

**STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Casey L. Manning, Circuit Court Judge

Appellate Case No. 2016-000415

RECEIVED

SEP 20 2016

S.C. SUPREME COURT

CLINTON FOLKES, 216506,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT.

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)
GS-40-2007-GS-40-6654

State of South Carolina)
)
vs.) TRANSCRIPT OF RECORD
) (Trial)
)
Clinton Folkes,)
)
Defendant.)

July 7, 8, 9, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE JAMES BARBER, III, JUDGE

APPEARANCES:

HEATHER WEISS, ASSISTANT SOLICITOR
ANDREW ROGERS, ASSISTANT SOLICITOR
Attorneys for the State

DEON O'NEIL, DEPUTY PUBLIC DEFENDER
LUKE SHEALEY, DEPUTY PUBLIC DEFENDER
Attorneys for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
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Monday, July 7, 2008

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THE COURT: Do we have any pre-trial?

MR. O'NEIL: Just a couple of Neil v. Biggers.

THE COURT: Pardon me?

MR. O'NEIL: Just a couple of Neil v. Biggers
hearings, Your Honor.

THE COURT: You've got a Neil v. Biggers?

MR. O'NEIL: Two Neil v. Biggers, Your Honor.
I'm sorry.

THE COURT: All right.

MR. O'NEIL: May I approach Your Honor?

THE COURT: Yes, sir.

(Document handed to the Court)

THE COURT: What is the charge?

MS. WEISS: Your Honor, this is assault and
battery with intent to kill.

THE COURT: I don't have a sheet in front of me.

MS. WEISS: You do not?

THE COURT: Is it five and five?

MR. O'NEIL: Five and five, Your Honor.
14-7-1110.

THE COURT: All right. We ready to go?

MR. SHEALEY: Yes, sir, Your Honor. I'll be
handling the motions for the defense.

THE COURT: All right.

1 **MR. O'NEIL:** Your Honor, do you want to do
2 motions first or pick a jury first?

3 **THE COURT:** I don't care. What do you all want
4 to do? Pick the jury and then send them to lunch and
5 do the motions?

6 **MR. O'NEIL:** Yes, Your Honor.

7 **MS. WEISS:** Yes, Your Honor.

8 **THE COURT:** All right. We can do that. I'm
9 ready.

10 **THE BAILIFF:** The jury is all present, Your
11 Honor.

12 **THE COURT:** All right. Good morning, ladies and
13 gentlemen. My name is Jim Barber and I'm a circuit
14 judge here in Richland County. And we are about to
15 select a jury in a case entitled The State of South
16 Carolina vs. Clinton Folkes, F-O-L-K-E-S. Mr. Folkes
17 has been charged in a bill of indictment with the
18 offense of assault and battery with intent to kill.

19 Now, before we select the jury, ladies and
20 gentlemen, I want to ask you certain questions and I
21 want to introduce you to some individuals who may be
22 involved in this trial. I also want to tell you a
23 couple of things about our criminal justice system
24 that I want you to keep in mind throughout the course
25 of this trial.

1 First, ladies and gentlemen, in every instance a
2 defendant who comes into this courtroom comes in with
3 a presumption of innocence. He is prepared innocent,
4 and that presumption only changes if the jury after
5 hearing the evidence determines that in fact a
6 defendant is in fact guilty.

7 The second basic principle of our criminal
8 justice system is that the burden of proving this
9 defendant guilty falls upon the State of South
10 Carolina. The State is obligated to prove the
11 defendant guilty and prove him guilty beyond a
12 reasonable doubt. The defendant has no burden
13 whatsoever in this case. It all falls upon the State
14 of South Carolina.

15 Now, before we begin, ladies and gentlemen, I'd
16 like to introduce you to the defendant, Mr. Clifton
17 (sic) Folkes. Mr. Folkes, if you would please stand
18 and face the jury. This is Mr. Folkes, ladies and
19 gentlemen. And I would inquire at this time, is
20 there any member of this jury panel or any member of
21 the jury panel's immediate family who is related by
22 blood or connected by marriage or either now or in
23 the past has had a close personal relationship with
24 Mr. Folkes or either now or in the past has had an
25 employment or a business relationship with Mr.

1 Folkes? If so, please stand.

2 MR. O'NEIL: Your Honor, his first name is
3 Clinton Folkes.

4 THE COURT: It's Clinton?

5 MR. O'NEIL: Yes, sir.

6 THE COURT: Oh. Excuse me. I'm sorry.
7 Mr. Clinton Folkes. Thank you, sir. You may be
8 seated.

9 Ladies and gentlemen, in most instances when
10 cases come into the court the parties are represented
11 by attorneys, and that is in fact the situation here
12 today. The State of South Carolina is represented by
13 the Solicitor's Office or the Fifth Judicial Circuit.
14 The attorneys, the assistant solicitors who will be
15 handling this case for the Solicitor's Office are
16 Ms. Heather Weiss. And this is Mrs. Weiss right here
17 and Mr. Andrew Rogers. Mr. Rogers is standing as
18 well.

19 And I would inquire at this time, ladies and
20 gentlemen, is there any member of this jury panel or
21 any member of the jury panel's immediate family who
22 is related by blood or connected by marriage or
23 either now or in the past has had a close personal
24 relationship with either of these individuals or
25 either now or in the past has had an employment or a

1 business relationship with either of these
2 individuals or with the Solicitor's Office of the
3 Fifth Judicial Circuit? If so, please stand. All
4 right. Thank you all.

5 Ladies and gentlemen, representing Mr. Folkes
6 are Mr. Deon O'Neil and Mr. Luke Shealey. Mr. O'Neil
7 is the one on my right, your left; and Mr. Shealy is
8 on the other side. And I would inquire -- they are
9 both members of the South Carolina Bar. They're
10 employed by the Richland County Public Defender's
11 Office.

12 And I would inquire at this time, is there any
13 member of this jury panel or any member of this jury
14 panel's immediate family who is related by blood or
15 connected by marriage or either now or in the past
16 has had a close personal relationship with either of
17 these gentleman or either now or in the past has had
18 an employment or a business relationship with these
19 young men or with the Public Defender's Office or
20 either now or in the past has been represented by
21 these two individuals? If so, please stand. Yes,
22 sir, Mr. Goins. Robert Goins, who do you know?

23 Yes: Thank you, Your Honor. Juror number
24 83. I went to law school with Mr. O'Neill. We're
25 not really close personal friends, but we are

1 acquaintances.

2 **THE COURT:** The fact that you went to law school
3 with Mr. O'Neil, would that prevent you from
4 listening to the evidence in this case and based upon
5 such evidence rendering a fair and impartial verdict?

6 **Yes:** No, Your Honor.

7 **THE COURT:** All right. Thank you, sir. Ladies
8 and Gentlemen, I'd now like to read to you the names
9 of some potential witnesses who may testify in this
10 trial. And if any of them are here, I will ask them
11 to stand and to face the jury so that the jury can
12 see who you are.

13 Karem Jones, Tiffany Briggs, Tim Abney, Jerome
14 Patrick, Retalia Green. I hope I am pronouncing
15 these right. Nathaniel Spann. Dr. Stephen Fann,
16 F-A-N-N with Palmetto Richland Memorial.
17 Investigator R. C. McCracken of the Columbia Police
18 Department. Sergeant D. Shuler of the Columbia
19 Police Department. Investigator Montgomery with the
20 Columbia Police Department.

21 Lieutenant Evans with the Columbia Police
22 Department. Officer Sessions with the Columbia
23 Police Department. Officer Oulette, O-U-L-E-T-T-E,
24 with the Columbia Police Department. Officer
25 Battiste with the Columbia Police Department.

1 Officer Dingle with the Columbia Police Department.
2 Officer Huntley with the Columbia Police Department.
3 CSI Ross. I've never seen that before. With the
4 Lexington County Sheriff's Department.

5 Mr. Steven Grigsby who is an EMT, emergency
6 medical technician. Mr. Michael Smith who is an EMT.
7 Ms. Kim Gathers with 911. Ms. Jennifer Blair with
8 911. Mr. Mike King with 911. CSI Currie.
9 Mr. Kermit Scott. Mr. James Reddick.

10 Ladies and gentlemen, I would inquire at this
11 time, is there any member of this jury panel or any
12 member of the jury panel's immediate family who is
13 related by blood or connected by marriage or either
14 now or in the past has had a close personal
15 relationship with any of the potential witnesses
16 whose names I just read to you or either now or in
17 the past has had an employment or a business
18 relationship with any of those individuals or with
19 respect to a physician, been a patient of that
20 physician? If so, please stand. Yes, sir. Your
21 name?

22 **Yes:** I'm juror number 55, Steve Wilson.
23 Officer Battiste has worked for me at my school just
24 after hours.

25 **THE COURT:** All right. You know Officer

1 Battiste because he's done some work at a school
2 where you're employed as well. Is that correct?

3 Yes: That's right.

4 THE COURT: And your name is Mr. Lewis?

5 Yes: Wilson.

6 THE COURT: Oh, Wilson. All right, Mr. Wilson.
7 The fact that Officer Battiste has been employed at
8 the same school that you are employed, would that
9 prevent you from listening to the evidence in this
10 case and based upon such evidence rendering a fair
11 and impartial verdict?

12 Yes: No, sir.

13 THE COURT: All right. Thank you, sir. Ladies
14 and gentlemen of the jury, is there any member of
15 this jury panel who has formed or expressed an
16 opinion as to the guilt or the innocence of the
17 defendant? If so, please stand.

18 Is there any member of this jury panel who is
19 conscious of any interest or any bias or any
20 prejudice for or against the defendant, Mr. Folkes?
21 If so, please stand.

22 Can each member of this jury panel give the
23 State and the defendant, Mr. Folkes, a fair and
24 impartial trial? If you believe you cannot, please
25 stand.

1 Is there any further inquiry from the State?

2 **MS. WEISS:** Nothing from the State, Your Honor.

3 **THE COURT:** Anything from the defendant?

4 **MR. O'NEIL:** No, Your Honor.

5 **THE COURT:** Madam Clerk.

6 **MR. O'NEIL:** May we approach?

7 **THE COURT:** Yes.

8 (Whereupon, a bench conference is had)

9 **THE COURT:** All right. All right, Madam Clerk.

10 **THE CLERK:** Ladies and gentlemen of the jury
11 panel, as I call your name, please come down and
12 bring all your belongings with you. Stand here in
13 front of this microphone and give your name and your
14 occupation. Vickie Thigpen.

15 (White female)

16 **Yes:** Hello. I'm Vickie Thigpen. I'm
17 employed as a federal government employee with the
18 Department of Agriculture.

19 **THE CLERK:** What says the State?

20 **MS. WEISS:** Please present Ms. Thigpen.

21 **THE CLERK:** What says the defense?

22 **MR. O'NEIL:** Please excuse the juror.

23 **THE CLERK:** Please have a seat in the back.

24 Alan Knight.

25 (White male)

1 **Yes:** Yes. My name is Alan Knight. I'm a
2 music instructor at Carolina Music Academy at
3 Columbia College. Is there anything else?

4 **THE CLERK:** What says the State?

5 **MS. WEISS:** Please present Mr. Knight.

6 **THE CLERK:** What says the defense?

7 **MR. O'NEIL:** Please seat Mr. Knight.

8 **THE CLERK:** Have a seat in the jury box, please,
9 sir. Isaac Lee.

10 (Black male)

11 **Yes:** Isaac Lee. I'm employed at Owens
12 Field.

13 **THE CLERK:** What says the State?

14 **MS. WEISS:** Please excuse Mr. Lee.

15 **THE CLERK:** Have a seat in the back of the room,
16 please. Joella Ryan-Cook.

17 (White female)

18 **Yes:** I'm Joella Ryan-Cook. I work for
19 the Columbia Museum of Art as deputy director.

20 **THE CLERK:** What says the State?

21 **MS. WEISS:** Please present Ms. Ryan-Cook.

22 **THE CLERK:** What says the defense?

23 **MR. O'NEIL:** Please seat Ms. Ryan-Cook.

24 **THE CLERK:** Have a seat in the jury box.

25 Margaret McElveen.

1 (White female)

2 **Yes:** I'm Margaret McElveen. I'm a
3 teacher in Richland School District one.

4 **THE CLERK:** What says the State?

5 **MS. WEISS:** Please present Ms. McElveen.

6 **THE CLERK:** What says the defense?

7 **MR. O'NEIL:** Please seat Ms. McElveen.

8 **THE CLERK:** Have a seat in the jury box, please.
9 Edward Wilson.

10 (Black male)

11 **Yes:** Edward Wilson. I work for
12 orthodontic specialists.

13 **THE CLERK:** What says the State?

14 **MS. WEISS:** Please present Mr. Wilson.

15 **THE CLERK:** What says the defense?

16 **MR. O'NEIL:** Please seat Mr. Wilson.

17 **THE CLERK:** Have a seat in the jury box.
18 Cherilyn Taylor.

19 (Black female)

20 **Yes:** I'm Cherilyn Taylor. I'm a
21 psychologist at South Carolina State University.

22 **THE CLERK:** What says the State?

23 **MS. WEISS:** Please excuse Ms. Taylor.

24 **THE CLERK:** Have a seat in the back of the room,
25 please. Caroline Meyer.

1 **JUROR:** Hi. I'm Caroline Meyer. I'm a graphic
2 designer for the University of South Carolina.

3 **THE CLERK:** What says the State?

4 **MS. WEISS:** Please present Ms. Meyer.

5 **THE CLERK:** What says the defense?

6 **MR. O'NEIL:** Please seat Ms. Meyer.

7 **THE CLERK:** Have a seat in the jury box. Marvin
8 Foster.

9 (Black male)

10 **JUROR:** Marvin Foster, elementary school
11 principal.

12 **THE CLERK:** What says the State?

13 **MS. WEISS:** Please present Mr. Foster.

14 **THE CLERK:** What says the defense?

15 **MR. O'NEIL:** Please seat Mr. Foster.

16 **THE CLERK:** Have a seat in the jury box, please.
17 Carrie Glenn.

18 (Black female)

19 **Yes:** I am Carrie Glenn. I work with
20 Carolina Block Division Center as a receptionist.

21 **THE CLERK:** What says the State?

22 **MS. WEISS:** Please present Ms. Glenn.

23 **THE CLERK:** What says the defense?

24 **MR. O'NEIL:** Please seat Ms. Glenn.

25 **THE CLERK:** Have a seat in the jury box, please.

1 Sandra Roseborough.

2 (Black female)

3 **Yes:** Hi. I'm Sandra Roseborough and I
4 work for the South Carolina military, at the present
5 at McEntire Joint National Army Guard Base.

6 **THE CLERK:** What says the State?

7 **MS. WEISS:** Please present Ms. Roseborough.

8 **THE CLERK:** What says the defense?

9 **MR. O'NEIL:** Please seat Ms. Roseborough.

10 **THE CLERK:** Have a seat in the jury box, please.
11 Jennifer Drumwright.

12 (Black female)

13 **Yes:** Hi. I'm Jennifer Drumwright and I'm
14 a clerk at SCANA Corporation.

15 **THE CLERK:** What says the State?

16 **MS. WEISS:** Please present Ms. Drumwright.

17 **THE CLERK:** What says the defense?

18 **MR. O'NEIL:** Please seat Ms. Drumwright.

19 **THE CLERK:** Have a seat in the jury box, please.
20 John Hutto.

21 (White male)

22 **Yes:** My name is John Hutto and I manage
23 public relations for the Department of Mental Health,
24 Bull Street.

25 **THE CLERK:** What says the State?

1 **MS. WEISS:** Please present Mr. Hutto.
2 **THE CLERK:** What says the defense?
3 **MR. O'NEIL:** Please seat Mr. Hutto.
4 **THE CLERK:** Have a seat in the jury box.
5 Michael O'Shaughnessey.
6 (White male)
7 **Yes:** I'm Michael O'Shaughnessey. I'm a
8 sales manager for Vulcan Materials Company.
9 **THE CLERK:** What says the State?
10 **MS. WEISS:** Please present Mr. O'Shaughnessey.
11 **THE CLERK:** What says the defense?
12 **MR. O'NEIL:** Please seat this juror.
13 **THE CLERK:** Have a seat in the jury box. Daniel
14 Wiedemann.
15 (White male)
16 **Yes:** My name is Dan Wiedemann. I work
17 for AT&T as an I.T. analyst.
18 **THE CLERK:** What says the State?
19 **MS. WEISS:** Please present Mr. Wiedemann.
20 **THE CLERK:** What says the defense?
21 **MR. O'NEIL:** Please seat Mr. Wiedemann.
22 **THE CLERK:** Have a seat in the jury box.
23 **THE COURT:** All right. What do you think? We
24 need one?
25 **MR. O'NEIL:** That's fine, Your Honor.

1 **MS. WEISS:** Yes, Your Honor.

2 **THE COURT:** All right. Each one of you get one
3 strike.

4 **THE CLERK:** Kathy Lindsey.

5 (Black female)

6 **Yes:** I'm Kathy Lindsey, a fifth grade
7 math teacher with Richland School District two.

8 **THE CLERK:** What says the State?

9 **MS. WEISS:** Please present Ms. Lindsay.

10 **THE CLERK:** What says the defense?

11 **MR. O'NEIL:** Please seat Ms. Lindsey.

12 **THE CLERK:** Have a seat in the jury box.

13 **THE COURT:** All right. Anything from the State
14 with respect to the composition of the jury?

15 **MS. WEISS:** Nothing, Your Honor.

16 **THE COURT:** Anything from the defendant?

17 **MR. O'NEIL:** No, Your Honor.

18 **THE COURT:** Okay. Ladies and gentlemen of the
19 jury panel that did not get selected, I thank all of
20 you very much for making yourself available. I'm
21 going to ask you to return back downstairs to the
22 jury assembly room. You will get further
23 instructions down there. You all have a nice
24 afternoon. Thank you for coming up.

25 All right, ladies and gentlemen of the jury of

1 the jury panel. Let's go ahead and swear the jury if
2 we could.

3 **THE CLERK:** Ladies and gentlemen, would you
4 please stand and raise your right hand.

5 (Whereupon, the jury is sworn)

6 **THE CLERK:** Thank you.

7 **THE COURT:** Ladies and gentlemen, we're going to
8 break for lunch in just a few minutes because I need
9 to take up some pre-trial matters with the attorneys
10 before we actually begin the trial. So I'm going to
11 ask that you all be back here at 2:15 when we do
12 that. That will give us time to do our pretrials and
13 then let everybody have lunch.

14 A couple of things I want to tell you though
15 before we break. First of all, ladies and gentlemen,
16 this case is very, very important to both the State
17 and the defendant. So we want to do everything we
18 can to ensure that both sides get a fair and
19 impartial trial. One of the ways that I'm going to
20 ask that you help in that regard is that you not
21 discuss this case with each other or with anyone else
22 at any time until you have been given instructions
23 that you can begin your deliberations.

24 And that means that at any time you are back in
25 the jury room, please don't discuss the case with

1 each other. When you go to lunch in just a little
2 bit, I know you have limited knowledge of this case,
3 please don't discuss the case with anybody that you
4 come in contact with. I anticipate this trial will
5 last several days. So you'll be going home this
6 evening and you may come in contact with people,
7 including family or friends. Don't discuss the case
8 with anybody.

9 And the reason I ask you to do that, ladies and
10 gentlemen, is because I don't want you to begin to
11 formulate any sort of opinion about this case until
12 you have had an opportunity to hear from both sides.

13 If you start talking about the case in the midst
14 of the State's case, you may begin to form some
15 opinion about the case. And the defendant hasn't
16 been given an opportunity to put forth any evidence
17 the defense wishes to offer. If you go home and talk
18 to your spouse or your child or somebody about the
19 case, they may offer some opinion about the case that
20 may have some influence on you.

21 And they're certainly not here to listen not
22 evidence, to see any exhibits that have been
23 introduced, to weigh the credibility of the witnesses
24 who have testified. So that's not fair to either the
25 State or the defendant.

1 I promise you when you begin your deliberations
2 you can talk about the case as long as you wish.
3 When the case is over you can talk to anybody that
4 you want to talk to about the case. But until then,
5 please do not discuss case with anybody.

6 As I've told you, Mr. Clinton Folkes who is the
7 defendant has been charged with the offense of
8 assault and battery with intent to kill. The bill of
9 indictment states that Mr. Folkes did in Richland
10 County on or about July 22, 2007 with malice
11 aforethought commit an assault and battery upon one
12 Karem Jones with the intent to kill the said victim.

13 Now, ladies and gentlemen, the indictment is a
14 notice document. It is this document right here.
15 And it is prepared for the purpose of putting the
16 defendant on notice of the particular charge. It is
17 nothing more. It's not evidence. It's not to be
18 considered by you for any purpose other than it is
19 giving the defendant notice of this particular
20 charge.

21 To this charge the defendant has pled not guilty
22 which now means that the burden falls upon the State
23 to prove this defendant guilty and to prove him
24 guilty beyond a reasonable doubt of this particular
25 charge.

1 As I told you earlier, Mr. Folkes comes into
2 this courtroom presumed to be innocent and this
3 presumption of innocence will only change if you
4 after hearing all of the evidence determine that you
5 believe that he is in fact guilty.

6 As I told you, the burden falls upon the State.
7 The defendant has no burden whatsoever. The
8 defendant doesn't have to offer any evidence. If the
9 defendant believes the State has failed to meet its
10 burden, the defendant hey not offer any evidence. If
11 the defendant does wish to offer evidence, I assume
12 it would be of a similar type evidence that the State
13 will offer.

14 Most of the evidence, ladies and gentlemen, will
15 come into this case by way of testimony from
16 witnesses. Those witnesses will get into this
17 witness box where the deputy is seated and will tell
18 you what information that witness knows from having
19 seen something, heard something, smelled something,
20 felt something, tasted something. That witness has
21 learned something from one of his or her senses and
22 they will pass that factual information on to you.

23 Now, there may be witnesses who are considered
24 expert which are a little different than a factual
25 witness in that an expert has specialized knowledge

1 or training in some particular field by virtue of his
2 or her education and that witness is an expert in
3 that field and can offer opinions in and his or her
4 areas of expertise. Fact witnesses generally just
5 tell you what factual information they have.

6 Other types of evidence that might be introduced
7 may be photographs or documents, things of that
8 nature. That is actually introduced. It becomes an
9 exhibit in the trial and that evidence will go you
10 with you to the jury room for your review during the
11 course of your deliberations.

12 The testimony, ladies and gentlemen, will go
13 with you in your memory. So it is absolutely
14 essential that you pay close attention to what is
15 being said in this trial. If you can't hear
16 something or you don't understand something either by
17 a witness or the lawyer or the judge or anyone,
18 please indicate in some manner. Raise your hand or
19 let me know that you can't hear, don't understand
20 what's being said, and we will correct that problem.

21 A third type of evidence that might be
22 introduced is what we call a stipulation. And that's
23 where the parties stipulate or agree as to some fact
24 or some matter. If there is a stipulation the
25 lawyers will tell me and I will pass that on to you,

1 and you are to accept that fact or matter as though
2 it has been proven here in the courtroom.

3 Now, ladies and gentlemen, these lawyers in this
4 case are very important to the trial because they
5 really are the ones that conduct the trial. They
6 call witnesses. They question witnesses. They're an
7 integral part of this process. Listen carefully to
8 what they say. But understand this, that what the
9 lawyers say in the course of this trial is not
10 evidence. They are advocates for their respective
11 client. Pay close attention to them, but understand
12 what they tell you is not evidence in this trial.

13 Now, the way a trial takes place, ladies and
14 gentlemen, is the first thing that happens when we
15 come back from lunch is these lawyers are going to
16 given an opportunity to get up and make an opening
17 statement. The solicitor will go first because the
18 State has the burden of proof, and because of that,
19 they get to go first throughout the trial.

20 The opening statement is a chance for the
21 lawyers to introduce themselves or their co-counsel
22 so you know who they are. They also have an
23 opportunity to talk to you a little bit about what
24 they think will come out during the course of this
25 trial. It's a chance for them to educate you or

1 inform you a little bit so you have some
2 understanding of this matter as it unfolds in the
3 course of the trial.

4 After the State makes its opening statement the
5 defendant is given the same opportunity. When both
6 sides have completed their opening statement, then
7 the State will go forward with the presentation of
8 its evidence. I've told you what types of evidence
9 will be called or introduced.

10 When the state has finished the defendant is
11 given an opportunity to offer his evidence. If the
12 defendant offers evidence; again, it would be of a
13 similar nature I would believe to the State's
14 evidence. And that is, most of it would be testimony
15 from witnesses.

16 When both sides have completed the presentation
17 of their evidence, then the lawyers are given another
18 opportunity to speak with you. This is called a
19 closing argument. And the closing argument is a
20 little different from the opening statement in that
21 the closing argument is a time for these lawyers to
22 review what came out during the course of the trial
23 to point out to you what they believe is essential
24 things that you need to consider and discuss in your
25 deliberations. It is their chance to attempt to

1 convince you or persuade you as to why you should
2 ultimately return a verdict for their respective
3 client.

4 When both sides have completed their argument,
5 then, ladies and gentlemen, I will charge you or
6 instruct you as to the law. You will then retire to
7 the jury room, determine the facts, apply the law and
8 render your verdict.

9 Now, ladies and gentlemen, you are probably the
10 most important aspect of this trial because you are
11 the fact finders in this case. You will listen to
12 this evidence and you will determine what you believe
13 to be the facts in the case. No one else will
14 participate in that process. After you determine the
15 facts, then you'll apply the law that I gave you
16 during the charge portion of the trial and then
17 render your verdict.

18 My responsibility is a little bit different. In
19 addition to my responsibility to charge you or
20 instruct you as to the law, I'm also sort of a
21 referee in this matter. In most structured events we
22 have rules, and we have rules of evidence in South
23 Carolina in a trial. We have rules of procedure.
24 And it's my responsibility to see that this trial is
25 conducted according to those rules.

1 I've already told you these lawyers have an
2 integral participation in this trial because they
3 represent their respective clients and they're here
4 to advocate positions for their respective clients.

5 As I said, this case I think will take several
6 days. Whether it will get into a third day or not I
7 don't know. But we'll see. We have good lawyers and
8 they'll proceed in the case as quickly as they can
9 without jeopardizing any of what they believe they
10 need to do for their respective client.

11 As I told you, I need to take up some matters
12 with these lawyers now while you're gone. I know it
13 may seem like a long lunch, but that's going to give
14 us an opportunity to do what we need to do. Rather
15 than keep the whole jury panel around while we dealt
16 with the facts, the legal matters this morning, we
17 decided we'd select the jury, we could send the other
18 panel members to any other courtrooms if they need to
19 select juries in those courtrooms.

20 So again, do not discuss this case while you're
21 gone. Be back here at 2:15. The folks that you're
22 going to have the most dealings with, ladies and
23 gentlemen, are the bailiffs. And these are the
24 gentleman who are seated in the back. Mr. Dye is in
25 the back, Mr. Hollis is right here, and Mr. Whittle

1 is behind you.

2 And these are experienced bailiffs. They will
3 show you how to get from the courtroom to the jury
4 room, how to get from the jury room to leave the
5 courthouse and get back in the morning. They'll sort
6 of take role when you come back from lunch and when
7 you come back in the morning. They are here to help
8 you. Any questions come up, you feel free to ask
9 them. They'll bring any problems to my attention or
10 to the clerk's attention.

11 This is a court of record which I'm sure they
12 talked to you about in jury qualification. Our court
13 reporter is Ms. Jenny Williams who is the young lady
14 seated here. You won't know that she's here but
15 she'll take down every word that's being said in this
16 process.

17 The young lady to my left is Katherine Harrison
18 who is my law clerk and she helps me in a number of
19 ways. We'll all work to do what we can to see that
20 this trial goes as quickly and as smoothly as it can.

21 Mr. Whittle, if you would take the jury and take
22 them to the jury room, then let them go to lunch, I
23 would appreciate it. You all have a nice lunch,
24 ladies and gentlemen. Please don't discuss the case
25 while you're gone. And we'll see you back here at

1 2:15.

2 (Jury out at 12:30 p.m.)

3 **THE COURT:** All right. You all ready?

4 **MS. WEISS:** Your Honor, our victim has some
5 personal issues this morning. He is on his way but
6 he is not in the courtroom at this time. He is the
7 primary witness for the Neil v. Biggers. So we would
8 ask if it's possible just to break now, come back
9 early.

10 **THE COURT:** How long is all this going to take?

11 **MS. WEISS:** I think 15 minutes.

12 **THE COURT:** All right. Well, why don't we break
13 for lunch and come back here at -- let's see -- 1:30.
14 What time do you think we need to be back, Mr.
15 O'Neil?

16 **MR. O'NEIL:** Your Honor, we may need 25 minutes.

17 **THE COURT:** I was going to give you at least a
18 half hour.

19 **MR. O'NEILL:** We're requesting two Neil v.
20 Biggers.

21 **MS. WEISS:** Quarter of two.

22 **THE COURT:** Can we do it in a half hour? I
23 mean, I don't want to --

24 **MR. SHEALEY:** I think it can be done in half an
25 hour. But there are two of them, so we'll have to go

1 through separate inquiries.

2 **THE COURT:** Let's see. Why don't we come back
3 about 20 'til 2. That will give us an hour and ten
4 minutes and that will give us 40 minutes to do what
5 we need to do in that period of time. Okay?

6 **MS. WEISS:** Thank you, Your Honor.

7 **MR. O'NEIL:** Thank you, Your Honor.

8 **THE COURT:** All right. You all have a nice
9 lunch and we'll see you then.

10 (Whereupon, a lunch break is taken)

11 (WHEREUPON, State's Exhibit No. 1 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 2 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 3 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 4 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 5 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 6 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 7 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 8 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 9 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 10 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 11 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 12 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 13 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 14 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 15 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 16 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 17 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 18 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 19 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 20 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 21 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 22 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 23 is marked for
8 identification.)

9 **THE COURT:** Ms. Weiss, do you know what time
10 we're supposed to start?

11 **MS. WEISS:** Sir?

12 **THE COURT:** Do you know what time we're supposed
13 to start?

14 **MS. WEISS:** Yes, Your Honor. We're having
15 trouble getting our witnesses down here.

16 **THE COURT:** I don't care.

17 **MS. WEISS:** I apologize, Your Honor.

18 **THE COURT:** Apparently you're having trouble
19 getting the lawyers down here.

20 **MS. WEISS:** Yes, Your Honor.

21 **THE COURT:** Is Mr. Rogers coming?

22 **MR. SHEALEY:** No, sir. Yes, sir. I'm sorry,
23 Judge.

24 **THE COURT:** He doesn't come on time either.

25 **MR. SHEALEY:** No, sir. Yes, sir.

1 **THE COURT:** Where is the defendant?

2 **DEPUTY:** He's in route. That's all I've been
3 told.

4 **THE COURT:** Is that route from the detention
5 center?

6 **DEPUTY:** No. He's downstairs. He's being
7 shackled.

8 **THE COURT:** Do you all know what time he's
9 supposed to be here?

10 **DEPUTY:** I don't have anything to do with that.
11 That's the other deputy.

12 **THE COURT:** Well, ...

13 (Pause)

14 **THE COURT:** All right. We've got a Neil v.
15 Biggers hearing. Let's go ahead and proceed. Who is
16 it that made the identifications?

17 **MR. SHEALEY:** Your Honor, we do have a problem
18 with the out-of-court identifications as to the
19 victim, Mr. Karem Jones, identifying Mr. Folkes in a
20 photo line-up. We also have a problem with the
21 suggestiveness of the show-up I.D. of another
22 witness, Ms. Tiffany Briggs. As to both of those
23 we'd like to hold separate inquires. And I believe
24 the suggestiveness of each violates Mr. Folkes'
25 Fourteenth Amendment rights to due process.

1 **THE COURT:** We haven't heard it yet.

2 **MR. SHEALEY:** Yes, Your Honor.

3 **MS. WEISS:** Your Honor, this is the problem we
4 had. I don't know where the witnesses -- who is
5 bringing them down. They'll be down in a moment.

6 But in response to that, the first Neil v.
7 Biggers they're asking for, the State would argue
8 Neil v. Biggers should not apply because the show-up
9 I.D. was done by his former girlfriend and she had a
10 history with him. She had known him for
11 approximately two years, dated him off and on for
12 several months. The prior knowledge of the defendant
13 means that Neil v. Biggers does not apply. And I
14 would --

15 **THE COURT:** The show-up line-up was done by
16 somebody's prior girlfriend.

17 **MS. WEISS:** Yes, sir.

18 **THE COURT:** What does that mean? Girlfriend got
19 pictures of --

20 **MS. WEISS:** No, Your Honor. This was a show-up.
21 The date of the incident Mr. Folkes attacked the
22 victim in the park, then left the park and walked a
23 couple of blocks away. His former girlfriend was in
24 the park at the time. The former girlfriend was in
25 the park at the time. She then went with the officer

1 to where the defendant was and said, "That's him.
2 He's changed shirts, he's changed pants, but that's
3 him. I know him. I dated him."

4 **MR. SHEALEY:** Your Honor, as to the nature and
5 the length of the relationship, I think that's a fact
6 that would need to be established. I've never heard
7 any mention of a two-year relationship. In her
8 statement she says a month or so. I don't really
9 know what their past relationship is. I just think
10 that given the suggestive nature of her being brought
11 to the scene where he is arrested a ways away --

12 **THE COURT:** All right. Well, let's call whoever
13 you want to call. I mean, I hope you're not putting
14 us through an exercise just to go through an
15 exercise.

16 **MR. SHEALEY:** No, sir.

17 **THE COURT:** Call these people Ms. Weiss, please.

18 **MS. WEISS:** Thank you, Your Honor. The State
19 calls Tiffany Briggs.

20 TIFFANY T. BRIGGS, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** State your name, please.

23 **WITNESS:** My name is Tiffany Tranice Briggs.

24 DIRECT EXAMINATION

25 **BY MS. WEISS**

1 Q Ms. Briggs, good afternoon. Back in July, on
2 July 22nd, 2007, do you have a specific memory of
3 this date?

4 A Yes, because it was my birthday.

5 Q Okay. And where were you living at that time?

6 A Actually the day the incident happened I was living
7 at Riverside Estate which is an apartment complex. I
8 had just moved out the homeless situation I think two
9 or three days before that.

10 Q And just two or three days prior to that you were
11 living in the homeless situation?

12 A Yes, ma'am.

13 Q And did you spend a lot of time at Finlay Park?

14 A Yes, ma'am.

15 Q Did you have the opportunity to know Clinton Folkes?

16 A Yes, ma'am. He was my boyfriend for about three
17 months.

18 Q Okay. And prior to actually being your boyfriend,
19 did you have the opportunity to know him?

20 A Yes, I did. We were in a homeless situation I would
21 say before that. Exactly I would say I came into it
22 December of two-thousand and, yeah, 2007. 2006,
23 2007. Maybe a little bit before two years now we've
24 been knowing him. But a good bit, about eight, seven
25 months before that.

1 Q Okay. So you had known him for about seven, eight
2 months prior to that?

3 A Yes.

4 Q Did you spend a lot of time with Mr. Folkes?

5 A While we were in the relationship, yes. And in the
6 homeless situation, yes.

7 Q Okay. And do you see him probably every day?

8 A I wouldn't say every day. But generally, in the
9 homeless situation, I seen him at least about every
10 day. He didn't stay at the shelter we were staying
11 in. But, yeah; other than that, every day.

12 Q And did you have an opportunity to get to know him,
13 his facial features, his mannerisms, his walk, his
14 voice?

15 A Yes, ma'am.

16 Q Okay. And on July 22nd, 2007, did you have the
17 opportunity to see him that day?

18 A Yes, ma'am.

19 Q And when did you first see him that day?

20 A I actually first seen him in the park because I had
21 got there around about, I will say 6:30, 7:00, around
22 about that time.

23 Q And was it still light at that time?

24 A Yes, ma'am.

25 Q And is there any question in your mind that he's the

1 person you saw?

2 A Yes, ma'am. I mean, there is no question in my mind
3 that he was not the person.

4 Q And after he left the park, did you have the
5 opportunity to see him again?

6 A Yes, I did. When the officer actually took me to
7 identify him on, I think it was Calhoun and -- okay.
8 Yes. I got to see him when the officer brought us
9 around to see him.

10 Q Did you say it was a few blocks away from the park?

11 A Yes, ma'am.

12 Q And did you have the opportunity to see him?

13 A Yes, ma'am, I did.

14 Q And is it the same person that you saw there that you
15 had seen in the park?

16 A Yes, ma'am.

17 Q Was there any difference?

18 A Yes. He had switched clothes actually.

19 Q And do you see that person in court today?

20 A Yes, I do.

21 Q And where is he?

22 A Standing right there. Sitting right there.

23 MS. WEISS: Okay. Please let the record reflect
24 that she has picked out the defendant, Mr. Clinton
25 Folkes.

1 **THE COURT:** Is that the man sitting between the
2 two lawyers?

3 **WITNESS:** Yes, sir.

4 **THE COURT:** At the defense table. Okay. The
5 record reflects it.

6 **Q** Thank you. No further -- or one more question. When
7 the officer drove you over to where he was, did he
8 tell you that that was the person from the park?

9 **A** No, he didn't. I -- I actually stayed after the
10 incident happened. And the defense left, Clinton
11 Folkes left. I actually stayed to talk to the
12 officers. And all he wanted me to do is come around
13 and identify him. And that's what I did.

14 **Q** And are you the one that gave the officers his name?

15 **A** Yes, ma'am.

16 **Q** And the description of what he was wearing?

