense of

1 assault and battery first degree. A person commits
2 the offense of assault and battery in the first
3 degree if the person unlawfully injures another
4 person and the act occurred during the commission of
5 a robbery, burglary, kidnapping or theft.

6 A person may also commit the offense of assault
7 and battery in the first degree if the person
8 unlawfully offers or attempts to injure another
9 person with the present ability to do so and the act
10 either is accomplished by means likely to produce
11 death or great bodily injury or occur during the
12 commission of a robbery, burglary, kidnapping or
13 theft. Great bodily injury means bodily injury
14 which causes a substantial risk of death or which
15 causes serious permanent disfigurement or
16 protractive loss or impairment of a function of a
17 bodily member or organ.

18 Mr. Thomas has raised the defense of
19 self-defense. Self-defense is a complete defense,
20 and if it is established, you must find Mr. Thomas
21 not guilty.

22 The State has the burden of disproving
23 self-defense by proof beyond a reasonable doubt. If
24 you have a reasonable doubt of the defendant's guilt
25 after considering all the evidence, including the

1 evidence of self-defense, then you must find the
2 defendant not guilty. On the other hand, if you
3 have no reasonable doubt of the defendant's guilt
4 after considering all of the evidence, including the
5 evidence of self-defense, then you must find the
6 defendant guilty.

7 The following elements are required to
8 establish self-defense: First, the defendant must
9 be without fault in bringing on the difficulty. If
10 the defendant's conduct was the type which was
11 reasonably calculated to and did provoke a deadly
12 assault, the defendant would be at fault in bringing
13 on the difficulty and would not be entitled to an
14 acquittal based on self-defense.

15 The second element of self-defense is that the
16 defendant was actually in imminent danger of death
17 or serious bodily injury or that the defendant
18 actually believed he was in imminent danger of death
19 or serious bodily injury. If the defendant was
20 actually in imminent danger, it must be shown that
21 the circumstances would have warranted a person of
22 ordinary firmness and courage to strike the fatal
23 blow to prevent death or serious bodily injury. If
24 the defendant believed he was in imminent danger of
25 death or serious bodily injury, it must be shown

1 that a reasonably prudent person of ordinary
2 firmness and courage would have had the same belief.

3 In deciding whether the defendant was actually
4 or believed he was in imminent danger of death or
5 serious bodily injury, you should consider all the
6 facts and circumstances surrounding the crime
7 including the physical condition and the
8 characteristics of the defendant and the victim.

9 The defendant does not have to show that he was
10 actually in danger. It is enough if the defendant
11 believed he was in imminent danger and a reasonably
12 prudent person of ordinary firmness and courage
13 would have had the same belief. The defendant has
14 the right to act on appearances even though the
15 defendant's beliefs may have been mistaken.

16 It is for you to decide whether the defendant's
17 fear of immediate danger of death or serious bodily
18 injury was reasonable and would have been felt by an
19 ordinary person in the same situations.

20 Words accompanied by hostile acts may,
21 depending upon the circumstances, establish
22 self-defense. Evidence of prior difficulty between
23 the victim and the defendant may be considered in
24 deciding whether a threat existed, whether the
25 defendant had a reason to believe a threat existed

1 and how serious the threat was. The relative sizes,
2 age and weights of the defendant and the victim may
3 be considered in deciding the apparent or actual
4 need for force in self-defense and the amount of
5 force needed.

6 The reputation of the victim as a violent
7 person may be considered in deciding whether there
8 was a need for force, whether the defendant had
9 reason to believe there was a need for force and
10 whether deadly force was reasonably necessary.
11 Prior instances of violence by the victim may be
12 considered in deciding whether the defendant
13 actually believed he was in imminent danger of death
14 or serious bodily injury or was actually in imminent
15 danger. The intoxication of the victim may be
16 considered in deciding whether the defendant's fear
17 of death or bodily harm was reasonable.

18 The final element of self-defense is that the
19 defendant had no other probable way to avoid the
20 danger of death or serious bodily injury other than
21 to act as the defendant did in this particular
22 instance. A person cannot be required to make an
23 exact calculation as to the degree or amount of
24 force which may be needed to avoid death or serious
25 bodily harm. Therefore, in self-defense, the

1 defendant has the right to use the force needed to
2 avoid death or serious bodily harm.

3 The force used in self-defense does not have to
4 be limited to the degree or amount of force used by
5 the victim. The defendant has a right to use so
6 much force as appeared to be necessary for complete
7 self-protection in which a person of ordinary reason
8 and firmness would have believed to be needed to
9 prevent death or serious bodily harm.

10 Ladies and gentlemen, I'm going to go over the
11 verdict form now with you. Mr. Foreman, it is your
12 responsibility to complete this verdict form.
13 Please remember there's absolutely no significance
14 in the way that I read the things that are on the
15 paper. It's simply I have to put something first on
16 the paper.

17 In the Court of General Sessions for the Ninth
18 Judicial Circuit, case number 2014-GS-08-0059, State
19 of South Carolina, County of Berkeley versus John
20 Arthur Thomas, we, the jury, find the defendant,
21 John Arthur Thomas, not guilty, or we, the jury,
22 find the defendant guilty of attempted murder, or
23 we, the jury, find the defendant guilty of assault
24 and battery of a high and aggravated nature, or we,
25 the jury, find the defendant guilty of assault and

1 battery in the first degree.

2 Mr. Foreman, this must be a unanimous decision
3 meaning all 12 of you must agree on this verdict.
4 Once you have reached a unanimous decision, you will
5 sign the verdict form, date it and indicate to the
6 bailiff by knocking on the jury room door that you
7 have reached your unanimous decision.

8 To my two alternates, I need you to remain with
9 us. We will place you in -- the two of you in a
10 separate room until the first 12 have indicated that
11 they can begin their deliberations and, at that
12 point, then I will come and release you.

13 To my first 12, is there any member of the jury
14 panel, for whatever reason, feel that you would be
15 unable to complete your deliberations at this time?
16 If you feel that you would be unable to complete
17 your deliberations, please stand.

18 Thank you. All 12 jurors have indicated that
19 they are able to complete the deliberations.

20 To all 14 of you, this is the last time I will
21 say this to you, do not begin your deliberations, do
22 not discuss this case amongst yourselves. Please
23 take all your belongings, including your note pads
24 with you. And we will be gathering the verdict form
25 and the exhibits, and once we have done that, then

1 the bailiffs will indicate that you may begin your
2 deliberations.

3 Please rise for the jury.

4 (The jury retires to the jury room.)

5 **THE COURT:** Any motions or matters pertaining
6 to the charge as read?

7 **MR. PATTERSON:** None from the State, Your
8 Honor.

9 **THE COURT:** Pertaining to the charge as read?

10 **MR. SHELTON:** As read, no, but just the same
11 objections as to citizen's arrest, accident, assault
12 and battery second and assault and battery third.

13 **THE COURT:** All right. And, Mr. Shelton, do
14 you wish to place anything on the record concerning
15 the slide about malice, the inference of malice?

16 **MR. SHELTON:** Yes. Thank you, Your Honor. The
17 slide did indicate that malice could be inferred
18 from the use of a dangerous weapon and that would
19 not apply in this case as to State v. Belcher. And
20 so we do feel that it was prejudicial to the jury,
21 obviously Your Honor took that down or asked them to
22 take that down, but we do feel like they saw it and
23 it was right there in front of the screen where they
24 read it and were able to read it, Your Honor.
25 Request a curative instruction as to cannot be --

1 malice cannot be inferred from the use of a
2 dangerous weapon.

3 **THE COURT:** I instructed -- once I saw the
4 slide, I instructed the jury, and had y'all approach
5 and had the slide removed, instructed the jury that
6 I would instruct them on the law applicable to this
7 case. Are you asking for any further curative
8 instruction, Mr. Shelton?

9 **MR. SHELTON:** Just that malice cannot be
10 inferred in this case from the use of a deadly
11 weapon.

12 **THE COURT:** Are you asking me to bring the jury
13 back in and give them that one instruction and then
14 tell them to begin their deliberations?

15 **MR. SHELTON:** Yes, Your Honor.

16 **THE COURT:** All right. At this time, I am not
17 going to do that, but I just wanted to have it
18 placed on the record. I believe that for the very
19 short time that it was up on the screen, there was
20 nothing that distinguished that line from any of the
21 others, and that giving the curative instruction and
22 giving the complete and accurate instruction on the
23 law under the self-defense Belcher, I think that the
24 record is thoroughly protected.

25 All right. Anything further?

1 **MR. SHELTON:** No. Thank you, Your Honor.

2 **THE COURT:** Anything further?

3 **MR. PATTERSON:** Nothing, Your Honor.

4 **THE COURT:** All right. We'll be at ease. Just
5 make sure that everything's -- y'all have already
6 checked the verdict form and are in agreement with
7 that, with the understanding, Mr. Shelton, you're
8 objecting that there's not more lesser includeds, I
9 understand that, but to the form of the verdict
10 form. And, at this time, we will be taking
11 Mr. Thomas into custody awaiting the verdict.

12 And, Mr. Thomas, that is just a policy that I
13 do. You have been appropriate throughout the trial
14 and have appeared, but this is just -- we've reached
15 the stage in the trial where I will place you in
16 custody awaiting the verdict. Thank you.

17 (The jury commences its deliberations at
18 11:12 A.M.)

19 (A recess transpired.)

20 **THE COURT:** All right. We have a verdict.
21 Anything from the State?

22 **MR. PATTERSON:** Nothing from the State, Your
23 Honor.

24 **MR. SHELTON:** Nothing from the defense.

25 **THE COURT:** All right. Let's bring in the

1 jury.

2 **MR. PATTERSON:** Your Honor, I don't think our
3 victim is back from lunch, just for purposes of if
4 there is a sentence.

5 **THE COURT:** All right.

6 (The jury returns to open court to report
7 its verdict at 2:01 P.M.)

8 **THE COURT:** I understand that you have reached
9 a verdict. If you'll please fold the verdict form,
10 hand it to the bailiffs and they will -- I need to
11 review and make sure that the verdict is in proper
12 order. Thank you.

13 (The bailiff hands the verdict to the
14 Judge.)

15 **THE COURT:** Please stand.

16 VERDICT OF THE JURY

17 **THE CLERK:** County of Berkeley, State of South
18 Carolina versus John Arthur Thomas, indictment
19 number 2014-GS-08-0059, we, the jury, find the
20 defendant, John Arthur Thomas, guilty of assault and
21 battery of a high and aggravated nature. And it was
22 signed by the Foreperson.

23 Ladies and gentlemen of the jury, if I've
24 accurately published your verdict, please indicate
25 by raising your right hand at this time.

1 (All jurors so indicate.)

2 **THE COURT:** Thank you.

3 Anything further required of the jury from the
4 defendant?

5 **MR. SHELTON:** Yes. Your Honor, we request that
6 the jury be polled.

7 **THE COURT:** All right. Please poll using jury
8 numbers.

9 **THE CLERK:** Juror number 82, is this your
10 verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Is it still your verdict?

13 **JUROR:** Yes, ma'am.

14 **THE CLERK:** Juror number 81, is this your
15 verdict?

16 **JUROR:** Yes, ma'am.

17 **THE CLERK:** Is it still your verdict?

18 **JUROR:** Yes, ma'am.

19 **THE CLERK:** Juror 84, is this your verdict?

20 **JUROR:** Yes, ma'am.

21 **THE CLERK:** Is it still your verdict?

22 **JUROR:** Yes, ma'am.

23 **THE CLERK:** Juror 138, is this your verdict?

24 **JUROR:** Yes, ma'am.

25 **THE CLERK:** Is it still your verdict?

1 JUROR: Yes, ma'am.

2 THE CLERK: Juror 14, is this your verdict?

3 JUROR: Yes, ma'am.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: Juror 120, is this your verdict?

7 JUROR: Yes, ma'am.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes, ma'am.

10 THE CLERK: Juror 139, is this your verdict?

11 JUROR: Yes, it is.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes, it is.

14 THE CLERK: Juror 17, is this your verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE CLERK: Juror 58, is this your verdict?

19 JUROR: Yes, ma'am.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Juror 30, is this your verdict?

23 JUROR: Yes, ma'am.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 **THE CLERK:** Juror 50, is this your verdict?

2 **JUROR:** Yes, ma'am.

3 **THE CLERK:** Is it still your verdict?

4 **JUROR:** Yes, ma'am.

5 **THE CLERK:** And, juror 176, is this your
6 verdict?

7 **JUROR:** Yes, ma'am.

8 **THE CLERK:** Is it still your verdict?

9 **JUROR:** Yes, ma'am.

10 **THE CLERK:** Your Honor, I polled the jury and
11 the verdict stands.

12 **THE COURT:** Thank you.

13 Anything further?

14 **MR. SHELTON:** Not from the jury, Your Honor.

15 **MR. PATTERSON:** Nothing further from the State,
16 Your Honor.

17 **THE COURT:** Ladies and gentlemen, this
18 completes your service to this case. It also
19 completes your service for the week. If you would,
20 please, return to your jury room. I will be in
21 there in just a few moments to personally thank you
22 for your service to Berkeley County.

23 Please rise for the jury.

24 (The jury was excused.)

25 **THE COURT:** We're outside the presence of the

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

FRANKLIN ALEX MYERS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Myers, where are you employed?

A. South Carolina Department of Probation, Parole,
and Pardon Services.

Q. How long have you been with them?

A. Almost ten years.

Q. And in your capacity, you are trained to do
pre-sentence reports?

A. I would say initially, yes.

Q. So it's been a while?

A. It has been a while, yes, ma'am.

Q. And how many reports, pre-sentence reports,
would you say you've done?

A. This will be my second pre-sentence report.

Q. In the ten years?

A. That's correct.

Q. And do you remember when your last one was?

A. May of 2005.

Q. So these are a pretty rare bird?

A. For me, yes.

Q. Well, for me, too, and that's one of the reasons

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 I wanted to ask you questions. I'm certainly familiar
2 with them in federal court, but in state court we don't
3 use them quite as much. Are you familiar with the federal
4 court system and how they do their pre-sentence report?

5 A. I am not.

6 Q. Well, one of my first questions was about the
7 source of your information. In the facts that you set out
8 starting on page 3 of your report, those, I take it, were
9 lifted directly from the incident report?

10 A. That is correct.

11 Q. And, in fact, they were pretty much cut and
12 pasted; right?

13 A. With some modifications.

14 Q. Even on page 4 you could see where it says, this
15 officer took photos of blood on the door and on the floor
16 behind blah, blah, blah. You didn't do that?

17 A. That's correct.

18 Q. So you were just lifting from the incident
19 report?

20 A. Right.

21 Q. Did you -- well, did you attend the trial --

22 A. No.

23 Q. -- in this case?

24 A. I did not.

25 Q. Did you have an opportunity to review any of the

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 trial testimony?

2 A. I did not.

3 Q. So you don't know how the trial testimony
4 differed from what was initially reported at the scene?

5 A. I do not.

6 Q. But you would agree that oftentimes in criminal
7 investigations, officers learn more after the event than
8 they have there at the scene?

9 A. I would agree with that, yes.

10 Q. And as far as the source for the defendant's
11 statement of the events, did that come from an interview
12 recently with the defendant?

13 A. It did.

14 Q. And where was that interview conducted?

15 A. At the Hill-Finklea Detention Center.

16 Q. And you would not have had an opportunity to
17 compare what the defendant told you at the detention
18 center with the way he testified at trial; is that --

19 A. No, I would not.

20 Q. And you were aware that the jury, however, heard
21 from the defendant? He actually testified in the trial.

22 A. Yes.

23 Q. And the jury rejected his testimony?

24 A. Apparently, yes.

25 Q. Now, in fashioning your recommendations for the

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 sentence in this case, were you aware of the defendant's
2 prior GPS monitoring by his employee -- his employer?

3 A. Yes.

4 Q. And did that have any effect on your
5 recommendation, the fact that he had been on some
6 sort of GPS monitoring?

7 A. No.

8 Q. Do you know what the parameters of that
9 monitoring were?

10 A. For that particular monitoring, no.

11 Q. Now, you recommended that the defendant receive
12 mental health counseling and anger management. Why was
13 that?

14 A. Although I'm not qualified to make a diagnosis
15 for mental problems, in my experience as a probation
16 officer it appeared as though he may benefit from some
17 sort of mental counseling or an assessment by mental
18 counseling.