17 **A** Yes, ma'am.

18 **Q** Okay. Thank you. No further questions, Your Honor.

19 **THE COURT:** All right. Mr. Shealey.

20 **MR. SHEALEY:** Thank you. May it please the
21 Court.

22 CROSS EXAMINATION

23 **BY MR. SHEALEY**

24 **Q** So, Ms. Briggs, you say that Mr. Folkes was your
25 boyfriend for three months?

1 **A** Yes, sir.

2 **Q** You knew him from your homeless situation?

3 **A** Yes.

4 **Q** Does that mean you saw him every once in a while
5 because he was homeless?

6 **A** Yes. He was in a homeless situation. As of
7 December 14th I went into the homeless shelter on
8 Bull and Taylor. Most of our Sundays we spent in the
9 park because we get to eat at Turnipseed or Cafe
10 Ministries. So, yes, I have seen Clinton Folkes from
11 that time on. And I --

12 **Q** So he would frequent some of the same areas that you
13 would frequent?

14 **A** Yes, sir.

15 **Q** Now, do you recall making a statement to the police?

16 **A** Yes, I do.

17 **Q** And you did some writing in that statement?

18 **A** Yes, sir. Yes, I did.

19 **Q** Do you recall telling the police that you had been
20 dating him for a month?

21 **A** Might be so. Yeah. We had broke up three times
22 within -- me and Clinton had an affection to where
23 our relationship he worked at Action Labor. We had
24 an okay relationship where we'd break up and then get
25 back together and then break up. And this happened

1 three times within that time period.

2 Q So you would agree that a month is different from
3 three months, right?

4 A The whole relationship I based on three months. But,
5 yes. I would say, yes, it is a bigger difference.

6 Q Now, the police, they brought you to where Mr. Folkes
7 was arrested, right?

8 A Mm-hmm (affirmative).

9 Q And they asked you to look at him, correct?

10 A Mm-hmm (affirmative).

11 Q He was in handcuffs at that time, wasn't he?

12 A Actually, Clinton Folkes, yes, he was in handcuffs.

13 Q He was sitting in the car, wasn't he?

14 A No, he wasn't. He was standing up. I was sitting in
15 the car.

16 Q You were sitting in the police car?

17 A Yes, I was. He was just standing at -- and actually
18 he was not in handcuffs. Another officer was
19 standing there about to put Clayton in handcuffs. I
20 was in the police car.

21 Q Okay. Was he surrounded by several officers?

22 A No, he wasn't. By the time me and the second officer
23 had got there or me and the officer I was with, I
24 would say it was about three officers the whole time
25 when I was there.

1 Q So whether he was in handcuffs or about to be put in
2 handcuffs, you knew that he was about to be arrested,
3 right?

4 A Yes.

5 Q These were City of Columbia Police Department
6 officers?

7 A Yes.

8 Q And at that time you said he was wearing something
9 different from what you saw him in?

10 A Yes.

11 Q Beg the Court's indulgence. Nothing further, Judge.

12 THE COURT: All right. Anything further?
13 Anything further?

14 MS. WEISS: Just briefly.

15 REDIRECT EXAMINATION

16 BY MS. WEISS

17 Q The same statement that the defense was talking
18 about, I believe you said that you had known Clinton
19 Folkes for eight months?

20 A Yeah.

21 Q Okay. Thank you.

22 THE COURT: All right. Thank you, ma'am. You
23 may step down. All right. Who is the next one?

24 MR. SHEALEY: Your Honor, we have a separate
25 motion as to Mr. Karem Jones.

1 **THE COURT:** All right.

2 **MR. SHEALEY:** He is the victim in this case.

3 **MS. WEISS:** Thank you, Your Honor. May it
4 please the Court. The State calls Karem Jones.

5 KAREM E. JONES, JR., after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Thank you. Have a seat in the
8 witness stand. Give the court reporter your name.
9 State your name, please.

10 **WITNESS:** Karem Emanuel Jones, Sr.

11 DIRECT EXAMINATION

12 **BY MS. WEISS**

13 **Q** Good afternoon, Karem. Karem, did you have the
14 opportunity to be in the park on July 22nd of 2007?

15 **A** Yes, ma'am.

16 **Q** And did you receive any injuries while you were in
17 the park that day?

18 **A** Yes, ma'am. I received a laceration to my neck and
19 my arm.

20 **Q** Okay. And about how long -- what time of day did
21 that injury occur?

22 **A** For the exact time, I couldn't give. I know the sun
23 was still out and bright. So it was probably about
24 6, 6:30.

25 **Q** And did you have the opportunity to see who cut you?

1 **A** Yes, ma'am, I did.

2 **Q** About how long did you have from the time the person
3 first approached you until they left to view that
4 person?

5 **A** From the beginning to the end, I'd say about 30
6 minutes.

7 **Q** Thirty minutes?

8 **A** It was a while. The person was -- he was there the
9 whole time. He was the same person that attempted to
10 kill me. I mean, I'll never forget his face. I'll
11 never forget anything about him.

12 **Q** And you said the sun was out?

13 **A** The sun was out nice and bright because we were all
14 sitting under the tree to try to stay out of the
15 sunlight.

16 **Q** And there was no trouble to view him?

17 **A** No, ma'am.

18 **Q** Did he come at you face only?

19 **A** Yes, ma'am, he did. He actually stood there for a
20 minute or two.

21 **Q** And after he left, did you have to be transported to
22 the hospital?

23 **A** Yes, ma'am, I did.

24 **Q** And did you have the opportunity to talk to
25 Investigator McCracken while you were in the

1 hospital?

2 A The next day, I believe so. I think I'm pretty sure

3 it was the next day.

4 Q And do you remember meeting or talking to

5 Investigator McCracken?

6 A Yes, ma'am, I do.

7 Q And were you under any heavy narcotics? Is there

8 anything that would have altered your memory or your

9 ability to think at that point?

10 A No, ma'am. Like I said, it was the next day. It was

11 the next morning. I had already started eating and

12 pretty much getting back to myself.

13 Q Okay. Do you recall Investigator McCracken coming

14 into your hospital room?

15 A Yes, ma'am, I do.

16 Q What did he do when he came in?

17 A He asked me how -- first he asked me how I was doing

18 and then he asked me if I could identify the person

19 that did this to me. I told him yeah.

20 Q Was there any question in your mind at that point --

21 A No, ma'am.

22 Q -- that you could identify him?

23 A No, ma'am. None at all.

24 Q And did he show you anything?

25 A Yes, ma'am. He showed me a picture with six people

1 on it.

2 Q Okay. And did he tell you anything about these
3 pictures?

4 A No, ma'am, he did not.

5 Q Okay. Did he point out any specific person out of
6 these six pictures?

7 A No, ma'am, he did not.

8 Q I'm going to show you what's been marked as State's
9 Exhibit No. 1 for identification. Do you recognize
10 this?

11 A Yes, ma'am, I do.

12 Q What is it?

13 A It's a line-up of people.

14 Q And is this the same line-up you looked at that day?

15 A Yes, ma'am; the exact same.

16 Q Okay. And are there any markings on it?

17 A Yes, ma'am. My initials and a circle.

18 Q And is that in your handwriting?

19 A Yes, ma'am, it is.

20 Q Okay. That's the person that you picked out?

21 A Yes, ma'am. That's him.

22 Q Was there any question in your mind that that's the
23 person?

24 A Yes, ma'am.

25 Q I'm going to show you what's been marked as State's

- 1 Exhibit No. 2. Do you recognize that?
- 2 **A** I do.
- 3 **Q** Is that your signature on it?
- 4 **A** Yes, ma'am, it is.
- 5 **Q** Is that your address? Or was that your address at
- 6 the time?
- 7 **A** Yes, ma'am.
- 8 **Q** Okay. And that says on this date Investigator
- 9 McCracken showed you six pictures and you picked out
- 10 picture 55484. And that would be the same picture
- 11 that's on here?
- 12 **A** Yes, ma'am.
- 13 **Q** And that was done on July 23rd, 2007, the day after
- 14 this incident?
- 15 **A** Yes, ma'am.
- 16 **Q** And can you pick out this person? Is he in the
- 17 courtroom at this time?
- 18 **A** Yes, ma'am. He's sitting right there, right
- 19 inbetween those two gentlemen.
- 20 **MS. WEISS:** Your Honor, may the record --
- 21 **THE COURT:** The record reflects he's identified
- 22 the defendant.
- 23 **Q** Okay. And Investigator McCracken didn't give you any
- 24 indication whether the person would be on this sheet
- 25 or who the person was on this sheet?

1 **A** No, ma'am.

2 **Q** Okay. Thank you. No further questions for this
3 witness, Your Honor.

4 **THE COURT:** Mr. Shealey.

5 **MR. SHEALEY:** Thank you, Your Honor.

6 CROSS EXAMINATION

7 **BY MR. SHEALEY**

8 **Q** Good afternoon. Mr. Jones. Obviously the solicitor
9 just walked you through some of the events of that
10 day. But do you remember calling 911 from a pay
11 phone? Right?

12 **A** Yes, sir.

13 **Q** Okay. You'll agree that when you called 911 you
14 didn't name Clinton Folkes as the person who attacked
15 you, right?

16 **A** I'm not sure if I did or didn't.

17 **Q** Would it be fair to say that you said a black male
18 wearing a multicolored striped shirt attacked you?

19 **A** No. Because I do recall I think they did ask me his
20 name and I said Clinton Folkes. As a matter of fact,
21 is it possible for us to hear the tapes? Because I'm
22 pretty sure I did hear his name.

23 **Q** We may or may not go back to that. Let's stick to
24 just these basic questions. Okay?

25 **A** Okay.

1 Q I was asking if you recall naming him or not. And I
2 was saying that you do not name him. And I'll ask
3 you if you agree with --

4 A That, I guess so. I guess I can.

5 Q Isn't it true that you only had known him for a week
6 as someone who goes to that park, right?

7 A Known him as talked to him, probably so. But I've
8 seen him every day. We worked at the same labor
9 company, Action Labor. He was there every day like I
10 was there every day.

11 Q Do you recall giving a statement to Investigator
12 McCracken in the hospital you just talked about?

13 A Yes.

14 Q Have you gone over that statement recently with
15 anybody?

16 A Have I gone over that with anybody?

17 Q Have you looked at it recently?

18 A Have I looked at it?

19 Q You haven't read it at all recently?

20 A I'm not sure. I'm not sure.

21 Q Do you remember in that statement saying you'd known
22 Mr. Folkes for about a week?

23 A Yeah.

24 Q Okay.

25 A I mean, I talked to him about a week. Yes, sir.

1 **Q** Now, I'm not trying to embarrass you. But you've
2 been arrested before, right?

3 **A** Yes, sir, I have.

4 **Q** So you're aware that when they take you down to jail
5 they don't let you wear the clothes that you're
6 wearing right now or anything off the street, right?

7 **A** Right.

8 **Q** And they he have a special little blue uniform they
9 put you in sometimes?

10 **A** Right.

11 **MS. WEISS:** Objection, Your Honor. I don't see
12 the relevance to this identification.

13 **MR. SHEALEY:** Your Honor, I believe it goes to
14 this particular photo line-up. I think we're about
15 to get to the fact that Mr. Folkes is wearing one of
16 those blue jail uniforms. And my questioning is
17 regarding whether Mr. Jones is familiar with what
18 those uniforms look like. I think it goes exactly to
19 this.

20 **THE COURT:** You can ask him a question. Let's
21 see what the photograph --

22 **MS. WEISS:** It looks like a t-shirt to me.

23 (Document handed to the Court)

24 **Q** Now, the line-up that Ms. Weiss was just showing you,
25 was that the exact line-up that you were shown in

1 your hospital room?

2 **A** Yes, it is.

3 **Q** Were you a shown a color line-up, or were you a shown
4 a black and white line-up?

5 **A** I was shown a black and white, that same piece of
6 paper.

7 **Q** Now, you were homeless at the time, correct?

8 **A** Yes, sir.

9 **Q** Have you frequently associated with some of the
10 people down at the park?

11 **A** Somewhat. Because like I say, I pretty much stayed
12 to myself. I only talked with and hung out with
13 certain people.

14 **Q** Well, you hung out with Ms. Briggs, right?

15 **A** Ms. Who?

16 **Q** Ms. Briggs?

17 **A** Yeah. I associated with her every now and then. We
18 never really kind of hung out.

19 **Q** People generally met on Sundays, right?

20 **A** Yes. Some people would go to church. Some people
21 would go over places.

22 **Q** You all had been doing some drinking that day,
23 correct?

24 **A** We all or me? Me, yes, I was drinking.

25 **Q** You'd been using marijuana as well, right?

1 **A** Yes, sir, I had.

2 **Q** Beg the Court's indulgence. Nothing further for this
3 witness, Your Honor.

4 **THE COURT:** Anything further?

5 **MS. WEISS:** Not from this witness, Your Honor.

6 **THE COURT:** Thank you, sir. You may step down.
7 Anything further?

8 **MS. WEISS:** The State calls Investigator
9 McCracken.

10 ROBERT MCCRACKEN, after being duly sworn,
11 testifies as follows:

12 **THE CLERK:** Thank you. Have a seat in the
13 witness stand and give the court reporter your name.

14 **WITNESS:** Robert McCracken.

15 DIRECT EXAMINATION

16 **BY MS. WEISS**

17 **Q** Investigator McCracken, are you the lead investigator
18 on State vs. Clinton Folkes?

19 **A** Yes, ma'am.

20 **Q** And did you have the opportunity on July 23rd, 2007
21 to talk to the victim, Mr. Karem Jones?

22 **A** Yes, ma'am.

23 **Q** Where was that conversation?

24 **A** It was at the hospital in his hospital room.

25 **Q** I'm going to show you what's been marked as State's

1 Exhibits 1 and 2 for identification. Do you
2 recognize these?

3 **A** Yes, ma'am.

4 **Q** And what are they?

5 **A** A photo line-up and a photo line-up form that was
6 used to identify which photograph, as well as him
7 circling the photographs.

8 **Q** And are these the photos and the form that you used
9 in this case?

10 **MS. WEISS:** Your Honor, I would ask that these
11 forms be admitted for the purposes of this hearing.

12 **THE COURT:** All right. Any objection?

13 **MR. SHEALEY:** No objection, Your Honor.

14 **THE COURT:** All right. So admitted.

15 (WHEREUPON, State's Exhibit No. 1 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 2 is admitted
18 into evidence.)

19 **Q** Thank you, Your Honor. Investigator McCracken, when
20 you went into Mr. Jones' hospital room, what did you
21 say to him? Do you have something that you typically
22 say when you first talk to a victim?

23 **A** I initially got a statement from him and/or a verbal
24 statement as to what happened. I asked him if he
25 could identify the person, how he knew the person,

1 and at that point I would show them the photo
2 line-up.

3 Q And did he indicate at the time he could identify the
4 perpetrator?

5 A Yes, ma'am. He had no doubt that he could identify
6 the person.

7 Q He was very certain of that fact?

8 A Yes, ma'am.

9 Q Okay. And did you then hand him this piece of paper?

10 A Normally what I do with photographic line-up's is I
11 turn them face down and I ask the person to turn it
12 over, that way I'm not touching the photo or holding
13 the photo any particular way, and ask them if they
14 recognize any person in those photographs.

15 Q And is that what you did with Mr. Jones?

16 A Yes, ma'am.

17 Q Okay. And how long did it take him before he
18 identified a photo?

19 A He looked at the photographs, but it was almost
20 immediately. He pointed to him.

21 Q Okay. And did he have any hesitation?

22 A No, ma'am.

23 Q Is this his handwriting on this form?

24 A Yes, ma'am. I had him initial it.

25 Q So did he also circle it?

1 **A** Yes, ma'am.

2 **Q** And did he seem to be under the influence of anything
3 at the time you were talking to him?

4 **A** No, ma'am.

5 **Q** And State's Exhibit 2 is your form. Did you fill
6 that out, or did Mr. Jones fill that out?

7 **A** I filled out my name, the date, the time, the charge
8 down at the bottom, the address. He filled out the
9 picture number 6 and he wrote down 6 and he filled
10 out the number.

11 **Q** Okay. And this is his signature?

12 **A** Yes, ma'am.

13 **Q** And is that --

14 **A** That's my signature.

15 **Q** That's your signature? And you're a notary?

16 **A** Yes, ma'am.

17 **Q** So you notarized this. Did he ever have any
18 hesitation in picking this out?

19 **A** No, ma'am.

20 **MS. WEISS:** No further questions at this time.

21 **THE COURT:** Anything, Mr. Shealey?

22 **MR. SHEALEY:** Yes, Your Honor. Briefly.

23 CROSS EXAMINATION

24 **BY MR. SHEALEY**

25 **Q** Good afternoon, Investigator.

1 A Yes, sir.

2 Q So it's your testimony that this is essentially a
3 photo line-up that we're talking about, right?

4 A The one that's in evidence is the photo line-up.
5 But, yes, sir.

6 Q Is this the exact one, or was a color photo line-up
7 generated?

8 A No, sir. That's the exact line-up.

9 Q Do you generally use just a black and white line-up,
10 or do you ever do a color line-up?

11 A I've done both. It depends on how the backgrounds
12 are and the color comes out. We want to make them
13 all similar.

14 Q Now, that photo line-up was generated through the
15 jail's website I assume, correct?

16 A Yes, sir.

17 Q And these are past pictures of arrests, right?

18 A Does he --

19 Q These are pictures generated through people being
20 arrested?

21 A Yes, sir.

22 Q And their photos are taken, right?

23 A Yes, sir.

24 Q Okay. Now, that picture that is particularly used in
25 that was from the arrest of that day, right?

1 **A** I believe so. I'd have to go back to check that, but
2 I can do it by the date on the photograph.

3 **Q** Because he wasn't arrested in jail uniform, right?

4 **A** No, sir.

5 **Q** He was arrested wearing street clothes, correct?

6 **A** Yes, sir.

7 **Q** Okay. Now, did you not go and visit -- you didn't
8 visit Mr. Jones the date of the incident, right?

9 **A** No, sir. He was in surgery that morning. Or that
10 afternoon he was in emergency surgery and I could not
11 visit him at that time.

12 **Q** You're not a doctor. You're not sure as to what type
13 of treatment he was given. But did you try to visit
14 him that day?

15 **A** No, sir. Sergeant Shuler advised me that he was in
16 emergency surgery. At that point I did not figure I
17 could visit him that evening.

18 **Q** Okay.

19 **A** Due to those circumstances.

20 **Q** Beg the Court's indulgence. Nothing further for this
21 witness, Judge.

22 **THE COURT:** All right.

23 **MS. WEISS:** Nothing further for this witness,
24 Your Honor.

25 **THE COURT:** All right. You got anything you

1 want to say, Mr. Shealey?

2 MR. SHEALEY: Yes, sir. Your Honor, as to Ms.
3 Briggs, I will withdrew my motion as to her. I
4 apologize for that. Simply based on discovery it was
5 really hard to tell what type of relationship they
6 had, if any; but I don't think it's appropriate for
7 her.

8 As to Mr. Jones, I would think that his I.D. is
9 unduly suggestive. Also Neil v. Biggers and its
10 progeny, we've got a two-prong test; first, whether
11 it's unduly suggestive; and then if it is suggestive,
12 then you've got other factors to consider. Maybe
13 it's reliable anyway. I would argue that it's
14 suggestive based on the fact that Mr. Jones and
15 Investigator McCracken both agree that is this a jail
16 uniform jumpsuit that he's wearing. It's not
17 anything that would not stick out. And none of the
18 other people in the line-up are wearing their jail
19 uniforms. They're all photographed in their plain
20 street clothes.

21 The fact that Mr. Jones admitted to being
22 arrested before, admits knowing what the Alvin S.
23 Glenn jumpsuit looks like I think makes it
24 particularly able for that to stick out in his mind
25 in a line-up, that this is something different from

1 normal street clothes and that's something that the
2 rest of people in the line-up did not have. They
3 were not in jail jumpsuits. Only Mr. Folkes was. So
4 I would argue that it is unduly suggestive to pick
5 someone out of a line-up wearing a jail jumpsuit.

6 If you agree with that, then I think, you know,
7 there are other factors we need to see. Well, it's
8 so reliable that this mistaken identification might
9 not be made. As you know, some of these factors to
10 look at are the opportunity of the witness to view
11 the crime at the time.

12 **THE COURT:** I'm familiar with those.

13 **MR. SHEALEY:** Yes, sir. They would argue that I
14 think Mr. Jones testified that in his statement he
15 agreed that he said he'd only known him for a week.
16 There is some discrepancy. But my argument is that
17 on the 911 to dispatch, he didn't say Clinton Folkes,
18 you know, cut me or hurt me. He said a black male
19 and he gave a description. He didn't know him well
20 enough to say his name at the time.

21 And he also admitted in terms of his perception
22 his opportunity to view this defendant that he was
23 drinking, he had been using marijuana. I think that
24 skews his perception to as he might not be able to
25 accurately know his attacker that evening.

1 And I think it was a relatively short
2 altercation. I think just given all these factors,
3 the totality of the circumstances, I think it is
4 unduly suggestive and that even looking at the
5 totality, I don't think it should be allowed in
6 because it would prejudice my client and violate his
7 Fourteenth Amendment due process rights.

8 **THE COURT:** Anything you want to say, Ms. Weiss?

9 **MS. WEISS:** Your Honor, I did not think -- I
10 mean, I don't even know that that is a jail jumpsuit.
11 I mean, it's a dark shirt. I think it's a black and
12 white picture. It goes along with everybody else
13 wearing different outfits. I think the defense is
14 assuming that it is.

15 **THE COURT:** I saw it.

16 **MS. WEISS:** You saw it. I'm not even sure that
17 it is a jail jumpsuit. And even if it is, I don't
18 know how anybody could notice what it was in that
19 short a period of time. The Investigator said he
20 looked at it, looked at the pictures and went, that's
21 him. He was certain about it. He has time to look
22 at it. I don't think it is unduly suggestive. I
23 mean, I think it's reliable information.

24 I don't even think the factors would even have
25 to be looked at. I don't think it is unduly

1 suggestive and I think it's a reliable I.D. He was
2 certain at the time. Certainly the moment
3 Investigator McCracken came in the room, he could
4 pick it out. And this just happens to be somebody
5 who knew him for a week and then actually saw him
6 commit the crime.

7 Obviously most of the crimes that we deal with
8 in these courts, somebody only sees them when they're
9 being attacked. This person just happened to know
10 him for a week prior from this time and knew what he
11 looked like. So when he came to take him, he just
12 knew him that much better, as you'll hear when this
13 crime began as he was getting in his face. So I
14 think this is a very reliable identification and
15 should be admitted.

16 **THE COURT:** All right. I'm going to deny it.
17 The witness says he'd actually known him for six
18 months, having worked with him, didn't know him as an
19 acquaintance but knew who he was, knew his face and
20 had worked with him for six months, then says for a
21 period of time prior to the incident he knew him and
22 associated with him to some degree for a period of a
23 week prior to the incident. So I'm not even sure
24 that it's a situation where a Neil v. Biggers is
25 necessary. He's got knowledge of who this person is.

1 I can look at the picture. I wouldn't have any
2 idea that that was a jail suit. It looks like a dark
3 t-shirt to me. It's black and white. I don't see
4 anything in there that suggests that that's
5 suggestive in any way. And clearly if the fellow
6 knew who he was and had contact with him for six
7 months, a week, whatever, he knew him, and he can
8 testify that that's the person who did what he did.

9 Now, you may have some areas that you can attack
10 his testimony because of things that you point out.
11 He didn't identify him with his name and all of that.
12 But I think it's certainly appropriate and I'm going
13 to allow it in.

14 **MS. WEISS:** Thank you, Your Honor.

15 **THE COURT:** All right. Are we ready to go?

16 **MR. O'NEIL:** Just a couple more housekeeping. I
17 I'd just like to renew my Rule 5, specifically as it
18 relates to any additional statements by the victim in
19 this case, Karem Jones. I think by me looking
20 through the discovery, it was noted by the hospital
21 staff that an individual from the police department
22 came to speak with Mr. Jones on the night of the
23 incident, July 22nd, 2007. I don't have a statement
24 from Mr. Jones on that day. But out of an abundance
25 of caution, I would renew my Rule 5 to see.

1 **THE COURT:** Have you all given them everything?

2 **MS. WEISS:** We've given them everything, Your
3 Honor.

4 **THE COURT:** All right.

5 **MR. O'NEIL:** Thank you, Your Honor. I would ask
6 the Court to sequester our lay witnesses with the
7 exclusion of the victim, Mr. Jones, to prevent the
8 witnesses from altering their testimony in light of
9 what they heard through other witnesses's testimony,
10 Your Honor, specifically because I think at least
11 three of the witnesses in this case, Your Honor, did
12 not give a prior statement.

13 **THE COURT:** What you all say about it? Do you
14 have any objection to sequestering?

15 **MS. WEISS:** Except for the victim and the
16 investigating officer.

17 **THE COURT:** They're entitled.

18 **MS. WEISS:** That's fine.

19 **THE COURT:** We'll do that. The victim and the
20 investigator can stay. All witnesses will be
21 sequestered.

22 **MR. O'NEIL:** Your Honor, we would ask at some
23 time to settle the records of all lay witnesses
24 involved in the case, Your Honor.

25 **THE COURT:** Have you all already done that?

1 **MS. WEISS:** Let's see.

2 (Pause)

3 **THE COURT:** All right, sir. Are we ready to go
4 yet?

5 **MR. O'NEIL:** Yes, Your Honor.

6 **THE COURT:** You got the record resolved?

7 **MR. O'NEIL:** I think we do. Yes, Your Honor, we
8 do.

9 **THE COURT:** All right. Let's bring us in some
10 witnesses, I mean jurors.

11 **THE BAILIFF:** Be glad to, Your Honor.

12 (Jury in at 2:25 p.m.)

13 **THE BAILIFF:** The jury is all present, Your
14 Honor.

15 **THE COURT:** All right. Thank you. Ladies and
16 gentlemen, I apologize for keeping you all waiting
17 but our pre-trial matters took a little bit longer
18 than we anticipated. But we are now at the point of
19 beginning our trial. As I told you, the lawyers have
20 an opportunity to talk to you. So, Ms. Weiss, I'll
21 call on you and ask if you are prepared to go
22 forward. Oh, Mr. Rogers, if you would, please.

23 **MR. ROGERS:** The State is ready, Your Honor.
24 May it please the Court?

25 **THE COURT:** Yes, sir.

1 **MR. ROGERS:** Your Honor, counsel, on July 22nd,
2 2007 here in Richland County mere blocks from this
3 very courthouse, that man, Clinton Folkes, did it,
4 cut the victim, Mr. Kareem Jones, sitting right there
5 at the corner on his neck causing serious injuries to
6 his neck and to his forearm.

7 Now, as a result of these actions the State of
8 South Carolina has charged the defendant with assault
9 and battery with intent to kill. In order to prove
10 that today the State is going to call various
11 witnesses, and those witnesses will come before you
12 in front of this witness stand right here and testify
13 as to the fact that they remember and the evidence
14 that they remember seeing.

15 What you will hear today is on the afternoon of
16 July 22nd, 2007, here in Richland County, the
17 defendant ate dinner with two witnesses, Ms. Retalia
18 Jones -- or excuse me -- with Ms. Retalia Green and
19 Mr. Jerome Patrick, that after eating dinner at the
20 Salvation Army they walked a few blocks down to
21 Finlay Park which is just down the street.

22 Upon arriving in the park they met a number of
23 people who were gathered in an open field down by the
24 stadium, if you're familiar with the area. It was a
25 sunny day in July, so everybody was congregated in

1 the shade underneath some trees. At that time the
2 defendant started to interact with some of the people
3 down there and the various witnesses were talking to
4 each other.

5 You'll hear that Mr. James Reddick, first found,
6 came in contact with the defendant, that at that time
7 the defendant picked a fight with him, and that after
8 the defendant pulled a blade out of his pocket,
9 Mr. Reddick backed away understanding that he didn't
10 want a piece of this fight, that this was going to be
11 dangerous and he didn't want a part of that.

12 You will hear that moments later the defendant
13 picked a fight with Mr. Jones. We have multiple
14 witnesses to this effect. And you will hear that the
15 defendant first took a swing -- had a verbal argument
16 with the victim. That verbal argument turned
17 physical when the defendant took a swing at Mr.
18 Jones. Mr. Jones defended himself, took two quick
19 punches to the defendant and knocked him on the
20 ground.

21 Mr. Jones didn't want to fight this afternoon or
22 that day. He didn't want any trouble. He was just
23 trying to enjoy a day in the park. But as he was
24 trying to keep the defendant down to avoid further
25 confrontation, you will hear that the defendant

1 reached in his pocket, pulled out a blade and cut Mr.
2 Jones across the neck and across his forearms, that
3 this was not a mere flesh wound that somebody might
4 get shaving in the morning. This was a serious
5 injury dangerously close to a major artery.

6 At that time Mr. Jones noticed that he was cut,
7 ran away and called 911, used a pay phone a short
8 distance from there. You will hear from Ms. Tiffany
9 Briggs who is the ex girlfriend of the defendant.
10 She was in the park and witnessed all this. And you
11 will hear from her that after she saw the defendant
12 cut Mr. Jones that he then hit her in the back and
13 taunted the victim as she ran away.

14 You will hear that after the incident a couple
15 of people called 911. The defendant lingered around
16 the area for a couple of moments and then left the
17 park going in a northeast direction. If you're
18 familiar with the park, it's towards the stairs,
19 towards the northeast. He went back in that
20 direction.

21 At the time of the incident he was wearing a
22 striped shirt and dark pants. Now, you will hear
23 from a couple of witnesses here that it's not
24 uncommon for people hanging out in the park to have
25 bags, and in those bags they have changes of clothes.

1 You will hear that when the witness or when the
2 defendant caused the injuries, he was wearing a
3 striped shirt. He was then located a short distance
4 later wearing a different shirt. Listen to see how
5 that change of clothing occurred.

6 After 911 was called, officers responded to the
7 scene. You will hear from officers today that say
8 they investigated the incident. They came to the
9 scene, secured the scene. They spoke with some
10 witnesses, spoke to specifically Mr. Patrick, Ms.
11 Green, Ms. Briggs, and three other key people who
12 watched the incident occur.

13 They then did a search of the area for the
14 defendant. Now, at the time, this is immediately
15 after the incident occurred, at the time the suspect
16 description was pretty -- wasn't extraordinarily
17 specific. Listen for the initial description. The
18 initial description was black male, striped shirt,
19 dark pants.

20 Based on that initial description one of the
21 officers that you will hear from, Officer Oulette,
22 stopped the defendant and another gentleman as they
23 exited the park at the northeast corner, as they
24 exited the park towards the street, that these two
25 individuals roughly matched the description.

1 At that time there wasn't a specific name of the
2 suspect. So he stopped them, took identification
3 from them to verify who they were. They didn't
4 specifically match the initial description, so he let
5 them go but took their name. Moments later, after
6 the officers were able to finish talking to the
7 witnesses, calm them down a little bit and get a more
8 thorough description, one of the witnesses gave a
9 name of the defendant, Clinton Folkes.

10 As soon as that name came on the radio Officer
11 Oulette realized that's the guy I just pulled. I
12 just saw him. He immediately turned his police car
13 around and went to go look for the defendant and
14 stopped him a few blocks away. At that time the
15 defendant was placed into custody. This was the end
16 of Officer Oulette's shift, so he handed the
17 defendant off to another officer.

18 You will hear that the witnesses at the scene
19 who witnessed the incident occur, they knew the
20 defendant. This wasn't some random person that they
21 had never seen before. They were able to identify
22 the defendant. That there was an identification that
23 occurred moments after the incident. And you will
24 also hear about the investigation that occurred.

25 Now, as I stated earlier, the defendant is

1 charged were assault and battery with intent to kill.
2 At the conclusion of this trial the judge is going to
3 instruct you specifically related to the law. And
4 these are going to be much more in depth
5 instructions. If anything I say contradicts what the
6 judge says, please listen to the judge.

7 But for our purposes right now so that you can
8 understand the key points to listen for throughout
9 the trial, assault and battery with intent to kill is
10 a bit misleading. The law of South Carolina does not
11 require that the State prove that the defendant
12 actually intended to kill the victim. On the other
13 hand, the State does have to prove that the defendant
14 unlawfully committed an act of violent injury on the
15 person of another and that he did this with either
16 implied or expressed malice.

17 Notice that this does not state that the State
18 has to prove that the defendant intended to kill the
19 victim. We only have to prove that the defendant
20 intended to inflict violent injury. When we talk
21 about malice, there are two types of malice. Malice
22 is a legal definition, a legal word. And one of
23 definitions that's used is that malice is the
24 wrongful intent to injure another and indicates a
25 wicked heart. There are two types of malice. There

1 is implied and there is expressed malice.

2 Expressed malice is a deliberate intent to
3 unlawfully like take the life of another,
4 deliberately, expressed. Implied malice on the other
5 hand are when circumstances demonstrate a wanton or
6 reckless disregard for human life or when a
7 reasonable person would have known that there was a
8 strong likelihood that death would result from his
9 actions. Okay?

10 You will hear some conversations throughout this
11 trial about reasonable doubt. What is reasonable
12 doubt? And like I said, the judge will instruct us
13 specifically at the end of the trial. One of the
14 definitions of reasonable doubt that is from the
15 Supreme Court that I'd like for you to keep in mind,
16 is that reasonable doubt is that which leaves you
17 firmly convinced of the defendant's guilt.

18 There are few things in this world that we know
19 with absolute certainty. And in criminal court, in
20 criminal law, we only have to prove things beyond a
21 reasonable doubt. The law says that if after hearing
22 all of the evidence after careful consideration of
23 the facts in this case you are firmly convinced that
24 the defendant did commit these crimes, you must find
25 him guilty. Now, let me say that again. If you are

1 firmly convinced that the defendant committed these
2 acts, you must find him guilty.

3 Now, if on the other hand after your
4 deliberations you find that there is a real
5 possibility, a real possibility that the defendant
6 did not commit these acts, you must find him not
7 guilty. At the conclusion of this trial, after
8 listening to the witness statements, after seeing the
9 evidence that's introduced, we will address you once
10 again. And I am confident that after carefully
11 listening to the evidence, after careful deliberation
12 of the facts in this case you will have no choice but
13 to return a verdict of guilty. Thank you.

14 **THE COURT:** All right, Mr. Shealey.

15 **MR. SHEALEY:** Thank you, Your Honor. May it
16 please the Court. I'd like to tell you about the
17 world of homeless people. These are the people that
18 we ignore as they sit on park benches, the people
19 that are panhandling while we're out shopping. Now,
20 in order for you to fully understand this world and
21 to understand this case, we're going to have to get
22 into what this means, to be homeless.

23 Now, Mr. Rogers, the State's government lawyer,
24 has come up here and he's tried to paint you a
25 picture of my client, Mr. Folkes, as a monster, Mr.

1 Jones, an angel just out getting a bite to eat when
2 he gets attacked. But I think after you hear the
3 evidence you'll realize that this is not a black and
4 white situation. This is a gray area. There's no
5 angels; there's no monsters here. This is not an
6 innocent victim. And you're going to hear about
7 that.

8 Now, the State is going to ask that you believe
9 the stories they're selling to you today. And
10 they're selling this story to you through the
11 government lawyer mainly by testimony that comes from
12 this stand. And it's going to be testimony mostly
13 from other homeless people that they claim were there
14 that night.

15 Now, they are going to ask that you decide that
16 their version, their tale they're trying to sell is
17 credible and that Mr. Folkes is bad and not credible.
18 And I think after you hear this evidence, after you
19 hear the testimony that comes from this stand, you'll
20 realize that this is not the gospel truth as they
21 would have you believe it and that you must take
22 everything with a grain of salt, a substantial grain
23 of salt, a lump of salt in this case, ladies and
24 gentlemen.

25 I want to turn your attention to July 22nd of

1 last year, Sunday in Finlay Park. Finlay Park is
2 right across there. Some of you all are probably
3 familiar with that. Now, this is a place where
4 homeless people often congregate. It's very
5 attractive to the people who don't have homes. It
6 has public restrooms, showers. It has a place to be
7 when it's warm when you don't have anywhere else to
8 do. It's also right across from the Oliver Gospel
9 Mission near the Salvation Army. You get a hot, free
10 meal.

11 Now, on the night of July 22nd of last year,
12 2007, a large congregation of homeless people were
13 congregating. They're all there when Mr. Jones gets
14 in an altercation with another person. It's a quick
15 altercation. He realizes he's injured after this
16 fight and he walks to a pay phone that's in the park
17 a ways away. And the evidence is going to show that
18 he calls 911.

19 The evidence is going to also show that he says
20 an unknown black male is the person he got in a fight
21 with. And the best description he can give is that
22 he's wearing a multicolored shirt and blue jeans. He
23 doesn't say, "Clinton Folkes just cut me."

24 So sometime later and several blocks away
25 Clinton Folkes is detained and arrested. He's

1 wearing a white shirt and green genes, not matching
2 the description initially given by the police, given
3 by the so-called victim. And he's charged with
4 assault and battery with intent to kill. They're
5 saying he's intending and he intended to murder Mr.
6 Jones that night.

7 Now, Mr. Rogers here is telling you his version
8 of the law. He is not the judge of the law. The
9 judge is the judge of the law. You all are the
10 judges of the facts. I want to talk to you about
11 your role as jurors.