19 Q. And how about the anger management portion?

20 A. From his own description of the offense and the
21 events, I figured that the -- a counselor or some other
22 expert could assess him to determine whether he needed
23 anger management.

24 Q. So you did not make a determination that he, in
25 fact, needed it? Or did you?

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 A. No. I recommended that a qualified expert
2 determine whether or not he needs anger management.

3 Q. In your report it says: while under
4 supervision, he received mental health counseling and
5 anger management counseling. That's a little different
6 than him being required to be assessed and someone else
7 making that determination, isn't it?

8 A. Well, to someone outside the agency, yes. But
9 to someone inside the agency, it's when you say -- when
10 you submit someone to counseling, that could mean a number
11 of things. It could mean just to be determined whether
12 they need it, or actually complete a program.

13 Q. And when you say someone outside, I mean, I'm
14 outside of probation.

15 A. Right.

16 Q. I would have thought that meant counseling, and
17 maybe the Court would have thought that that was part of
18 your recommendation. But you're saying now it's for
19 assessment?

20 A. Correct. I'm not qualified to determine whether
21 someone needs anger management.

22 Q. And you said you based that on the facts
23 surround the offense and --

24 A. His own description --

25 Q. -- the things that the defendant --

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 A. -- of the offense.

2 Q. Now, when you were preparing your report, did
3 you have an opportunity to review the video from the scene
4 of the crime?

5 A. Actually, yes.

6 Q. And where did you see that?

7 A. I actually saw it from a coworker.

8 Q. Tell me more about that.

9 A. He showed me a video of --

10 Q. Who? Who showed it to you?

11 A. Agent Powell.

12 Q. And do you know where he received --

13 A. I do not.

14 Q. -- the video?

15 Do you know if the video was of the entire
16 incident?

17 A. I do not.

18 Q. Can you tell the Court about how long the video
19 that you watched lasted? Was it seconds, minutes?

20 A. Maybe thirty seconds.

21 Q. Do you remember which view point or what
22 perspectives the camera was shot from?

23 A. It appeared the video was some sort of security
24 camera that was in the corner of a room and it was facing
25 the part of a bar.

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 Q. So in that perspective, you could see the
2 defendant approaching from a door and approaching the
3 victim from beside or from behind?

4 A. Yes.

5 Q. And then the stabbing motion?

6 A. Yes.

7 Q. And then did you see the other video that was
8 taken from the perspective from behind the pool table?

9 A. I did not.

10 Q. So in your review of the video you could not see
11 that after the initial confrontation, around and near the
12 bar scene, that the defendants didn't roll around -- that
13 the defendant and the victim did not roll around on the
14 ground?

15 A. The video didn't last as long for me to
16 determine that.

17 Q. So you don't know whether or not that part is
18 accurate?

19 A. Correct.

20 Q. So you don't know whether or not that part of
21 what the defendant told you is true?

22 A. No.

23 Q. In your view of the video, was it clear to you
24 that there was a lack of provocation on the part of the
25 victim?

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 A. No. The video was very short. I couldn't see
2 what happened before the video started or what happened
3 afterwards. I couldn't make an opinion whether or not it
4 was provoked or not.

5 Q. Did you make an attempt to get a copy of the
6 full video?

7 A. No.

8 Q. Would you agree that that would have been maybe
9 a better thing to do to have a fuller picture of what
10 happened?

11 A. No.

12 Q. You don't think video would be better than
13 someone's recollection?

14 A. Well, I'm sure that a video would be better
15 than someone's recollection. However, I do not believe my
16 view of the entire video would have been relevant to the
17 pre-sentence investigation, no.

18 Q. So the lack of provocation on the part of the
19 victim wouldn't affect your opinion as to what should
20 happen to this defendant or what sort of sentence he
21 should plea --

22 A. No.

23 Q. -- should have? Really?

24 A. Yes.

25 Q. Would premeditation on the part of the defendant

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 have any effect on your recommendation?

2 A. No.

3 Q. You don't consider how well thought out a crime
4 is, or how long a person has been thinking about a crime,
5 in determining what sort of sentence they receive?

6 A. It depends on what the policy says. I go by a
7 policy that the department provides, and it didn't mention
8 anything about addressing a full video or provocation or
9 premeditation.

10 Q. Do you have a copy of that policy?

11 A. Not on me, but I can tell you the policy number.

12 Q. Okay. What's that?

13 A. It is 501.

14 Q. One second. 501.

15 A. That's it.

16 Q. And where is that located?

17 A. It's located on our servers. We could easily
18 pull that for you.

19 Q. That might be something useful for us and the
20 Court to have just moving forward so that we'll know more
21 about how these reports are prepared.

22 In your recommendation, you note the factors
23 that were considered, and one of the factors you mention
24 is the serious bodily injury to the victim. In sort of a
25 correlation to that, did you also consider the seriousness

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 of the attack itself?

2 A. Yes.

3 Q. And so whether or not the victim was injured
4 badly or not badly, the seriousness of the attack would
5 have an effect on your opinion; is that right?

6 A. Or the seriousness of the injury would effect.

7 Q. Right. But would the seriousness of the attack?

8 A. [No response]

9 Q. In other words, you can have a situation where
10 someone came into this room with a shotgun or an Uzi or
11 something and fired hundred of shots into the gallery and
12 nobody got hit or nobody got hurt. But that would still
13 be a serious attack; right?

14 A. In my personal opinion, yes.

15 Q. And even though there were no serious injuries,
16 the attack itself would be considered serious in your
17 mind?

18 A. I would agree with that, yes.

19 Q. So in this situation, you note the seriousness
20 of the bodily injury. And did you consider that a serious
21 injury? The victim's injury.

22 A. Yes.

23 Q. And so what I'm asking in correlation to that,
24 would you consider the attack a serious attack?

25 A. I don't know. I didn't get to see all the

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 evidence, and I only have an incident report and the
2 defendant's version of the event, so I don't think I could
3 make a qualified opinion on that.

4 Q. And did you consider the danger that the
5 defendant put others in during this attack, the other
6 patrons at the bar, the employees at the bar, things like
7 that? Did that weigh into your sentencing recommendation?

8 A. No.

9 Q. What kind of effect does a defendant's
10 acceptance of responsibility have on your recommendation?

11 A. I do not recall anything in the policy that
12 mentions that. There may be something, I just don't
13 remember right now.

14 Q. Do you remember if you considered acceptance of
15 responsibility?

16 A. No.

17 Q. You did not?

18 A. I did not.

19 Q. Did you consider the lack of acceptance of
20 responsibility?

21 A. No.

22 Q. Would you agree with me that in the road to
23 rehabilitation, oftentimes a person's acceptance of
24 responsibility is important in determining how serious
25 they are about getting better or being rehabilitated or

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 changing their ways, their criminal ways?

2 A. Yes.

3 Q. But that was not something that you considered?

4 A. Correct.

5 Q. In your policies, which, again, I've told you I'm
6 not familiar with, is there any direction from your policy
7 or from Columbia or from your superiors for you to
8 consider overcrowding in the department of corrections?

9 A. No.

10 Q. When you have someone who is on probation is
11 there any effort, as a result of the overcrowding
12 situation we have in this state, to do as much as you can
13 and give as much leeway as you can to defendants so that
14 you aren't putting them into the department of
15 corrections?

16 A. Could you rephrase that?

17 Q. I'll try. When you have someone on monitoring
18 for -- not electronic monitor, but just probationary type
19 monitoring or parole type situations, and you're looking
20 at violations, is there any instruction from Columbia or
21 superiors or anyone that requires you to give extra
22 leeway, maybe even more leeway than you would like to, in
23 determining whether or not someone should go back to the
24 department of corrections because there is such an
25 overcrowding issue?

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 A. There's been no mention of overcrowding.

2 Q. No one has ever discussed with you the prison
3 overcrowding situation that we have here in South
4 Carolina?

5 A. Not in relation to staffing violations or
6 warrants, no.

7 Q. In what context has that been discussed with
8 you?

9 A. Well, as an employee of probation and parole, I
10 mean, it's something that's discussed --

11 Q. That you're aware of.

12 A. -- all the time.

13 Q. So it hasn't been a factor in monitoring or
14 supervision situations. Is it a factor in
15 recommendations?

16 A. I'm not sure what you're asking.

17 Q. Is prison overcrowding a factor in your making
18 recommendations as to how someone should be sentenced?

19 A. No.

20 Q. Now, a defendant's criminal history, how does
21 that play into your recommendations?

22 A. It doesn't. It doesn't. The criminal history
23 does not. The factors I considered were the max sentence
24 he could receive under the charge and the other two
25 factors listed on the recommendation page.

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 Q. So you don't -- the fact that someone has a
2 criminal record or not is not something that weighs into
3 your recommendation?

4 A. No.

5 Q. Now, in your role with probation and parole,
6 you're aware generally of some of the sentencing goals or
7 sentencing philosophies that courts and prosecutors and
8 probation agents use in trying to come up with an
9 appropriate sentence, are you not?

10 A. Yes.

11 Q. Things like punishment or retribution, you would
12 agree that that's an appropriate thing to consider? for
13 courts to consider?

14 A. Yes.

15 Q. Simple punishment, retribution, has nothing
16 to do with a victim or a defendant, but just the crime
17 itself?

18 A. Correct.

19 Q. You would agree that's appropriate?

20 A. In some cases, yes.

21 Q. Well, in a stabbing case, that would be a
22 factor; right?

23 A. I don't think I'm qualified to make that
24 opinion. I don't know.

25 Q. Rehabilitation, that would be a factor whether

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 or not someone could be rehabilitated? That would be
2 something you would look to?

3 A. I would not personally -- I do not -- I don't
4 make policy decisions like that, so I really don't know.

5 Q. Well, how about do you consider a deterrent
6 effect in fashioning a sentencing recommendation?

7 A. In my capacity in preparing these investigation
8 reports, no.

9 Q. And whether or not a victim is restored or made
10 whole as a result of the sentence, that's not something
11 you consider either?

12 A. I don't believe that's in the policy. It may
13 be. I can't remember.

14 Q. But you didn't in this situation?

15 A. I don't -- I can't remember if I did.

16 Q. Okay.

17 A. I would have to look -- if I can look at the --
18 in the -- once you look at the policy, you'll see how
19 relevant it is. But I can't really remember. I would
20 have to look at it.

21 Q. And those things actually might be more of a
22 court function than your function anyway?

23 A. Yes.

24 MS. WILSON: Beg the Court's indulgence.

25 [Whereupon, Ms. Wilson and Mr. Poulos confer]

Franklin Alex Myers
Direct Examination by Ms. Wilson
March 23, 2015

1 MS. WILSON: That's all I have, Judge.

2 THE COURT: Mr. Shelton? Mr. Groeber?

3 MR. GROEBER: Thank you. Just a few questions.

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Franklin Alex Myers
Cross-Examination by Mr. Groeber
March 23, 2015

CROSS-EXAMINATION

1
2 BY MR. GROEBER:

3 Q. The solicitor talked to you briefly about the
4 defendant's statement that he gave to you; right?

5 A. Uh-huh.

6 Q. And you were unable to be here during the trial
7 so you didn't see his testimony?

8 A. That's correct.

9 Q. Were you able to view his statement that he gave
10 to the police right after his arrest?

11 A. No.

12 Q. So you wouldn't know if those three things were
13 fairly consistent or not?

14 A. No.

15 Q. The solicitor also talked to you about prison
16 overcrowding and that that was a problem in our state.
17 You would agree with that; right?

18 A. That there's an overcrowding problem?

19 Q. Yes.

20 A. I've read that. People say that. I don't know
21 if there is or not.

22 Q. Would you think it's fair to say that probation
23 agents monitor a significant number of people?

24 A. Yes.

25 Q. Individually, they have to monitor a certain

Franklin Alex Myers
Cross-Examination by Mr. Groeber
March 23, 2015

1 number. Do you know the number in Berkeley County each
2 agent has to monitor, about?

3 A. The average number is probably around one sixty.

4 Q. And if the Court were inclined to accept
5 probation's recommendation, that would add another person
6 to their -- to being monitored in Berkeley County?

7 A. That's correct.

8 Q. Were you -- I want to talk to you briefly about
9 a few people that you didn't -- also didn't speak with.
10 You didn't speak with any of the witnesses that were there
11 that night?

12 A. That's correct.

13 Q. Except for the victim and --

14 A. That's correct.

15 Q. So you weren't able to ask them what they
16 thought about these two individuals --

17 A. No.

18 Q. -- and what maybe an appropriate sentence would
19 be?

20 A. Correct.

21 Q. And so you also weren't able to talk -- or you
22 didn't talk with any family, friends or neighbors of
23 either of the two people?

24 A. Correct. I did not speak with any of them, no.

25 MR. GROEBER: One moment, Your Honor.

Franklin Alex Myers
Cross-Examination by Mr. Groeber
March 23, 2015

1 [Whereupon, Mr. Groeber and Mr. Shelton confer]

2 MR. SHELTON: No further questions. Thank you.

3 THE COURT: Ms. Wilson, any follow up?

4 MS. WILSON: No, ma'am.

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

6 [Whereupon, Mr. Myers is excused and exits the
7 witness stand]

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State vs. John Thomas
Proceedings
March 23, 2015

1 would not fall within that, but I'll be more than
2 happy to take a look at the matrix.

3 MS. WILSON: Well, the reason why I asked for it
4 is because of that. And then later it says for
5 offenses that carry more than fifteen years, which
6 this one does, there is an expectation that the
7 recommendation will include a period of incarceration.

8 THE COURT: Further down under the order?

9 MS. WILSON: Yes, ma'am. On page 5, about
10 halfway down. I can go ahead -- I know that Mr.
11 Poulos wants to address the facts of the case. And
12 you-all were involved in the trial. I was not. So --

13 THE COURT: Mr. Poulos, I'll be happy to hear
14 from you.

15 And we'll take -- depending on when that comes,
16 we'll take a moment for everybody to review that
17 matrix.

18 MR. POULOS: Your Honor, I just wanted to
19 address the Court generally on sentencing and
20 reiterate that our position is that a substantial act
21 of jail sentence is appropriate here.

22 Mr. Thomas stands convicted of a violent offense
23 after a jury trial. Not only statutorily violent, but
24 the act itself was an act of violence. The jury
25 rejected many of his contentions in his testimony. I

State vs. John Thomas
Proceedings
March 23, 2015

1 think his criminal history has been made clear, Your
2 Honor, and includes six convictions: four felony
3 convictions, a prior violent felony conviction within
4 the past ten years. We have our --

5 THE COURT: Which one was that? The --

6 MR. POULOS: That was the manufacturing of meth,
7 Your Honor.

8 The GPS monitoring that was mentioned by defense
9 counsel I think is honestly just simply his employer
10 tracking the location of his cell phone. I don't
11 believe that rises to the level of GPS monitoring to
12 make it relevant --

13 THE COURT: Were there any violations while he
14 was out pretrial?

15 MR. POULOS: No, Your Honor, not that I'm aware
16 of. And I'm not alleging there are. I simply don't
17 think the GPS monitoring of his phone is relevant to
18 the Court's decision.

19 THE COURT: But he was out pretrial; correct?

20 MR. POULOS: Yes, Your Honor.

21 THE COURT: And there was no violation?

22 MR. POULOS: Correct.

23 THE COURT: How long -- when was his release
24 date? How long has he been out?

25 MR. SHELTON: It was very soon after February

State vs. John Thomas
Proceedings
March 23, 2015

1 21st. I don't have that exact date, Your Honor.

2 THE COURT: So a period over a year? Would that
3 be correct?

4 MR. SHELTON: Yes, Your Honor.

5 THE COURT: And clearly you're not -- it doesn't
6 fall into the GPS monitoring that would qualify him
7 under -- pretrial detention that would qualify him for
8 any credit.

9 MS. WILSON: And we don't have that statue or
10 that ordinance in Berkeley County, so even if it did,
11 it wouldn't work.