12 You decide what's credible coming from that
13 witness stand. You decide what fact is true, what
14 fact is not true and who can you believe. You're
15 going to hear from these witnesses, and when you hear
16 from them I ask that you please do your duty and
17 question. Credibility is always an issue when you're
18 on this witness stand. You need to think to
19 yourself, anybody that I'm hearing from up here, do
20 they have a reason, a motive to lie, to not tell the
21 truth? Do they have something to gain from selling
22 their story to you today? I want you all to think
23 good and hard about that.

24 Now, they're saying that Mr. Folkes intended to
25 murder Mr. Jones that night, but the evidence you're

1 going to hear is that Mr. Jones calls 911 after this
2 alleged vicious injury to his neck. He's alert.
3 He's responsive. He then walks from the telephone
4 there to wait at the stage, if you all are familiar
5 with the park, which is another ways away, does not
6 lose consciousness. We never hear that in the
7 medical records that he ever lost consciousness from
8 this vicious injury that they say had intent to kill.
9 You'll never hear any of that.

10 You will hear that his bleeding was under
11 control before EMS even got there, this vicious
12 injury. You will hear that the doctors, the experts
13 on what or how severe or not severe an injury is, they
14 will classify his injury as simply superficial. And
15 at the end of the day the only treatment it required
16 was a few stitches and some topical antibiotics. But
17 they're going to tell you or sell you a story today
18 that he had the intent to murder somebody that day.

19 Let's talk about what's missing from this case.
20 You're not going to find any weapon in evidence. No
21 weapon was found. These are just stories,
22 allegations from people. You're not going to find
23 any DNA linking my client to this crime. What you
24 have are stories based on the testimony of homeless
25 people with questionable credibility.

1 Now I want to tell you about what your job is.
2 And the judge is going to instruct you as well. The
3 State's job is to try to convince all 12 of you all
4 together of their story. They have to do all the
5 work here. They have to convince all 12 of you
6 beyond a reasonable doubt of their story for you to
7 find guilt.

8 What does reasonable doubt mean? Reasonable
9 doubt means that after listening to all the testimony
10 from this stand, taking all that evidence into
11 consideration that all 12 of you would have to be
12 firmly convinced of what they're trying to sell you
13 without hesitation. So that means if one of you
14 hesitates, has a reasonable hesitation about their
15 version of events, Mr. Folkes remains an innocent
16 man.

17 He's an innocent man sitting there right here
18 today because that is the way our wonderful judicial
19 system allows us to be. The Supreme Court says he's
20 clothed in a robe of righteousness. And that's just
21 fancy language meaning he doesn't have to come here
22 and prove himself innocent. He doesn't have to prove
23 himself not guilty. The burden is on the State
24 through its government lawyers to sell their story to
25 you so that all of you would believe it beyond a

1 reasonable doubt.

2 We have the best judicial system in the world.
3 It's envied by all other nations. It didn't come
4 easy to get here. It took sweat and blood and tears
5 over many, many years. And it's been here to protect
6 you. And I ask that today you protect it. Hold them
7 to their burden. Do your duty as jurors. Listen to
8 what comes from this stand. I feel that once you do
9 that you can only find a verdict of not guilty on
10 assault and battery with intent to kill.

11 **THE COURT:** All right. Thank you, Mr. Shealey.
12 Madam Solicitor, are you ready to call your first
13 witness?

14 **MS. WEISS:** Your Honor, may we approach?

15 (Whereupon, a bench conference is had)

16 **THE COURT:** Mr. Rogers, who your first witness?

17 **MR. ROGERS:** Your Honor, the first witness will
18 be Mr. Karem Jones.

19 **THE COURT:** Let's bring him up here and swear
20 him, please.

21 KAREM E. JONES, SR., after being duly sworn,
22 testifies as follows:

23 **THE CLERK:** Thank you very much. Have A seat in
24 the witness stand and give the court reporter your
25 name.

1 Q And when you say, can you explain to the jury what
2 you mean by get everything right?

3 A Well, we just couldn't seem to -- you know, I've
4 always felt like if you're in a relationship with
5 someone, you should be able to get together and
6 progress. It should only get better. It shouldn't
7 stay the same nor get worse. Inbetween her things
8 never changed. It just stayed the same. It's like
9 the more we talked about it, it just didn't go
10 anywhere. It was just pretty much a waste of time.

11 Q Things different now?

12 A Yes. They're a lot different now.

13 Q How are things different now?

14 A Well, for one, I'm actually getting ready to get
15 custody of my son. I just met my fiancée who I am
16 getting ready to marry in about another year. And
17 I'm working two jobs now, pretty much going in the
18 right direction. Everything is -- everything is the
19 way it should be.

20 Q And do you have a place that you live now?

21 A Yes, ma'am.

22 Q A permanent residence, your home?

23 A Yes, ma'am. My name is actually on the lease.

24 Q All right. About how long were you without a
25 residence, without a home?

1 **A** I would say about four months total. About three to
2 four months total.

3 **Q** During that time were you living completely just out
4 in the park or just around Columbia?

5 **A** Well, just pretty much around Columbia. I was
6 staying with friends here, staying in abandoned
7 apartments there and just -- excuse me -- and just
8 pretty much just trying to keep a roof over my head
9 somehow.

10 **Q** Now, back on July 22nd, 2007, would you say that's
11 about the time things hit rock bottom?

12 **A** Yes, ma'am.

13 **Q** And what was going on that week in your life?

14 **A** Well, that week I had just -- I had just -- I didn't
15 know which way to turn. And so I met a friend. I
16 had -- well, I had known them from a temporary
17 service that we worked at, you know, and his brother
18 was a pastor. So I had actually went to church with
19 him that Sunday morning and rededicated my life to
20 God that day. So, you know, that was -- I had just
21 kind of just needed some help, was just trying to
22 figure out which way to go.

23 **Q** The people that you knew, your friend from the
24 temporary service, the people at the park, would you
25 say that those were your acquaintances, your friends,

1 your associates at the time?

2 A Yes. Yes. Those two were definitely. If I had a
3 problem or something or needed something, I could
4 always go to them. One of them always had like
5 cigarettes or an extra blanket or something like
6 that.

7 Q And did you spend some nights actually outside in the
8 City of Columbia?

9 A Yes, ma'am, I did.

10 Q The night before this were you actually outside?

11 A Yes, ma'am, I was.

12 Q Where did you spend the night?

13 A In a parking garage.

14 Q When you got up that morning, where did you go?

15 A I went to the park. That's where a friend of mine
16 told me about church. And he said his brother was a
17 pastor and he was going. And I had decided that, you
18 know, that would be the best thing to do, is to try
19 to get back in church to get myself together.

20 Q And what was your friend's name?

21 A Jerome.

22 Q Okay. And did you go with Jerome to church?

23 A Yes, ma'am, I did.

24 Q And about how long did you stay at the church?

25 A We stayed there until about -- he picked us up at

1 like 9:30 that morning.

2 **Q** Who picked you up?

3 **A** Yeah. His brother, the pastor. He comes to all the
4 places where all the homeless people are and sees if
5 they want to go to church. So he had came to an
6 apartment, a boarding home. Jerome said that's where
7 we need to meet him at. So he picked us at about
8 9:30 that morning. We left about maybe 2:30; 2:30,
9 3, something like that.

10 **Q** Okay. And is there any alcohol at the church?

11 **A** Oh, no, ma'am. No, ma'am.

12 **Q** And so you just prayed and hung out with people at
13 the church?

14 **A** Yes, ma'am.

15 **Q** Did you eat there?

16 **A** Yes, ma'am, I did.

17 **Q** And at 2:30 where did you return to?

18 **A** We returned to the park. Yes, ma'am. He dropped us
19 back off in the park.

20 **Q** And your hesitation, is that just because it was a
21 year ago?

22 **A** Yes, ma'am. I'm just trying to make sure I was just
23 correct.

24 **Q** So you return to the park. What did you do next?

25 **A** Well, me, I talked to them for a few minutes and then

1 I stepped off. I walked to a place where I kind of
2 hid a beer at from the previous night before because
3 you can't buy beer on Sundays. Well, back then you
4 couldn't.

5 But I had previously walked to a place where I
6 had left a beer from the night before. I went and
7 got it and ran into another friend of mine. We
8 talked. And, you know, after that, after I finished
9 the beer, I came back to the park. I actually laid
10 down for a little bit until it was time to go to the
11 Salvation Army.

12 Q So you drank the beer. And that was just one beer?

13 A Yes, ma'am. A high gravity, a 24-ounce.

14 Q I'm sorry. How much?

15 A A high gravity, a 24-ounce.

16 Q Okay. And at that point did you smoke any marijuana,
17 do any drugs?

18 A Yes, ma'am, I did. I smoked a half a blunt with a
19 friend of mine.

20 Q Okay. Did you use any other drugs?

21 A No, ma'am. That was it.

22 Q Okay. You say you smoked half a blunt. Were there 'a
23 couple of people you were sharing it with?

24 A Yes. It was in a circle. There was about three of
25 us.

1 Q And then what did you do next?

2 A I went back to the park. I laid out my little
3 blanket and just laid under the tree and laid down.

4 Q Did you -- were you talking to anybody or hanging out
5 or just getting some peace and quiet?

6 A I think I might have spoke to a few people and just
7 laid down from there.

8 Q Okay. And where did you go next?

9 A Well, after that, there was an altercation between me
10 and "New York", as they call him.

11 Q You said you went to the Salvation Army?

12 A Oh, yeah. Yeah. That was like at like 2:30 or 3.
13 Yeah. Because we did go. We went and ate at the
14 Salvation Army. That was -- I think, if I remember,
15 they served from like 5 to 6 or something like that.

16 Q Okay.

17 A I haven't been down there in a while. So...

18 Q And then you came back to the park?

19 A Yes, ma'am.

20 Q And that's when you laid down your blanket?

21 A Yes, ma'am.

22 Q Okay. Let me show you what has been marked as
23 State's Exhibits 10 and 11 for identification. Do
24 you recognize these pictures?

25 A Yes, I do.

1 Q And can you identify them for me?

2 A Yeah. This is the bottom of Finlay Park or Sidney
3 Park, whichever one it's called. That's the tree
4 that I had my stuff laying out under.

5 Q And there is some stuff in that picture. Is that
6 similar to the same place yours would have been?

7 A Yes, ma'am. I believe that is my stuff.

8 Q If these were taken more recently, it probably
9 wouldn't be.

10 A Well, it looks so much -- it looks just like my
11 stuff. I had a bag and the same colored blanket.
12 Somebody might have got my stuff.

13 MS. WEISS: The State moves State's 10 and 11
14 into evidence.

15 MR. O'NEIL: No objection.

16 THE COURT: So admitted, without objection.

17 (WHEREUPON, State's Exhibit No. 10 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 11 is admitted
20 into evidence.)

21 Q Karem, I'm going to ask you just to show -- I
22 couldn't show these to the jury a minute ago. If you
23 can, show on this picture where it was that you were
24 laying down?

25 A I'd say about right up in this area here under the

1 tree, more or less. Well, I know I was under the big
2 tree. So I was probably over in this area right
3 here.

4 Q Somewhere around here?

5 A Yes, ma'am.

6 Q Okay. And just to get a little different view you
7 can see, is that the same tree?

8 A Yes, ma'am.

9 Q So you'd be right about where? Let me get you
10 oriented.

11 A About over here. I would be over this way.

12 Q That way?

13 A Yes, ma'am.

14 Q But you were underneath the tree?

15 A Yes, ma'am. It was -- everybody was pretty much
16 under the tree. It was hot that day.

17 Q Okay. And you were laying on your blanket and you
18 had spoken to a couple of people?

19 A Yes, ma'am.

20 Q Did you have any personal relationships with anybody
21 that hung out in the park?

22 A No, ma'am. Not any personal relationships. Just
23 with people I just associated with.

24 Q Okay. And did you know Clinton Folkes prior to
25 July 22nd of 2007?

1 **A** As of like know him know him, no. I had worked with
2 him through Action Labor. It was a temporary
3 service. That's where everybody that was pretty much
4 homeless worked at. So I had seen him there a couple
5 of times. And then prior, about a week, you know, we
6 had worked on a job together. So, you know, we just
7 started just talking. You know, I'd see him and
8 speak; he'd see me and speak and, you know, pretty
9 much go on his way.

10 **Q** Did you call him by name, or did you just kind of
11 know him by face?

12 **A** I called him by his nickname which was "New York". I
13 used to call him "New York".

14 **Q** So the name Clinton Folkes didn't necessarily mean
15 anything to you?

16 **A** No. Well, like I say, I had heard them call his
17 name. Say, like at Action Labor, they'll call your
18 names on tickets. And, you know, it would be like
19 Kareem Jones or something like that. But, no, not
20 really.

21 **Q** You knew him as "New York"?

22 **A** Yes, ma'am.

23 **Q** Prior to this day when you were laying on your
24 blanket hanging out under the tree, did you have any
25 problems with Clinton Folkes?

1 **A** No, ma'am. I didn't -- no.

2 **Q** Had you ever gotten into an argument with him?

3 **A** No. Never.

4 **Q** Had you ever gotten into a fight with him?

5 **A** No, ma'am.

6 **Q** And prior to the actual moment that this happened,
7 did you actually have a problem with Clinton Folkes?

8 **A** No, ma'am.

9 **Q** So you all had no reason to be arguing or fighting or
10 anything?

11 **A** I had -- like I say, I've made mistakes myself. I
12 didn't -- I mean, I just tried to -- I tried to
13 associate with people with the same goals as me which
14 was trying to get out of the situation. I really,
15 you know, didn't too much associate with a lot of
16 people, just people, you know.

17 **Q** And you were laying on your blanket. Were you drunk
18 at this time?

19 **A** No, ma'am. I did have a little buzz but I wasn't
20 drunk.

21 **Q** Would you say you were high at this time?

22 **A** So-so. It wasn't really -- it wasn't really a good
23 one.

24 **Q** Would you say that the alcohol or the drugs would
25 have skewed your ability to know what was going on?

1 **A** No, ma'am. Not at all.

2 **Q** And you remember this day clearly?

3 **A** Yes, ma'am.

4 **Q** When you were laying on your blanket, go ahead and
5 tell the jury. What happened next?

6 **A** Well, I was laying on my blanket and I just happened
7 to notice, you know, Clinton was talking loud,
8 flashing money, you know, just being an overall
9 nuisance. And so a friend of his came up to me, and
10 she was like, "Hey."

11 **MR. O'NEIL:** Objection, Your Honor. Hearsay.

12 **THE COURT:** Well, I don't know what he's going
13 to say.

14 **MS. WEISS:** Your Honor, this doesn't go to the
15 truth of the matter asserted.

16 **THE COURT:** Pardon me?

17 **MS. WEISS:** This doesn't go to the truth of the
18 matter asserted.

19 **THE COURT:** All right. Well, let's see what --

20 **A** She said, "Hey. How you doing?" You know, we
21 started talking. And that's when I noticed Clinton.
22 You know, he was running his mouth. And, you know,
23 he was talking and he started getting closer to me.
24 And I told him, "Hey, you know, back up."

25 **Q** Wait a minute now. I'm going to slow you down for

1 just a minute. She started getting closer to you or
2 he did?

3 A No. He did. She was already standing by me talking
4 to me. She was --

5 Q She was standing next to you just talking?

6 A Yes, ma'am.

7 Q Were you touching each other?

8 A No, ma'am.

9 Q Okay. Was this somebody that you had a romantic
10 relationship with?

11 A No, ma'am. She was just an associate, you know, just
12 somebody you talk to.

13 Q And you said that Clinton was being just a regular
14 nuisance. Could you tell if he was intoxicated?

15 A Yes, ma'am. He was intoxicated.

16 Q And what led you to believe that?

17 A Well, after he was standing so close to me, you
18 could -- I mean, you could see it, you know. He was
19 just -- I mean, he was out of his normal character as
20 I have always seen him, you know. He was always a
21 work type person. You know, he was just slurring his
22 speech, talking to everybody. He had -- I could
23 definitely tell he had something to drink.

24 Q Okay. And he was beyond just his normal way of
25 acting or beyond one drink?

1 **A** Yes, ma'am.

2 **Q** Okay. And what did he do next?

3 **A** Well, we exchanged a couple of words, you know, and I
4 kept telling him to --

5 **Q** Now, before you exchanged words, what did he do
6 first?

7 **A** He walked up and stood there and stood right by me
8 while me and another person was talking.

9 **Q** Okay.

10 **MS. WEISS:** Your Honor, I'm going to ask that
11 the witness be allowed to step down for just a
12 minute.

13 **THE COURT:** All right.

14 **Q** And if I am you, show me where he was standing next
15 to you?

16 **A** About -- about right there. And another person was
17 standing directly right here.

18 **Q** Okay. And did he just -- you be him. If I am you,
19 where is he standing?

20 **A** Well, if you're me, he was standing on the side of me
21 right here.

22 **Q** Okay.

23 **A** And I kept telling him because --

24 **Q** Can you hear? I'm sorry. Can you hear?

25 **A** He was talking trash. And I kept telling him --

1 Q What was he saying?

2 A Just what the F is going on? What are you doing with
3 her, and all this and that. I'm like, you know, what
4 are you talking about?

5 Q And what did he do next?

6 A He started getting closer. And that's when I told
7 him again, "Hey, back up. You're getting too close
8 to me."

9 Q How close did he get to you before anything got
10 physical, if I am you?

11 A Probably about this close.

12 Q So he kept approaching you?

13 A Yes, ma'am. I stayed in the same spot the entire
14 time. I did not move.

15 Q Okay. You can sit back down. Thank you. And you
16 said that he was kind of talking trash?

17 A Yes, ma'am.

18 Q Did his trash escalate from, "What are you doing
19 there with her?"

20 A Yes, ma'am. He punched me in my -- he punched me in
21 my eye.

22 Q Okay. But verbally, did he escalate what he was
23 saying to you before he touched you?

24 A I mean, he was just saying the same thing. I'll F
25 you up and such-and-such, such-and-such.

1 Q Okay. And I know you probably are trying to edit
2 what you're saying for the jury. But it's important
3 for them to hear what exactly he was saying. So if
4 you can just say one of lines exactly what he was
5 saying?

6 A "I'll fuck you up."

7 Q Okay. And what did you think he meant by that?

8 A Meaning he was going to --

9 MR. O'NEIL: Objection, Your Honor.

10 MS. WEISS: It's opinion as to what he thought,
11 what he took it to mean.

12 THE COURT: Well, he can testify how he took it.

13 MS. WEISS: Right. That was the --

14 THE COURT: What he thought he meant, he can
15 testify what he believed his meaning of the statement
16 was, not what the other party's belief was.

17 MS. WEISS: Yes, Your Honor.

18 Q What did you think that statement meant?

19 A I thought it meant he was going to try to hurt me,
20 try to fuck me up. I'm just going on what he said.

21 Q And, in fact, how much time elapsed between his
22 saying that statement and when he touched you?

23 A I'd say about another five to six seconds because --

24 Q And what did he do first?

25 A Well, he kept talking. And like I told him, you

- 1 know, he just kept coming towards me. And I do
2 recall him pulling a bottle out. He threw it at me.
3 But it didn't -- like I said, it didn't hit me.
- 4 Q So he threw a bottle. Did you see what kind of
5 bottle it was?
- 6 A Yeah. A king Cobra bottle. Full.
- 7 Q A full King Cobra bottle?
- 8 A Yes, ma'am.
- 9 Q And he threw it at you but it didn't you?
- 10 A Yes, ma'am.
- 11 Q Okay. And what did he do next?
- 12 A He was --
- 13 Q Did you react at that point?
- 14 A No, ma'am. I just -- like because Tiffany was still
15 standing there. And I'm like, you know, you going to
16 say something or something? She was pretty much
17 ignoring him. And that's when he took a step closer,
18 and then that's when he punched me in my eye.
- 19 Q Okay. And what happened next?
- 20 A I defended myself. I hit him back.
- 21 Q And what happened when you hit him?
- 22 A Well, when I hit him, he staggered.
- 23 Q Now, before you start, did you have any weapons on
24 you at all?
- 25 A No, ma'am.

- 1 Q Did you have any weapons in your hands?
- 2 A No, ma'am.
- 3 Q Okay. He hit you in the eye, and then what did you
- 4 do?
- 5 A I hit him back.
- 6 Q How did you hit him?
- 7 A Hit him a two-piece.
- 8 Q And what does that mean?
- 9 A That's when you hit somebody twice.
- 10 Q Two hands?
- 11 A Yeah. Right and left.
- 12 Q Okay. And what happened next?
- 13 A Well, he started falling back and he grabbed ahold of
- 14 my shirt. And in turn, I started falling with him.
- 15 And as we were tussling on the ground, he is like,
- 16 uh-uh, and he hit me in my neck twice. And I didn't
- 17 think anything of it, you know, because I'm still
- 18 trying to -- I'm still wrassling with him trying to,
- 19 you know, trying to get him to calm down. Like I
- 20 say, I had no intention of hurting this man. I'd
- 21 just rededicated my life to Christ. I was trying to
- 22 straighten up, you know. And that's when somebody
- 23 was like, "Hey, you're bleeding."
- 24 Q All right. I'm going to ask you to step down one
- 25 more time. If that's okay, Your Honor?

1 **THE COURT:** Yes, ma'am.

2 **Q** Just to show just one more time. If you're him and
3 I'm you, can you show me when you said he just
4 punched twice how he punched you?

5 **A** Well, he punched -- I punched him twice. He punched
6 me once.

7 **Q** Right.

8 **A** But he would hit me with his left hand because he hit
9 me in this eye.

10 **Q** And then when you were on the ground, he pulled you
11 to the ground?

12 **A** When I hit him, he staggered back. But in turn, he
13 grabbed me and I started falling toward him.

14 **Q** And then he hit you?

15 **A** And then we was like half way on the ground wrassling
16 and he -- so he hit me --

17 **Q** Here. Show me how he hit you on me.

18 **A** Like he -- like trying to -- like I thought he was
19 just missing his punches when he was like hitting me
20 up in here.

21 **Q** Okay. And I'm going to ask you to turn to the jury.
22 Is this where he hit you?

23 **A** Yes, ma'am.

24 **Q** I'm just trying to turn sideways so they can see
25 that. And do you have any other scars?

1 **A** This one right here on my arm.

2 **Q** That scar right there. And do you have any others on
3 your face?

4 **A** I have one under here.

5 **Q** Right there?

6 **A** Yes, ma'am.

7 **Q** Okay. Go ahead. You can have a seat. And you were
8 in the throes of him pulling on you and pulling you
9 toward the ground. You were trying to subdue him?

10 **A** Yes, ma'am.

11 **Q** And then did somebody yell out?

12 **A** Yes. Somebody said, "You're bleeding." And I just
13 noticed the blood on my arm, you know. And I was
14 still wrassling him. And they were like, "No, no.
15 You're bleeding from the neck." So I immediately
16 jumped up and I checked my neck. And I'm like, oh,
17 crap, I'm bleeding. So I'm like in just like sort of
18 shock. And he jumps up off the ground, just like,
19 I'm going to f'g kill you, and starts running towards
20 me. So I ran to the phone booth.

21 **Q** Wait a second. This is important. What was that
22 line? What did he say?

23 **A** He said, "I'm going to fucking kill you."

24 **Q** And he started running towards you?

25 **A** Yes, ma'am. And I turned around and ran to the phone

1 booth.

2 Q Okay. And I show you what's been marked as State's
3 Exhibit 3 for identification. Do you recognize this?

4 A Yes, ma'am.

5 Q And what is it?

6 A It's a pay phone.

7 Q Is that the phone booth?

8 A I'm not -- I thought the pay phone was this way.

9 Q This is looking back into the park?

10 A Okay. Yeah. Then that's it.

11 Q Okay. And that's the same pay phone you ran to.
12 These are the trees?

13 A Yes, ma'am.

14 MS. WEISS: Okay. Your Honor, we'd like to
15 enter State's Exhibit 3 into evidence.

16 MR. O'NEIL: No objection.

17 THE COURT: So admitted.

18 (WHEREUPON, State's Exhibit No. 3 is admitted
19 into evidence.)

20 Q Showing the jury, the altercation took place out here
21 in the middle of the field?

22 A Yes, ma'am.

23 Q And then once you started bleeding, you came to the
24 pay phone?

25 A Excuse me. Yes, ma'am. I had stood up and I was

1 like still checking my neck. And he jumped up and
2 said, "I'll fucking kill you", and he started running
3 toward me. So I was more concerned then about my
4 neck. So I ran and called the police.

5 Q What did you think was going to happen with your neck
6 bleeding?

7 A Well, for a minute there I thought I was dying.

8 Q Okay. And you ran to the phone and called 911?

9 A Yes, ma'am.

10 Q What did Clinton Folkes do next?

11 A Well, after I pretty much outran him to the phone
12 booth, I mean, he turned around and started walking
13 off.

14 Q Do you remember what he was wearing that day?

15 A He had on a blue striped shirt. And I'm not sure
16 about the pants. But like I say, I remember the
17 shirt he had on.

18 Q I show you what's been marked as State's Exhibit 23.
19 Do you recognize this?

20 A Yes, ma'am.

21 Q What is it?

22 A It's a shirt with a stripe. Well, it's a purple
23 striped shirt it looks like.

24 Q Does that shirt look familiar?

25 A Yes, ma'am.

1 Q What is it familiar from?

2 A Familiar? That's the shirt he had on.

3 Q Okay.

4 MS. WEISS: Your Honor, at this time I'd like to
5 enter State's Exhibit 23 into evidence.

6 MR. O'NEIL: No objection, Your Honor.

7 THE COURT: So admitted.

8 (WHEREUPON, State's Exhibit No. 23 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 24 is marked for
11 identification.)

12 Q And where is that shirt located?

13 A I'm lot sure. Somewhere in the park.

14 Q A trashcan?

15 A Oh, yes, ma'am.

16 Q Okay. A trashcan in the park. I show you what's
17 been marked as State's Exhibit 24. Do you recognize
18 this?

19 A Yes, ma'am.

20 Q What is it?

21 A It's the shirt. It's the same shirt he had on.

22 Q Okay.

23 MS. WEISS: Your Honor, at this time I'd like to
24 enter State's Exhibit 24 into evidence.

25 MR. O'NEIL: I would object at this point until

1 the proper chain foundation is laid.

2 **THE COURT:** Say that again?

3 **MR. O'NEIL:** I said I would object at this point
4 until the proper chain foundation is laid.

5 **THE COURT:** What chain?

6 **MR. O'NEIL:** The chain of evidence, Your Honor,
7 as it relates to the shirt.

8 **THE COURT:** All right. Ladies and gentlemen,
9 let me let you step back to the jury room. Please
10 don't discuss the case while you're there.

11 (Jury out at 3:20 p.m.)

12 **THE COURT:** Tell me what you mean by the chain.

13 **MR. O'NEIL:** Chain of custody, Your Honor.

14 **THE COURT:** Why do we need that?

15 **MR. O'NEIL:** They need to show this is the
16 particular shirt that was found in the trashcan on
17 that particular day, Your Honor. There's been no
18 testimony that --

19 **THE COURT:** He's identifying this is the shirt.

20 **MR. O'NEIL:** Yes, Your Honor.

21 **THE COURT:** This is not like drugs. The drugs
22 are not identifiable in and of themselves and they're
23 fungible; something might happen to them. This is
24 the shirt that he's identifying is the shirt he saw
25 that day.

1 **MR. O'NEIL:** Yes, Your Honor.

2 **THE COURT:** I don't know what chain you're
3 talking about.

4 **MR. O'NEIL:** My only concern is that there's
5 going to be testimony that there were clothes all
6 over this particular park. I just want to ensure
7 that this is the same shirt that was found in the
8 trashcan.

9 **THE COURT:** Well, he's identified it. He's
10 testifying that that's the shirt.

11 **MR. O'NEIL:** Yes, sir. That's the shirt that he
12 saw the defendant wearing, Your Honor. I'm not sure
13 that that's the shirt that was found, the same shirt
14 that came out of the trashcan, Your Honor.

15 **THE COURT:** Well, didn't he just testify that
16 was the shirt that was recovered?

17 **MS. WEISS:** I mean, he said that that was the
18 same shirt, that's the shirt in the trashcan that he
19 saw him wearing and that's the same shirt he saw him
20 wearing.

21 **THE COURT:** You know, I think he can testify to
22 that. If you've got some question as to whether
23 that's the shirt, you can certainly cross examine
24 him. I don't know what chain -- you mean that this
25 officer found it and passed it to this officer and

1 passed it to that officer?

2 **MR. O'NEIL:** Yes, sir.

3 **THE COURT:** Well, I don't think you need to do
4 that on a case such as this where it's an
5 identifiable piece of property.

6 **MR. O'NEIL:** Yes, Your Honor.

7 **THE COURT:** All right. We're going to take a
8 little bit of a break since we've got the jury out.
9 We'll take about ten, fifteen minutes or so. You can
10 step down. Don't discuss your testimony while we're
11 down. All right?

12 **WITNESS:** Yes, sir.

13 **THE COURT:** Go ahead and give the jury something
14 to drink.

15 (Whereupon, a break is taken)

16 (WHEREUPON, State's Exhibit No. 24 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 25 is marked for
19 identification.)

20 **THE COURT:** All right. Mr. Hollis, let's bring
21 the jury in.

22 **THE BAILIFF:** Be glad to, Your Honor.

23 **THE COURT:** Where is our witness?

24 **MS. WEISS:** Right here, Your Honor.

25 **THE COURT:** Come back up here.

1 (Jury in at 3:38 p.m.)

2 **THE BAILIFF:** The jury is all present, Your
3 Honor.

4 **THE COURT:** All right. Thank you, Mr. Hollis.
5 All right, Ms. Weiss.

6 **MS. WEISS:** Thank you, Your Honor.

7 **Q** All right. Go back to the shirt. This was the same
8 shirt that you saw him wearing that day?

9 **A** Yes, ma'am.

10 **Q** Now, when he pulled you down to the ground by your
11 shirt, he was pulling you down, you were kind of over
12 him, could you see anything in his hand?

13 **A** I seen a blue -- like a blue handle. And it was just
14 like -- I thought it was like a club or something.
15 But it was just -- I seen like a blue -- like a blue
16 handle, like a blue bulb or something.

17 **Q** Okay.

18 **A** And that was pretty much what I seen until we like --
19 until he got up afterwards. I didn't really -- I
20 seen what was in his hand but I didn't know what it
21 was until after he had stood up.

22 **Q** Okay. You say you saw a bulb sticking out of one
23 side. Did you see anything coming out of the other
24 side?

25 **A** At the time when we were on the ground, no.

1 Q And after he stood up, what did you see?

2 A I seen that he had a knife. It was blue. It had a
3 blue handle and it had a hook blade on the end of it.

4 Q Okay. I show you what's been marked as State's
5 Exhibit 25 for demonstrative purposes. Do you
6 recognize this?

7 A Yes, ma'am.

8 Q Is that the same type of blade that you were just
9 describing?

10 A Yes, ma'am. That's very, very similar to it. Except
11 the point, this part here wasn't there, and it had a
12 blue handle and it was bigger on the end down here.

13 Q Okay.

14 A And it had lines, like grip lines through it.

15 Q Okay. Now, you went to the phone and you called 911?

16 A Yes, ma'am.

17 Q Do you recall what type of description, if any, you
18 gave on that phone call?

19 A I remember vaguely. I couldn't tell you the exact
20 description.

21 Q But you remember calling 911?

22 A Yes, ma'am.

23 Q And where did you go after you made that phone call?

24 A They put me in an ambulance and took me to Palmetto
25 Richland Hospital.

1 Q While you were making that phone call, was anybody
2 else helping you?

3 A I remember a guy, a little short white guy with long
4 hair. And I think Jerome or somebody gave me some
5 ice to put on my neck. And that's like all I pretty
6 much remember of that.

7 Q So you had some ice. Somebody gave you some ice?

8 A Yes, ma'am. Ice and a brown towel to hold onto it
9 because it was bleeding so much.

10 Q And you were able to hold that onto your -- hold all
11 that onto your neck?

12 A Yes, ma'am.

13 Q And where did you wait?

14 A In that area I believe. I think I walked over to the
15 stage or whatever.

16 Q Okay.

17 A But I know I was still -- I was in the area by the
18 phone booth. That's where they told me they were
19 coming. Because I know the dispatcher kept asking me
20 what side, and I didn't know the numbers to the
21 block, 700 block or something like that they were
22 saying. But I couldn't -- I just told them I was on
23 the side where the stage was, the side where the
24 stage was.

25 Q And were you still bleeding pretty heavily?

1 **A** Oh, yes, ma'am.

2 **Q** You said you went to Richland Memorial Hospital?

3 **A** Yes, ma'am.

4 **Q** What happened once you got to Richland Memorial?

5 **A** Well, when they took me in there for emergency
6 surgery, they wouldn't let me see a mirror because I
7 kept asking for one. They was just trying to get me
8 to lay down. And they started -- they started
9 talking amongst each other. And I asked the doctor,
10 I was like, "Well, how bad is it? Can I see a
11 mirror?" He was like, "No. Just" --

12 **MR. O'NEIL:** Objection, Your Honor.

13 **THE COURT:** Sustained.

14 **Q** Okay. So what did they do? You went to the
15 hospital. And then what happened to you next?

16 **A** Like I said, they took me back for surgery.

17 **Q** And how long did you end up staying in the hospital?

18 **A** Until about 6:00 the next day. That's when I was
19 discharged.

20 **Q** The next afternoon?

21 **A** Yes, ma'am.

22 **Q** Okay. And do you recall what, if anything, what
23 treatment you received?

24 **A** Well, I know I had stitches.

25 **Q** Okay. The next day while you were in the hospital,

1 did you have the opportunity to talk to an
2 investigator?

3 A Yes, ma'am.

4 Q Did any other investigators come up there?

5 A No, ma'am.

6 Q Okay. Do you remember who came up there the next
7 day?

8 A Yes, ma'am.

9 Q Who was that?

10 A Mr. McCracken.

11 Q When he came to your room, what did he do first?

12 A The first thing he asked me was how was I doing. And
13 I'm like, "Okay." Then he asked me about to pick up
14 a line-up. And --

15 Q Let's do it a little bit slowly. Were you under any
16 heavy narcotics at this point?

17 A No, ma'am. I had already started -- they had already
18 started bringing me food and started taking the IV's
19 and stuff out of my arm.

20 Q And were you pretty coherent? Did you know what was
21 going on?

22 A Yes, ma'am.

23 Q Okay. So do you remember Investigator McCracken
24 asking you what happened?

25 A Yes, ma'am. Somewhat. I think so. I'm not sure

1 because this was so long ago. I do remember -- the
2 main thing I do remember is the line-up. And I think
3 I did -- I think I signed a statement, too.

4 Q Okay.

5 (WHEREUPON, State's Exhibit No. 26 is marked for
6 identification.)

7 Q I'm going to show you what's been marked as State's
8 Exhibit No. 26 for identification. Do you recognize
9 this?

10 A Yes, ma'am, I do.

11 Q And who handwriting is that in?

12 A That is in Mr. McCracken's handwriting.

13 Q Okay. And whose signature is that on the bottom?

14 A That's my signature.

15 Q And do you recall signing this --

16 A Yes, ma'am.

17 Q -- at the hospital?

18 A Yes, ma'am.

19 Q So you talked to Investigator McCracken. And you
20 said you remember something about a line-up. Did he
21 ask you about who had cut you?

22 A No, ma'am. He didn't ask me about it. He just asked
23 me could I identify the person that had done this.

24 Q And what did you say?

25 A Yes, ma'am.

1 Q Were you certain of that?

2 A Yes, ma'am.

3 Q And did you feel that you had had enough time to view
4 the person that had cut you?

5 A You don't forget a person's face that does something
6 like that. You just -- you -- I could never -- I
7 can't forget his face now.

8 Q Okay. Let me show you State's Exhibit 1 for
9 identification. Do you recognize this?

10 A Yes.

11 Q Okay. Can you describe, tell me what this is?

12 A That's the line-up. That's the exact same line-up
13 from the hospital.

14 MS. WEISS: Your Honor, at this time I'd like to
15 enter State's Exhibit 1 into evidence.

16 MR. O'NEIL: Your Honor, subject to our previous
17 objection.

18 THE COURT: You all step up here a minute.

19 (Whereupon, a bench conference is had)

20 Q So you said this is the actual one that you looked
21 at?

22 A Yes, ma'am.

23 Q Okay. And did you make any markings on this piece of
24 paper?

25 A Yes, ma'am. I put my signature under there, I mean

- 1 my initials under it.
- 2 Q And is that in your handwriting?
- 3 A Yes, ma'am. It is my handwriting.
- 4 Q And there is a circle. Did you make that circle?
- 5 A Yes, ma'am.
- 6 Q About how long do you recall looking at this piece of
- 7 paper before you were able to pick him out?
- 8 A Two, three seconds.
- 9 Q And do you recognize what's been marked as State's
- 10 Exhibit 2?
- 11 A Yes, ma'am.
- 12 Q And did you fill this out with Investigator
- 13 McCracken?
- 14 A Yes, ma'am.
- 15 Q And it says that you identified photo 55484?
- 16 A Yes, ma'am.
- 17 Q Right there. Is that your handwriting?
- 18 A Yes, ma'am.
- 19 Q Okay. And does that correspond to the same number as
- 20 the picture on this paper?
- 21 A Yes, ma'am.
- 22 Q And that's your signature?
- 23 A Yes, ma'am.
- 24 Q And how certain --
- 25 A It looks like a doctor's handwriting.

1 Q And how certain were you that that's the person that
2 cut you?

3 A Without a shadow of a doubt. There is no doubt.
4 500,000 percent. I mean, how can you -- I could
5 never forget his face.