12 MR. POULOS: And, lastly, Your Honor, I think
13 it's of note that the defendant's statement in the
14 report talks about falling to the ground -- falling to
15 the ground. I think that's just been completely been
16 made to be untrue, Your Honor, by the video. You've
17 seen the video. The jury saw the video. In that
18 contention, it simply is false.

19 And so for those reasons's Your Honor, we are
20 requesting substantial active jail time.

21 THE COURT: Mr. Shelton, I'll be happy to hear
22 from you and then we'll -- or we can take a break now
23 to allow everyone to -- why don't we do that. Let's
24 go ahead and take a break.

25 MS. WILSON: I just need five minutes.

State vs. John Thomas
Proceedings
March 23, 2015

1 THE COURT: And I'll review -- I'll mark the
2 matrix as Court's 2.

3 And then, Mr. Fashion, I'm going to need a whole
4 set. Because it's going to be made part of the
5 record, I'm going to need a whole different set of
6 Form 501 and the matrix for my personal use.

7 MR. FASHION: Yes, ma'am.

8 THE COURT: Thank you.

9 [Off the record momentarily]

10 THE COURT: All right. Let's take about ten
11 minutes.

12 [Whereupon, a recess is taken from 10:27 a.m. to
13 11:51 a.m.]

14 THE COURT: Ms. Wilson --

15 MS. WILSON: Thank you, Your Honor.

16 THE COURT: -- I had given you some opportunity
17 to go over now Court's 1 and 2. And so if there is
18 anything additional you wish to place on the record?

19 MS. WILSON: I think it's important -- Your
20 Honor, the reason I got involved in this -- as you
21 know, I wasn't involved in the trial -- is because
22 my prosecutors who were involved were alarmed by the
23 pre-sentence investigation and recommendation. And I
24 think it's been quite enlightening to hear the
25 testimony of Agent Myers here today. And I appreciate

State vs. John Thomas
Proceedings
March 23, 2015

1 and applaud his candor in his testimony.

2 It was quite revealing, however, to see the lack
3 of training and the lack of consistency in the way
4 that this report was generated versus the policies and
5 procedures that are in place. And, again, I don't
6 fault the agent himself for that. I think it's
7 probably an institutional problem. I think this is,
8 in all likelihood, a situation that is akin to our
9 crises in GPS monitoring where people didn't quite
10 realize what we have here.

11 The good news is that pre-sentence reports
12 aren't requested that often, and it's evident by the
13 fact that the agent has only done two in his decade-
14 long career. It's even more unusual for one to be
15 done in a trial situation.

16 I think at the end of the day the pre-sentence
17 report itself should be of little to no value to the
18 Court. You presided over the trial. You heard the
19 facts of the case. You've seen the video and have
20 seen how aggravated this case is.

21 One disturbing thing that Agent Myers revealed
22 to me, and I believe defense counsel, as well, was
23 that when he initially prepared his report, he did
24 recommend prison time and a split sentence but that he
25 was instructed to change that.

State vs. John Thomas
Proceedings
March 23, 2015

1 I spoke with Mr. Fashion about that and he
2 informed me that he did instruct the change and one of
3 the reasons was because he felt that the defendant
4 could be supervised effectively. And I understand
5 that. I think that is an important thing for this
6 Court to consider. But the things that apparently
7 were not considered in this report, and routinely
8 aren't considered, especially by defense counsel, is
9 the other goals of sentencing.

10 You know, we tend to focus on the defendant and
11 what's going on with the defendant. And while I do
12 think that's proper to consider, it has almost become
13 politically incorrect to talk about punishment, to
14 talk about retribution, to talk about restoration of
15 the victim, and to talk about those things. And that
16 was, again, evidenced by the fact that the agent
17 didn't see fit to even consider the defendant's
18 criminal history.

19 You have a defendant before you who this is not
20 his first rodeo. And, granted, he hasn't come year
21 after year after year. What he has shown -- although
22 he has done probation successfully, he has shown that
23 it didn't turn his life around. He continued to have
24 violations after being given the benefit of probation
25 and split sentences by courts that have gone before

State vs. John Thomas
Proceedings
March 23, 2015

1 you.

2 We believe it's important that you consider the
3 seriousness of this attack. Again, you saw the video.
4 And whether or not my victim is a good guy, not a good
5 guy, whatever, he's still sitting in a bar enjoying
6 time with his friends when he was approached from the
7 side or behind.

8 This defendant put others in danger. This
9 situation could have easily been a murder. It could
10 have easily have been a situation where others were
11 harmed or seriously hurt. He's just lucky. Our
12 victim is just lucky. We're one millimeter away from
13 a murder case, and I don't know that this defendant
14 should get the benefit from this Court of that when
15 you consider the seriousness of the attack.

16 And I also think it's important to note that
17 even probation and parole, who has recommended a
18 probationary sentence, even in their policy they say
19 it is expected that there will be a sentence of
20 incarceration given.

21 I think one of the things, again, that's
22 important for this Court to look at is the acceptance
23 of responsibility, remorse, and things of that nature.
24 Even in the pre-sentence report where the defendant is
25 allowed to give his recitation of the facts, it's all

State vs. John Thomas
Proceedings
March 23, 2015

1 the victim's fault. You know, that's what it's about.

2 And I understand they have a history. But at
3 that moment in time, in those minutes beforehand, the
4 victim is sitting there innocently. And so I think
5 it's important for you to consider that.

6 I think that retribution is a completely valid
7 sentencing mission. I think that deterrent -- what
8 sort of deterrence is it for a defendant like this to
9 be given probation or even a short sentence from
10 others who would think, I'm going to weigh the risk
11 here, you know, I don't like this guy, this guy's
12 going to be wrong, whatever you might -- whatever
13 scenario you might dream up, for someone to walk into
14 a place and maliciously and provocatively to stab
15 someone and then chase them around a pool table. You
16 saw the video where the victim has a chair trying to
17 keep him away.

18 So I hope that you'll consider all of those
19 things. I hope that you will take note of at least
20 the pre-sentence situation here and share your
21 experience and the information that we've all learned
22 today with our colleagues, because it is -- I think
23 that we all thought that maybe we could take some
24 comfort in pre-sentence investigations, but I think
25 we've seen today that we just can't do that and maybe

State vs. John Thomas
Proceedings
March 23, 2015

1 some things need to be changed within that. I know
2 they are horribly understaffed, and I feel for them
3 because they have a thankless job.

4 I would also note in that regard that law
5 enforcement, although it's required, wasn't asked for
6 their input as to sentencing. Certainly the incident
7 report was considered, but not their import -- not
8 their input as to the sentencing itself.

9 We are asking for active time. We think
10 substantial time is appropriate in this case. We
11 understand that the Court will weigh mitigating
12 factors, like the defendant's age and other things in
13 his criminal history. But we appreciate your
14 indulging us this morning. I think it's been
15 educational for all of us. And we trust you'll give a
16 sentence that's just under these facts.

17 THE COURT: Thank you.

18 Mr. Shelton, I'll be happy to hear from anyone
19 regarding sentencing.

20 MR. SHELTON: Thank you, Your Honor. May it
21 please the Court.

22 Your Honor, you've gotten a lot of information.
23 I know that the State has filed a motion and we've
24 filed a motion in support and I know Your Honor has
25 gotten that.

State vs. John Thomas
Proceedings
March 23, 2015

1 I just wanted to make sure that you have gotten
2 the letters of character of recommendation of the
3 people in the neighborhood and his friends and family.
4 He also has got the letter from his boss, who
5 reiterated some of the things he testified to, and
6 some more things about John and his work and what he
7 has done with them.

8 Your Honor, in addition to that, we would -- I
9 understand Your Honor's position on the monitoring. I
10 think that by statute, this could qualify. There's
11 nothing in the statute that indicates that this type
12 of monitoring could not qualify. He was ordered to
13 house arrest. The monitoring -- you've been provided
14 a report of what they monitored and how they monitored
15 him and that there were no violations.

16 And so, Your Honor --

17 THE COURT: Do you have the copy of the
18 monitoring report?

19 MR. SHELTON: Yes. It was from the Field
20 Services. Mr. Theodore Nesbitt was -- I provided that
21 in the packet, Your Honor.