6 Q Do you see the person in the courtroom today that cut
7 you in Finlay Park on July 22nd, 2007?

8 A Yes, ma'am, I do.

9 Q And can you please point him out and describe him?

10 A This gentleman right here, ma'am, the one with the
11 red colored shirt. It looks like his eye is swollen,
12 and the jacket in the middle of these two gentlemen.
13 But not to be confused with the gentleman that's
14 sitting behind him.

15 THE COURT: All right. He has identified the
16 defendant.

17 MS. WEISS: Thank you, Your Honor.

18 Q Is there any question in your mind that he is the
19 person that did it?

20 A No, ma'am.

21 Q After you got out of the hospital -- beg the Court's
22 indulgence one second. After you got out of the
23 hospital, did you have the opportunity to go to
24 police headquarters?

25 A Yes, ma'am.

1 Q And what happened when you went to headquarters?

2 A I had got out of surgery. I had to get into the
3 victim's program.

4 Q I'm not talking about that as much. Did they take
5 pictures when you were there?

6 A Yes, ma'am.

7 Q I'm going to ask you to look at State's Exhibits 14,
8 13, 18, 17, 15, 16 and 12. Do you recognize these
9 pictures?

10 A Yes, ma'am.

11 Q And just look through them real quick.

12 A Yes, ma'am.

13 Q Do those pictures accurately depict what you looked
14 like when you went to the police headquarters shortly
15 after your surgery?

16 A Yes, ma'am. Everything even down to the shirt I had
17 on, South Pole.

18 MS. WEISS: Your Honor, at this time the State
19 would like to enter the aforementioned exhibits into
20 evidence.

21 MR. O'NEIL: No objection, Your Honor.

22 THE COURT: So admitted.

23 (WHEREUPON, State's Exhibit No. 12 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 13 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 14 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 15 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 16 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 17 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 18 is admitted
12 into evidence.)

13 **MS. WEISS:** Your Honor, if the witness may step
14 down just a minute?

15 **THE COURT:** He may.

16 **Q** Okay. If you can just show the jury the injuries on
17 these pictures, what these are depicting?

18 **A** This is my neck right here.

19 **Q** Okay. Show them where the scar is on here, on the
20 picture?

21 **A** Oh. Right here. This is the same scar. This is one
22 under here, right here.

23 **THE COURT:** All right. I need you to --

24 **Q** Speak up a little bit louder.

25 **THE COURT:** -- speak up a little bit, Mr. Jones,

1 because the court reporter has to get what you're
2 saying.

3 A Yes, sir. I was describing the one right here
4 directly under my neck.

5 Q And that is a close-up view of which scar?

6 A Of this one right here on my neck here.

7 Q This is --

8 **THE COURT:** Why don't you all swap.

9 **MS. WEISS:** Okay.

10 Q That's the same one on your neck?

11 A Yes, ma'am.

12 Q And that's just got a measuring tool up next to it?

13 A Yes, ma'am.

14 Q The same one?

15 A Yes, ma'am. I was still swollen up real, real bad.

16 Q And what is that scar?

17 A That's the one to my arm right here.

18 Q Okay.

19 A That's the same one.

20 Q And finally?

21 A It looks like the same one.

22 Q Okay. Thank you. You can step back up to the stand.

23 Beg the Court's indulgence just one minute. Karem,
24 on July 22nd, 2007, when you were in Finlay Park and
25 you were on the ground and you realized you had

1 started bleeding, what did you think was happening?

2 **A** Well, I figured -- because at the -- before I knew I
3 was bleeding at the neck, I figured I had just got
4 scratched or something during the tussle, you know,
5 maybe from dragging my arm on the ground or
6 something.

7 **Q** So you just thought it was your arm bleeding?

8 **A** Yes, ma'am.

9 **Q** What did you think when you found out your neck was
10 bleeding?

11 **A** I'm dying.

12 **Q** Thank you. No further questions at this time, Your
13 Honor.

14 **THE COURT:** All right. Mr. O'Neil.

15 **MR. O'NEIL:** Thank you, Your Honor.

16 CROSS EXAMINATION

17 **BY MR. O'NEIL**

18 **Q** Mr. Jones, you're from California?

19 **A** Yes, sir.

20 **Q** And what high school did you go to there in
21 California?

22 **A** I didn't attend high school in California.

23 **Q** Where did you attend high school?

24 **A** I didn't attend -- where I attended high school was
25 A. C. Flora.

- 1 Q You play any sports at A. C. Flora?
- 2 A Football.
- 3 Q You consider yourself a pretty athletic guy?
- 4 A Well, back in the day, yeah.
- 5 Q Yeah. And back in July of last year, you would have
- 6 been what? About 31 years old?
- 7 A Yes, sir.
- 8 Q And do you know Mr. Folkes was about 44 years old?
- 9 A I guess. I didn't know his age.
- 10 Q You knew he was older than you?
- 11 A Yes, sir.
- 12 Q And how tall are you?
- 13 A I think about maybe five-nine, almost six.
- 14 Q You're taller than Mr. Folkes?
- 15 A Yes, sir.
- 16 Q How much did you weigh?
- 17 A Now?
- 18 Q Back then.
- 19 A Back then, probably like 150, 160.
- 20 Q You would agree that you were a little bit heavier
- 21 than Mr. Folkes?
- 22 A I guess.
- 23 Q And so you were younger, taller and heavier than Mr.
- 24 Folkes back then?
- 25 A Yes.

1 Q And you say he was drunk?

2 A Yes, sir.

3 Q Slurred speech I think was the words you used?

4 A Yes, sir.

5 Q And you were not drunk?

6 A No, sir.

7 Q You just had one beer?

8 A I had one beer and a half a blunt.

9 Q And you say Clinton swung at you and hit you in your
10 eye?

11 A Yes, sir.

12 Q And after that you all started fighting?

13 A Yes, sir.

14 Q But you didn't have a bruise on your eye, did you?

15 A Yeah. My eye was swollen.

16 Q Your eye was swollen?

17 A Yes.

18 Q I'm going to show you what's been marked State's
19 Exhibit No. 12. Permission to approach, Your Honor?

20 THE COURT: Sure.

21 A Okay. What am I pointing out?

22 Q And your eye wasn't swollen in this picture, was it?

23 A I think the swelling had went down some.

24 Q But it wasn't swollen in this picture?

25 A So-so.

1 Q And you said, I think your words were, you used a
2 two-piece on Mr. Folkes. Is that correct?

3 A Yes, sir.

4 Q You hit him twice?

5 A Yes, sir.

6 Q And he started falling?

7 A Yes, sir.

8 Q And you kind of fell on top of him?

9 A Yes, sir. He grabbed, kind of threw my balance off.
10 I started falling with him.

11 Q Okay. But you never saw him use a knife to your
12 neck. Is that correct?

13 A No, sir.

14 Q You never saw him cut you?

15 A No.

16 Q In fact, you didn't even know you were cut until Ms.
17 Briggs told you?

18 A Yes. She told me I was cut. I knew I was cut on the
19 arm. I didn't know I was cut on the neck.

20 Q Didn't have no idea you were cut on the neck?

21 A No, sir.

22 Q And I think today you said after you got up Mr.
23 Folkes said something about I'm going to f'g kill
24 you?

25 A Yes, sir.

1 Q Okay. No doubt that's what he said to you?

2 A No doubt.

3 Q And you talked to law enforcement a day after this
4 event, right?

5 A Yes, sir.

6 Q Investigator McCracken sitting right there?

7 A Yes, sir.

8 Q And you gave him a statement?

9 A Yes, sir.

10 Q And you wanted to be thorough in that statement you
11 gave him?

12 A Yes, sir.

13 Q You wanted to be honest?

14 A Yes, sir. Of course.

15 Q You definitely wanted to be truthful?

16 A Yes, sir.

17 Q You wanted the person that attacked you to be caught?

18 A Yes, sir.

19 Q And you wanted to include in that statement all the
20 important information so he could have been caught?

21 A Yes, sir.

22 Q Now, I'm going to show you a statement from that day.
23 Permission to approach, Your Honor?

24 THE COURT: Yes, sir.

25 Q Show me in that statement where you said Clinton

1 Folkes said I'm going to f'g kill you?

2 A It's not on this statement.

3 Q It's not in your statement?

4 A It's not on -- it's not on this statement.

5 Q Okay. Now, you say you saw a blue hook blade?

6 A Yes, sir.

7 Q A hook blade with a blue handle?

8 A Yes, sir.

9 Q And you also saw a red knife on the ground?

10 A Yes, sir.

11 Q This was when you all were tussling on the ground?

12 A Yes, sir.

13 Q Okay. Now, you also said Clinton had a King Cobra in
14 his hand?

15 A A King Cobra, a beer. A beer, yeah. Not in his hand
16 at that time. That was like in the beginning after
17 he threw it at me and missed.

18 Q Now, this fight occurred where the bench at, where
19 the statute of Mr. Finlay is, correct?

20 A Yes, sir.

21 Q Near that area?

22 A Yeah. In that area.

23 Q Now, after the fight happened you got up and ran and
24 called 911?

25 A Yes, sir.

1 Q Now, Clinton ran the other direction?

2 A After he seen he couldn't catch me, he ran the other
3 direction.

4 Q But he ran the other direction?

5 A After he seen he couldn't catch me, because he ran
6 towards me first. That's when I ran to the phone.
7 That's how I can describe the knife he had in his
8 hand.

9 Q Now, did you mention anywhere in your statement that
10 he ran towards you?

11 A In this statement here?

12 Q Yeah, that statement. That statement that you gave a
13 day after the event when you were questioned by the
14 cops?

15 A No. It's not mentioned in here.

16 Q So you ran towards the pay phone?

17 A Yes.

18 Q Now, the pay phone is probably about, you would
19 agree, about 75 yards from the bench?

20 A From the bench? I would guess so. But the fight
21 didn't take place at the bench. It took place under
22 the tree which is closer than the bench.

23 Q So you agree that the pay phone is probably about
24 50 yards away from the tree?

25 A Well, give or take.

- 1 Q And you called 911, right?
- 2 A Yes, sir.
- 3 Q And you talked to 911 for a few minutes?
- 4 A Yes, sir.
- 5 Q And you never mentioned to 911 the name of the person
- 6 you were in the fight with?
- 7 A I may or I may have not. I can't recall.
- 8 Q But you do agree that you had heard Clinton's name
- 9 before?
- 10 A Yeah.
- 11 Q You met him at the job, as a matter of fact?
- 12 A Yeah.
- 13 Q And you told them that there had been a fight at the
- 14 park when you talked to 911?
- 15 A Yes, sir.
- 16 Q And you told them two people had been involved?
- 17 A Yes, sir.
- 18 Q And you said one dude with a knife was trying to walk
- 19 out the park?
- 20 A No. I'm not sure. I don't think I said that.
- 21 Because the phone conversation I recall, they asked
- 22 me, "Were you a victim?" And I was like, "Yes,
- 23 ma'am." And they started asking me questions about
- 24 me. No questions were asked about the assailant
- 25 until toward the end of the conversation.

1 Q But I guess my question is solely, do you remember
2 telling them that the dude with the knife walked out
3 the park?

4 A I don't remember.

5 Q Okay. But after you got off the phone with 911, you
6 moved off to the stage. That's where you were
7 waiting for an EMT to come?

8 A Yes, sir.

9 Q As a matter of fact, I think Mr. Abney was there, the
10 kind of heavyset black guy?

11 A Honestly, I can't recall him.

12 Q But somebody helped you get the bleeding under
13 control?

14 A Yeah. The little short white guy with long hair.

15 Q He helped you?

16 A He helped me.

17 Q Okay. And you had the bleeding under control before
18 EMS arrived?

19 A Well, with the ice and the water, it wasn't under
20 control, but it wasn't bleeding as bad it was.

21 Q And you never passed out during this whole time?

22 A No, sir.

23 Q And you didn't have any cuts on your hands or
24 anything?

25 A On my arm.

1 Q Yeah. But not on your hands?

2 A No, sir.

3 Q And you had been drinking that night you said?

4 A Yes, sir.

5 Q Had you been using cocaine that night?

6 A No, sir.

7 Q But you had been using marijuana?

8 A Yes, sir.

9 Q In fact, I think you had been using marijuana about
10 45 minutes before getting to the hospital?

11 A Well, maybe. I don't think it was that close
12 together though.

13 Q Did you share that marijuana with Ms. Green and Mr.
14 Patrick?

15 A No.

16 Q But Ms. Retalia Green and Mr. Patrick, those are your
17 friends?

18 A Well, associates.

19 Q Did Mr. Patrick's brother help you get your apartment
20 that you're in right now?

21 A Mr. Patrick's brother?

22 Q Yeah. Did he help you get that apartment?

23 A No.

24 Q You said EMS took you to the hospital that night?

25 A Yes, sir.

1 Q And the doctors, they treated your injuries?

2 A Yes, sir.

3 Q They stitched you up?

4 A Yes, sir.

5 Q Gave you a little ointment?

6 A Yeah. The next day.

7 Q Yeah. They referred you to the Lexington/Richland
8 Drug and Alcohol Counseling Center, didn't they?

9 A I think so. I'm not sure.

10 Q And you said this was the shirt that Mr. Folkes had
11 on that night? This is the shirt?

12 A Yep. Blue collar. That's it.

13 Q The shirt he had on while you all were tussling on
14 the ground?

15 A Yeah.

16 Q You say he cut you and you were bleeding?

17 A Yes, sir.

18 Q But you would admit that there's no blood at all on
19 this shirt?

20 A It doesn't look like it to me.

21 MR. O'NEIL: Beg the Court's indulgence, Your
22 Honor. No further questions, Your Honor.

23 THE COURT: All right. Madam Solicitor,
24 anything further?

25 MS. WEISS: Nothing, Your Honor.

1 **THE COURT:** All right. Thank you, sir. You may
2 step down.

3 **MS. WEISS:** The State calls Tiffany Briggs.
4 TIFFANY T. BRIGGS, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** Thank you. Have a seat in the
7 witness stand and give the court reporter your name.

8 DIRECT EXAMINATION

9 **BY MS. WEISS**

10 **Q** Good afternoon, Ms. Briggs. How are you?

11 **A** I'm fine.

12 **Q** Tiffany, where are you from originally?

13 **A** Columbia, South Carolina.

14 **Q** And did you grow up here for most of your life?

15 **A** Yes, ma'am.

16 **Q** Did you go to school here?

17 **A** Yes, ma'am.

18 **Q** Where did you graduate from high school?

19 **A** Actually I dropped out of Brooklyn Cayce. And when I
20 came back to Columbia in 2005, actually 2006, I went
21 to Midlands Tech to do my undergrad.

22 **Q** And what brought you back to Columbia?

23 **A** Katrina.

24 **Q** Where are you currently living now?

25 **A** I'm actually staying on Rosewood in a rental room.

1 Q And who do you stay with?

2 A I have a boyfriend. So me and my boyfriend stay
3 together.

4 Q And it's just the two of you?

5 A Yes, ma'am.

6 Q Things are going pretty well now?

7 A Yes, ma'am.

8 Q Okay. Back July 22nd of 2007, do you remember that
9 day for any particular reason?

10 A Yes, ma'am. Because it's my birthday.

11 Q And on that day where were you living?

12 A Actually I was staying in Riverside Estates. I had
13 just left the homeless situation I'd say three days
14 before that.

15 Q You said three days before that you were living in
16 what you call the homeless situation?

17 A Yes, ma'am.

18 Q How long had you been living in the homeless
19 situation?

20 A Since December the 14th of 2006.

21 Q And during that time did you have the opportunity to
22 get to know Clinton Folkes?

23 A Yes, ma'am.

24 Q And back in June, sometime in June of 2007, did you
25 end up picking up a fraudulent check charge while you

1 were living out there?

2 **A** Actually I picked up the fraud case right after
3 Katrina when me and my daughter were staying at 1719
4 Winyah. So I got brought up for the charges in 2007.
5 Yes, ma'am.

6 **Q** Okay. So right about right during all this?

7 **A** Yes, ma'am.

8 **Q** Okay. So you said you did get to know Clinton
9 Folkes. So did you know him from the time you moved
10 into the park, into the homeless situation?

11 **A** I would say within a couple of months, yeah, of
12 December, January, February, around about that time,
13 yes. That's when I come to know a lot of people that
14 I know that are in the witness stand with me or in
15 the court testifying.

16 **Q** And did you at some point get to know Clinton Folkes
17 a little bit better?

18 **A** Yes, ma'am. We started to become boyfriend and
19 girlfriend. I can't really tell you exactly what day
20 because we had went together. We broke up like three
21 times and went back together. So we had did that
22 three times.

23 **Q** And would you say that Mr. Folkes is kind of a
24 jealous type?

25 **MR. O'NEIL:** Objection, Your Honor.

1 **THE COURT:** What's the point of that?

2 **A** Yes. I would say that myself.

3 **THE COURT:** Whoa, ma'am.

4 **MS. WEISS:** Hold on. Sorry, Your Honor.

5 **THE COURT:** Is the objection on relevancy?

6 **MR. O'NEIL:** Yes, Your Honor.

7 **MS. WEISS:** Your Honor, I think this will tie it
8 directly into the altercation that we're here about.

9 **THE COURT:** All right. Overruled.

10 **Q** So you would say yes, that he is?

11 **A** Yes, ma'am.

12 **Q** On July 22nd of 2007, were you and Mr. Folkes
13 together or were you separated?

14 **A** We were separated at the time.

15 **Q** How long had you been separated?

16 **A** Like I say, about three days, three or four days.

17 **Q** So this was a fresh breakup again?

18 **A** Yes. Actually that was our last breakup.

19 **Q** Okay. But it had just happened a couple of days
20 earlier. And you actually went to live with some
21 friends?

22 **A** Yes, ma'am.

23 **Q** You knew Mr. Folkes fairly well. You had plenty of
24 opportunities to know who he was, what he looked
25 like, where he hung out?

1 **A** Yes, ma'am. I even got to know a lot of the
2 people -- well, not a lot -- a couple of people in
3 South Carolina that he knew besides the homeless
4 situation.

5 **Q** And on July 22nd, 2007, what did you do that day? It
6 was your birthday. Tell the jury what you did?

7 **A** Actually on July 21st we went -- me and my roommate,
8 we went to Sumter and we stayed at her mom's house
9 that night with her daughter, with her foster little
10 girl that was staying there. We went to church
11 actually together. Then she works at Friedman's
12 which is in Sandhill, and she got off work I'd say
13 about 6, between 6, 6:30, 7.

14 **Q** That night?

15 **A** Yes, ma'am. It was a Sunday. So I think Friedman's
16 is open from 1 to 6.

17 **Q** What did you do when she got off work?

18 **A** As we were coming back around, because I live in
19 Riverside Estates, so that's Cayce way, I told her to
20 drop me off by the park because I wanted to see a
21 couple of people in the homeless situation that were
22 friends of mine.

23 **Q** So you said you were probably through around about
24 6:30 or so?

25 **A** Yeah. I'd say right between there.

1 Q Who did you see when you first came into the park?

2 A I came from the top of the hill. I actually seen the
3 witness. Well, I wouldn't even say it, the defendant
4 and the rest of everybody that's here with me who is
5 actually telling their side of the story, too. They
6 were all sitting in the park having a conversation.
7 And Mr. Green, too.

8 Q Had you been drinking that day?

9 A No.

10 Q Had you been using any drugs?

11 A Not that day.

12 Q Okay. So were you under the influence of anything
13 when you came to the park that day?

14 A No, ma'am.

15 Q I'm going to show you what's been marked as State's
16 Exhibits 10 and 11. Do you recognize these pictures?

17 A Yes, ma'am.

18 Q And if you can show the jury; when you say you came
19 from the top of the park, show them what you meant by
20 the top of the park?

21 A When I say top of the park, there is also an entry
22 over here which comes by the Veterans. It's all the
23 way at the top. It comes by the V.A. service
24 building I think it is, and I know it's a fed
25 building. So I was coming from that way.

1 Q Okay. All right. I'm going to show you State's
2 Exhibits 4 and 8. Do you recognize these pictures?

3 A Yes, ma'am.

4 Q And is that where you're talking about?

5 A Yes, ma'am. This is the direction I came from.

6 MS. WEISS: Okay. Your Honor, at this time I'd
7 like to enter State's Exhibits 4 and 8 in evidence.

8 MR. O'NEIL: No objection, Your Honor.

9 THE COURT: So admitted.

10 (WHEREUPON, State's Exhibit No. 4 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 8 is admitted
13 into evidence.)

14 Q Showing the jury, so you came down from these steps
15 down into the park?

16 A Yes, ma'am.

17 Q There. And that would be the same as coming from
18 this way --

19 A Yes, ma'am.

20 Q -- down into the park? And back to State's
21 Exhibits -- well, State's Exhibit 11. Is that where
22 you were headed?

23 A Yes, ma'am.

24 Q To that general area there?

25 A Actually, yeah, right here somewhere.

1 Q And is that where everybody was seated and sitting
2 around talking that you knew?

3 A Yes, ma'am. A lot of them, a lot of us laid on
4 blankets because I also had one at one point, too,
5 that we laid on blankets under the tree either to
6 stay out the sun or to not have the sun and have the
7 little breeze that was out there.

8 Q And did you know Karem Jones when you came into the
9 park that day?

10 A I did not honestly know his name, but I did know him
11 as an associate of part of the homeless situation.

12 Q And had you known him to be down there for a very long
13 period of time?

14 A No. Because he had lost a baby I think a couple of
15 weeks before. He lost one of his children before he
16 came into the homeless situation.

17 Q So he had just been in there a couple of weeks?

18 A Yes, ma'am.

19 Q Okay. So you -- did you have any sort of
20 relationship with him?

21 A No. Other than talking about his kid that passed,
22 no. Because him and the baby's mama at the time were
23 talking and were getting along.

24 Q Okay. So there was no relationship between the two
25 of you?

1 **A** No.

2 **Q** You just knew who he was?

3 **A** Yes, ma'am.

4 **Q** Okay. So when you came into the park, who did you
5 talk to first?

6 **A** I actually talked to Clayton before I talked to Karem
7 because they were starting out arguing.

8 **Q** Okay. So when you say Clayton, who are you talking
9 about?

10 **A** I mean Clinton Folkes which we called "New York".

11 **Q** And did you call him Clayton sometimes?

12 **A** I called him Clayton or "New York". I have never
13 called him Clinton Folkes.

14 **Q** And you talked to him. What was his demeanor when
15 you came in contact with him first in the park?

16 **A** He was intoxicated, I wouldn't say drunk. He was
17 drinking. And he was in a bad mood that day, a
18 little bit worse than I've seen him on a normal day.

19 **Q** Okay. And did you all have much of a conversation?

20 **A** No, not really. It was more of a demeanor of me
21 between Karem Abdoob (phonetic) and him. It was more
22 between them of Clayton and him fussing and him
23 accusing Karem Dubarts (phonetic) that I was going --
24 or that we were going to date or that we had dated or
25 something like that that day.

1 Q So would you say, who was starting things when you
2 were standing down there?

3 A When I stood there for a while, I sat there and I
4 watched Clayton. Actually I watched it for a minute
5 before I even got into it. I watched Karem and
6 Abdoob sit there. And they were arguing. It was
7 just -- it was like it was going from one person --
8 first it was going from one person to another. And I
9 sat there and watched it I'd say no more than five or
10 six minutes before I stepped in.

11 Q And what did you see happen next?

12 A I seen -- through the whole thing, I seen -- I saw
13 Clayton jump up and say something, him and Karem go
14 at it. I remember Clayton punching at Karem and then
15 Karem turning around and getting up and punching
16 Clayton. And then it went from them two punching
17 each other, Karem running to Clayton, coming in and
18 just taking the knife and cutting his neck.

19 Q So did you see a knife?

20 A Actually I didn't see a knife. I seen a box cutter
21 which I would call a copy cutter also.

22 Q Where did you see that?

23 A Actually it was on Clayton at the time.

24 Q And you've known Clayton for a while. Have you ever
25 seen him to have a knife?

1 **A** Yes.

2 **MR. O'NEIL:** Objection, Your Honor.

3 **THE COURT:** Overruled.

4 **Q** Have you known him to have a knife?

5 **A** Yes. Because we went together, he also -- I had one
6 that he had gave me. And I've known him to carry
7 them because he at least carries three. It's not
8 really safe for a female to be out in case something
9 happens.

10 **Q** And you said you saw a box cutter. Was that in his
11 hand or on the ground or on him or --

12 **A** It was on his -- I know him to have that one. This
13 one was on him like it always is.

14 **Q** Okay. And did you see him punching at Mr. Jones, at
15 Karem?

16 **A** Yes. I did at first.

17 **Q** You saw him punch him first. Did you see him getting
18 into his face or starting --

19 **A** Yeah. They were arguing. I mean, they were at it
20 arguing. Then --

21 **Q** Who started that fight or that argument?

22 **A** I would say Clayton because Clayton had -- even
23 standing from it, Clayton was the only one talking
24 and Clayton was the one that was very upset and very
25 mad. And just everybody -- it was more of a guy

1 thing. When you see guys go at it and they -- well,
2 guys to go at it and have verbal things as if they
3 were going to fight. I thought it was going to be an
4 argument and then it got louder between them.

5 Q And at some point did you see Karem bleeding?

6 A Yes, I did.

7 Q When was that?

8 A After Karem actually -- Clayton swung at Karem and
9 Karem went running, I seen Clayton chase him. And
10 then I seen Karem -- I heard them say, "Karem is
11 bleeding from his neck." I just knew he pulled out
12 the knife. I did not see him actually -- I didn't --
13 it happened so quick when I seen it, it was just, he
14 was holding the side of his neck and there was blood.

15 Q And you say you saw Clayton chasing him?

16 A Yes, I did.

17 Q And was he saying anything? Did you hear him saying
18 anything?

19 A They were arguing that day. There was a lot of words
20 and a lot said in that conversation. So, yes, I did
21 hear them but I don't remember the exact words.

22 Q Do you recall any exact words when he was chasing
23 Karem after Karem was bleeding?

24 A He didn't actually chase Karem after Karem was
25 bleeding. He actually cut Karem. Karem realized

1 that he was bleeding. Kareem went towards getting ice
2 and stuff. And that's when Clayton came behind me
3 and struck me in the back. And then I seen him
4 exiting the park the same way I came in.

5 Q And did you actually see the cut on Kareem?

6 A All I seen was Kareem's hand had blood on it. No, I
7 never got to see the cut, even from the ambulance. I
8 just seen the blood coming from his neck.

9 Q And was there a lot of blood?

10 A Yeah.

11 Q And what were you thinking when you saw the blood?

12 A I don't even remember what I was saying. I was like
13 I just -- I just -- I couldn't believe he cut him.
14 And they were calling -- and there were so many
15 people grabbing phones. There was another set of --
16 there was a family of Caucasians sitting over there
17 with their kids. They had a little boy and a little
18 girl and they got up and they left. And I just seen
19 everything just moving. I really didn't hear
20 anything. I just seen more than I could hear.

21 Q And did you stay in the park after Clayton left?

22 A Yes, I did.

23 Q And did you have the opportunity to talk to law
24 enforcement?

25 A The officer is not here today, the man I talked to.

1 But me and the officer had a brief disagreement or a
2 brief --

3 Q Discussion?

4 A Yeah. Attitude with each other I would say.

5 Q And what did you talk to the officer about?

6 A The officer, the ambulance had came and picked up
7 Karem. And when the ambulance came and picked him
8 up, the officer was like, "Okay, Ms. Briggs." He was
9 like, "So who is the guy?" He was like, "Who was the
10 guy that just went in the ambulance which just got
11 stabbed?" I was like, "I don't know." He said, "But
12 I thought you said you knew the guy that just" -- he
13 said, "I thought you said one of the guys was your
14 boyfriend." I was like, "The guy that just went in
15 the ambulance", which started us to arguing, "I don't
16 know his name." The one that stabbed was the name
17 that I gave him when I said Clayton.

18 Q What name did you give him?

19 A Clayton Folkes.

20 Q Folkes?

21 A (Nods head affirmatively)

22 Q And were you able to give them a description of what
23 Clayton was wearing?

24 A Yes, ma'am.

25 Q And do you remember what that description was?

- 1 **A** Clayton was wearing a purple/green striped I would
2 say collared shirt which is pullover. And that's
3 what he had on when he left the park, and a pair of
4 blue jeans.
- 5 **Q** I show you what's been entered as State's Exhibit 24.
6 Do you recognize this shirt?
- 7 **A** Yes, ma'am.
- 8 **Q** Why do you recognize this shirt?
- 9 **A** Because that's the shirt Clayton had on the day that
10 he stabbed Kareem. That's the shirt he had when he
11 stabbed him.
- 12 **Q** And do you recognize this as a shirt that Clinton
13 owns, owned?
- 14 **A** Yes, ma'am.
- 15 **Q** Do you recognize State's Exhibit 23?
- 16 **A** Yes, ma'am.
- 17 **Q** And what is that?
- 18 **A** It is actually where we sit. The bench is -- well,
19 actually where you sit, where I came into the park,
20 there is a metal thing where we have swings where you
21 can sit and rock back and forth. It's a trashcan
22 right there.
- 23 **Q** And what do you see in that trashcan?
- 24 **A** Clayton's shirt.
- 25 **Q** Did you give the officers information on which

1 direction Clinton went to leave the park?

2 A Yes, ma'am.

3 Q And which direction was that?

4 A I told them that he went towards the park when he
5 went towards the Strom Thurmond building because
6 that's actually what I call it over there. I told
7 them he went out towards the park.

8 Q And did you have the opportunity to leave the park
9 with an officer?

10 A Yes, ma'am.

11 Q And what was that purpose?

12 A To actually go identify Clayton.

13 Q Okay.

14 A The gentleman that you have on your side, he actually
15 put me in one of the police's cars and he actually
16 took me up and he told me to sit. I actually got to
17 sit in the front seat. And he told me to tell him
18 was that Clayton. That's all he asked me. He was
19 like, "Was that the person who stabbed the guy in the
20 park?" And I told him yes. And we waited there
21 until another officer got there because that's when
22 it became three.

23 Q So was there any doubt in your mind that that was the
24 same person?

25 A It was the same person. But like I told the officer,

1 he changed clothes. He changed clothes. But it was
2 the same person that did it, because he had on the
3 same book sack.

4 Q He had the same book sack but different clothes?

5 A Yes, ma'am.

6 Q And did you know him to carry clothes with him?

7 A Yes, ma'am. Because they have lockers at Action
8 Labor in which we keep our clothes. And in a
9 homeless situation you carry your clothes in a bag.
10 You leave it in the storage room that's now on
11 Elmwood or you leave them at your job. So I carried
12 my clothes in my bag, too.

13 Q Would he have had an opportunity to change clothes?

14 MR. O'NEIL: Objection, Your Honor. It calls
15 for speculation.

16 THE COURT: Sustained. I don't know that she
17 can testify --

18 MS. WEISS: Withdrawn. That's fine.

19 Q And do you see Clinton Folkes, the person that you
20 saw stab Mr. Jones, in the courtroom today?

21 A Yes. I see him right there.

22 Q And can you identify what he's wearing?

23 A He actually has on a I would say orange button-up
24 shirt and a -- what do we call it? Blazer, a blue --
25 I would say a dark blue blazer.

1 **THE COURT:** All right. She's identified the
2 defendant.

3 **MS. WEISS:** Beg the Court's indulgence one
4 minute.

5 (WHEREUPON, State's Exhibit No. 27 is marked for
6 identification.)

7 **Q** I'm going to show you what's been marked as State's
8 Exhibit 27 for identification. Do you recognize
9 this?

10 **A** Yes, ma'am.

11 **Q** And whose handwriting is that?

12 **A** My handwriting.

13 **Q** Okay. And what is it?

14 **A** Actually it was the day of my birthday. And the
15 officers needed me to stay also and write the report.
16 So that's what I did.

17 **Q** And you wrote this statement?

18 **A** Yes, ma'am.

19 **Q** And whose handwriting is this?

20 **A** The actual officer's.

21 **Q** Okay. Did he ask you questions?

22 **A** Yes, ma'am.

23 **Q** Did you have the opportunity to read over these
24 questions and answers?

25 **A** Yes, ma'am.

1 Q And whose signature is that on the bottom?

2 A Mine. He gave me time to write my report. Then he
3 came back in and read mine. Then he went over the
4 questions because I was kind of nervous that day.
5 And then he asked questions from there.

6 Q Okay.

7 MS. WEISS: Thank you. No further questions at
8 this time, Your Honor.

9 THE COURT: All right.

10 CROSS EXAMINATION

11 BY MR. O'NEIL

12 (WHEREUPON, Defendant's Exhibit No. 1 is marked
13 for identification.)

14 Q So, Ms. Briggs, you say you were not drinking that
15 night?

16 A Yes.

17 Q And were you on any type of mental health medication
18 that night?

19 A No. At that time I think it's been about -- before
20 actually they took me off of it, I stopped taking it
21 after Lexington, about January of 2007. I stopped
22 taking it myself.

23 Q So you stopped taking your mental health medication?

24 A Yes.

25 Q And you say you were not under any influence of any

1 drugs this particular night?

2 **A** No, not that night. And I am not a known drinker.

3 **Q** And you claim you and Mr. Folkes used to date?

4 **A** Yes.

5 **Q** But you were talking to Mr. Jones that night?

6 **A** Actually I was talking, well, Mr. Folkes. That day I
7 started talking to Mr. Folkes before I started
8 talking to Mr. Jones.

9 **Q** Were you standing right beside Mr. Jones when the
10 fight occurred?

11 **A** Actually, no. I was standing in the middle of both
12 of them.

13 **Q** But how close were you to the fight, I guess is what
14 I'm asking you?

15 **A** I wasn't close enough to get hit. As a matter of
16 fact, I wasn't -- it would be like from the gentleman
17 in the white coat to about -- too close, too close.
18 I would say between you all, I was standing right
19 there in the middle, a little bit, where the white
20 cups are. We were standing, if this is Clayton and
21 this is Mr. Jones, I would be standing right there in
22 the middle where the white cups are.

23 **Q** So about 45 feet away is about right?

24 **A** Yeah. I would say right there in the middle, good
25 enough for them to hear me but not too close to

- 1 either one of them.
- 2 Q And you say you saw a gray box cutter?
- 3 A Yeah.
- 4 Q Sort of like -- I'm showing you Defense Exhibit No. 1
- 5 for identification. Sort of like this, a box cutter?
- 6 A Yes, sir.
- 7 Q And it was gray?
- 8 A Yes, it was. It was I would say gray. Yes, it was.
- 9 Q I'm going to show you what's been marked as State's
- 10 Exhibit I think 25 for I.D. purposes. It wasn't
- 11 anything like this, was it?
- 12 A No.
- 13 Q It wasn't this?
- 14 A Hmm-mm (Negative)
- 15 Q You're absolutely sure?
- 16 A He might have had one but everybody else said it.
- 17 But what I seen him have that day and what I seen him
- 18 actually cut the guy with was totally different than
- 19 what everybody else seen.
- 20 Q So you were about four or five feet away?
- 21 A Yes, I was.
- 22 Q So you absolutely didn't see this?
- 23 A I'm positive.
- 24 Q I think you said you saw Clinton punch at Mr. Jones?
- 25 A No. Clinton punched him because he was sitting down

1 when Clinton punched him. I was always -- there
2 is -- right there where they were sitting and the
3 trees are in the middle, if you go all the way to the
4 edge, there is a walkway. There is a bench sitting
5 there and there is a tree standing there. I stood
6 there and watched it.

7 Q So you said the fight started when Mr. Jones was
8 sitting down?

9 A Yeah. This was going on -- actually there was two
10 other people there. There was three other people.
11 The guy I've seen in the homeless situation since
12 I've been back to the park, but I've never seen the
13 woman and her daughter again after that. They were
14 standing there and I looked at them. And they were
15 standing back behind me. Actually they weren't
16 standing. They were sitting in the chair behind
17 where I was standing.

18 Q Okay. And how many times did you see Mr. Jones
19 strike Mr. Folkes?

20 A I actually seen them hit about -- he just -- when
21 guys go to punch, they go to punch. And that's
22 just -- I just seen him going to swing at him. Once
23 Clayton had took the first punch at Mr. Jones, then I
24 seen -- I seen Mr. Jones get up and I just seen him
25 just start. And they wasn't good enough because Mr.

1 Jones is taller than Clayton. So when he went to
2 swing, Clayton fell back to the ground. And when
3 Clayton fell back to the ground, this one, like a box
4 player, just went running around like a boxing
5 player. So I've seen a lot of fights. So when I
6 seen it, you've got to understand, it was more like
7 that in this fight. When I say being a fight, it's
8 more like that.

9 Q Who did you see running around?

10 A I actually seen, when Clayton took the first hit and
11 then Mr. Jones came back and Mr. Jones swung, Mr.
12 Jones got up to where he could fend and realized that
13 Clayton was going for the pocket, and he just went
14 running right before he got stabbed.

15 Q You didn't see Mr. Jones hit Mr. Folkes at all?

16 A Yes, I did. After -- actually Clayton hit Mr. Jones
17 first. Then Mr. Jones actually went at him like a
18 boxing player and then Mr. Jones actually got a good
19 couple of licks because Clayton fell back. And then
20 he actually jumped up. I mean, he actually went
21 running towards the flag post where the American flag
22 and other flags are.

23 Q Did you see Mr. Jones on top of Mr. Folkes?

24 A Once he hit the ground, I wouldn't say I seen him on
25 top of him. Once he hit the ground, Mr. Jones did .

1 back up, and that's when he went -- Clayton got up
2 because Clayton stumbled and fell and he got up and
3 he went towards Mr. Jones again. And Mr. Jones went
4 running because Clayton couldn't get up too fast.