22 THE COURT: Let me see that.

23 MS. WILSON: Are we talking about to give credit
24 towards a prison sentence?

25 THE COURT: I believe that's what he's asking.

State vs. John Thomas
Proceedings
March 23, 2015

1 MS. WILSON: Your Honor, I believe that the
2 County has to have an active --

3 THE COURT: I'm going to pull the statute up
4 again. Thank you.

5 MS. WILSON: The Home Detention Act is where
6 that would be found, and we don't have that here in
7 Berkeley or Charleston County.

8 MR. SHELTON: As far as my reading of the
9 statute, it doesn't require that the County be the one
10 that monitors, Your Honor.

11 However, even if Your Honor doesn't give him
12 credit for that almost a year that he was out on
13 monitoring, I ask that you take that into
14 consideration with the sentencing. Essentially, he's
15 been monitored for over 502 days now, Your Honor,
16 between being in jail and being on that monitoring
17 with his company.

18 Your Honor, minus the GPS, it would be 143 days
19 counting the 33 days he's been now in jail since the
20 trial.

21 Just briefly on some of the facts as far as what
22 the State has contended that he wasn't taking
23 responsibility. Your Honor, one, with the fall to the
24 ground, it doesn't actually say a fall to the ground.
25 It just says that Mr. Melton fell backwards towards

State vs. John Thomas
Proceedings
March 23, 2015

1 the ground not pulling him towards -- with him.

2 And that was never our contention that he fell
3 to the ground. It was that there was a struggle off
4 to the side and that is when he got cut with the
5 knife. That was our contention at trial. That has
6 not changed. It's been the same since, Your Honor.
7 And so that is not anything different.

8 He did obviously, Your Honor knows, at trial
9 asked for accident as a charge.

10 But, Your Honor, he has taken responsibility.
11 Since he -- the day after this incident, he
12 apologized. He said he was sorry. He told the police
13 about what happened. He did -- he took responsibility
14 for this, Your Honor.

15 And you know through pretrial -- some of the
16 pretrial talks, some of the -- there was no offer in
17 the case. It was attempted murder or not. And the
18 jury did not believe the State in the maliciousness,
19 and so there was no maliciousness, as far as the jury
20 is concerned and so he was -- that's why he was not
21 found guilty of the murder.

22 So, Your Honor, probation has indicated that he
23 is someone that can be supervised. I understand the
24 report. But he is someone that can be supervised. I
25 think this was out of character for John. This is not

State vs. John Thomas
Proceedings
March 23, 2015

1 the type of person that he is. He's said that. He's
2 admitted that. Friends, family, neighbors, everyone
3 that knows him knows that he's not that type of
4 person.

5 On the other hand, the victim is a bad person.
6 He absolutely goes to our theory of what he said to
7 Your Honor that a dog would bite on his master, and he
8 indicated that he is the master in the situation and
9 he still is that. And so it goes on to our theory of
10 the case, Your Honor.

11 But that being said, for John he did wrong.
12 He's here. He took responsibility for it, and we're
13 asking Your Honor to give him the probationary
14 sentence.

15 THE COURT: Statute 24-13-1530 indicates that it
16 could be used as an alternative for low risk,
17 nonviolent if the home detention program is available
18 in our jurisdiction.

19 To my knowledge, there is no alternative in this
20 jurisdiction, so it would not qualify for -- I am not
21 going -- based upon my reading of the statute, I'm not
22 going to give him the additional -- the 143 days will
23 be the calculation.

24 MR. SHELTON: And that's fine, Your Honor.

25 What I was referring to is statute 24-13-40, the

State vs. John Thomas
Proceedings
March 23, 2015

1 calculation of credit for time served. And I think
2 under that reading of the statute you might feel --
3 it's still in your discretion -- but he might be able
4 to get --

5 THE COURT: I just wanted to place that on the
6 record, because it clearly says if it's available in
7 the jurisdiction. And it is not.

8 MR. SHELTON: Thank you, Your Honor.

9 THE COURT: I'll be happy to hear from anybody
10 else.

11 MR. SHELTON: I mean, his boss is here. You
12 heard -- you got a letter from him. His sister is
13 here. His pastor is here. There's a question as to
14 whether they're actually blood related. But he's --
15 that's who he's living with, with his sister and her
16 husband in Goose Creek. She was able to provide a lot
17 of those letters and things from family members. A
18 Lisa, former girlfriend, is here, Your Honor, in
19 support. You saw the letter from Mr. Roady
20 [phonetic]. I don't know -- I don't know if his
21 sister would be able to talk to Your Honor, but
22 they're obviously here supporting him and --

23 THE COURT: I'll be happy to hear from one,
24 if she would like to come forward. Just come forward
25 and --

State vs. John Thomas
Proceedings
March 23, 2015

1 If you will state your full name for the record
2 and please spell your last name.

3 MS. TRENT: Karen Trent. T-R-E-N-T.

4 THE COURT: I'll be happy to hear from you.

5 MS. TRENT: My brother has, ever since this
6 incident, wishes he could take it back. It's been a
7 nightmare. How did it come to this? He has regretted
8 it. We've prayed over it. Being in the wrong place
9 around the wrong people at the wrong time contributed
10 to it. I'm not trying to undermine the Court. I just
11 feel as though everybody is a victim. Everybody all
12 the way around is hurt.

13 My brother has tried hard to get where he is and
14 for that to be took away over -- he's been with me for
15 the last year. He goes to work and home. That's all
16 he does. He sits and prays like this and just wishes
17 this is all over with. I'm extremely nervous. I just
18 cannot believe this whole sequence happened.

19 I just ask that the Court please have mercy upon
20 him, as God does. And I love him. Thank you.

21 THE COURT: Thank you, Ms. Trent.

22 MS. TRENT: Thank you for letting me speak.

23 THE COURT: Thank you.

24 Does your client wish to address the Court?

25 MR. THOMAS: Yes, Your Honor.

State vs. John Thomas
Proceedings
March 23, 2015

1 As I said before, I never intended --

2 THE COURT: Let's place Mr. Thomas under oath.

3 THE CLERK OF COURT: Please raise your right
4 hand.

5 THE COURT: I need to ask you a few questions,
6 as well.

7 THE CLERK OF COURT: Please raise your right
8 hand.

9 [Whereupon, Mr. Thomas is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm the testimony you will give the Court in this
12 matter will be the truth, the whole truth, and nothing
13 but the truth, so help you God]

14 MR. THOMAS: Yes, ma'am, I do.

15 Your Honor, as I said before, I didn't intend to
16 hurt anybody. I felt so bad about it that when I
17 heard that he went in the hospital, I prayed for him.
18 Not that he wasn't hurt for me: to him.

19 And up to this point I've been out for a year.
20 I have not tried to have any contact with him or
21 bother him. On the other hand, he's contacted Lisa,
22 that's in the courtroom, tried to contact her on
23 facebook and he's had -- he's the one initiating
24 contact.

25 I'm not -- don't wish him any ill will. I wish

State vs. John Thomas
Proceedings
March 23, 2015

1 this would never happen, but it did and I'm sorry it
2 did. But I didn't intend for anybody to get hurt. I
3 just wanted my stuff back.

4 THE COURT: Mr. Shelton, anything further?
5 Mr. Groeber?

6 [No response]

7 THE COURT: Mr. Shelton, did you advise your
8 client that this is classified as a violent and a
9 serious offense?

10 MR. SHELTON: Yes, Your Honor.

11 THE COURT: And what that ramification would be,
12 especially since he has a previous violent offense?

13 MR. SHELTON: Yes, Your Honor.

14 THE COURT: And did you also advise your client
15 of his right to appeal the sentence that I'm about to
16 impose here today?

17 MR. SHELTON: Yes, Your Honor.

18 THE COURT: Mr. Thomas, you have the right to
19 appeal this sentence. You did not have the right to
20 appeal it previously because I had not imposed the
21 sentence. You or your attorney must do so within ten
22 days. Do you understand?

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: Mr. Thomas, we've reached the stage
25 where I'm going to impose the sentence upon you. Is

State vs. John Thomas
Proceedings
March 23, 2015

1 there anything further you wish to say to me or to
2 anyone in this courtroom?