5 Q Because Clayton was drunk that day?

6 A Yes, he was. I think everybody was drunk.

7 Q Everybody was drunk?

8 A Well, I wouldn't say everybody. I would say -- well,
9 yeah. I would say the ones that were sitting there,
10 even Mr. Jones, I wouldn't know if they were
11 drinking. I had just got in there first of all.
12 Secondly, I'm not a known drinker from any of the
13 homeless situations. They don't know that I drink
14 now. And they don't even have a history of me
15 drinking. So for them, they were drinking, but I
16 ain't a part of that situation.

17 Q And it's fair to say that Mr. Jones was getting the
18 best of Mr. Folkes?

19 A No. I would say it was best that when the first lick
20 was threw Clayton got the first lick in. Then Mr.
21 Jones actually defended himself, like any man would.
22 And then Clayton fell. And then Mr. Clayton Folkes,
23 like a wimp, went at him and stabbed him.

24 Q But you didn't actually see Mr. Folkes stab Mr.
25 Jones, did you?

- 1 **A** I seen him when -- Clayton was the only one by Mr.
2 Jones when Mr. Jones was bleeding. There was nobody
3 else. There was not even me by him.
- 4 **Q** I understand that. But my question is simply, you
5 actually didn't see Mr. Folkes stab Mr. Jones, did
6 you?
- 7 **A** Actually, I seen him just swing. All I did was see
8 him swing at him. And the next thing I know this one
9 started saying he got blood. That's what I seen.
- 10 **Q** And you saw Mr. Jones run towards the pay phone?
- 11 **A** Yes.
- 12 **Q** You saw Mr. Folkes run the other way towards --
- 13 **A** No. Then when -- actually he went running towards
14 the pay phone and he was actually grabbing like this,
15 I didn't know Clayton came behind me because I was
16 still standing in the spot of them supposedly be
17 trying to calm down and act like decent human beings
18 because there were kids around. He came behind and
19 punched me in the back.
- 20 **Q** And then what's when he ran?
- 21 **A** That's when he went up. Because I was even going
22 towards hitting, too.
- 23 **Q** So after you say he struck you, that's when he ran
24 towards --
- 25 **A** Yeah. That's when he ran up.

- 1 Q And where did you go after the fight?
- 2 A Actually I went with the police.
- 3 Q And you went with Investigator McCracken?
- 4 A That day, yes. I went with Investigator McCracken
5 and the other gentleman that was sitting in the
6 chair. Yeah. I went with Investigator McCracken to
7 the City of Columbia, to their office.
- 8 Q He took you down to headquarters to get a written
9 statement?
- 10 A Yes. I went from going from -- there were so many
11 police that day. I went from in the car to going to
12 identify Clayton to going back to the top of the park
13 for them finding the t-shirt actually there. Because
14 all I said is, "Yes, that's Clinton Folkes." But his
15 clothes had done changed. They went back towards the
16 park because they said everything must be left there.
17 I waited through the whole process.
- 18 Q And I think you said some other people are with you
19 here today?
- 20 A Yes.
- 21 Q Who are those people?
- 22 A Actually a part of the homeless situation, too. When
23 you're in a homeless --
- 24 MS. WEISS: Objection, Your Honor. I mean, I'm
25 not sure about the way he's phrasing that people are

1 with her here today.

2 **MR. O'NEIL:** Your Honor, that's what her
3 testimony was on direct.

4 **THE COURT:** Well, she obviously felt like she
5 could answer it. I'm going to overrule the
6 objection.

7 **A** Well, I would say with me because we were there the
8 day of the incident and we were part of the homeless
9 situation. And we associate. They don't come to
10 where I live now on Rosewood. They don't assist me,
11 meaning I've never met them other than the homeless
12 situation ever in my life before.

13 **Q** And who were those people that's with you today?

14 **A** Actually they were people from the homeless
15 situation. Jada, another guy, was just there. He's
16 not even a part of the homeless situation. The other
17 two were normally frequently of the park, stayed at
18 Oliver Gospel Mission. Jada has never stayed at Bull
19 and Taylor shelter with me. So they were a part of
20 the homeless situation, meaning if you eat at -- what
21 would I call it -- Turnipseed or Cafe Ministries,
22 when I say a part of it, that's where I met you
23 between the homeless situation. There's are places
24 where you can go eat free on Sundays in the park.
25 Salvation Army is another one. Also the Salvation

1 Army there turns to churches that feed to the
2 homeless, that actually feed the homeless more.
3 There is actually a church on Gervais that feeds.
4 There is actually a couple of them downtown that
5 feeds. So these are tons of places they feed in
6 homeless situations.

7 **Q** Now, you were a little bit upset with Clinton that
8 day, were you not?

9 **A** No, I wasn't.

10 **Q** But you say you all had just broken up though?

11 **A** Yeah. About three days earlier. But not upset. I
12 broke up. I went to go stay with my friends. I was
13 supposed to be going back to school at the time but I
14 did not get there.

15 **MR. O'NEIL:** Beg the Court's indulgence, Your
16 Honor.

17 (Pause)

18 **MR. O'NEIL:** No further questions, Your Honor.

19 **THE COURT:** All right. Anything further?

20 **MS. WEISS:** Nothing further from the State, Your
21 Honor.

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

23 **MS. WEISS:** Your Honor, may this witness be
24 excused?

25 **THE COURT:** Any objection?

1 **MR. O'NEIL:** No objection.

2 **THE COURT:** Yes, ma'am. You're free to leave.

3 **MS. WEISS:** The State calls James Reddick.

4 **MR. O'NEIL:** Your Honor, may we approach?

5 **THE COURT:** You may.

6 (Whereupon, a bench conference is had)

7 **JAMES REDDICK,** after being duly sworn, testifies
8 as follows:

9 **THE CLERK:** Thank you. Have a seat in the
10 witness stand.

11 **DIRECT EXAMINATION**

12 **BY MS. WEISS**

13 **Q** Good afternoon, Mr. Reddick. How are you?

14 **A** Fine.

15 **Q** Mr. Reddick, introduce yourself to the jury. Tell
16 them where you live, where you're from?

17 **A** My name is James Reddick. I'm originally from
18 Philadelphia. I reside here in Columbia, and I work
19 at the Dorn V.A. Medical Hospital.

20 **Q** You work at the Dorn V.A. Medical Hospital?

21 **A** Yes.

22 **Q** And who do you live with?

23 **A** My fiancée. Dorothy Osborne.

24 **Q** Back on July the 22nd of 2007, who were you living
25 with at that time?

1 A Nobody. I was staying in a motel.

2 Q Okay. And did you spend some time at the park at
3 that time?

4 A Yes, ma'am.

5 Q Do you still like to spend some time at the park?

6 A Yes, ma'am.

7 Q And are you friends with the people that hang out
8 down there?

9 A Yes, ma'am.

10 Q Back in July, on July 22nd of '07, were you steadily
11 employed?

12 A Yes.

13 Q Who were you working with?

14 A I was working for Campbell Roofing through Action
15 Labor.

16 Q Okay. And did you ever -- did you have the
17 opportunity to know Clinton Folkes?

18 A Yes, ma'am.

19 Q And how did you get to know him?

20 A He was working for Campbell Roofing through Action
21 Labor.

22 Q Okay. Now, just to cover this, just to get it out of
23 the way, you actually have a history with law
24 enforcement, with getting in trouble with the law?

25 A Yeah.

1 Q Is that right?

2 A Used to.

3 Q Used to. Back in 1993 you had an attempted armed
4 robbery conviction. And back in '95 you had a
5 burglary third, a burglary second convictions?

6 A Correct.

7 Q And let's see. In 2000 a breach of trust?

8 A Yes, ma'am.

9 Q And 2003 breach of trust?

10 A No, ma'am.

11 Q No?

12 A Just one breach of trust.

13 Q Just one breach of trust? Okay. But you have a
14 history of that. But that's all. You don't have
15 anything since 2003?

16 A No, ma'am.

17 Q Okay. And has your life changed since 2003?

18 A Yes, ma'am.

19 Q And tell the jury about that.

20 A I used to be out of control, drugs and just running
21 wild. I have settled down and trying to do the right
22 thing now.

23 Q So you're now working for the V.A. At the time you
24 were working for Campbell Roofing. Is there a type
25 of knife that you used on a regular basis with

1 Campbell Roofing?

2 A There is two types.

3 Q Okay. Tell the jury a little bit -- I know you've
4 educated us a little bit on the two different types
5 of roofs and the two different types --

6 A I worked on a hot tar roof. I was actually the
7 kettle man and I ran the kettle. So I did a lot of
8 cutting the paper that goes on the roof. If anybody
9 knows anything about hot tar, you put tar into the
10 paper --

11 Q Make sure you speak up a little bit slower so
12 Ms. Williams can actually hear you.

13 A Oh. And you put paper, tar, paper, tar. So it was
14 my job to cut strips of paper. So I always had a
15 utility knife that was closed and I could hook it up
16 to my belt. That's what I carried seven days a week.

17 Q And what's the other type of roof?

18 A There is a metal roof that you put metal over the top
19 of wood. And you use a hawk blade, a blade with a
20 hook in it. And it has a fixed handle. The ones
21 that we had had fixed handles.

22 Q I show you what's been marked as State's Exhibit 25.
23 Do you recognize this?

24 A Yeah. That's a roofing hawk blade.

25 Q It's a roofing hawk blade. And this would be used

1 for which type of roof?

2 A Metal.

3 Q Metal roof. But you worked on the hot tar roof?

4 A Yes, ma'am.

5 Q Did Mr. Clinton Folkes also work for Campbell
6 Roofing?

7 A Yes, ma'am.

8 Q Which type of roof did he work on?

9 A Hot tar. He started on hot tar. He tried to
10 transfer to the metal roof. Well, he worked on the
11 metal roof for a couple of days while we were rained
12 out. They can do metal roofs in the rain but we
13 couldn't do hot tar in the rain.

14 Q Would you have to have this type of knife to work on
15 a metal roof?

16 A Yes, ma'am.

17 Q Did you ever see Clinton Folkes with this type of
18 knife?

19 A Yes, ma'am.

20 Q Did you have any problems with Clinton Folkes?

21 A Not that day.

22 Q Did you ever have any arguments or any beef with him,
23 any reason that you all had problems?

24 A No, ma'am.

25 Q Okay. Would you consider him one of your friends,

1 just as anybody else in the park would have been your
2 friend that day, prior to that day?

3 A Yes, ma'am.

4 Q Now, did something happen on July 22nd that changed
5 that relationship?

6 A Yes, ma'am.

7 Q Okay. Tell us a little bit about that day. That was
8 a Sunday. What were you doing in the park?

9 A I had just came home from -- well, I just came back
10 to the park from church and then steady be going back
11 to my room. I decided to hang in the park with some
12 of the other guys that, you know, I associated with
13 and just chill out, you know. And --

14 Q Had you been drinking that day?

15 A I don't drink, period. I haven't had a drink since I
16 was 15 and I'm 53 now. So alcohol wasn't a factor
17 for me.

18 Q Had you been using any drugs that day?

19 A No kind of drugs.

20 Q And did you have the opportunity to see Clinton
21 Folkes?

22 A Yes, ma'am.

23 Q When did you first see him?

24 A I was sitting in the park. I just got some ice cream
25 from the ice cream man. I was sitting there eating

1 ice cream. And he walked up and said --

2 Q What was his demeanor when he walked up?

3 A He was intoxicated.

4 Q And was he loud or quiet?

5 A He was loud.

6 Q Okay. And what was he saying to you?

7 A Everything about the child of God. You know, he was
8 calling me all kind of names, this and that. And
9 like I said, I'm from Philadelphia. So he said
10 everybody from Philly is this, P's. And so I said,
11 you see a P, come get some.

12 Q So he came up to you out of nowhere?

13 A Yeah. Yeah. We were sitting there. I had a New
14 York hat on. And I think it offended him because he
15 is from New York. I'm from Philadelphia. He asked
16 me why would I have on a New York hat. I told him
17 plain and simple, it matched my outfit.

18 Q So when he came up to you, how close did he get to
19 you?

20 A As close as this mike is.

21 Q As close as that mike is? And what was he saying
22 when he was in your face?

23 A That I was a P and a B and he was going to do this
24 and he was going to do that. And I just --

25 Q Now, did you have any weapons on you?

1 **A** No, ma'am.

2 **Q** And did you think he was about to do anything?

3 **A** Not right then. Because I had sat down. I just got
4 -- I didn't even want to hear it no more. I sat down
5 and he was just kept going. And he called me a few
6 more names. And I got frustrated and I stood up and
7 said, "Well, come get some." He reached in his back
8 pocket and pulled --

9 **MR. O'NEIL:** Objection, Your Honor. There's
10 been no temporal connection.

11 **THE COURT:** Pardon me.

12 **MR. O'NEIL:** There's been no temporal
13 connection, Your Honor.

14 **THE COURT:** What kind of connection?

15 **MR. O'NEIL:** Time connection. I apologize.

16 **THE COURT:** I don't know what you mean any time
17 connection. I'm going to overrule your objection.

18 **A** And he reached in his pocket and I seen him pull the
19 handle of that hawk blade out. So I threw my hands
20 up in the air and said, "Okay. You know, you got it.
21 I'm going to let it go." I backed off.

22 **Q** And what did you see him do next?

23 **A** Rakeem (phonetic) was laying on the blanket beside
24 the chair I was sitting in. Him and Clayton started
25 arguing, or Clayton started arguing with him.

1 Q What was he saying? What did he start saying to --

2 A The same thing. He was calling him B's and P's and
3 this and that. He was laying on the ground. So I
4 think he felt that, you know, he was overpowered
5 because Clinton was standing over the top of him. So
6 he stood up.

7 Q Okay. Do you think -- is there any reason that he
8 would have seen the knife?

9 A No. He had it in his back pocket.

10 Q Okay. So there is no reason that the victim would
11 have seen the knife?

12 A No, ma'am.

13 Q Okay. So keep going. I'm sorry. So he went over to
14 him, and what did he say?

15 A And they just started arguing. And Hakim (phonetic)
16 told him just to back up and get out of his space.
17 You know, "Back up a little bit, you're too close."

18 Q How close did you see he him get to Kareem?

19 A About from here to here.

20 Q Okay.

21 A So Akeem (phonetic) told him to back up. You know,
22 "You're getting a little bit too close. You're
23 getting in my space. I don't want no trouble. We're
24 just chillin', you know, having a good time." And
25 they kept exchanging words. And Clinton had a beer

1 in his hand at the time. And he tried to hit Akeem
2 with the beer.

3 Q Okay.

4 A And he missed.

5 Q Beg the Court's indulgence just one minute. All
6 right. Did you see what type of beer it was?

7 A No, not really.

8 Q Okay. But you saw it was a beer bottle?

9 A It was beer in a brown bag. He had it in a bag. And
10 the bag I think was wet, and that's how it slipped
11 out of his hand.

12 Q And where did it go?

13 A On the ground.

14 Q Okay. And then what happened next?

15 A After he dropped the beer, he swung. He hit Akeem in
16 the eye.

17 Q Okay.

18 A And Akeem hit him twice and knocked him down.

19 Q So that was all pretty quick?

20 A Yeah.

21 Q So he tries to hit him with the beer bottle, throws
22 that, punches him in the eye, and then Kareem hits him
23 pretty quick?

24 A Twice.

25 Q Twice. And he goes down. Did you see what happened

1 next?

2 **A** Yeah. Keem (phonetic) just stood over the top of him
3 and he seen him reaching in his back pocket. So
4 Akeem tried to grab his right hand. But when he
5 pulled the hawk blade out of his pocket, he missed
6 his hand, and that's when he got hit across his
7 throat. And then he grabbed it. He was already cut
8 across his throat and he grabbed his hand. He put it
9 in the other hand and hit him across his arm I think
10 three or four times. And Akeem just ran off and
11 grabbed it. He was holding his neck.

12 **Q** Did you see the knife in his hand?

13 **A** Yeah. I seen him when he cut him.

14 **Q** Did you see how he was holding the knife?

15 **A** Yeah.

16 **Q** Can you show the jury how he was holding the knife?

17 **A** Like this. And he reached up and pulled it down
18 across his throat, across the side of his neck.

19 **Q** Did it appear to you that he was aiming for anything
20 in particular?

21 **MR. O'NEIL:** Objection, Your Honor.

22 **MS. WEISS:** It's his opinion.

23 **THE COURT:** Well, he can tell what he observed.
24 He's not going to opine whether he was aiming or
25 something. Sustained.

1 **MS. WEISS:** Thank you, Your Honor.

2 **Q** So he was holding the knife in his hand. He reached
3 up and cut Karem across the throat?

4 **A** Yes, ma'am.

5 **Q** Did you see Karem bleeding?

6 **A** Yes.

7 **Q** Did you actually see the mark on his neck?

8 **A** I seen an open hole in his neck.

9 **Q** And what did you see happen next? Or what did you
10 hear? Did you hear anything?

11 **A** Akeem ran over. He got on the phone. And there was
12 a guy out there throwing a football with his little
13 boy. And he called the police. A couple of other
14 people called the police. We walked over to Akeem.
15 And that's when I seen his neck was lanced open. And
16 we tried to cover it up until the ambulance got
17 there. And they took him to the hospital. Clinton
18 walked back over. He said, "It ain't over. I should
19 have killed you." And then he punched Tiffany in the
20 back and ran out through the top of the park.

21 **Q** Okay. Now, did you know Clinton by name?

22 **A** Yeah.

23 **Q** And about how long had you known him?

24 **A** I started working for Campbell January the 2nd. I
25 think he started in March. And he ended up in

1 April -- I mean, July when the incident started
2 happening.

3 Q Okay. And is there any question in your mind who the
4 person was that cut Karem Jones that day?

5 A No. I went to work with Clinton every day.

6 Q And do you see that person in the courtroom today?

7 A Yes, ma'am. Sitting right there.

8 Q Can you describe him for the court reporter?

9 A He's sitting inbetween the two gentlemen with the
10 pink shirt, I guess it's a pink shirt, and suit
11 jacket on.

12 THE COURT: All right. He's identified the
13 defendant.

14 MS. WEISS: Thank you, Your Honor.

15 Q You said that Karem was intoxicated?

16 A No. Karem wasn't.

17 Q I mean not Karem. I'm sorry. That Clinton was
18 intoxicated?

19 A Yeah.

20 Q And how would you describe his demeanor throughout
21 this whole thing?

22 A I mean, he was -- he was loud. He was prancing
23 around like he can beat the world. And he was
24 looking for trouble and he got it.

25 Q And what did you think was going to happen when he

1 reached in his pocket for the knife?

2 MR. O'NEIL: Objection, Your Honor. Relevance.

3 THE COURT: Pardon me?

4 MR. O'NEIL: Relevance to what this witness
5 thought was going to happen.

6 THE COURT: Well, I'm going to let him testify
7 about what it appeared to him. Overruled.

8 MS. WEISS: Thank you, Your Honor.

9 Q What did it appear to you was going to happen when he
10 reached in his pocket and grabbed that knife?

11 A At me?

12 Q Yes.

13 A I thought he was going to cut me.

14 Q Okay. And what about with Karem Jones?

15 A Well, he did cut him.

16 Q And was there a lot of blood?

17 A Yeah. There was pretty much.

18 Q Thank you. Beg the Court's indulgence. No further
19 questions, Your Honor.

20 THE COURT: All right.

21 MR. O'NEIL: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. O'NEIL

24 Q Mr. Reddick?

25 A Yes, sir.

1 Q You said Mr. Folkes and Mr. Jones were arguing?

2 A Yeah.

3 Q And you were arguing with Mr. Folkes as well?

4 A Well, he was arguing with me.

5 Q How close were to you Mr. Folkes and Mr. Jones?

6 A As close as me and you are right now.

7 Q And you said Mr. Folkes swung and hit Mr. Jones once?

8 A After he tried to hit him with the beer bottle, the
9 beer bottle slipped out his hand. Then he punched
10 him in the eye. And Akeem hit him two times and
11 knocked him down.

12 Q So Mr. Jones hit Mr. Folkes twice?

13 A Twice.

14 Q And Mr. Folkes fell down?

15 A Right.

16 Q And then did you see Mr. Jones get on top of Mr.
17 Folkes?

18 A He just stood there.

19 Q Stood over him like this?

20 A Yeah. And then he reached in -- Clinton reached in
21 his pocket. And when he pulled it out, Mr. Jones
22 tried to grab his arm to keep him from coming up with
23 it because he was bent over him. When he bent over
24 Clinton to grab the knife, Clinton hit him across his
25 neck.

- 1 Q So you're saying Mr. Jones bent over Mr. Folkes?
- 2 A After he pulled the razor out of his pocket.
- 3 Q He grabbed his arm?
- 4 A He tried to be grab it and missed.
- 5 Q And that's when Mr. --
- 6 A And that's when Mr. Folkes cut him across the arm, I
- 7 mean his neck.
- 8 Q So Mr. Jones would have seen the knife at that point?
- 9 A No. I don't think he seen it.
- 10 Q But you saw it?
- 11 A I knew he had it.
- 12 Q But you saw it though? Did you see it?
- 13 A Did I see it?
- 14 Q Yeah.
- 15 A Yeah, I seen it.
- 16 Q And you were standing about this far away?
- 17 A Yes.
- 18 Q Okay. So if you saw it, Mr. Jones would have saw it?
- 19 A He should have saw it.
- 20 Q Where were you when the police arrived?
- 21 A Sitting in the park.
- 22 Q Did the police talk to you that day?
- 23 A No, they didn't.
- 24 Q And you say you heard Mr. Folkes come back up to
- 25 where you all were standing?

1 **A** No. He never came back up to where we were standing.
2 We were all -- well, he never -- see, Mr. Jones ran
3 away from us because we was bleeding. Clinton was
4 still standing there.

5 **Q** Okay.

6 **A** That's when he hit Tiffany and hollered at him, told
7 him he should have killed him, it ain't over with.
8 And he punched Tiffany in the middle of her back and
9 then he took off running.

10 **Q** Did you ever tell the police that?

11 **A** They never asked me.

12 **Q** Did you ever tell them?

13 **A** No, I didn't.

14 **Q** Did you ever give them a statement?

15 **A** No, sir. They made us leave. They made everybody
16 leave from around the area. They said it was a crime
17 scene so they made everybody leave.

18 **Q** Did you tell them you had just witnessed a crime?

19 **A** They have never said anything to me.

20 **Q** I'm asking what you told him. Did you tell them you
21 had just witnessed a crime?

22 **A** No, sir, I did not.

23 **Q** You never gave any statement about what you said
24 happened?

25 **A** No, sir.

1 Q And you say you had an attempted armed robbery in
2 '93?

3 A I don't remember when it was. She's got the paper.
4 It's been a while ago.

5 Q And you have a burglary second degree. And you have
6 a breach of trust?

7 A Correct.

8 Q Now, you say you carry a knife with you?

9 A I used to when I was working roofing. I don't carry
10 a knife any more. I don't carry any weapons.

11 Q But you were carrying a knife back then?

12 A I was doing roofing.

13 Q So you were carrying a knife?

14 A No. I was carrying a box cutter.

15 Q A box cutter?

16 A Yeah.

17 Q Now, you say you worked with Action Labor?

18 A Yes, sir.

19 Q And you were doing roofing jobs for Action Labor?

20 A Campbell Roofing.

21 Q Campbell Roofing?

22 A Mm-hmm (affirmative).

23 Q And you said you were working on a hot tar roof?

24 A Tar roof.

25 Q And Mr. Folkes was working on a hot tar roof?

1 **A** Yes, sir.

2 **Q** And you said you don't use these type of knives on a
3 hot tar roof?

4 **A** No, sir.

5 **Q** Does Action Labor supply those tools when you're
6 working at these job sites?

7 **A** No, sir. Not a razor they don't.

8 **Q** Does the job sites supply tools for you?

9 **A** No.

10 **Q** So the job site don't give you those tools?

11 **A** Not on hot tar.

12 **Q** Okay. Beg the Court's indulgence, Your Honor.
13 Nothing further, Your Honor.

14 **THE COURT:** Anything further?

15 **MS. WEISS:** Very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 **BY MS. WEISS**

18 **Q** You say that you worked on hot tar and Clinton worked
19 on hot tar. But you also said that Clinton worked on
20 the metal roofs?

21 **A** Yeah. When we had rain days, he would go over on the
22 metal roof.

23 **Q** So he had to have one of these to go do that?

24 **A** They issued those on the metal roof, and you're
25 supposed to turn them in when you leave, when you get

1 off from work. You're supposed to turn them in.

2 Q So he had one of these in his hands when he was
3 working on metal roofs?

4 A Yes, ma'am.

5 Q And on this Sunday afternoon, July 22nd, 2007, were
6 you carrying your box cutter?

7 A No, I was not.

8 Q So were you armed at all?

9 A No, ma'am.

10 Q But was Clinton Folkes armed?

11 A Yes, ma'am.

12 Q Is this the knife, a similar knife to this that he
13 had in his hand?

14 A Similar to that; yes, ma'am.

15 Q Is there any question in your mind?

16 A No, ma'am.

17 Q Thank you.

18 THE COURT: Anything further?

19 MR. O'NEIL: Briefly, Your Honor.

20 RE CROSS EXAMINATION

21 BY MR. O'NEIL

22 Q What color was the knife you saw Mr. Folkes had?

23 A It was a brown handle just like that and steel.

24 Q It was a brown handle?

25 A Like that right there, just like that.

1 Q Just like this?

2 A Just like that.

3 Q Brown handle?

4 A Just like that.

5 Q No question about it?

6 A No question about it.

7 Q And you said when you get these knives at the job
8 site you have to turn these back in?

9 A On the metal roof.

10 Q On the metal roof you have to turn these back in?

11 A You're supposed to turn them in.

12 Q They have a supervisor to make sure you turn these
13 back in?

14 A I don't work on the metal roof.

15 Q So you don't know whether they have a supervisor or
16 not?

17 A I know they have a supervisor, but I don't know how
18 close they scrutinize their equipment.

19 Q But you're supposed to turn these back in?

20 A Supposed to; yes, sir.

21 Q No further questions.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 MS. WEISS: Your Honor, may this witness be
25 excused?

1 **THE COURT:** He may.

2 **MR. O'NEIL:** No objection, Your Honor.

3 **THE COURT:** You're free to leave.

4 **MR. ROGERS:** Your Honor, the State calls Jerome
5 Patrick.

6 JEROME PATRICK, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Have a seat in the witness stand and
9 give the court reporter your name.

10 **WITNESS:** Jerome Patrick.

11 DIRECT EXAMINATION

12 **BY MR. ROGERS**

13 **Q** Good afternoon, sir. How you doing today?

14 **A** All right.

15 **Q** Where were you born?

16 **A** . . . 1961.

17 **Q** . . . '61?

18 **A** Yes, sir.

19 **Q** And were you born in Columbia?

20 **A** No. Charleston.

21 **Q** Charleston. So you consider yourself a South
22 Carolina man?

23 **A** Yes.

24 **Q** Okay. Did you -- when did you first come to
25 Columbia?

1 A About four years ago.

2 Q About four years ago?

3 A Yes, sir.

4 Q So you've been in Columbia about three years before
5 the incident we're here today about?

6 A Yes. Yes.

7 Q Okay. Now, when you came to Columbia, did you have a
8 particular place to stay?

9 A Yes. My brother is a minister here.

10 Q Okay.

11 A And I moved up in the northeast part of Columbia from
12 Northtrace Smith, Summerton.

13 Q Okay. And did you hang out in downtown much?

14 A Yeah. I came downtown because that was ministry, the
15 street ministry as far as my brother's church. I was
16 on the street ministry. So I stayed just about every
17 day in the park, just about every day on the park.

18 Q And while you were in the park, did you ever see the
19 defendant, Mr. Folkes?

20 A Oh, yes. We were friends. Yes, yes.

21 Q About how long had you known him before this date?

22 A Oh, we had known each other a good little while
23 because we worked together and we used to be down in
24 the park for a while. Yes, sir.

25 Q Now, before we get too much into what happened on the

1 date in question today; I'm not trying to embarrass
2 you, but have you ever had a problem with the law
3 before?

4 A Oh, yes, sir.

5 Q Been arrested a couple of times?

6 A Yes, sir.

7 Q Okay. Now, like I said, I'm not trying to embarrass
8 you, but I've got to go through your record a little
9 bit while we're here.

10 A Oh, that's okay.

11 Q Okay?

12 A Yes, sir.

13 Q Did you have a simple assault back in the eighties?

14 A Yes, sir.

15 Q Furnishing contraband in '89?

16 A Yes. Contraband.

17 Q There was a driving under -- well, hang on. An auto
18 breaking in '95?

19 A Yes. I did that. Yeah. Through a friend.

20 Q What about a false police report?

21 A Yes.

22 Q Do you remember something like that?

23 A Yes. Greenville.

24 Q Okay. I'm sorry. I just wanted to make sure I
25 didn't cut you off. I'm sorry.

1 **A** No. No.

2 **Q** In '98 did you have a giving false information
3 charge? Do you remember something about that?

4 **A** I think so. '98.

5 **Q** Okay. In 2000 did you have a shoplifting charge?
6 Does that sound familiar?

7 **A** Yes. It sounds familiar.

8 **Q** Okay. Did you have another one in 2001 you think?

9 **A** Yeah. Back to back.

10 **COURT REPORTER:** Could you move up and speak
11 into the microphone, please.

12 **WITNESS:** Oh, yes.

13 **COURT REPORTER:** And scoot your chair up there,
14 please.

15 **Q** We just want to make sure everybody can hear you.

16 **WITNESS:** Oh, okay. Can you hear me now?

17 **Q** Yeah. Just try and speak up for me.

18 **A** Okay.

19 **Q** Then I show another property offense in 2001?

20 **A** Yes. Yes. That's right.

21 **Q** Okay. And then in 2002 I see a financial transaction
22 card fraud.

23 **A** Yes.

24 **Q** Does that sound right?

25 **A** Yes, sir.

- 1 Q And then maybe another shoplifting in 2004?
- 2 A Yes, sir.
- 3 Q And then you had a little trouble in 2005. I'm
- 4 showing an interfering with officers, hindering an
- 5 officer? Or it became -- it looks like it came with
- 6 a receiving stolen goods?
- 7 A Yeah.
- 8 Q Two counts of receiving stolen goods?
- 9 A Yes.
- 10 Q And then a driving under suspension?
- 11 A Uh-huh (affirmative).
- 12 Q So you had those arrests?
- 13 A Yes.
- 14 Q Okay. But since that time in 2005, you haven't been
- 15 convicted of anything. Is that true?
- 16 A That's true.
- 17 Q Okay. Do you have any pending charges right now?
- 18 A Yes.
- 19 Q What pending charges do you have?
- 20 A Breach of trust.
- 21 Q Breach of trust?
- 22 A (Nods head affirmatively).
- 23 Q Is that here in Richland County?
- 24 A Yes.
- 25 Q Now, we're not here to talk about that today.

1 A Yes, sir.

2 Q But I just wanted to ask you a couple of questions.
3 Have we offered -- my office, the Solicitor's Office,
4 have we made any promises to you related to that
5 charge?

6 A Oh, no. No, sir.

7 Q When we've been talking to you about this case, have
8 we even talked about that charge?

9 A No.

10 Q So as you sit here today, you're not expecting
11 anything from us --

12 A No.

13 Q -- relating to that charge?

14 A No, sir.

15 Q I just want to make sure we go ahead and get that out
16 of the way. Now, let me direct you back to July
17 22nd, 2007.

18 A Okay.

19 Q And I think I heard you say that was your birthday.
20 Is that correct?

21 A Yes. That's correct.

22 Q Okay. And how did you start your birthday that day?

23 A I went to church.

24 Q Was that your brother's church?

25 A Yes.

- 1 Q How did you get there?
- 2 A He came to pick us up from Finlay Park. He comes
- 3 every Sunday morning. His minister comes to pick up
- 4 every Sunday morning.
- 5 Q Does he have a van or a truck or something?
- 6 A Yes. He has a van.
- 7 Q Did anybody go with you that day?
- 8 A Yes. Kareem went with us also.
- 9 Q The gentleman sitting behind me?
- 10 A Yes.
- 11 Q And who else went with you, sir?
- 12 A A couple of other people from the park.
- 13 Q Do you know Retalia?
- 14 A Yes. Retalia.
- 15 Q Did she go with you?
- 16 A Yes. She went to church also.
- 17 Q Okay. Did you -- after you went to church, what did
- 18 you do? Did you guys eat up there?
- 19 A Yeah. We ate at the church and then we came back and
- 20 we came back to the park. And that's when we parked
- 21 and we went to Salvation Army to go back.
- 22 Q So you came back. Is it Finlay Park you're talking
- 23 about?
- 24 A Yes. Yes.
- 25 Q So you came back to Finlay Park for a little bit?

1 **A** Yes.

2 **Q** How long would you say you stayed there before you
3 went back to Salvation Army?

4 **A** Church usually gets out about 12, and we stayed there
5 for a couple of hours and then we went up to
6 Salvation Army.

7 **Q** And what were you doing up there at the Salvation
8 Army?

9 **A** They fed again at Salvation Army. We met a lot of
10 people. It was my birthday. So I didn't want to
11 just lay around the park. I just wanted to get
12 around.

13 **Q** That sounds good. Did anybody go with you back to
14 the Salvation Army for dinner?

15 **A** It was me and Retalia that went back up there. And
16 we ate. But on the way coming back, it was me,
17 Retalia and Clinton. We came back together.

18 **Q** But he didn't eat dinner with you?

19 **A** No.

20 **Q** You just met him up there?

21 **A** Yeah. We met him up there. Yeah.

22 **Q** And you said that you'd known him for a couple of
23 years previously. Is that true?

24 **A** Well, we had seen each other and then we worked
25 together. All of us worked together at Action Labor.

- 1 Q So how long would you say that you would estimate
2 that you knew him before that date? Are we talking
3 months? Years?
- 4 A Close to a year. Yeah.
- 5 Q Now, you said you worked with him. What kind of work
6 would you do with him?
- 7 A Oh, we used to all catch jobs at Action. We did a
8 bunch of different type. But actually worked
9 together, we did roofing together.
- 10 Q Okay.
- 11 A Yes.
- 12 Q What type of roofing?
- 13 A Well, I had been on the metal roof and he had been
14 started on the -- he is the one who introduced me to
15 the roofing thing because he was doing the hot tar
16 roof and I was doing -- and he said, "They've got a
17 bunch of roofing jobs." So by the time I got there,
18 all the hot tar was already full. So they had the
19 metal roof. So I went to the metal roof. And then
20 he came over to the metal roof with me.
- 21 Q So you worked with him on the metal roofing?
- 22 A Yes.
- 23 Q But not the hot tar roof?
- 24 A Not the hot tar roof.
- 25 Q Do you know what company that was through?

- 1 **A** Campbell. Campbell Roofing.
- 2 **Q** When you were working with him on those roofing
- 3 sites, did you have to use any knives?
- 4 **A** Yes.
- 5 **Q** Any type of blades?
- 6 **A** Yes, yes, yes. Yes, yes, yes.
- 7 **Q** What type of blade -- do you know what type of blade
- 8 was used on the tar roof?
- 9 **A** Probably the --
- 10 **Q** I mean, if you don't know, that's okay. But do you
- 11 know what type of blade you used?
- 12 **A** Probably the straight blade, a straight one.
- 13 **Q** Was there a special blade that was used on the metal
- 14 roof?
- 15 **A** Yeah. To cut the styrofoam, yes. There was two
- 16 types. We used a straight blade and a hawk blade,
- 17 one that was kind of thick.
- 18 **Q** I'm going to show you two things. One is Defense
- 19 Exhibit 1 and one is State's Exhibit 25. Defense
- 20 Exhibit 1 is the black thing in my hand. Do you
- 21 recognize this type of knife?
- 22 **A** Yeah, I recognize that type.
- 23 **Q** How would you describe that?
- 24 **A** Straight blade. That's a straight, short blade.
- 25 **Q** A straight, short blade?

1 **A** Yeah.

2 **Q** And you used these type of blades on your job site?

3 **A** Sometimes. Yeah. We was using that at first. But
4 it wasn't cutting all the way through the thickness
5 of it. And then we went to the hawk blade because
6 that works better because it was thick styrofoam.

7 **Q** So this knife, State's Exhibit 25, the one with the
8 brown handle --

9 **A** Yes.

10 **Q** -- you used this one? This one works better on metal
11 roofs?

12 **A** Yes. It worked better. Yeah.

13 **Q** You have one of these when you were working there?

14 **A** Yes.

15 **Q** By these I mean State's Exhibit 25. You had one of
16 these?

17 **A** Yes.

18 **Q** This hook knife, did ever see the defendant with one
19 of these?

20 **A** Yeah. We both had one. We been sharing one at one
21 time and then they got a couple of them and we all
22 had one. Well, they had it on the job and we all had
23 used one.

24 **Q** So both of you used this knife?

25 **A** Yes.

1 Q This hook knife on the metal roofs?

2 A Yes.

3 Q Did you see him ever have that knife outside of work?

4 A Yes. Yes.

5 Q Okay. Did he to your knowledge ever have knives on
6 him?

7 A Well, I know --

8 Q Like when you were just hanging out in the park?

9 A Just the regular razor. But then after that, you
10 know, after we had got those kind, I guess he had
11 that kind, too. I know he had that one.

12 *THE COURT:* You need to speak up, please.