3 MR. THOMAS: I want to apologize to Mr. Melton.
4 I never intended to hurt him at all and I wish him no
5 ill will at all.

6 THE COURT: Mr. Melton, I typically do not have
7 the defendant address the victim. And I saw the
8 gestures you were making. And I do that -- some
9 victims like that, some do not, and so this is the way
10 that I control and run my courtroom. And I understand
11 why you may want him to look you in the eyes, and I do
12 understand that, but sometimes that leads to further
13 issues. So that's why he's not turning around.

14 MR. MELTON: Okay.

15 THE COURT: And so I just wanted to address that
16 to you.

17 MR. MELTON: And I thank you, Your Honor. I
18 thank you for that.

19 THE COURT: Thank you.

20 Anything further?

21 MR. THOMAS: No, ma'am.

22 THE COURT: Mr. Melton, I wish to address you.
23 First of all, thank you. You have been here every
24 time. And I know that you have much going on and this
25 has been impactful and you have had to travel here.

State vs. John Thomas
Proceedings
March 23, 2015

1 So I thank you for your patience.

2 As you can see, we are very busy here in
3 Berkeley County when we run court, and I want you to
4 understand that it's not that I don't think this case
5 is important. On the contrary. I actually spent many
6 hours contemplating this case. And I asked for the
7 pre-sentence investigation because I just frankly do
8 not understand what was happening that day in the bar.

9 This is -- based upon all accounts, this is
10 outside of Mr. Thomas' character, outside of the
11 issues that you may or may not have been having
12 throughout your friendship. And so this has troubled
13 me. And, ordinarily, behavior is in line. People
14 consistently act the same way and you can look at past
15 patterns to determine future behavior. And so that's
16 why I wanted a pre-sentence investigation which, in
17 and of itself, unrelated to this case, has opened up a
18 whole different set of issues. So I appreciate
19 everyone's patience.

20 Sentencing, as everyone in this courtroom knows,
21 is the hardest part of my job. The easy thing to do
22 is always to impose the maximum sentence. That's
23 the easy thing to do. It requires no thought and
24 nobody -- everybody feels then -- the victim may feel
25 that justice is done. And as I've said several times,

State vs. John Thomas
Proceedings
March 23, 2015

1 it depends on where you're sitting, on which side of
2 the bench you're sitting, on which side of the isle
3 you're sitting, as to how you perceive whether or not
4 justice was done.

5 I do feel that justice has been done in this
6 case. Mr. Poulos and Ms. Wilson -- and it was Mr.
7 Patterson before he left the office -- zealously
8 represented and presented a case and tried the case to
9 a jury. I believe that the victim's rights were
10 adequately protected. So on that front, I do believe
11 justice has been done.

12 Mr. Thomas, justice has been done in your case.
13 You have had two very zealous advocates representing
14 you throughout and have gone above and beyond in
15 representation.

16 So what's going to happen here today is I'm
17 going to impose a sentence and one or both of you are
18 going to feel that justice is not done because you're
19 not going to agree with what the sentence is. But I
20 want to assure you that I didn't come in here in
21 February and give no further thought to your case and
22 I didn't come in here today -- I have seriously
23 considered what the sentence would be.

24 I know, Mr. Thomas, Mr. Shelton thinks the world
25 of you and has -- and I know that this has troubled

State vs. John Thomas
Proceedings
March 23, 2015

1 him and weighed upon him. And I know that Mr. Poulos
2 likewise has indicated to me that this was a very
3 tragic and violent offense that -- Mr. Melton, in and
4 of itself, has occurred.

5 It's unfortunate because I heard the testimony
6 and I read between the lines. Y'all were at one point
7 very close. And even today you mentioned that your
8 mom cooked, Mr. Melton, and that was very touching.
9 And so I think that not only physically, but
10 emotionally, on many levels this has been difficult
11 for everyone involved.

12 But at the end of the day, Mr. Thomas, you went
13 into that bar with a knife. And I watched that video.
14 On more than one occasion I watched that video, and I
15 think it was -- it was troubling. And I think it was
16 troubling to everyone sitting in here watching that.
17 And that is why the jury found you guilty of assault
18 and battery of a high and aggravated nature and that's
19 why I must sentence you accordingly.

20 I have taken into account even all the issues
21 with the pre-sentence investigation. I have taken
22 into account all of the good things that you have done
23 while you were out on bond.

24 It's the order of the Court on indictment 2014-
25 GS-08-59 that you be committed to the State Department

State vs. John Thomas
Proceedings
March 23, 2015

1 of Corrections for a term of ten years provided upon
2 the service of four years the balance is suspended
3 with probation for three years. Give you credit for
4 143 days. There is to be no contact with the victim.
5 Substance abuse counseling, random drug and alcohol
6 testing, anger management counseling.

7 Good luck to you, sir.

8 Thank you. Good luck to you, Mr. Melton.

9 MR. MELTON: Thank you.

10 THE COURT: Thank you.

11 [Whereupon, Court's Exhibit Number 2 is marked
12 by the court reporter]

13 [SENTENCING CONCLUDES AT 12:16 P.M.]

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DEJ2013-11-02748

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2013-11050454

ARREST WARRANT NUMBER

2013A0810401499

DATE OF ARREST

November 6, 2013

ACTION OF GRAND JURY

True Bill

Thomas Martin J.
Foreperson of Grand Jury
Date: 2-11-14

VERDICT

Michael J. Reed 2/19/15
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2014GS0800059

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term

THE STATE

vs.

JOHN ARTHUR THOMAS

DOB: 1958-09-30

W/M

Indictment for

Attempted Murder

§16-03-0029

CDR: 3410

FILED
14 FEB 11 PM 12:55
CLERK OF COURT
BERKELEY COUNTY, S.C.

3th

2th

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

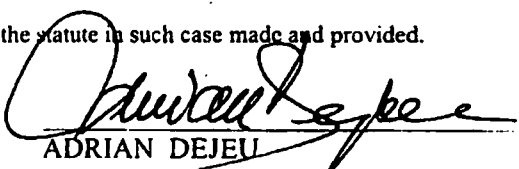
INDICTMENT

At a Court of General Sessions, convened on February 11, 2014 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That JOHN ARTHUR THOMAS did in Berkeley County, South Carolina, on or about November 4, 2013, willfully, feloniously, and intentionally attempt to kill another person, William Melton, with malice aforethought, either expressed or implied, by means of a knife, in violation of §16-03-0029 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.


ADRIAN DEJEU
ASSISTANT SOLICITOR

Money Man #8
431 N Highway 52
Moncks Corner, SC 29461
(843) 899-9100

NAME (Last Name First) of SELLER

MELTON, WILLIAM KENNETH

CUST NO. 059683 01578 01578

TRX NO

182925

ADDRESS (RESIDENCE)

CROSS, SC 29436

SOC SEC

XXX-XX-XXXX

DATE MADE

1/16/13

TIME MADE

13:19

Buy

IDENTIFICATION TYPE and NUMBER

PHONE

DOB

EYES

RACE

HAIR

HEIGHT

WEIGHT

SEX

BLU

WHT

BLO

6'02

200

M

ITEM NO	Special Marking or Engravings	Serial Altered	Evidence of Party Owner	Other Identifier or Characteristics	YOU HEREBY SELL, TRANSFER AND DELIVER THE FOLLOWING DESCRIBED GOODS	AMOUNT
018292501	Sold	N	N	N	ELECTRICAL METER: LOW VOLTAGE PRO VOLTAGE METER LVPRO 3 SER#008P7L002359 IN BLACK CASE	10.00
018292502		N	N	N	AIR FASTENER: CAMPBELL HAUSFELD NB006750 SER#NSNV	10.00
018292503		N	N	N	HEATER: MR. HEATER MH18B SER#EC 74885-11013041	5.00
018292504		N	N	N	POWER TOOL: BOSCH HAMMER DRILL 11224VSR SER#78303192	20.00
018292505		N	N	N	ELECTRICAL METER: SOUTHWIRE MULTIMETER 10030S SER#NSNV	5.00

THE SELLER OF THE ITEM(S) ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL, and you are representing that you are at least 18 years of age. You also acknowledge that you have been given a copy of this contract and consent in the sale or disposal of this property according to the terms set forth herein. I represent the above listed collateral a wholly owned and unencumbered and I acknowledge receipt of a true copy of this contract.