13 A I left mine on the job. And, you know, we used it
14 just about every day.

15 Q New, let's go back to July 22nd, 2007.

16 A Yes.

17 Q After you finished eating at the Salvation Army, I
18 think you said that the defendant and Retalia and
19 yourself --

20 A Yes.

21 Q -- went from the Salvation Army down to Finlay Park?

22 A Yes.

23 Q Do you remember what about time of the day that was?

24 A That was after the meal, after 4:30. About 5
25 something because they start feeding about 5:30.

1 Q Was it still daylight outside?

2 A Yes, it was still daylight.

3 Q Do you remember what the defendant was wearing at

4 that time, what shirt he had on?

5 A A striped shirt. Yes.

6 Q A striped shirt?

7 A Yes.

8 Q Sir, I'm going to show you what was previously marked

9 as State's Exhibit 24. Does this shirt look familiar

10 to you? Does that look familiar at all?

11 A Pretty much, yes.

12 Q Pretty much?

13 A Yes, sir.

14 Q Where do you think you might have seen this shirt

15 before?

16 A On Clayton.

17 Q On Mr. Folkes?

18 A Yeah.

19 Q Does this look like the shirt he was wearing on

20 July 22nd, 2007? Or, yeah. 2007?

21 A Yes.

22 Q Okay. How long did it take you guys to walk from

23 Salvation Army down to Finlay Park?

24 A Oh, about a couple of minutes. It's only a few --

25 I'd say about five minutes at the most, five or six

1 minutes. It don't take that long.

2 Q And while you were walking, did you have anything to
3 drink at that time?

4 A Well, I don't drink. But Mr. Clayton had a couple of
5 Cobras, those Cobra beers.

6 Q King Cobra beers?

7 A Yes.

8 Q You said he had a couple. Do you think he probably
9 had two or more?

10 A Well, I knew he had it in a bag. Well, he was
11 drinking -- we was drinking -- he was drinking one.

12 Q But he had a bag him that had something in it?

13 A Yeah. Yeah. I believe he had some more in the bag
14 at the time.

15 Q But you said you didn't drink?

16 A No, no, no. Not that day, no.

17 Q Did you have anything else that might have blurred
18 your thoughts that day?

19 A Oh, no. Not that day.

20 Q Once you got to the park, what area of the park did
21 you enter first?

22 A At the top. We come in from the top and we came all
23 the way on down to the bottom.

24 Q All right. Now, you said at the top. I'm going to
25 show you what's previously been marked as State's

1 Exhibit 8. Does that picture look familiar to you?

2 A Yes. That's up top. That's coming in from right by
3 the Strom Thurmond building. And that's the top.
4 And that's where the way we came in.

5 Q So this is where you came in. Did you -- this kind
6 of looks down Finlay Park. Were you all walking down
7 this direction?

8 A Yes.

9 Q And can you kind of point -- I don't think you can
10 really see it in this picture, but can you kind of
11 point to the area where you would have been walking
12 to?

13 A Down here.

14 Q Down towards that grassy area?

15 A Yeah. Around that corner there's trees in the
16 middle, right in the middle right across from the
17 stage right in the center of the field.

18 Q Was anybody else at the park when you guys got there?

19 A Oh, yes. Yes.

20 Q A lot of people hanging out?

21 A Yeah.

22 Q It was a nice day?

23 A A nice day. Yeah.

24 Q Now, I'm going to show you a couple of other pictures
25 here. I'm going to start out with State's Exhibit

1 No. 4. What does that look like? Is that Finlay
2 Park?
3 A Yes. That's Finlay Park.
4 Q And does this kind of show where you came from?
5 A Yeah. We came from up here, down past that, across
6 the field into this area over here across from this.
7 It was right over in this area.
8 Q And you said you were meeting some people under the
9 trees?
10 A Yes.
11 Q Does that look like the trees you guys were --
12 A Yes. That's correct.
13 Q And that's State's Exhibit 11?
14 A Yeah.
15 Q So can you kind of point to this area where people
16 were hanging out?
17 A Right down here because the tree shade blocked, had
18 us out in this area right here out in front of the
19 trees.
20 Q Just out in front of those trees?
21 A Yes.
22 Q Now, this is a closer look. Is that the same tree
23 right there?
24 A That's the same tree. We was more right over in this
25 area right here.

1 Q And that's over by the red mark?

2 A Yes.

3 Q And that's State's Exhibit -- let me look -- State's
4 Exhibit No. 10?

5 A Yes.

6 Q Okay. So when you got down to that grassy area
7 underneath the trees, do you remember who was there
8 specifically?

9 A Yes. There were James, Tiffany.

10 Q James. Do you know James's last name?

11 A Reddick. Mr. Reddick. Yes.

12 Q Okay. James and Tiffany. Do you remember Kareem?

13 A Yes.

14 Q Mr. Jones?

15 A Kareem was there by Tiffany. And there were some more
16 people off to the left of that. Mary. All the
17 usuals would be out there.

18 Q When you got back down to the park area down by the
19 trees, did the defendant -- were you able to observe
20 his interaction with Mr. Reddick? James?

21 A Yeah. They had like a little altercation. They had
22 some words. And we kind of like had to separate
23 them. Well, not really separate them. They
24 separated theirselves (sic). They had words and they
25 separated. And Mr. Reddick went back to sit down.

1 And I really couldn't see exactly because I was
2 talking to Retalia. And right after that happened,
3 that's when I guess it escalated on to the next
4 incident.

5 Q Before we get to that next incident, could you
6 determine who started the argument between James and
7 the defendant?

8 A Well, Mr. Folkes had kind of like -- because James
9 was already down there and he said some words to
10 James about the hat because he had on a New York hat,
11 you know, that my fiancée gave James. He asked him,
12 "Where did you get that hat from?" And he told him
13 that Rita gave him that hat. He told him he ain't
14 from no New York. Then that kind of like escalated
15 into a little argument.

16 Q Now, you talked about your fiancée?

17 A Yes.

18 Q What's her name?

19 A Retalia Green.

20 Q Do you call her Rita sometimes?

21 A Rita. Yes.

22 Q That's the same young lady that was walking with you
23 from the Salvation Army?

24 A Yes. That's correct.

25 Q I just want to make sure I've got everybody straight.

1 A Okay.

2 Q So after the defendant got in the argument with
3 James --

4 A Yes.

5 Q -- about how soon was that from the time that he got
6 in an argument with Mr. Jones?

7 A A couple of minutes right after that, right after
8 that.

9 Q Pretty quick?

10 A Yeah. Pretty -- well, not -- pretty quick, because
11 right after we calmed them down, then this happened.
12 Yeah.

13 Q Do you remember how the incident started between the
14 defendant and Mr. Jones?

15 A Well, Kareem was lying down talking to Tiffany. And I
16 guess once he had got through arguing with James, he
17 just turned to that direction because we was all
18 right there, if you can understand what I'm saying.

19 Q All right there under the trees?

20 A Yeah. All right under the trees. And I guess
21 because he was standing right over Mr. Hakim
22 (phonetic) at the time. So when he turned to him, I
23 guess he was upset because of Tiffany because, you
24 know, him and Tiffany was kind of close.

25 Q Kind of close. Do you know if they'd ever dated?

1 **A** Yeah. They were going together. And just I think
2 that night before, that's when they had kind of like
3 separated.

4 **Q** So they'd broken up just before that day?

5 **A** Yes. Yes. Just the day before.

6 **Q** When Mr. Jones was talking to Tiffany, were they
7 doing anything? Were they touching?

8 **A** No, no. They were just talking.

9 **Q** Just talking in the grass?

10 **A** Yes.

11 **Q** You said the defendant came up to Mr. Jones first?

12 **A** Yes.

13 **Q** And they had words?

14 **A** Yes.

15 **Q** Did there come a point when Mr. Jones stood up?

16 **A** Yes.

17 **Q** Did it appear to you that -- who appeared to you that
18 started the argument?

19 **A** Well, Mr. Folkes, because Mr. Jones just laying
20 there. And I guess he didn't like the idea of
21 someone arguing, coming standing up over him. And,
22 you know, he had no control of what happened the day
23 before just because he -- because we had just came
24 back from church together. Both of these are, you
25 know, friends of mine. And what happened was I guess

1 he was upset because he was talking to Tiffany. And
2 he said some words to Mr. Jones. Then he got up.
3 And at that time everything just started happening so
4 fast.

5 Q Okay. So let's slow it down. Things started
6 happening fast. What was the first thing that
7 happened? They got in an argument?

8 A Yeah. They got in an argument.

9 Q Did it turn physical?

10 A Yeah. It go physical because Mr. Folkes still had
11 the beer bottle in his hand.

12 Q Was it a glass bottle?

13 A Yeah. It was a glass bottle.

14 Q One of the bigger glass bottles?

15 A Yeah. It was a quart bottle of King Cobra. And he
16 swung it at him but it came out of the bag. And then
17 at that time, that's when he had threw a jab and hit
18 Mr. Jones on the side of the head. And --

19 Q The bottle, was it a full glass bottle?

20 A No. He was drinking out of it. Yeah. He was
21 drinking out of it. And --

22 Q So the first thing was the defendant hit Mr. Jones?

23 A Yes.

24 Q What did Mr. Jones do after that?

25 A Right after that, that's when he threw a -- he jabbed

1 I mean. Well, when he throwed the bottle, he blocked
2 it, but he didn't do anything until he jabbed him
3 with a punch. Because, see, the bottle came out of
4 the bag when he went to swing it. And then after
5 that he pulled a jab and hit him, and then that's
6 when he retaliated, hit him two times and he fell to
7 the ground.

8 Q So just two quick hits?

9 A Yeah.

10 Q When the defendant fell to the ground, what did Mr.
11 Jones do?

12 A Mr. Jones went over him to try to hold him down to
13 let him know that it ain't what he thought it was in
14 so many words.

15 Q What do you mean by that, it wasn't what he thought
16 it was?

17 A Because he really thought that he was trying to go
18 with Tiffany I guess or be with Tiffany. And knowing
19 that they all be in that park and he knowing that
20 Tiffany was his girlfriend, and that would be like a
21 disrespect thing.

22 Q So did it look like Mr. Jones was trying to avoid a
23 fight?

24 A Yeah. He was trying to avoid it. He was trying to
25 tell him, "No, no, man. It ain't like that. I ain't

1 trying to fight you or nothing like that." And
2 that's when, you know, the next thing I know, I
3 thought he had just reached up and boxed him. And
4 then after that everybody say he cut. And then I
5 didn't really look in the hand, and then I saw the
6 knife blade and then I saw the opening. All of that
7 was opened up. And that's --

8 Q Let me just stop you just there for a second. Your
9 Honor, may the witness step down for a demonstration?

10 THE COURT: Yeah. You've got about two minutes
11 and we're breaking for the night. So if you want
12 to --

13 Q You know what? You can keep your seat. We'll just
14 try and keep it frequent. Your Honor, if the Court
15 would like, we can go ahead and break now.

16 THE COURT: All right. Ladies and gentlemen,
17 we're going to go ahead and recess for the evening.
18 I'm going to ask you not to discuss this case while
19 you're gone tonight. We'll start tomorrow morning at
20 9:30. Please be prompt. Do not be late. And you
21 all have a nice evening. Don't discuss the case with
22 anybody while you're gone. We'll see you tomorrow
23 morning at 9:30.

24 (Jury out at 5:25 p.m.)

25 THE COURT: Is Mr. Patrick under subpoena?

1 **MS. WEISS:** Yes, sir, Your Honor.

2 **THE COURT:** All right. Mr. Patrick, you need to
3 make sure you're here tomorrow morning so you can
4 resume the stand. Be here by about 9:15.

5 **WITNESS:** Yes, Your Honor.

6 **THE COURT:** Do not discuss the case with anybody
7 while you're gone tonight. Don't talk to anybody
8 about it. Okay?

9 **WITNESS:** Yes, Your Honor.

10 **THE COURT:** All right. You can step down. What
11 other witnesses are you all going to have in this
12 case?

13 **MS. WEISS:** Your Honor, we have two more lay
14 witnesses.

15 **THE COURT:** All right. Just tell me who they
16 are.

17 **MS. WEISS:** They are Retalia Green and Tim
18 Abney.

19 **THE COURT:** Are they just to say the same thing
20 that's been said?

21 **MS. WEISS:** No, sir, Your Honor. Just a little
22 bit different.

23 **THE COURT:** All right. Well, we don't need five
24 witnesses saying the same thing. We can condense
25 that. If they've got something else, that's fine.

1 What else? We've got Retalia and who else?

2 **MS. WEISS:** Retalia Green and Tim Abney. And
3 then --

4 **THE COURT:** And then you have the investigator.

5 **MS. WEISS:** Then we have the 911 just to get
6 those tapes. Those won't be long. And then we have
7 the responding officer also that found the shirt, the
8 officer that took them to the show-up. The EMT. And
9 the investigator, the doctor. And what? Oh, yeah.
10 The arresting officer. All those are going to be
11 just very brief.

12 **THE COURT:** So you'll finish in the morning.

13 **MS. WEISS:** We should finish by lunchtime, Your
14 Honor. Actually my doctor, I'd like to do him at
15 2:00 tomorrow morning afternoon. He can't come in
16 until then. But he'll be the last witness at 2:00
17 tomorrow afternoon. He'll be very brief.

18 **THE COURT:** I'm going to need to know whether
19 your client is going to testify or not.

20 **MR. O'NEIL:** I don't anticipate it at this
21 point, Your Honor.

22 **THE COURT:** All right. Well, you don't have to
23 make that decision at this point. We'll address it
24 when we get there. All right. Let me see you all
25 back in the office. We'll start at 9:30 in the

1 morning.

2 (Whereupon, the proceedings are concluded for
3 the day, to be reconvened tomorrow morning)

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Tuesday, July 8, 2008

THE COURT: All right. Where is our witness?

MS. WEISS: Our witness is right outside, Your Honor.

THE COURT: Do you want to get him in here? Do we have anything we need to take up this morning?

MR. O'NEIL: Your Honor, we do have an issue not with this witness but with witnesses I guess further down the line, that if the State intends to introduce the 911 tape, I would have an objection to part of that 911 tape. Of course it's not this next upcoming witness, but I guess at a break we could take up that issue with the 911 tape.

THE COURT: What's the issue?

MR. O'NEIL: Basically, Your Honor, there's three calls on the 911 tape, one call from the victim, Karem Jones. The second call is from an unidentified person. The third call is from Tim Abney, a witness on the State's witness list.

I have objection to the second call from the unknown person based on confrontation clause issues, it being cumulative, and also Crawford issues, Your Honor.

THE COURT: What do you say about that?

MS. WEISS: Your Honor, they are 911 calls.

1 They are not made for the purpose of being testimony
2 in court. They're made to get help. We have a
3 records custody from 911 who says that these calls
4 are the calls that came into 911 and, I mean, they're
5 calls that are made for the purpose of getting help.
6 I think that gets around Crawford, and I think --

7 **THE COURT:** What does the one from the unknown
8 person say?

9 **MS. WEISS:** That there was a stabbing at the
10 park. I mean, we can play it for you.

11 **THE COURT:** That's all it says?

12 **MS. WEISS:** I mean, I don't know all the
13 intricacies. I can play it for you though.

14 **THE COURT:** Well, I mean, have you all not
15 listened to the tape?

16 **MS. WEISS:** We have. That's pretty much all
17 that's on it. I've listened to it and Mr. -- and
18 Andrew has listened to it. So --

19 **THE COURT:** All right. And you have some
20 objection to that?

21 **MR. O'NEIL:** Yes, Your Honor. I have objection
22 to that based on Crawford, confrontation, and it
23 being cumulative. I think the person also goes on to
24 say that the victim is bleeding really bad and some
25 other particular things I'm not exactly sure of.

1 **THE COURT:** All right. Well, I'm going to
2 exclude it. We don't need it. I mean, I don't know
3 what the issue is. We know the guy got stabbed. Is
4 that an issue?

5 **MR. O'NEIL:** No, Your Honor.

6 **THE COURT:** I mean, you know. But there's no
7 point in playing all three of them.

8 **MS. WEISS:** Okay. And also, Your Honor, just
9 while we're talking about this, I tried to cover all
10 my bases by putting three records custodians from 911
11 on the witness list. And of course two of those are
12 out of the office. The third one can't come. So
13 it's a fourth record custodian that is actually
14 coming. His name is Tim Brown. He's a records
15 custodian from 911, but he was not on the witness
16 list.

17 **THE COURT:** Do you all have an issue as to -- do
18 we need to bring a records custodian in?

19 **MR. O'NEIL:** No, Your Honor.

20 **THE COURT:** You all will stipulate that this is
21 the 911 tape?

22 **MR. O'NEIL:** Yes, Your Honor.

23 **THE COURT:** All right. Does that help you?

24 **MS. WEISS:** Yes, Your Honor. We can just play
25 it in as a stipulation that these two are 911 calls?

1 **THE COURT:** Stipulate that the 911 calls, these
2 were 911 calls that were received by the 911
3 operators.

4 **MR. O'NEIL:** Just so we're clear, the first one
5 we're clear but not the second one.

6 **THE COURT:** All right.

7 **MS. WEISS:** Thank you, Your Honor.

8 **THE COURT:** And you don't need the custodian if
9 you don't want them.

10 **MS. WEISS:** Okay. Thank you, Your Honor.

11 **THE COURT:** Anything else?

12 **MS. WEISS:** No, Your Honor.

13 **THE COURT:** All right. Let me get your witness
14 back up here, if we could, please, sir. All right.
15 Mr. Patrick, you didn't talk about this case since we
16 left yesterday, have you?

17 **WITNESS:** No, Your Honor.

18 **THE COURT:** All right. Let's bring the jury in,
19 if we could.

20 (Jury in at 9:37 a.m.)

21 **THE BAILIFF:** The jury is seated, Your Honor.

22 **THE COURT:** All right. Thank you very much.
23 Good morning, Ladies and Gentlemen. Nice to see you
24 this morning. Let me ask you a couple of things
25 before we get started. Did anybody have any

1 discussions about this case since we left yesterday
2 afternoon? Were you approached by anyone to discuss
3 the case? Okay. Good.

4 Ladies and gentlemen, as you remember when we
5 broke, the State was in the process of offering their
6 witness, Mr. Jerome Patrick. And Ms. -- who was
7 directing this? Mr. Rogers was handling the
8 questioning of the witness. So, Mr. Rogers, I'll ask
9 if you would please proceed, sir.

10 **MR. ROGERS:** Thank you, Your Honor. May it
11 please the Court.

12 **Q** (By Mr. Rogers) Good morning, sir.

13 **A** Good morning, sir.

14 **Q** Good to see you again this morning. Before we get
15 back into July 22nd I'd just like to touch on
16 something for a second. We spoke yesterday that you
17 have a pending charge up here in the Solicitor's
18 Office. Is that correct?

19 **A** Yes. That's correct.

20 **Q** Do you know when that charge -- did that charge occur
21 before or after July 22nd, 2007?

22 **A** Oh. Way after.

23 **Q** And was that before or after you'd already spoken to
24 the police?

25 **A** Way after.

1 Q Way after?

2 A Yeah.

3 Q And I'd like to bring you back to July 22nd, 2007.

4 That's that we were talking about yesterday just
5 before we broke for the end of the day. I believe we
6 left off right when you were describing the fight as
7 it occurred between the defendant and Mr. Jones. Is
8 that correct, sir?

9 A That's correct.

10 Q Okay. I'd like to start off by reiterating for the
11 jury, who threw the first punch?

12 A Mr. --

13 Q Mr. Jones?

14 A No.

15 Q Or the defendant, Mr. Folkes?

16 A Yes. Mr. Folkes.

17 Q Your Honor, if it please the Court, I'd like for the
18 defendant (sic) to step down from the stand for a
19 brief demonstration.

20 **THE COURT:** All right.

21 Q I'm sorry. The witness. I think I misspoke and said
22 the defendant, Your Honor. All right. So we're
23 going to pretend for a second that I'm Mr. Jones and
24 you're Mr. Folkes.

25 **COURT REPORTER:** Could they switch places,

1 please, Your Honor?

2 **MR. ROGERS:** Yes, ma'am. Is this better for
3 you?

4 **COURT REPORTER:** Much better.

5 **Q** Okay. So I'm Mr. Jones and you're Mr. Folkes. How
6 close were they standing when the first punch was
7 thrown?

8 **A** He swunged (sic) the bag. He swunged the bag about
9 right here. And the beer came out of the bag. And
10 then he hold his hand up, and that's when he threw
11 the first punch.

12 **Q** Okay.

13 **THE COURT:** Speak up, please, sir.

14 **A** When he threw -- he had a bag with a beer in it and
15 he slung it but the beer came out of the bag. And
16 then that's when he came back with a punch to the
17 face, and that's when Mr. Jones hit him with two
18 pieces. Then when he went down --

19 **Q** Hang on. So the defendant threw the first punch and
20 hit Mr. Jones in the face?

21 **A** Yeah.

22 **Q** Okay. At that point then Mr. Jones threw two
23 punches?

24 **A** Yes.

25 **Q** Where did he hit the defendant?

1 **A** In the face.

2 **Q** In the face. So one, two?

3 **A** Mm-hmm (affirmative).

4 **Q** A right and a left?

5 **A** Yes.

6 **Q** From that point what happened?

7 **A** Then Mr. Folkes went to the ground.

8 **Q** Okay. The defendant?

9 **A** Yes. He had went to the ground. And Mr. Jones came
10 over to try to hold him down and said, "Stop. I
11 don't want to -- we don't have to go through this
12 right here." That's when, he came out with the blade
13 and hit him across the face and then he hit him
14 across the arm.

15 **Q** So he cut him. When he threw that punch, this sling
16 that cut him, did you see a knife then?

17 **A** No, I didn't. Actually I thought it was a box at
18 first. And then I saw the knife in his hand. And
19 then I didn't really realize he was bleeding until he
20 got back up because, you know, after the punch he
21 kind of rose back up and I saw that this was opened
22 up.

23 **Q** Now, at that time when the defendant threw the strike
24 that cut Mr. Jones, was Mr. Jones trying to avoid a
25 fight still at that point?

1 **A** Yeah. He was trying to avoid a fight. Than he was
2 standing up. And then we said, "You're cut." And
3 then he felt his neck. And then he looked at the
4 blood, and that's when he turned and he ran.
5 **Q** And by "he" you mean Mr. Jones?
6 **A** Yes. Mr. Jones ran.
7 **Q** So once Mr. Jones realized he was cut he ran?
8 **A** Yeah.
9 **Q** Which direction did he run?
10 **A** He ran towards the telephone booth. The stage is on
11 the left. He ran towards the telephone booth out
12 into the yard.
13 **Q** Thank you, sir. You may re-take the stand. When Mr.
14 Jones ran away while he was bleeding, when he ran to
15 the telephone --
16 **A** Yeah.
17 **Q** -- what did the defendant do at that time?
18 **A** Well, he was kind of like taunting and rejoicing, and
19 he said, "I should have killed your ass." You know
20 what I'm saying? And he had the blade then.
21 **Q** He was holding the blade up in the air then?
22 **A** Yeah. He had the blade. And he said, "I should have
23 killed your ass. I should have killed your ass, you
24 punk." And then that's when he turned around and hit
25 Ms. Tiffany and grabbed his bag and walked off.

1 Q Which direction did he walk when he was leaving?

2 A He went up the hill away from the officers' direction
3 going up the hill to the top of the park.

4 Q Is that the same general direction that you and he
5 and Ms. Retalia had come into the park previously?

6 A That's correct.

7 Q After he walked away, did you remain there at the
8 scene?

9 A Yes, I did.

10 Q Okay. And did you follow the defendant or the
11 victim? Did you walk anywhere?

12 A We stood there for a while until -- because we were
13 still like kind of in shock because of, you know,
14 what had happened. Then when we saw the blood and we
15 saw the guy helping. The guy came over to help him
16 with the rag. And they went to call. Everyone was
17 still huddled, you know, and amazed that someone --
18 that he was cut. And we didn't know how really bad
19 it was. And I was kind of comforting Retalia at the
20 time. But then we walked over there towards him.

21 Q Now, I think you said that somebody tried to help him
22 with a rag?

23 A Yes. The guy who was throwing the football out there
24 with the kids came over with the rag and he saw, you
25 know, all the blood started coming out real bad at

1 that particular time because he had already ran
2 across the field. And his shirt was kind of soaked
3 with the blood. The guy came over and administered
4 ice and a rag to his neck.

5 Q To try and help control the bleeding?

6 A Yes. That's correct.

7 Q Were you there when the police arrived?

8 A Yes, I was.

9 Q And after the police arrived on the scene, did you
10 speak with them?

11 A Yes, I did.

12 Q And did anything happen from your point after the
13 police arrived? Did you do anything further? Did
14 you see anything further?

15 A Yes. When the police arrived they taped off the area
16 because they said it was a crime scene and they taped
17 off the area. And they had asked us which direction
18 that he went. And they said if you don't mind
19 walking us in the direction.

20 Q Did you walk this with them?

21 A Yes.

22 Q Was anybody else with you at that time?

23 A Yes. Retalia. And we walked up the hill. And, you
24 know, there's a couple of paths. And we walked with
25 them up there. And it just so happened they said,

1 "Well, did he still have a knife on him?" We said we
2 believe so. They were kind of like backtracking,
3 looking for the knife. And then we went by the
4 garbage can, looking for the knife. And when we
5 looked in the garbage can, that's when they found the
6 shirt.

7 Q Now, I'd like to please let the record reflect I'm
8 showing opposing counsel what's previously been
9 marked as State's Exhibit 21. Let me show you a
10 picture. Please tell me if you recognize this
11 picture?

12 A Yes, I do.

13 Q And what is this a picture of?

14 A That's the garbage can right off the top of the hill
15 where they found the shirt at.

16 Q And does that fairly and accurately depict the
17 trashcan as it appeared on July 22nd, 2007?

18 A Yes, it is.

19 MR. ROGERS: Your Honor, at this time we'd like
20 to enter this exhibit, State's Exhibit 21, in
21 evidence.

22 MR. O'NEIL: No objection, Your Honor.

23 THE COURT: So admitted.

24 (WHEREUPON, State's Exhibit No. 21 is admitted
25 into evidence.)

1 Q You said that the shirt was recovered from inside
2 that trash bag (sic), sir?

3 A That's correct.

4 Q I'm going to show you another picture that's been
5 previously marked and entered as State's Exhibit 23.
6 Does that look like what the shirt looked like that
7 day?

8 A That's correct.

9 Q And it was sitting in the trashcan at that point?

10 A That's correct.

11 Q Now, do you remember what officer you were walking
12 with at that time? If you don't, that's okay. Do
13 you remember?

14 A No. I don't remember.

15 Q But it was you, Retalia, and the officer?

16 A And the officer. That's correct.

17 Q Okay. A brief moment, Your Honor.

18 **THE COURT:** Yes, sir.

19 Q Sir, do you see in court today the person who cut Mr.
20 Jones?

21 A Yes, I do.

22 Q And can you please point him out for the jury?

23 A In the center of the two guys right there, Mr. Folkes
24 with the paper in his hands.

25 Q The gentleman in the blue shirt between the two

1 attorneys?

2 A Yes, sir.

3 MR. ROGERS: Your Honor, I'd like the record to
4 reflect that the witness has identified the
5 defendant.

6 THE COURT: It does.

7 Q Thank you, sir. Sir, I have no further questions for
8 you at this time. Please answer any questions
9 opposing counsel may have.

10 CROSS EXAMINATION

11 BY MR. O'NEIL

12 Q Mr. Patrick, good morning.

13 A Good morning.

14 Q Let me make sure I have your prior record straight.
15 Have you three shopliftings?

16 A Mm-hmm (affirmative).

17 Q You have a financial transaction card fraud?

18 A That's correct.

19 Q You have a receiving stolen goods?

20 A Mm-hmm (affirmative).

21 Q You have a simple assault?

22 A Mm-hmm (affirmative).

23 Q An auto breaking?

24 A Mm-hmm (affirmative).

25 Q And you have I think two filing of false police

1 reports and one hindering a police officer?

2 A I believe so, sir.

3 Q And a driving under suspension?

4 A Mm-hmm (affirmative).

5 Q Now, I think you said this particular day was your
6 birthday?

7 A That's correct.

8 Q And you say you hadn't been using any drugs on this
9 particular day?

10 A That's correct, sir.

11 Q And it was also Tiffany Briggs' birthday as well?

12 A That's correct.

13 Q Okay. Now, you're familiar with box cutters. I
14 think you said you worked with them actually?

15 A Yes.

16 Q And you're familiar with hook blades?

17 A Yes. That's right.

18 Q And I'm going to show you what's been marked
19 Defendant's Exhibit 1 for I.D. and State's Exhibit 23
20 I think for I.D. Defense Exhibit 1 is a box cutter.

21 A That is correct.

22 Q And State's Exhibit 23 is a hook blade?

23 A Yeah.

24 Q And there is a big difference between those two?

25 A I understand that, sir.

1 Q And you understand that the hook blade has probably
2 like a three-inch curved blade on the end of it?

3 A That's correct.

4 Q But a box cutter has a straight edge like that?

5 A Yeah. That's correct.

6 Q So you won't get these two mixed up?

7 A No. No.

8 Q And what color blade, what color weapon did you see
9 that day?

10 A What color blade?

11 Q Yeah.

12 A The blade was shiny just like that, as far as the
13 blade.

14 Q What color was the handle?

15 A The handle was flat. Because we use it. It was a
16 flat one, the one that me and Mr. Folkes used.
17 Because we used the hook blade instead of the box
18 cutter due to the fact that the styrofoam that we cut
19 wouldn't cut with a regular box cutter. So that's
20 why they went and bought these hawk blades so we can
21 use that to cut deeper into the styrofoam because we
22 were setting them on the roof.

23 Q I understand that. But my question to you, sir, is,
24 what color was the handle you saw?

25 A The handle that I saw?

1 Q Yeah.

2 A Well, he had it in his hand at that particular time,
3 that handle.

4 Q So you didn't see the handle?

5 A I saw part of the handle, and part of the handle had
6 the wood grain to it.

7 Q So it was wood grain?

8 A And blue.

9 Q Wood grain and blue?

10 A Yeah.

11 Q Okay. Now, you said you and Mr. Folkes worked
12 together?

13 A That's correct.

14 Q At Action Labor?

15 A Yes.

16 Q But in fact you all only worked I think one day
17 together?

18 A No. That's incorrect sir.

19 Q What days did you work at Action Labor back in July
20 of 2007? You worked on July 2nd?

21 A Yeah. It was prior to -- he had had the blade for
22 prior because we was working. We was trying to
23 actually get a job with Campbell Roofing. And me and
24 him was working side-by-side. Actually they had
25 employees and we were temps. So we were working

1 extra hard to try to get a job. We was working real
2 hard together.

3 Q I understand that, Mr. Patrick. But what I'm trying
4 to get to is the days you worked. I think you worked
5 July 2nd. Do you remember that?

6 A I believe so.

7 Q July 3rd?

8 A I believe so.

9 Q July 6th?

10 A That's after the 4th. I believe.

11 Q July 7th?

12 A I believe.

13 Q July 9th?

14 A Yeah. We worked. Well, we had to work.

15 Q Then you skipped over to July 18th and then
16 July 16th?

17 A I don't think we skipped no week's work.

18 Q I'm asking you about whether you skipped some weeks
19 in there?

20 A No. No, I didn't.

21 Q So you didn't skip a week in there?

22 A No.

23 Q Okay. Now, you said that Action Labor doesn't supply
24 the tools for you?

25 A No.

- 1 Q You have to get these tools on your own?
- 2 A No. Campbell supplies these tools.
- 3 Q The work site supplies them?
- 4 A Yes. Yes, they did.
- 5 Q The supervisor is there to make sure you turn these
- 6 tools back in?
- 7 A They just asked us to put them in the box. And
- 8 sometimes we just leave them on the roof.
- 9 Q Some way to make sure you turn them back in. You
- 10 either put them in the box or leave them on the roof?
- 11 A Yeah. They didn't really check, you know, pat you
- 12 down to make sure you didn't take it with you or
- 13 anything.
- 14 Q But you had to leave it in those two areas?
- 15 A Yes.
- 16 Q And you said this probably happened last July?
- 17 A Yes, sir.
- 18 Q Almost about a year ago?
- 19 A That's correct.
- 20 Q And there were other people out in the park besides
- 21 the group you were with?
- 22 A That's correct.
- 23 Q You said that people were out there playing football?
- 24 A Mm-hmm (affirmative).
- 25 Q There were little kids over there in the little kid

1 area?

2 A That's correct.

3 Q Other people just sitting out there in the grass
4 area?

5 A That's correct.

6 Q It's fair to say the park was full of other people
7 around this time?

8 A Yes.

9 Q And you never -- you say you spoke to police that
10 day?

11 A Yes, I did.

12 Q But you never sat down and gave a statement to
13 police, did you, a written statement?

14 A A verbal.

15 Q But you didn't sit down and write a written statement
16 as to what happened?

17 A No.

18 Q None of the things you've said today did you sit down
19 and write a statement out to the police officer about
20 what happened?

21 A No. I didn't wrote (sic) it down.

22 Q Okay. And since last July, I think you said you've
23 picked up charges of your own?

24 A Yes.

25 Q Back in April of this year? That sounds about right?

- 1 **A** Yeah. April of this year.
- 2 **Q** You picked up a breach of trust?
- 3 **A** Yes.
- 4 **Q** And a carrying a concealed weapon?
- 5 **A** Yeah. But that was my razor for work. And they
- 6 dropped that, threw that out already.
- 7 **Q** Okay. But the breach of trust is still pending?
- 8 **A** Yes.
- 9 **Q** And that charge is being prosecuted by the same
- 10 office that Mr. Rogers and Ms. Weiss works for,
- 11 correct?
- 12 **A** I believe so.
- 13 **Q** And you hope that your testimony today will kind of
- 14 benefit you in some way with your pending charges.
- 15 Is that correct, sir?
- 16 **A** No. No, sir. No, sir.
- 17 **Q** You hope that your testimony is going to hurt you?
- 18 **A** No. I hope that it has no bearing on it because what
- 19 I did in that breach of trust, I did that, you know,
- 20 if you understand what I'm saying.
- 21 **Q** And you and Ms. Rita Green, you all are fiancées?
- 22 **A** Yeah. That's my fiancée.
- 23 **Q** You all are engaged?
- 24 **A** Yes.
- 25 **Q** You all have been together about what? Over four

1 years now?

2 A Yes. That's correct.

3 Q And in fact, I think you all live together?

4 A Yes.

5 Q You all eat together?

6 A When we're together, yes.

7 Q In fact, did you all go home together, last night
8 together?

9 A Yes. We did.

10 Q You all spent last night together as well?

11 A Yes.

12 Q And have you seen the other witnesses involved in
13 this case since last July?

14 A Since last July?

15 Q Yeah.

16 A Yes.

17 Q Ms. Tiffany Briggs?

18 A Well, Tiffany, here and there. You know, they're all
19 in the park once in a while.

20 Q So you saw some of the other witnesses hanging out in
21 the park?

22 A Yeah.

23 Q Did you see Mr. Jones in the park since last July?

24 A Not in the -- once I think I saw him in the park.

25 Q Okay. And you all conversated when you all saw each

1 other? You all talked when you all saw each other?

2 **A** Well, hi and bye, how you doing? You know what I'm
3 saying?

4 **Q** And you talked with people from the prosecutor's
5 office about the case?

6 **A** Since when?

7 **Q** Since last July. You talked to people from Mr. --

8 **A** Well, they came to, you know, ask me what happened.

9 So then I --

10 **Q** They came. You saw two of them?

11 **A** Yeah.

12 **Q** And you talked about the case?

13 **A** Yes, about what I saw.

14 **Q** And you said the -- you would say the fight happened
15 between Mr. Folkes and Mr. Jones pretty fast?

16 **A** Well, it's what you consider fast. Because first it
17 was verbal, then it got physical, and then it got
18 deadly.

19 **Q** And you said Mr. Folkes hit Mr. Jones one time in the
20 eye?

21 **A** Yeah.

22 **Q** With his right hand?

23 **A** Yes.

24 **Q** To Mr. Jones' -- I guess that would be his left eye?

25 **A** I guess it would be his left. It would be towards

1 left.

2 Q He had a beer bottle in his right hand I think you
3 said?

4 A Yeah. The beer bottle came out, and that's the same
5 hand that he --

6 Q So he swung at him with the beer bottle --

7 A And missed.

8 Q And missed?

9 A The beer came out of the bag because the bag was wet.

10 Q And then your testimony is that he was able to hit
11 him with the right hand before Mr. --

12 A Yeah. Because he didn't want to fight, and he wasn't
13 -- if you can understand what I'm saying, he was just
14 standing there. He just stood there when he threw
15 the beer bottle and amazed because he wasn't going to
16 fight him. You know what I'm saying? He was just
17 standing there and the beer bottle flew out of the
18 bag. And then that's when he just stood there and,
19 you know, he was looking at him and amazed that he
20 wasn't actually going to fight him because he didn't
21 really think that he was going to fight him. But
22 then he actually through a blow to the head. And
23 then I guess that's what caused him to react.

24 Q To the left side of the head?

25 A Yeah.

1 Q To the eye you're saying. And then did Mr. Jones
2 have any bruising to his left side of his face?

3 A No, not at that time.

4 Q Hitting him did not cause any damage?

5 A No. Like I said, well, it hit off the side of the
6 face. It was such, you know, he was moving at the
7 same time, but it was a blow.

8 Q Okay. And was Mr. Jones ever on top of Mr. Folkes?

9 A As far as not on top, but he was attempting to try to
10 hold both of his hands down at that particular time
11 to tell him, "Hey, it ain't like that." Because, you
12 know, he was already -- he had already knocked him
13 down, you know, and everybody had already saw that.
14 So he didn't really want to fight. So he was trying
15 to hold his hands down and say, "Hey, man, it ain't
16 really like that." And that's when --

17 Q So he was on top of him holding his hands down?

18 A Yeah. He didn't really all the way get down to his
19 knees, but he was just over him, you know, just hold
20 him down. You know what I'm saying?

21 Q Beg the Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 (Pause)

24 Q Mr. Patrick, you agree that you weren't drinking that
25 night?

1 **A** Yes.

2 **Q** That's your testimony?

3 **A** Mm-hmm (affirmative).

4 **Q** You agree that most everybody was drinking that
5 night?

6 **A** I didn't know about everybody else. I had went to
7 church that morning. And then when we got back from
8 church, we went to the Salvation Army.

9 **Q** Okay. No further questions, Your Honor.

10 **THE COURT:** Anything?

11 **MR. ROGERS:** Yes, Your Honor. Briefly.

12 REDIRECT EXAMINATION

13 **BY MR. ROGERS**

14 **Q** Sir, Mr. O'Neil asked you if you spoke to people
15 between July 22nd and now. Did you ever speak to
16 O'Neil before today?

17 **A** Yes. I spoke with him, too, at the --

18 **Q** When did you speak with him? Do you remember?

19 **A** At the park that time when they come to the park,
20 when you all been up there. I figured they came up
21 the same day.

22 **Q** And Mr. O'Neil had a chance to speak with you then?

23 **A** That's correct.

24 **Q** Do you remember the other attorney, the gentleman
25 sitting in the brown coat at the end of the table?

1 **A** Yeah. I think they been together.

2 **Q** So you think you remember speaking to him, too?

3 **A** I know there was two of them at that particular time.

4 Yes. I'm not pretty sure if that's the same one, but

5 I know it was Mr. O'Neil and another guy.

6 **Q** Okay. Fair enough. Now, just to clarify, is there
7 any doubt in your mind who cut Mr. Jones?

8 **A** No. There's no doubt in my mind.

9 **Q** And just to clarify, who cut Mr. Jones?

10 **A** Mr. Folkes.

11 **Q** Thank you, sir. No further questions.

12 **MR. O'NEIL:** No questions.

13 **THE COURT:** All right. Thank you. You may step
14 down, Mr. Patrick.

15 **WITNESS:** Yes, sir.

16 **THE COURT:** All right. Call your next witness
17 please, sir.

18 **MR. ROGERS:** Thank you, Your Honor. The State
19 calls Retalia Green. Your Honor, if the Court
20 doesn't object, we ask that Mr. Patrick be excused
21 from his subpoena.

22 **THE COURT:** He's free to leave if he wants to.

23 **RETALIA GREEN,** after being duly sworn, testifies
24 as follows:

25 **THE CLERK:** Thank you. Have a seat in the

1 witness stand and give the court reporter your name.

2 DIRECT EXAMINATION

3 **BY MR. ROGERS**

4 **Q** Good morning, ma'am. Can you please state your name
5 for us?

6 **A** My name is Retalia Green.

7 **Q** Ms. Green, where do you live?

8 **A** Right at this time I am living in a hotel. But I
9 will be living in Eastover just about in a month or
10 more, in the Columbia area.

11 **Q** Were you born here in Columbia?

12 **A** Yes, sir, I am.

13 **Q** Have you lived in Columbia pretty much your whole
14 life?

15 **A** Yes, sir.

16 **Q** Were you living in Columbia on July 22nd, 2007?

17 **A** Yes, sir. Actually I was homeless at that time.

18 **Q** Were you friends with Mr. Jerome Patrick?

19 **A** Yes, sir. I am friends with him. As a matter of
20 fact, Jerome Patrick is my fiancée.

21 **Q** Congratulations. The two of you were together last
22 year at that time?

23 **A** Yes, sir, we were.

24 **Q** And do you remember July 22nd?

25 **A** Yes, sir.

1 Q Do you remember how that day started for you?

2 A Yes. We were together here at the Finlay Park. We
3 went to eat at several places. At the end we were at
4 the Salvation Army, and we left the Salvation Army
5 and we came to the Finlay Park.

6 Q Did you start that day going to church?

7 A Yes, sir.

8 Q And how did you get to church?

9 A We went to church with his brother, Samuel Patrick,
10 who is the pastor at Christ Church on Decker. He
11 picks us up and he takes us to the church service.

12 Q After church did you come back into town?

13 A Yes. We went to the Red Ministry in the park and
14 also to the Cafe Ministry.

15 Q And did you end up eating dinner?

16 A At the Salvation Army.

17 Q Who ate dinner with you that day?

18 A It was me, Jerome and "New York".

19 Q And by "New York", who do you mean?

20 A "New York", that's what I know him as from the
21 streets. Clayton.

22 Q Clayton?

23 A Folkes.

24 Q You mean the defendant, Mr. Folkes?

25 A Yes, sir.

1 Q And that's his nickname on the streets?

2 A Yes, sir.

3 Q Before that day had you ever come in contact with the
4 defendant?

5 A Yes, sir. We were all in the park for like a year in
6 Finlay Park. We work at Action Labor through the
7 temp service together. We see each other basically
8 every day all day.

9 Q A lot of people hang out in the park usually?

10 A Yes, sir, we do.

11 Q And that's where you started to get to know him?

12 A Yes, sir.

13 Q Okay. After you ate dinner at the Salvation Army,
14 where did you go from there?

15 A We left the Salvation Army and went to the Finlay
16 Park.

17 Q Now, before we get into actually what happened in
18 Finlay Park, there's a couple of things that I need
19 to go over with you. I'm not trying to embarrass
20 you, but have you ever been in trouble with the law
21 before?

22 A Yes. I've been in trouble. I have a real -- a real
23 long history of trouble.

24 Q That's okay. I just need to hit a couple of things
25 for you, see if you remember them. Okay?

- 1 **A** All right.
- 2 **Q** Now, in 1990, did you have a forgery?
- 3 **A** Yes, sir.
- 4 **Q** What about in 1992? Do you remember another forgery?
- 5 **A** Yes, sir.
- 6 **Q** In 1992, do you remember a third forgery?
- 7 **A** Yes, sir.
- 8 **Q** What about a shoplifting that year?
- 9 **A** Yes, sir.
- 10 **Q** And the next year another shoplifting?
- 11 **A** Yes, sir.
- 12 **Q** And one additional shoplifting in 1993?
- 13 **A** Yes, sir.
- 14 **Q** Does that sound familiar? Then I show another
- 15 shoplifting charge in 1997?
- 16 **A** Yes, sir.
- 17 **Q** Then I show in 2004 a financial transaction card?
- 18 **A** Yes, sir.
- 19 **Q** Theft. Does that sound correct, ma'am?
- 20 **A** Yes, sir.
- 21 **Q** Okay. I just wanted to make sure we got that out in
- 22 the open so there's no questions about that.
- 23 **A** All right.
- 24 **Q** Now, when you left the Salvation Army and you headed
- 25 into the park, who was with you at that time?

1 **A** At the time it was me, Jerome Patrick and "New York"
2 which is Clinton Folkes.

3 **Q** Do you remember, what part of the park did you enter
4 into?

5 **A** We came in from the top side, which it would come
6 from the Strom Thurmond building. We came down the
7 step way and made it all the way down to the middle
8 of the park. Which it's a stage there, a grass area.
9 They have like where you have fishes at, a water site
10 right there in the middle of the park, too,
11 basically.

12 **Q** Your Honor, I'd like the record to reflect I'm
13 showing defense counsel what's previously marked as
14 State's Exhibit 20. Now, ma'am, I want to show you a
15 picture. Tell me if you recognize this picture?
16 Does that place look familiar?

17 **A** Yes. That's the entries of coming in the park. When
18 we came from the Salvation Army, we were entering in
19 through that side right there.

20 **Q** And does this fairly and accurate depict the entrance
21 to the park as you remember it on July 22nd?

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

23 **Q** Now, when you entered the park, was that police car
24 there?

25 **A** No, it wasn't.

1 Q So with the exception of that police car in the
2 picture, everything else look the same?

3 A Yes, sir, it is.

4 MR. ROGERS: Your Honor, at this time we'd like
5 to move State's Exhibit 20 into evidence.

6 MR. O'NEIL: No objection, Your Honor.

7 THE COURT: So admitted without objection.

8 (WHEREUPON, State's Exhibit No. 20 is admitted
9 into evidence.)

10 Q If you could point out, it looks like there may be a
11 couple of different ways that you can get into the
12 park there. Do you remember which side you came in
13 on?

14 A We were coming from across the street, and we would
15 walk down these step ways right here.

16 Q Right down those stairs. Okay. Now, I think you
17 told me you ended up in the middle of the park down
18 by the trees?

19 A Yes, sir.

20 Q Is that true?

21 A Yes, sir.

22 Q I'd like to show you another couple of pictures. I
23 show you what's previously been marked as State's
24 Exhibits 10 and 11. Does that look like the area?

25 A That is the area that we were in.

1 Q And that's State's Exhibit 11. This is State's
2 Exhibit 10?

3 A Yes, sir.

4 Q Now, there's a red mark there. Does that look about
5 like where people were congregating at that time?

6 A Yes. That's where we wind up being, right at that
7 exact location.

8 Q And there were a couple of people down there? It
9 wasn't just you?

10 A Yes. There were several people there, all laying out
11 in the grass socializing.

12 Q Do you remember specifically any particular people
13 being down there?

14 A At that time we had James Reddick. We had myself,
15 Jerome. We had Hakim. We had Tiffany. We had a lot
16 of other people there that I may be able to speak of
17 their street names but don't know their biological
18 names. But they were basically the people that were
19 in the church service, the people that goes down to
20 eat at the Salvation Army, and they are homeless
21 people.

22 Q You said they were your friends?

23 A Yes, they are.

24 Q When you say Hakim, are you talking about Mr. Jones?

25 A Yes, sir.

1 Q I just want to make sure we're familiar with
2 everybody we're talking about. Did there come a time
3 that the defendant got into an argument with Mr.
4 Reddick?

5 A Yes, sir. When we first got down there --

6 MR. O'NEIL: Objection, Your Honor. At this
7 point I just object. Under 403, I think this is
8 cumulative and already been covered by other
9 witnesses...

10 THE COURT: What's the question again?

11 MR. ROGERS: Did there come a time when the
12 defendant got in a fight with Mr. Reddick.

13 THE COURT: I'm going to let her answer that.
14 You know, if it's the same testimony over and over
15 again, we really don't need to go into the detail of
16 it. But I'll let her answer that question.

17 MR. ROGERS: Yes, sir.

18 A Yes. They did not physically fight but they were
19 verbally fighting. Mr. Folkes and Mr. Reddick was
20 verbally figuring until Mr. Folkes pulled out
21 something and Mr. Reddick put his hands up and backed
22 away.

23 Q After that did Mr. Folkes have words with Mr. Jones?

24 A Yes, sir. He had words with Mr. Jones. And Mr.
25 Jones was just standing there at the time.

1 Q Now, if I could, how much time took place between?

2 A It was just right back to back. It was like it was
3 he came out of one incident and then it was straight
4 to the next one.

5 Q Now, did the defendant come up to Mr. Jones, or did
6 Mr. Jones seek out the defendant?

7 A The defendant came to Mr. Jones.

8 Q And when Mr. Folkes came to the defendant, what
9 was -- excuse me. When Mr. Folkes came to Mr. Jones,
10 what was Mr. Jones doing at that time?

11 A Mr. Jones was actually standing there. I don't think
12 that Mr. Jones -- I don't think he was like preparing
13 himself for a fight until the defendant swung and hit
14 him first.

15 Q So did they exchange words first? Did they get into
16 a verbal fight?

17 A They passed a few words. I can't recall what it was.
18 But there was something said. And then the defendant
19 swung. He hit Hakim and then the second swung (sic),
20 he missed him.

21 MR. ROGERS: Your Honor, if I could ask the
22 witness to step down for a second for a brief
23 demonstration?

24 THE COURT: You may.

25 MR. ROGERS: Thank you, Your Honor.

1 Q Ma'am, if you could stand right here for me. When
2 the defendant and Mr. Jones first got in the first
3 verbal argument, how close were they together?

4 A They were like this.

5 Q So when they're talking, they're about this far?

6 A Uh-huh (affirmative).

7 Q Then who threw the first punch?

8 A The defendant threw the first punch.

9 Q How close were they when he threw the punch?

10 A They'd be like this right here, and he did this and
11 then he swung and hit him.

12 Q The defendant swung?

13 A Yeah, the defendant swung. He hit Jones in the eye.

14 Q Like on this side?

15 A Yes. And the second time he swung he missed. And
16 when he missed, Jones came back and hit him twice,
17 that's twice, and he dropped to the ground.

18 Q Hit him with a left/right?

19 A Uh-huh (affirmative).

20 Q And knocked him to the ground?

21 A Uh-huh (affirmative).

22 Q Then when Mr. Folkes was on the ground, was Mr. Jones
23 standing over him?

24 A Mr. Jones came like he was trying to keep him from
25 getting up off the ground. And Mr. Folkes went in

1 his pocket, came up with a blade, came up, reached up
2 and cut him across the neck.

3 Q Now, when he reached up, did you see a blade that
4 first time?

5 A The first time I thought it was a comb. That's what
6 I seen, a comb fell out. I didn't see the blade at
7 first. But when he came up, we seen the wooden
8 handle, and that's when we realized that Jones was
9 cut.

10 Q Now, I want to make sure. He didn't swing first at
11 the leg?

12 A No. He came up. He came from the ground. He was
13 here. When he came up, he came up like this. So it
14 was like; me, myself, I would say that he was
15 intentionally trying to do it.

16 MR. O'NEIL: Objection, Your Honor.

17 THE COURT: I'm going to let her testify what
18 her -- how she viewed it. Overruled.

19 Q All right, ma'am. If you could just take a seat.
20 When you first noticed Mr. Jones was cut, how close
21 were you to him?

22 A I was standing -- I was standing very close to it.

23 Q Very close. Would you say within ten feet?

24 A Yes, sir, I was.

25 Q Were you able to see the actual wound?

1 A Yes, sir. Well, at the time he didn't even know he
2 was cut. We saw the cut first.

3 Q Then was he bleeding anywhere else on his body, too?

4 A He was bleeding on his arms.

5 Q Do you remember which arm?

6 A No, sir, I didn't.

7 Q Just one of his arms?

8 A I know that one of his arms was bleeding. When he
9 grabbed -- when he went to grab for his neck, we
10 realized the arm was bleeding also. At that time we
11 grabbed for his neck. We told him he was bleeding.
12 He ran to the telephone --

13 Q Okay.

14 A -- which was a short distance away from him, the
15 stage.

16 Q Now, I show you another picture. This is what's been
17 marked as State's Exhibit 3. Do you see the
18 telephone that Mr. Jones ran to?

19 A Yes. He came from -- these are the trees. He ran
20 across the field to this telephone booth right here.

21 Q So he ran from these trees back here?

22 A Yes, sir.

23 Q Is that correct? To this blue telephone here. Is
24 that correct?

25 A Yes, sir.

1 Q Did anyone go with him at that time?

2 A At that time he was running, no. No one went with
3 him. We came behind him.

4 Q What did the defendant do as Mr. Jones was running
5 away?

6 A He were running sort of like acting like he were
7 running or running a slow pace saying, "Run, mother
8 fucker, run. Punk ass bitch, run. I should have
9 killed your mother fucking ass."

10 Q And that's what the defendant said to Mr. Jones?

11 A Yes, sir.

12 Q Once Mr. Jones reached the telephone, did Mr. Folkes
13 stay in the area?

14 A No. Mr. Folkes realized that Mr. Jones was at the
15 phone booth calling 911. Immediately he left out the
16 park going back the way we came in.

17 Q Did he carry anything with him at that time?

18 A He had a book bag with a sleeping bag in it. I think
19 he had a couple of quarts of beer.

20 (WHEREUPON, State's Exhibit No. 28 is marked for
21 identification.)

22 Q He had a bag with him at that time when he left. Is
23 that correct?

24 A Yes, sir.

25 MR. ROGERS: Your Honor, please let the record

1 reflect I'm showing opposing counsel what's
2 previously marked as State's Exhibit 28.

3 Q Now I want to show you something, and you tell me if
4 you recognize this object?

5 A That is Mr. Folkes' bag.

6 Q This is Mr. Folkes' bag?

7 A Yes, sir, it is.

8 Q Is this the bag you saw him carrying on July 22nd?

9 A Yes, sir. The only difference is that he had it
10 unzipped.

11 Q When you saw it, it was unzipped?

12 A Unzipped, yes.

13 MR. ROGERS: Your Honor, at this time we'd like
14 to enter State's Exhibit 28 into evidence. It's been
15 identified by the witness.

16 MR. O'NEIL: No objection.

17 THE COURT: So admitted.

18 (WHEREUPON, State's Exhibit No. 28 is admitted
19 into evidence.)

20 Q And when Mr. Folkes walked away, was he walking in
21 the same general direction that you had previously
22 entered the park?

23 A Yes, sir, he was.

24 Q When Mr. Jones was at the telephone, did anyone try
25 and give him assistance for his neck?

1 **A** Yes. There's a guy. At the time I did not know the
2 gentleman but I got to meet him. He gave him an ice
3 pack. I think he was in the park with his son and
4 they were out throwing the football. And he realized
5 that Mr. Jones was cut and he gave him an ice pack to
6 put on the bleeding area. So ...

7 **Q** Did you stay in the area?

8 **A** Yes, sir, I did. Actually I waited on the police to
9 arrive. They came --

10 **Q** And did they rush -- I'm sorry. I didn't mean to cut
11 you off. You were saying?

12 **A** They came in the park and they were questioning what
13 happened. I was there. I took them. I walked with
14 the police all the way through the park.

15 **Q** Did the police arrive pretty closely after the
16 incident?

17 **A** Yes, sir, they did.

18 **Q** And after you spoke with them, did you walk with them
19 through the park?

20 **A** Yes, sir, I did.

21 **Q** Did anyone walk with you at that time?

22 **A** I think it was -- as a matter of fact, it was me, my
23 fiancee, Jerome Patrick, and the officer. And we
24 walked through the park from the area the incident
25 happened all the way to the entrance we came in the

1 park.

2 Q Now, do you remember which officer you walked that
3 path with?

4 A No, sir, I don't.

5 Q That's okay. When you walked up, you said you were
6 trying to what? Trace the steps the defendant was
7 walking?

8 A Actually we were trying to find the blade that the
9 defendant were cut with. But once we got up the
10 steps, we realized that the shirt that "New York"
11 which is Clayton Folkes had on was in the garbage
12 can. He had changed clothes into another shirt.

13 Q Now, did you see the shirt as it was in the trashcan?

14 A Yes, sir. I walked up and picked it out of the
15 trashcan.

16 Q Ma'am, I want to show you what's previously been
17 entered into evidence as State's Exhibits 23 and 21.
18 I'm going to ask you if you remember State's Exhibit
19 21?

20 A Yes, sir, I do.

21 Q And what is this a picture of?

22 A That is the picture of the trashcan where the shirt
23 was at.

24 Q And where is this trashcan located?

25 A It's in the entries of the park where we came down.

1 It's right below the steps.

2 Q This is right near where you entered the park?

3 A Yes, sir, it is.

4 Q I'm going to show you what's State's Exhibit 23.

5 Does that look familiar?

6 A Yes, sir. That is the shirt.

7 Q That is the shirt. Is that the shirt in the
8 trashcan?

9 A Yes, sir, it is.

10 Q And is that the same trashcan that we previously
11 looked at?

12 A Yes, sir, it is.

13 Q A brief moment, Your Honor. Ma'am, I'm going to show
14 you something else, too. I show you what's been
15 marked as State's Exhibit 24. Does this shirt look
16 familiar at all?

17 A That is the shirt that Mr. Folkes had on as he was in
18 the park.

19 Q This is the shirt?

20 A Yes, sir, it is.

21 Q And was this what the defendant was wearing when you
22 saw him cut Mr. Jones?

23 A Yes, sir.

24 Q One moment, Your Honor. When you were walking with
25 the police officer after they responded to the

1 scene --

2 A Yes, sir.

3 Q -- did you stick to the normal concrete paths?

4 A No, sir, I didn't. Actually it's several areas in
5 the park where we have places that you can go behind
6 the trees. You can go --

7 Q Who usually goes back there?

8 A The people that are hiding clothes or where they put
9 their belongings because they're homeless. They've
10 got clothes out there in the park. Which the people
11 that utilize the place, that cuts to get through the
12 -- the homeless actually utilize those areas to put
13 their clothing or drink or whatever the case may be,
14 whatever they do, there's like cuts. That's who goes
15 through those cuts.

16 Q These are like shortcuts?

17 A Yes, sir, they are.

18 Q And have you ever been back there yourself?

19 A Yes, sir.

20 Q And that's where you took the officers?

21 A Yes, sir.

22 Q Thank you, ma'am. On July 22nd, 2007, had you had
23 anything to drink that day?

24 A No, sir. I don't drink. I don't do any drinking at
25 all.

1 Q Did you have anything that might have blurred,
2 impaired your vision or your memory at all?

3 A No, sir.

4 Q So you remember those incidents clearly?

5 A Yes, sir, I do.

6 Q And based on your memory, do you see the person in
7 court today?

8 A Yes, sir.

9 Q Is there any doubt in your mind who cut Mr. Jones?

10 A No, sir, there isn't.

11 Q Who do you remember cutting Mr. Jones in the park?

12 A "New York", which he is sitting between the two
13 gentlemens (sic) on this other opposite side which is
14 Clayton Folkes.

15 MR. ROGERS: Your Honor, I'd like the record to
16 reflect she has identified the defendant.

17 THE COURT: Okay.

18 Q No further questions for you at this time, ma'am.
19 Please answer any questions opposing counsel may
20 have.

21 A Yes, sir.

22 CROSS EXAMINATION

23 BY MR. O'NEIL

24 Q So, Ms. Green, it's your testimony that you wasn't
25 struggling to stay clean from drugs back in July of

1 2007?

2 A Actually I was clean already in 2007. I was already
3 clean.

4 Q You wasn't using drugs at all in July of 2007?

5 A No, I wasn't.

6 Q Okay. And you say you ate dinner with Mr. Folkes
7 that afternoon?

8 A Yes. Me, Jerome Patrick, and Mr. Folkes; we all ate
9 at the Salvation Army.

10 Q And he didn't go to church with you all, did he?

11 A No, he didn't.

12 Q He went to work that day?

13 A Yes, sir.

14 Q He got off work about 5:30?

15 A I don't know what time he got off work. I know we
16 ate at the Salvation Army. I don't know --

17 Q What time you ate at the Salvation Army?

18 A We ate at -- the dinner is served 4:30 'til 5:30.

19 Q So he got off work at 5:30, he couldn't have ate
20 dinner with you all at 4:30?

21 A Sir, like I said, I do not know what time he did get
22 off, but I know he ate dinner with me.

23 Q And you said you didn't know Tim Abney that day?

24 A No, sir, I didn't.

25 Q And you say you had a chance to meet Tim Abney

- 1 though?
- 2 **A** Yes, I did.
- 3 **Q** When did you meet Tim Abney?
- 4 **A** I met Tim the day that he gave him, Jones, the ice
- 5 pack in the park when I was talking with the officer.
- 6 And also I got a chance to meet him as we came into
- 7 court yesterday.
- 8 **Q** So you talked to him as you were coming into court
- 9 today?
- 10 **A** I talked to him on yesterday.
- 11 **Q** You talked to him yesterday?
- 12 **A** Yes, sir.
- 13 **Q** While you were sitting outside?
- 14 **A** Yes, sir.
- 15 **Q** And you and Mr. Patrick -- I think he's still in the
- 16 courtroom right there -- you all are engaged?
- 17 **A** Yes, sir. We've been -- actually we've been together
- 18 five years now.
- 19 **Q** How long have you all been engaged?
- 20 **A** We have been engaged two.
- 21 **Q** Two years?
- 22 **A** Yes, sir.
- 23 **Q** And you all live together?
- 24 **A** Yes, we do.
- 25 **Q** In fact, I guess you all have been living together as

1 late as last night? You all stayed together last
2 night?

3 A Yes, sir.

4 Q Okay. And have you ever been talking with anybody
5 else involved, any other witnesses involved in the
6 case?

7 A No, sir. We were instructed that after the trial
8 started we would no longer talk to each other. I
9 don't feel as though there was any reason to talk
10 about it.

11 Q And you didn't give a statement to the police, did
12 you?

13 A I don't recall if I gave a statement on paper, but I
14 did talk to them.

15 Q So no written statement?

16 A I don't think so.

17 Q So the things you said that Mr. Folkes said you
18 didn't write down for the police?

19 A I never said he said anything. All I -- oh, yes. I
20 gave them a statement, verbal statement. I didn't
21 write anything down.

22 Q Now, let me make sure I got your prior record
23 correct. You have I think three forgeries?

24 A Yes, sir.

25 Q Four shopliftings?

- 1 **A** Uh-huh (affirmative).
- 2 **Q** And a financial transaction credit card theft?
- 3 **A** Yes, sir.
- 4 **Q** Do you have any pending charges right now?
- 5 **A** No, sir.
- 6 **Q** No pending charges?
- 7 **A** No, sir.
- 8 **Q** And did anybody from the Solicitor's Office tell you
- 9 they would help you out?
- 10 **A** No, sir, they didn't.
- 11 **Q** Nobody ever told you that?
- 12 **A** No, sir.
- 13 **Q** And when you saw the fight, you were saying that Mr.
- 14 Jones was getting the best of Mr. Folkes?
- 15 **A** What happened was Mr. Folkes hit Mr. Jones. It
- 16 wasn't really a fight. Mr. Jones -- Mr. Folkes hit
- 17 Mr. Jones. Mr. Jones hit him with a two-piece to
- 18 keep him off of him, because he actually wasn't
- 19 trying to fight Mr. Folkes.
- 20 **Q** Now, did Mr. Folkes swing once or twice?
- 21 **A** Mr. Folkes swung twice.
- 22 **Q** So if somebody said he swung once that wouldn't be
- 23 correct?
- 24 **A** No, it's not correct. Because the first time he hit
- 25 him; the second time he missed.

1 Q So the first time he hit him, the second time he
2 missed?

3 A Yes.

4 Q And you were friends with Mr. Jones back then,
5 correct?

6 A I was friends with Mr. Jones and also Mr. Folkes. I
7 don't have anything against neither one. But right
8 is right and wrong is wrong.

9 Q And you were friends with Mr. Reddick back then?

10 A Mr. Reddick is my brother in Christ.

11 Q And you were friends with Mrs. Brings, Tiffany
12 Briggs?

13 A No. No, sir. I'm not friends with Ms. Briggs. I
14 associate with Ms. Tiffany, but we're not friends at
15 all.

16 Q And you just kind of just hung out together in the
17 park sometimes?

18 A Yeah. We hung out. Because we are actually out in
19 the park saying God can use sinners actually,
20 prescribing to get light.

21 MR. O'NEIL: Okay. Beg the Court's indulgence,
22 Your Honor. No further questions, Your Honor.

23 THE COURT: Anything?

24 MR. ROGERS: Nothing from the State, Your Honor.

25 THE COURT: All right. Thank you. You may step

1 down.

2 **MR. ROGERS:** Your Honor, we ask that this
3 witness be excused from her subpoena.

4 **THE COURT:** Thank you. Are you free to leave.

5 **WITNESS:** Thank you.

6 **MS. WEISS:** Your Honor, before we call our next
7 witness, I'd like to play one of the stipulated
8 tracks from the 911 call.

9 **THE COURT:** All right. Ladies and gentlemen,
10 the State and the defense counsel have agreed or
11 stipulated that they're going to play two 911 calls
12 that were made to the 911 center and that these are
13 the two calls that were placed.

14 **MS. WEISS:** I'm actually going to play one now
15 and one with the next witness.

16 **THE COURT:** Okay. That is the correct
17 stipulation. Is that right?

18 **MR. O'NEIL:** Yes, Your Honor.

19 (Whereupon, the 911 tape is played)

20 **MS. WEISS:** The State calls Tim Abney.

21 **TIM ABNEY,** after being duly sworn, testifies as
22 follows:

23 **THE CLERK:** Thank you. Have a seat in the
24 witness stand and give the court reporter your name.

25 **WITNESS:** My name is Tim Abney.

DIRECT EXAMINATION

BY MS. WEISS

Q Good morning, Mr. Abney. How are you?

A I'm okay. How are you this morning?

Q Good. I want to introduce you a little bit to the jury. Where are you from originally?

A Originally? My home town really is from Waggoner, South Carolina. But I moved to Columbia about 20 years ago.

Q And who do you live here with?

A I live by myself.

Q Do you have any family in Columbia?

A Yes. I have plenty of family in Columbia. As a matter of fact, my brothers are law enforcement officers. I have sisters who work for Department of Social Services, work for DMV and others sisters that works for Michelin and Brothers in Service and everything like that.

Q Now, where do you live in Columbia?

A I live on 2406 Cypress Street in Columbia, South Carolina.

Q And that's a home?

A Yes, ma'am.

Q And how long have you lived there?

A Oh, about 18 years.

1 Q Okay. Are you employed?

2 A I work for Quest Diagnostics. It's a bio lab. We do
3 all types of drug testing, all types of medical
4 testing, any type of testings that need to be done
5 for the hospitals, military base, things of that
6 nature.

7 Q And how long have you been working for Quest?

8 A About seven years.

9 Q Taking you back to July 22nd of 2007, do you remember
10 being in the park that day?

11 A Yes, I was. I was out there with a friend of mine
12 and her son. We were out there throwing, playing
13 football, throwing a football with them, teaching
14 them how to catch and throw. Also I do training on
15 side in that particular area also. So I was kind of
16 showing him things to do if he wanted to play
17 football.

18 Q Okay. Did you play football at some time?

19 A Yes. I played a year for South Carolina State.

20 Q South Carolina State?

21 A Yes, ma'am.

22 Q So you were playing football, teaching him how to
23 play football and trying to teach him how to get into
24 it. Do you remember the day itself?

25 A Well, it was hot. It was hot and a little sweaty.

1 It seemed like everybody was having a good time out
2 there with everyone. And we were just kind of
3 relaxing, you know.

4 Q Were you drinking?

5 A No. No. No. Gatorade, yes; and water, yes.
6 Alcoholic beverages, no.

7 Q And do you recall something happening out of the
8 ordinary that day?

9 A Yes. As a matter of fact, I did; as pertaining to an
10 in incident that occurred in which --

11 Q Please tell the jury about that?

12 A Well, at that particular point we were near the
13 staging area. And the incident occurred where a
14 gentleman was assaulted, was cut and had an injury.
15 So I heard a commotion first. Then the gentleman
16 seated right there with the striped shirt there came
17 in my direction and a lady that was with him. He was
18 holding his neck and I saw a bunch of blood
19 protruding down his hand.

20 So I asked to look at the wound to see where
21 exactly the wound was at. And the wound was near the
22 -- coming down the neck near the artery area. So I
23 had some ice in a cup and I drained the cup out and
24 gave him the ice to put on his neck and I started
25 calling 911 myself trying to get law enforcement or

1 any EMT down there to assist him because of the
2 nature of the wound was so near the artery area.

3 Q Did you have the opportunity to see the defendant
4 that day?

5 A I didn't actually see him, but I was told that --

6 MR. O'NEIL: Objection, Your Honor.

7 Q Without talking about what you were telling us, did
8 you actually see him? You didn't actually see him?

9 A I didn't actually see him.

10 Q Okay. And do you have any training or any experience
11 dealing with wounds?

12 A Yes. Yeah, yeah. With my job also, we take a first
13 aid CPR course with my job also in that we're dealing
14 with bio labs and we're dealing with working in the
15 medical area. We also take extensive courses within
16 having cuts and dealing with in the phlebotomy area
17 also. And by the notice of the wound of the victim,
18 that it is a very serious injury --

19 MR. O'NEIL: Objection, Your Honor. I don't
20 think this witness has been qualified as an expert to
21 give his opinion.

22 THE COURT: Well, I'm going to let -- he can
23 testify that it was a serious cut, wound. Overruled.

24 A Thank you. Well, by the notice of the injury, like I
25 said before, that it seemed like it was very serious.

1 And --

2 Q And were you able to -- do you have experience
3 helping to control bleeding? Is that part of your
4 training?

5 A Yes, ma'am. And that's why I offered ice and told
6 him to do direct pressure to the wound to keep it
7 from bleeding as much until the EMT gets to him. And
8 then also I told him that he is going to need
9 stitches for that particular wound.

10 Q And did you stay with him until the EMT's got there?

11 A Not quite. Because the officer came up and I was
12 talking with him. And then the EMT's went on over to
13 assist him over near the bathroom area. So I was
14 talking with the officers. I also told them what I
15 seen.

16 Q Okay. And you talked to the officers and gave them
17 all your information?

18 A Yes. Yes, ma'am.

19 Q And did you notice if the bleeding had somewhat
20 gotten under control?

21 A Yeah. A little bit. A little bit, but the wound
22 still was there. But the bleeding had stopped
23 because of the ice and the coldness near the area
24 kind of slowed the bleeding down.

25 Q And you said you called 911?

1 A Yes. I called 911 --

2 Q On your own?

3 A -- also.

4 Q I'm just going to ask you to listen to this
5 (Whereupon, a portion of the 911 tape is played)

6 Q And that was your voice on that recording?

7 A Yes, it was. May I say? I sound like my brother.

8 But, yes, ma'am. Yes, ma'am, that was me. Yes,
9 ma'am.

10 Q And the description you were giving, that was not of
11 your own?

12 A No, ma'am. It was someone speaking telling me the
13 description of the person who actually did the act.

14 Q And would you say that things are kind of chaotic
15 down there?

16 A Very much so. That's why I was speaking I guess in
17 that particular tone because I was trying to get him
18 assistance as fast as he could get it because of the
19 nature of the injury.

20 Q Okay. Thank you.

21 A You're welcome.

22 MS. WEISS: No further questions, Your Honor.

23 MR. O'NEIL: Just briefly, Your Honor.

24 CROSS EXAMINATION

25 BY MR. O'NEIL

- 1 Q So, Mr. Abney, you didn't see the fight?
- 2 A No, sir. I didn't see that directly, sir.
- 3 Q In fact, like you said, the description you gave of
- 4 the subject you got from somebody else?
- 5 A Yes, sir.
- 6 Q And you helped get the bleeding -- did you help get
- 7 the bleeding under control?
- 8 A Yes, sir. I gave him some ice. I gave him some ice
- 9 out of a cup and told him to apply direct pressure to
- 10 his neck.
- 11 Q Did you see a white guy with long hair also get the
- 12 bleeding under control?
- 13 A No, sir, I didn't.
- 14 Q You didn't see that?
- 15 A No, sir.
- 16 Q So it was you who got the bleeding under control?
- 17 A Yes, sir. I was assisting him.
- 18 Q And you actually thought Mr. Jones had gotten outside
- 19 the park?
- 20 A Excuse me?
- 21 Q You thought Mr. Jones had left the park? The victim,
- 22 Mr. Jones, you thought he left park?
- 23 A No, sir. No, sir. I didn't think he left the park.
- 24 Q You didn't tell the people on 911 that the victim had
- 25 gone to his car outside the park?

1 **A** I wouldn't -- no, sir. He didn't leave the park,
2 because I was there with him.

3 **Q** But do you remember telling 911 that he had left the
4 park and went outside to his car?

5 **A** No, sir. I don't remember that.

6 **Q** Okay. That's fine. And you actually had to ask Mr.
7 Jones whether or not he needed medical attention?

8 **A** Yes, sir. After I looked at the wound I asked him
9 because the bleeding was slowing down. And I looked
10 at the wound again, and I asked him if he wanted
11 medical attention. Then I seen the nature of the
12 cut, that he definitely needed it. And I told him he
13 was going to need some stitches.

14 **Q** And in fact, when were you on the phone with 911, you
15 had to stop and ask Mr. Jones whether or not he
16 needed an ambulance?

17 **A** Yes, sir.

18 **MR. O'NEIL:** Okay. No further questions, Your
19 Honor.

20 **THE COURT:** All right. Thank you, sir. You may
21 step down.

22 **MS. WEISS:** Your Honor, may Mr. Abney be
23 excused, please?

24 **THE COURT:** You may. Thank you. You're free to
25 leave.

1 **MR. ROGERS:** Your Honor, the State calls Officer
2 Sessions.

3 ANTONIO SESSIONS, after being duly sworn,
4 testifies as follows:

5 **THE CLERK:** Thank you. Have a seat in the
6 witness stand and give the court reporter your name.