TOTAL

CONTINUED

Pawnbroker's Signature

X
Seller's Signature

(NOTICE: See Terms Above)

Pawnbrokers are regulated by the S.C. Dept. of Consumer Affairs; if you have a consumer complaint, please call this toll free number: 1-800-922-1594

Money Man #8
431 N Highway 52
Moncks Corner, SC 29461
(843) 899-9100

NAME (Last Name First) of SELLER

MELTON, WILLIAM KENNETH

CUST NO. 059683 01578 01578

TRX NO.

182925

ADDRESS (RESIDENCE)

CROSS, SC 29436 LONGPOINT RD

SOC SEC

XXX-XX-XXXX

DATE MADE

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CONT'D

IDENTIFICATION TYPE and NUMBER

PHONE

DOB

EYES

RACE

HAIR

HEIGHT

WEIGHT

SEX

BLU

WHT

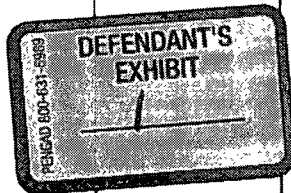
BLO

6'02

200

M

ITEM NO	Special Marking or Engravings	Serial Altered	Evidence of Party Owner	Other Identifier or Characteristics	YOU HEREBY SELL, TRANSFER AND DELIVER THE FOLLOWING DESCRIBED GOODS	AMOUNT
018292506		N	N	N	ELECTRICAL METER: COMMERCIAL ELECTRIC MULTIMETER MAS830B SER#NSNV	5.00
018292507		N	N	N	POWER TOOL: KING DRILL 2153-067 SER#NSNV	5.00



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TOTAL

60.00

Pawnbroker's Signature

X
Seller's Signature

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Money Man #8
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Moncks Corner, SC 29461
(843) 899-9100

NAME (Last Name First) of SELLER

MELTON, WILLIAM KENNETH

CUST NO. 059683 01578 01578

MAKER TYPIST

TRX NO.
184609ADDRESS (RESIDENCE)
CROSS, SC [REDACTED] GPOINT RD

SOC SEC XXX-XX-XXXX / 14/14 DATE MADE 11:42 TIME MADE

Buy

IDENTIFICATION TYPE and NUMBER

DL [REDACTED] PHONE [REDACTED] DOB [REDACTED] EYES BLU RACE WHT HAIR BLO HEIGHT 6'02 WEIGHT 200 SEX M

ITEM NO	Special Marking or Engravings	Serial # Altered	Evidence of 3rd Party Owner	Other Ident- ification	YOU HEREBY SELL, TRANSFER AND DELIVER THE FOLLOWING DESCRIBED GOODS	AMOUNT
018460901	 sold	N	N	N	RIFLE - BOLT: REMINGTON 700 .270 WIN SER#B6308359 W/BUSHNELL SCOPE (GL#10610)	275.00

THE SELLER OF THE ITEM(S) ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL, and you are representing that you are at least 18 years of age. You also acknowledge that you have been given a copy of this contract and consent in the sale or disposal of this property according to the terms set forth herein. I represent the above listed collateral a wholly owned and unencumbered and I acknowledge receipt of a true copy of this contract.

Pawnbroker's Signature

X
Seller's Signature

(NOTICE: See Terms Above)

TOTAL

275.00

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Money Man #8
431 N Highway 52
Moncks Corner, SC 29461
(843) 899-9100

NAME (Last Name First) of SELLER

MELTON, WILLIAM KENNETH

CUST NO. 059683 01578 01578

MAKER TYPIST

TRX NO.
184609ADDRESS (RESIDENCE)
CROSS, SC 29436 LONGPOINT RD

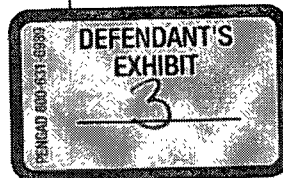
SOC SEC XXX-XX-0XXXX / 14/14 DATE MADE 11:42 TIME MADE

Buy

IDENTIFICATION TYPE and NUMBER

DL [REDACTED] PHONE [REDACTED] DOB [REDACTED] EYES BLU RACE WHT HAIR BLO HEIGHT 6'02 WEIGHT 200 SEX M

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Pawnbroker's Signature

X

Seller's Signature

(NOTICE: See Terms Above)

TOTAL

275.00

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**SILMAR ELECTRONICS, INC.**

3405 NW 113 COURT
MIAMI, FLORIDA 33178
Phone: (305) 513-0484

INVOICE

E-Mail: info@silmarelectronics.com
Website: www.silmarelectronics.com

Number	066872
Date	09/12/2013
Page	1

16:25 MRS TSM

Bill To:
9L0005

L & S ELECTRONICS
5911-B LOFTIS ROAD
HANAHAN, SC 29406

Ship To:
SAME

L & S ELECTRONICS
5911-B LOFTIS ROAD
HANAHAN, SC 29406



Reference #	Shipped	Salesperson	Terms	Tax Code	Doc #	Wh	Freight	Ship Via
BRUCE MILLS	09/12/13	CAM CAM HIGGIN	Bank United chk			09	PREPAID	PICK UP

Item	Description	Ordered	Shipped	Backordrd	UM	Price	UM	Extension
Ordered By: JOHN								
YRLD220ZW0BPKWKD	TOUCHSCREEN DEADBOLT OIL RUBBED BRONZE	1	1	0	EA	220.00	EA	220.00
ITI60-914	SIMON 3 BATTERY PACK	1	1	0	EA	10.36	EA	10.36
ITI60-699	RPLCMNT BATT,MICRO D	2	2	0	EA	12.17	EA	24.34
TX-6010-01-1	WRLS SMK DETECTOR	1	1	0	EA	71.01	EA	71.01
LVPRO3	POE,LOW VOL TESTER,P	1	1	0	EA	295.74	EA	295.74

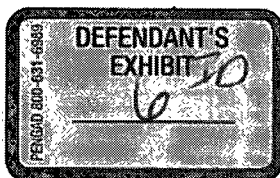
TOTAL DUE:

621.45

PAYMENTS:

Bank United chk

621.45 CK # 26316



Merchandise	Misc	Discount	Tax	Freight	Total Due
621.45	.00	.00	.00	.00	.00

NO MONEY REFUND / ONLY ACCOUNT CREDITS Print Name: _____

Sign: _____

Customer Copy

... Last Page

Further explanation of verdict
2 and # 3

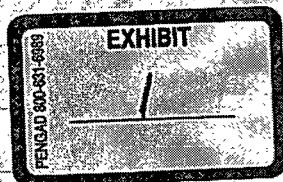
Lunch 7

Please clarify your question.

Ollie will take lunch orders.

Save this note!

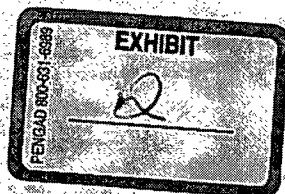
KH



Clarification between Assault and Battery
of a High + Aggravated Nature +

Assault + Battery in the 1st degree

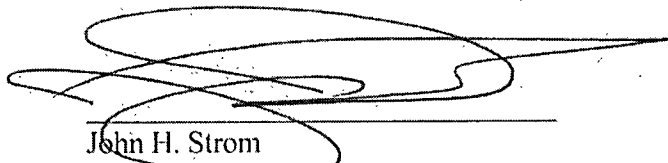
with the explanation



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 16th, 2016



John H. Strom
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

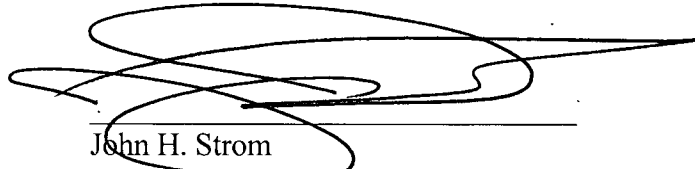
308

CERTIFICATE OF COUNSEL FOR APPELLANT

JUN 16 2016
SC Court of Appeals

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."

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