7 DIRECT EXAMINATION

8 **BY MR. ROGERS**

9 **Q** Please state your name, sir?
10 **A** Officer Antonio Sessions.
11 **Q** Sir, where are you currently employed?
12 **A** For the City of Columbia police.
13 **Q** How long have you been employed there?
14 **A** Currently two years.
15 **Q** And were you employed in law enforcement before that?
16 **A** Yes, sir.
17 **Q** Where was that?
18 **A** Department of Corrections.
19 **Q** How long were you employed at the Department of
20 Corrections?
21 **A** About a year.
22 **Q** Is that the extent of your law enforcement
23 experience, sir?
24 **A** Yes, sir.
25 **Q** Were you working with Columbia Police Department on

1 July 22nd of 2007?

2 A Yes, sir.

3 Q And what was your job capacity at that time?

4 A I'm actually a patrolman, pretty much to go to calls
5 of service and to actually patrol my territory.

6 Q Kind of a first responder?

7 A Yes, sir.

8 Q Were you -- you said you were working on July 22nd?

9 A I was.

10 Q Of 2007?

11 A Yes, sir.

12 Q Did you receive a call to Finlay Park on that day?

13 A I did. I received a call while I was in roll call in
14 reference to a fight in progress with a weapon.

15 Q And did they say where that -- where were you
16 dispatched to?

17 A Finlay Park which is at 900 Laurel street.

18 Q Did they give you a particular area of Finlay Park
19 that you were dispatched to?

20 A On the Taylor Street side.

21 Q The Taylor Street side?

22 A Yes, sir.

23 (WHEREUPON, State's Exhibit No. 29 is marked for
24 identification.)

25 MR. ROGERS: Please let the record reflect I'm

1 showing opposing counsel what has been marked as
2 State's Exhibit 29.

3 **THE COURT:** Mr. Rogers, when you say I'm showing
4 it, the record will reflect that. Because anything
5 you say, the record reflects that.

6 **MR. ROGERS:** Yes, sir. I just want to make
7 sure, Your Honor.

8 **Q** Sir, do you recognize this?

9 **A** Yes.

10 **Q** What does this look like to you?

11 **A** Like the overlook of the downtown area.

12 **Q** Do you see Finlay Park in this area, sir? Do you see
13 Assembly Street?

14 **A** Yes. I see Assembly Street right here.

15 **Q** And do you recognize Finlay Park anywhere in that
16 picture?

17 **A** Taylor Street is all the way down.

18 **Q** You don't?

19 **A** Would it be in this area?

20 **Q** Does it look familiar? That's okay. The park that
21 you responded to, was that towards the upper portion
22 of the park or the lower portion of the park?

23 **A** It was on the lower portion of the park.

24 **Q** Is there any type of feature down by that area that's
25 specific?

1 **A** They have the stage and the restrooms in the bottom
2 part of the park.

3 **Q** When you responded down to the stage, did you see
4 anybody upon -- did you make any contact with anybody
5 upon responding to the scene?

6 **A** Yes, sir. I made contact with the alleged victim and
7 also a witness at the time.

8 **Q** Do you remember the victim's name?

9 **A** From my understanding, his name was Kareem, if I can
10 remember.

11 **Q** And you said you spoke to some witnesses. Is that
12 accurate?

13 **A** I spoke with one of the witnesses that was there.

14 **Q** Do you remember which witness you spoke to, sir; or a
15 description of that person?

16 **A** She probably was a five-five black female, short
17 hair.

18 **Q** Kind of a skinny lady?

19 **A** Skinny, yes. Weighed about 135 to 140.

20 **Q** So you spoke with those two people in reference to
21 the fight?

22 **A** Yes, sir.

23 **Q** Did you take any type of witness statements, or did
24 you get a --

25 **A** At that time I spoke with the witness, and she gave

1 me a description of the alleged suspect. And at that
2 time, from my understanding, he was wearing a -- I
3 can't remember the name and the description of his
4 shirt, so I'm not going to speak upon that. But she
5 did tell me that he went across Finlay Park toward
6 the Laurel Street side.

7 Q The description of the suspect, did that develop over
8 the course of that time?

9 A It did.

10 Q With the initial description, do you remember what
11 the initial description was? Was it pretty specific,
12 or was it more vague?

13 A It was more vague. I can't remember the description
14 at the time that she gave me.

15 Q But would you say that the description became more
16 specific as the events unfolded?

17 A Yes, sir.

18 Q Did the witness seem to know the suspect?

19 A Yes, sir.

20 Q Did she seem -- did she give you any indication how
21 she knew him?

22 A She indicated that she was involved with him at one
23 point, at one time, and that the altercation started
24 off in reference to those individuals being together
25 in that altercation.

1 Q When you say involved, do you mean romantically?

2 A Yes, sir.

3 Q When you inspected the victim, did you look at his
4 wounds?

5 A From what I can remember, I believe he had puncture
6 wounds on the right side of his neck.

7 Q Did you call any kind of EMS to the scene? Were you
8 aware if they responded?

9 A The EMS was already been dispatched on the scene as
10 well. Once I arrived, EMS was already -- we actually
11 arrived at the same time.

12 Q So when you received the call, it was your
13 understanding EMS was already on the way?

14 A Correct.

15 Q When you responded to the scene, would you --

16 A EMS was on the scene. EMS and myself was on the
17 scene as well.

18 Q Who was tending to the victim?

19 A EMS. EMS personnel was attending to the victim.

20 Q Were you able to observe his wounds in any kind of
21 detail?

22 A Not in detail, I was not able to identify his wounds.
23 But --

24 Q And is that because the EMS was treating him at that
25 time?

1 **A** That's correct.

2 **Q** After you received a description from the witness and
3 the victim, did you -- how did you make that known to
4 the other officers?

5 **A** I went over the air, over the radio and announced
6 that it was a black male with the description that
7 the witness gave me and that he was heading to the
8 direction of the Laurel Street side.

9 **Q** You're in civilian clothes today. At that time were
10 you in uniform?

11 **A** Yes, sir, I was.

12 **Q** And is part of your uniform a radio?

13 **A** Yes, sir.

14 **Q** And that's on your person at all times?

15 **A** That's correct.

16 **Q** And is that same radio that you used to make the
17 announcements?

18 **A** Yes, sir.

19 **Q** Were you aware of whether or not Mr. Jones, the
20 victim in the case, was transported away from the
21 scene with the EMS?

22 **A** Yes, sir.

23 **Q** And do you know where they took him?

24 **A** From my understanding, they took him to Richland
25 Hospital.

- 1 Q Did you stay on the scene down at Finlay Park the
2 entire time?
- 3 A Yes, sir.
- 4 Q Did you ever have an occasion to transport the
5 witness?
- 6 A I did.
- 7 Q And this was the same witness that you had spoken to
8 the whole time you were there?
- 9 A Right. Correct.
- 10 Q Where did you transport her to?
- 11 A I transported her to the police headquarters.
- 12 Q Is that far from Finlay Park?
- 13 A No. It's probably about two blocks.
- 14 Q And you transported her in your squad car?
- 15 A Yes, sir.
- 16 Q Do you remember was there a -- did you give her to
17 another officer? Did you hand her off to somebody
18 else?
- 19 A Once I transported her to headquarters, she was
20 released to investigations.
- 21 Q Do you remember which investigator?
- 22 A No, sir, I don't.
- 23 Q Did you -- after you transported the witness to
24 headquarters, where did you go from there?
- 25 A At that time I was still at headquarters and at that

- 1 time I completed the report.
- 2 Q Are you aware of whether or not any evidence was
- 3 recovered in relation to this incident? Physical
- 4 evidence?
- 5 A At that time I was not aware of what evidence was
- 6 recovered.
- 7 Q Are you aware -- do you know if a suspect was
- 8 arrested that night?
- 9 A Yes, sir.
- 10 Q Were you present when that suspect was arrested?
- 11 A I was not present.
- 12 Q Is that uncommon in situations such as this?
- 13 A No, it's not uncommon.
- 14 Q Are you aware of how many officers responded to this
- 15 scene in total?
- 16 A I know it was a large quantity. I don't know the
- 17 exact amount of officers.
- 18 Q So you had a specific job to play in this
- 19 investigation?
- 20 A Yes, sir.
- 21 Q Were you present when any identifications were made,
- 22 sir?
- 23 A I'm sorry?
- 24 Q Were you present when any identifications were made?
- 25 A No, sir.

1 Q Did there come a point in the evening to where you
2 were aware of the suspect's name?

3 A There was, but I cannot remember his name at this
4 time.

5 Q Would you have given that name over the radio?

6 A Well, at the time when I arrived at investigations, I
7 actually received a photocopy of his picture and his
8 name.

9 Q Before you received that at headquarters, when you
10 were still speaking with the witness and you were
11 trying to develop a description of the suspect?

12 A Right.

13 Q You said that she knew him?

14 A Right.

15 Q That she had been in a relationship with him?

16 A Right.

17 Q Do you recall getting his name from her? If you
18 don't remember --

19 A When he gave me his description she did give me his
20 name. She gave me the description of what he was
21 wearing and she did give me his name.

22 Q When you got that description, what did you do with
23 that description?

24 A I gave that description over the air to the officers.

25 Q So that every responding officer was aware of who to

1 look for?

2 **A** Correct.

3 **Q** A brief moment. Your Honor, the State would have no
4 further questions at this time.

5 **THE COURT:** Anything?

6 **MR. SHEALEY:** Thank you, Your Honor. May it
7 please the Court.

8 **THE COURT:** Yes, sir, Mr. Shealey.

9 CROSS EXAMINATION

10 **BY MR. SHEALEY**

11 **Q** Good morning, Officer.

12 **A** Good morning, sir.

13 **Q** So you've been with City of Columbia I think you
14 testified two years now, right?

15 **A** Yes, sir.

16 **Q** I think the Department of Corrections before that for
17 a year?

18 **A** That's correct.

19 **Q** Now, it takes some substantial training to become a
20 City of Columbia police officer, right?

21 **A** That's correct.

22 **Q** I mean, they trained you in many aspects of how to do
23 your job, right?

24 **A** That's correct.

25 **Q** You're trained to be proficient with your fireman?

1 A Correct.

2 Q You're trained to secure a crime scene?

3 A Correct.

4 Q To locate any possible witnesses, right?

5 A Correct.

6 Q You're trained to fill out a police report?

7 A Correct.

8 Q And in fact, you all have a standard police report
9 that you fill out?

10 A That's correct.

11 Q Okay. And every little box means something, right?

12 A That's correct.

13 Q And there's a box for the victim's name?

14 A Correct.

15 Q A box for a complainant's name?

16 A Right.

17 Q A box for a suspect's name. A box that tells you
18 when you got there?

19 A Correct.

20 Q A box that tells you when you left?

21 A Correct.

22 Q Also a place to write out your narrative so you can
23 recall what happened?

24 A That's correct.

25 Q Because it's hard to recall what happened a year

1 later, right?

2 A That's true.

3 Q So today you don't remember what the description was
4 of the shirt --

5 A That's correct.

6 Q -- exactly, right? You don't remember exactly the
7 name that was given to you of the suspect, right?

8 A That's correct.

9 Q And you don't remember exactly what witness, what her
10 name was, right?

11 A That's correct.

12 Q That's why we have these incident reports that help
13 us document these things years later, months later?

14 A Right.

15 Q Because no one is perfect. And as the solicitor was
16 asking you about, you were the first one there,
17 right?

18 A Correct.

19 Q So you would secure that scene?

20 A Correct.

21 Q Make sure nothing gets tampered with?

22 A That's correct, sir.

23 Q Right? Now, if I told you that a woman who was
24 listed as the complainant, her name was Tiffany
25 Briggs, would that refresh your memory?

- 1 **A** That would.
- 2 **Q** Okay. Now, do you have your report with you today?
- 3 **A** I do not, sir.
- 4 **Q** Okay. Now, she is the only person you talked to
5 about this incident other than the victim, right?
- 6 **A** That's correct.
- 7 **Q** So while you're there securing the scene, you'll
8 agree that no other witnesses came up to you and told
9 you anything about this incident?
- 10 **A** I wouldn't say that, sir. Other witnesses came up to
11 me. And they were just pretty much crowded around me
12 trying to give me statements. But the only
13 individual that I actually was listening to was
14 Tiffany because she was part of the altercation that
15 took place, that escalated to this point.
- 16 **Q** Now, just told me there that there's a place for
17 witnesses on this report?
- 18 **A** Right.
- 19 **Q** So you would have written their names down, correct?
- 20 **A** That's correct.
- 21 **Q** Okay.
- 22 **A** Right.
- 23 **Q** Can you show me on your own report any other names of
24 witnesses you wrote down that day?
- 25 **A** Well, it's not going on the written report sir. Like

1 I said, Tiffany was the only witness that I put on
2 the report.

3 Q Okay.

4 A She gave me a valid statement.

5 Q Because she was memorable to you?

6 A Yes, sir.

7 Q So if there was another memorable witness, you would
8 have written it down in your report?

9 A That's correct.

10 Q Their name and all their information?

11 A That's correct.

12 Q And in securing this crime scene, you didn't find any
13 weapons that day, did you?

14 A No, sir.

15 MR. SHEALEY: Beg the Court's indulgence.

16 Nothing further from this witness.

17 THE COURT: Anything, Mr. Rogers?

18 MR. ROGERS: Nothing from the State, Your Honor.

19 THE COURT: Thank you, Officer. You may step
20 down.

21 MR. ROGERS: Your Honor, we ask that this
22 witness be relieved from his subpoena.

23 THE COURT: Officer, you're free to leave if
24 you'd like. Thank you.

25 WITNESS: Thank you, sir.

1 **THE COURT:** All right. I tell you, I think
2 we'll just go ahead and take a break at this point.
3 Ladies and gentlemen, I'll let you step back to the
4 jury room. We'll take about a 15 or 20-minute break.
5 Please don't discuss the case while you're back
6 there. And we'll bring you back in just a few
7 minutes. Thank you.

8 (Jury out at 10:50 a.m.)

9 **THE COURT:** Okay. We'll take a 15-minute break
10 and come back.

11 **MS. WEISS:** Thank you, Your Honor.

12 (Whereupon, a break is taken)

13 (WHEREUPON, State's Exhibit No. 30 is marked for
14 identification.)

15 **THE COURT:** Who is next?

16 **MR. ROGERS:** Officer Oulette.

17 **THE COURT:** Officer Oulette. All right. Is
18 Officer Oulette in the room?

19 **MS. WEISS:** Your Honor.

20 **THE COURT:** Yes, ma'am.

21 **MS. WEISS:** I'm not sure if this was clarified
22 earlier. But we'd like to add the stipulation that
23 those tracks one and three be entered into evidence
24 as State's Exhibit 30 -- they were played on the
25 record -- be entered into evidence.

1 **THE COURT:** You got any objection to that?

2 **MR. O'NEIL:** No, Your Honor.

3 **THE COURT:** All right.

4 **MS. WEISS:** Thank you, Your Honor.

5 **THE COURT:** So admitted. All right. Let's
6 bring the jury in.

7 (WHEREUPON, State's Exhibit No. 30 is admitted
8 into evidence.)

9 (Jury in at 11:09 a.m.)

10 **THE BAILIFF:** The jury is seated, Your Honor.

11 **THE COURT:** Okay. Mr. Rogers, do you want to
12 call your next witness, please?

13 **MR. ROGERS:** Thank you, Your Honor. The State
14 calls Officer Oulette.

15 DAVID OULETTE, after being duly sworn, testifies
16 as follows:

17 **THE CLERK:** Thank you. Have a seat in the
18 witness stand and give the court reporter your name.

19 **WITNESS:** Officer David Oulette, City of
20 Columbia Police Department.

21 DIRECT EXAMINATION

22 **BY MR. ROGERS**

23 **Q** Sir, how long have you been employed with the
24 Columbia Police Department?

25 **A** It will be 18 years in August.

1 Q 18 years? And what type of jobs have you held within
2 the CPD?

3 A I've worked patrol in the Metro unit.

4 Q What is your main responsibility as a patrol officer?

5 A The downtown area between Taylor Street and the zoo.

6 Q What types of duties do you do on a regular daily
7 basis?

8 A Answer dispatch calls, traffic.

9 Q Okay. Were you working with the Columbia Police
10 Department on July 22nd, 2007?

11 A Yes, I was.

12 Q Do you know when your shift started that day?

13 A My shift started at 6:00 in the morning.

14 Q Did there come a time when you were dispatched to
15 Finlay Park?

16 A Yes, there was.

17 Q Do you remember about what time that call came in?

18 A I believe around 6 in the afternoon, 6 or ten after
19 6.

20 Q Was that towards the ends of your shift?

21 A Towards the end of my shift.

22 Q When you responded -- or did you respond to that
23 call?

24 A Yes, I did.

25 Q And what area of the park did you respond to?

1 A I responded to the upper side between Laurel and
2 Assembly, up in that area.

3 Q And what particularly were you looking for at that
4 time?

5 A They put out a description of a suspect and I was
6 circulating the area looking for him.

7 Q Do you remember what that initial description was?

8 A Black male. I don't remember the clothing
9 description.

10 Q So the initial description was pretty vague?

11 A Yes.

12 Q Did you make any -- did you stop anyone regarding
13 that description?

14 A I stopped somebody on the corner of Laurel and
15 Assembly almost right outside of this building.

16 Q And is that close to the park?

17 A Yes, it is.

18 Q Sir, I'm going to show you what's previously been
19 marked as State's Exhibit 29. I'm also showing
20 defense counsel. Sir, I show you this. Can you
21 identify what this is?

22 A That's a map of the downtown area.

23 Q Do you see Finlay Park in this?

24 A Yes, I do.

25 Q Do you see the courthouse?

1 **A** Yes, I do.

2 **Q** Does this accurately depict the layout of that area?

3 **A** Yes, sir.

4 **Q** On July 22nd?

5 **A** Yes, sir, it does.

6 **Q** Of 2007?

7 **A** Yes, sir.

8 **MR. ROGERS:** Your Honor, at this time we move
9 State's 29 into evidence.

10 **MR. O'NEIL TWO:** Without objection.

11 **THE COURT:** So admitted.

12 (WHEREUPON, State's Exhibit No. 29 is admitted
13 into evidence.)

14 **Q** All right, sir. If you could do me a favor. I've
15 got a marker right here, a red marker. Your Honor,
16 may the witness step down for a second so as not to
17 block anybody's view?

18 **THE COURT:** So as to.

19 **Q** I'm trying to figure out how he can mark it without
20 cutting off everybody. Put it right here?

21 **THE COURT:** I don't know who "everybody" is, but
22 the jury is who you want to make sure is not blocked
23 off.

24 **MR. ROGERS:** Yes, sir. I just wanted to make
25 sure opposing counsel can see it.

1 **THE COURT:** Well, they can move.

2 **Q** Sir, can you show us where Finlay Park is on this
3 map?

4 **A** This is Finlay Park down here. That's the body of
5 water. Finlay Park sits in this whole area here.

6 **Q** Are you familiar with the stage in Finlay Park?

7 **A** Yes, I am.

8 **Q** Where is that located?

9 **A** That's going to be out in this area here.

10 **Q** And the upper side where you responded, where is
11 that?

12 **A** Up around Laurel and Assembly up here.

13 **Q** Sir, I'm going to show you what's been marked as
14 State's Exhibit No. 20. Do you recognize that
15 picture?

16 **A** Yes. That's it.

17 **Q** Where is this picture on that map?

18 **A** That's going to be up in here.

19 **Q** Okay. Now, you said you stopped some suspects after
20 the initial description. Can you mark on the map
21 with a number 1 where you stopped those suspects?

22 **A** Somewhere up in here.

23 **Q** Could you circle that for us?

24 (Witness complies)

25 **Q** At that time how many suspects did you stop?

1 A I'm not positive. One or two.

2 Q Okay. And why did you stop them?

3 A Because they fit the description that was put out.

4 Q And that was the initial description?

5 A The initial description.

6 Q Were you in your patrol car at that time?

7 A Yes, I was.

8 Q Did you exit your car?

9 A Yes, I did.

10 Q When you made contact with them, what did you do?

11 A I got their I.D.'s, their state I.D.'s from them and

12 checked them through our front desk for warrants and

13 then I released them.

14 Q And did you write down that information?

15 A Yes, sir.

16 Q The names of those individuals?

17 A Yes, I did.

18 Q Was Mr. Folkes, Clinton Folkes, one of the people who

19 you stopped at that time?

20 A Yes, he was.

21 Q But you let him go. Is that correct?

22 A Yes, I did.

23 Q And why did you release him?

24 A He had no warrants on him and the description was

25 vague.

1 Q Did there come a point where a name of the suspect
2 was released over the radio?

3 A Yes, there was.

4 Q What name was given?

5 A Clinton Folkes.

6 Q At that time what did you do then?

7 A I started circulating the area where I released him
8 and saw him walking to and stopped him again shortly
9 after.

10 Q How much time took place between when you stopped him
11 initially and when the name came over the radio?

12 A I believe it was about five or ten minutes.

13 Q A pretty quick amount of time?

14 A Pretty quick.

15 Q You said you found him a second time?

16 A Yes.

17 Q A short time later?

18 A Yes.

19 Q Can you show us on the map where you found him that
20 second time?

21 A It was right up in here.

22 Q If you could mark that with a 2 and circle it. Thank
23 you.

24 (Witness complies)

25 Q When you -- did you recognize him by sight the second

1 time?

2 A The second time. Yes.

3 Q At that time what did you do?

4 A I stopped him and detained him.

5 Q Okay, sir. I'll borrow that photo back from you. I

6 show you what's previously been marked as State's

7 Exhibit 19. I'm showing opposing counsel first.

8 Showing you State's Exhibit 19, sir, do you recognize

9 that?

10 A Yes. Mr. Folkes on the night I stopped him.

11 Q It's a picture of the defendant?

12 A Yes.

13 Q Does this fairly and accurately depict the defendant

14 as he appeared when you arrested him the second time?

15 A Yes.

16 Q Or excuse me. I guess placed him under the arrest

17 the first time?

18 A Yes, sir.

19 MR. ROGERS: Your Honor, at this time we move

20 State's Exhibit No. 19 into evidence.

21 THE COURT: Anything?

22 MR. SHEALEY: Your Honor, we do object to the

23 this.

24 MR. O'NEIL: May we approach, Your Honor?

25 MR. SHEALEY: May we approach?

1 **THE COURT:** You may.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** All right. I sustain the objection.

4 **Q** Did you remain with the defendant for the rest of the
5 evening, sir?

6 **A** No, I didn't.

7 **Q** And why was that?

8 **A** Because it was the end of my shift. He was released
9 to the oncoming shift.

10 **Q** Do you remember -- so you released him to another
11 officer?

12 **A** Another officer.

13 **Q** Do you remember which officer that was?

14 **A** Officer Battiste.

15 **Q** Thank you, sir, very much. I've got no further
16 questions for you at this time. Answer any questions
17 opposing counsel may have.

18 **THE COURT:** Anything?

19 **MR. SHEALEY:** Yes, Your Honor. May it please
20 the Court.

21 CROSS EXAMINATION

22 **BY MR. SHEALEY**

23 **Q** Good morning.

24 **A** How you doing?

25 **Q** Good. So you've been with City of Columbia for 18

1 years?

2 **A** Yes, sir.

3 **Q** Is that the only law enforcement agency you've worked
4 with?

5 **A** Yes, sir.

6 **Q** And you've worked as a patrol officer this whole
7 time?

8 **A** Yes, sir.

9 **Q** Okay. Never tried to advance or anything like that?

10 **A** Excuse me?

11 **Q** I mean, the same job description this whole time?

12 **A** Yes, sir.

13 **Q** And of course you got substantial training to do the
14 job that you do today, right?

15 **A** Yes, sir.

16 **Q** I mean, you had to go through an academy?

17 **A** Yes, sir.

18 **Q** They train you to write police reports?

19 **A** Yes, sir.

20 **Q** They train you to talk to people to find out what's
21 going on?

22 **A** Yes, sir.

23 **Q** To look for suspects?

24 **A** Yes, sir.

25 **Q** Secure a scene?

- 1 **A** Yes, sir.
- 2 **Q** You didn't write a report in this case though, right?
- 3 **A** No, sir.
- 4 **Q** And like you were testifying a little while ago, you
- 5 basically responded to dispatch, correct?
- 6 **A** Yes, sir.
- 7 **Q** And I know you don't really remember the exact
- 8 description, but I think you just testified that you
- 9 were looking for black males?
- 10 **A** Yes, sir.
- 11 **Q** So you were stopping black males?
- 12 **A** In the area.
- 13 **Q** Okay. A pretty big area?
- 14 **A** Around Finlay Park; yes, sir.
- 15 **Q** Okay. And you stopped Mr. Folkes along with another
- 16 person?
- 17 **A** Yes, sir.
- 18 **Q** Do you recall who that other person was?
- 19 **A** No, sir.
- 20 **Q** If I told you his name was Nathaniel Spann, would
- 21 that refresh your memory?
- 22 **A** It's possible.
- 23 **Q** Okay. You ended up arresting that other person,
- 24 right?
- 25 **A** I believe he had a warrant on him.

1 Q Okay. Now, although you don't recall today what the
2 exact description is, you let Mr. Folkes go at that
3 point?

4 A Yes, sir.

5 Q He didn't match the description that you were given
6 over dispatch?

7 A Yes.

8 Q Obviously you stopped both of these people long
9 enough to get their I.D.'s, right?

10 A Yes, sir.

11 Q You were looking for those warrants in case there
12 were any out there, right?

13 A Uh-huh (affirmative).

14 Q Were you questioning them generally at the time about
15 what you were out there for?

16 A I don't believe I even mentioned it.

17 Q Okay. You just said, "I'm stopping you because
18 you're a black male"?

19 A I just advised them I was stopping them, checked
20 their I.D.'s and released them.

21 Q So at that point the other man who you're not sure
22 who his name was, he wouldn't have said, "I think Mr.
23 Folkes changed clothes"? You don't recall anything
24 like that, do you?

25 A No, sir.

1 Q That would have made a report had you written one?

2 A I'm sure it would have.

3 Q Beg the Court's indulgence. Just briefly. Mr.

4 Folkes, when you stopped him that first time, he was
5 very cooperative with you, right?

6 A Yes, he was.

7 Q He didn't run from you or anything like that?

8 A No.

9 Q Nothing further.

10 THE COURT: Anything?

11 MR. ROGERS: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. ROGERS

14 Q Sir, the initial description that came over dispatch,
15 what type of description was that?

16 A It was just a very vague description. I don't recall
17 a clothing description.

18 Q Was it mostly a clothing description?

19 A Black male and they gave a clothing description.

20 Q Did that description become more specific later?

21 A Yes, I did.

22 Q And was it based on that first vague description that
23 you stopped Mr. Folkes at the number 1 spot?

24 A At the number 1 spot, yes.

25 Q Why did you stop him the second time?

1 **A** Because his name was broadcast over the radio.

2 **MR. ROGERS:** No further questions, Your Honor.

3 **THE COURT:** All right. Thank you, Officer. You
4 may step down. You are free to leave.

5 **WITNESS:** Thank you.

6 **MS. WEISS:** The State calls Kermit Scott. I'm
7 sorry. May this officer be free to leave, excused?

8 **THE COURT:** I've already told him that.

9 **MS. WEISS:** Sorry. Thank you, Your Honor.

10 **KERMIT SCOTT,** after being duly sworn, testifies
11 as follows:

12 **THE CLERK:** Thank you. Have a seat in the
13 witness stand and give the court reporter your name.

14 **WITNESS:** Sergeant Kermit Scott.

15 **DIRECT EXAMINATION**

16 **BY MS. WEISS**

17 **Q** Sergeant Scott, what is your current position with
18 the Columbia Police Department?

19 **A** I'm the supervisor for the crime scene unit for the
20 criminal investigations division.

21 **Q** And what are your duties as the supervisor?

22 **A** My duties are to supervise a group of six personnel
23 in the crime scene processing, collection,
24 documentation and analyzation of evidence collected
25 at a crime scene.

1 Q And as a part of that are you assigned to specific
2 cases?

3 A Yes, ma'am, we are.

4 Q Are you specifically assigned to specific cases as
5 well?

6 A No, ma'am, I'm not.

7 Q Okay. So as the supervisor, do you sometimes do
8 clean up and bits and pieces of other cases?

9 A Yes, I do.

10 Q In this case did you have the opportunity to become
11 involved in it?

12 A Yes, I did.

13 Q And what was the date of that?

14 A It was on June the 2nd.

15 Q Okay. I'm going to show you State's Exhibit 24. Do
16 you recognize this?

17 A Yes, ma'am, I do.

18 Q And how do you recognize it?

19 A That was a shirt that I took to Richland County
20 Sheriff's Department to their lab for analysis.

21 Q Okay. And what happened when you took it there?

22 A It was turned in and analyzed by their lab
23 specialists and with the results of no DNA found.

24 Q Okay. So were they able to analyze anything off that
25 shirt?

1 **A** No, ma'am, they were not.

2 **Q** And what did you do next?

3 **A** I brought it back to the lead investigator,
4 Investigator McCracken.

5 **Q** Okay. Thank you. No further questions, Your Honor.

6 **THE COURT:** Anything?

7 **MR. SHEALEY:** Just briefly, Your Honor.

8 CROSS EXAMINATION

9 **BY MR. SHEALEY**

10 **Q** Good morning, Mr. Scott. How are you?

11 **A** Good morning, sir.

12 **Q** You say you got involved with this case June 2nd?

13 **A** Yes, it was, sir.

14 **Q** This year?

15 **A** Yes, sir.

16 **Q** Okay. And this incident happened July 22nd of '07,
17 right?

18 **A** Yes, sir.

19 **Q** Now, I'm not going to go through all your
20 credentials. I know you're very well experienced and
21 trained. But basically you deal with DNA,
22 fingerprints, all those types of things you're
23 qualified to do?

24 **A** Yes, sir.

25 **Q** How long have you been doing it?

1 **A** I've been doing this, sir, since 2004.

2 **Q** Okay. How long have you been with the City of
3 Columbia?

4 **A** I've been with the City for seven years. I came here
5 in 2001.

6 **Q** Okay. And she just went through this shirt here in
7 evidence. And you said no DNA came back to it,
8 right?

9 **A** That is correct, sir.

10 **Q** So is there DNA in blood?

11 **A** Is there DNA in blood, sir?

12 **Q** Yes, sir.

13 **A** Yes, sir, there is.

14 **Q** So if there had been blood on this shirt you would
15 have found some DNA?

16 **A** Yes, sir.

17 **MR. SHEALEY:** Nothing further, Judge.

18 **THE COURT:** All right. Thank you, sir. You may
19 step down. Officer, you are free leave. Thank you.

20 **MS. WEISS:** The State calls Investigator
21 McCracken.

22 ROBERT MCCRACKEN, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Thank you. Have a seat and give the
25 court reporter your name.

1 **WITNESS:** Robert McCracken.

2 DIRECT EXAMINATION

3 **BY MS. WEISS**

4 **Q** Investigator McCracken, please introduce yourself to
5 the jury. Tell them where you're employed, what your
6 current job is?

7 **A** I'm Robert McCracken. As I said, I'm employed at the
8 Columbia Police Department here in South Carolina. I
9 am currently assigned to the violent crimes unit and
10 I do investigations, follow-up investigations for
11 that unit.

12 **Q** And what are your general duties on a day-to-day
13 basis?

14 **A** We are assigned cases to follow up on.
15 Occasionally -- well, more than occasionally -- we
16 get called out to crime scenes when there's a need
17 for us to be there, immediate follow-up needs to be
18 conducted. A lot of our cases we just get a report
19 put on our desk and we're required to follow up on
20 it, attempt to identify suspects, identify evidence
21 and prosecute in order for the Solicitor's Office to
22 prosecute a case.

23 **Q** How long have you been in law enforcement?

24 **A** This is my 19th year.

25 **Q** And have you been with the City of Columbia the

1 entire time?

2 **A** Yes, ma'am.

3 **Q** What did you start as at the City of Columbia?

4 **A** I started as a patrolman as everybody does at the
5 City of Columbia or most everybody does and was
6 promoted to -- started in investigations in June of
7 1998 and was promoted to investigator in October of
8 '99.

9 **Q** So a general case, who responds first to the scene?

10 **A** Most of the time it's a patrol officer. They're the
11 first responding officers to a scene. They get
12 called to it.

13 **Q** And what are their duties when they respond?

14 **A** Their duties are to first and foremost find a victim,
15 check on the victim, make sure the victim has medical
16 care if necessary, locate and identify a suspect if
17 there's one on the scene, also secure the crime scene
18 if there's one available if we can find the crime
19 scene at the time, secure it. Any witnesses, they
20 try to identify witnesses and get a general idea of
21 what happened when they respond to the scene.

22 **Q** Are their duties limited primarily to the actual
23 scene and that day?

24 **A** Yes, ma'am.

25 **Q** And that general time period as well?

1 **A** Right. They go to the scene. Once they're released
2 they go to the next call or go home and they're
3 pretty much done with it.

4 **Q** Taking you back to July 22nd of 2007, were you on
5 duty that day?

6 **A** Yes.

7 **Q** And did you get called out to a crime scene that day?

8 **A** I got called that day to respond to Sumter and I
9 believe it was Laurel and Sumter or Sumter and
10 Richland Street in reference to a possible suspect
11 referenced to the crime in question.

12 **Q** And were you told what type of crime occurred?

13 **A** Yes. I was told someone was cut severely.

14 **Q** Were you told who you were going to be meeting when
15 you got to Sumter and Richland?

16 **A** The only thing I knew at that point was a possible
17 suspect.

18 **Q** And who did you see when you got to Sumter and
19 Richland?

20 **A** Officer Battiste was present along with Mr. Folkes.

21 **Q** Had the witness already come at that point?

22 **A** No, ma'am.

23 **Q** So were you there when Tiffany Briggs was brought to
24 Sumter and Richland?

25 **A** Yes, ma'am. Sergeant Shuler pulled up. I advised

1 Sergeant Shuler to go back down to the park and find
2 the eye witness that could identify Mr. Folkes as the
3 person who committed this act, and he went back to
4 the park and brought her to me.

5 Q Okay. And how did the show-up happen?

6 A Sergeant Shuler pulled up with the -- Ms. Briggs in
7 the vehicle. Mr. Folkes was asked to exit the police
8 vehicle. He got out. I walked over to Sergeant
9 Shuler's vehicle where Ms. Briggs was, asked her if
10 that's the person. She stated, "Yes, that's
11 Clayton." She called him Clayton. Clayton. "But
12 he's changed clothes. He's got different clothes on
13 now."

14 Q Okay. And was there anything further done at that
15 time?

16 A Not right there.

17 Q Okay. Where did she go from there?

18 A She went back to the park because at that point we
19 did not have an actual location in the park where
20 this occurred, so what we wanted to do was find a
21 location where there may be blood or some other
22 evidence such as a weapon or anything like that. So
23 I had Sergeant Shuler take her back to the park since
24 she was now a witness to identify exactly where this
25 incident occurred.

1 Q And what did you do next?

2 A I went back to the park also after leaving that
3 location where Mr. Folkes was and Officer Battiste.

4 Q If you can use that pointer that's right next to you
5 that's hanging on the wall. Does that pull out? I'm
6 sorry. No. You can leave that there. Will you show
7 where you were at Sumter and Richland?

8 A We were in this area here next to this parking lot
9 which is labeled number 2.

10 Q And then where is the park?

11 A It's just pretty much this whole block right here
12 behind the post office.

13 Q Is that in the City of Columbia?

14 A Yes, ma'am, it is.

15 Q Is that in Richland County?

16 A Yes, ma'am.

17 Q So where did you go when you went to the park?

18 A When I went back to the park, I came down and went
19 into the parking lot here. Once I got here I ran
20 into Investigator Montgomery who was already on the
21 scene. When we work evening shift, this was an
22 evening shift thing, we were limited to, I think we
23 had two investigators at that time. We may have had
24 three. But I was the violent crimes investigator, so
25 I would be handling this case. The other

1 investigators would be there if I needed them and
2 they weren't busy. Once I got there I spoke with
3 officer or Investigator Montgomery. Then I spoke
4 with Officer Dingle and we went into the park to
5 locate where the crime scene occurred or where the
6 crime actually occurred in the park.

7 Q Okay. And did you have the opportunity to talk to
8 anybody from I.D.?

9 A Yes. Initially at Sumter and Richland Street I had
10 CSI Ross who used to be with the City of Columbia but
11 he is now with Lexington County respond out to that
12 location to photograph Mr. Folkes and his clothing.

13 Q So you had an officer, two investigators at the crime
14 scene out there trying to locate any evidence at the
15 crime scene, blood, any of that?

16 A Right. CSI Ross responded up there. He was cut
17 loose because we didn't have anything at the park at
18 that time. He was eventually called back to the
19 park.

20 Q And did you find any blood at the park?

21 A I did not see any blood. I didn't.

22 Q Did you find a weapon?

23 A No, ma'am. We did not find a weapon.

24 Q Explain to the jury what lengths you went to to try
25 to locate the clothing or weapon or anything in the

1 park?

2 A Well, after speaking with the witness that observed
3 the incident, Ms. Briggs, we identified a location or
4 a general location where the assault occurred at.
5 They gave me the direction of travel that the
6 defendant had taken or that the suspect had taken.
7 And Ms. Retalia Green, she approached me, said she
8 had seen the whole thing. She took me and Jerome and
9 Officer Dingle in the location where Mr. Folkes had
10 traveled.

11 She stated that she knew where the homeless
12 people kept their clothes and stuff and she would
13 show me those locations. And we went through some
14 cuts on the right-hand side right behind the post
15 office right in here which leads around and in this
16 area here. And lots of bags, clothing, bags of
17 clothing, sleeping bags, things of that nature, I
18 mean just all through that. You would really be
19 surprised at what's in there. There was no way to
20 check all those bags, no way possible.

21 Q But did you find a weapon?

22 A No, we did not find a weapon.

23 Q You had already been told by Ms. Briggs that the
24 defendant had changed clothes?

25 A Yes.

1 Q And --

2 A We were also --

3 Q -- were you able to find anything that resembled what
4 he had been described originally wearing?

5 A No, ma'am.

6 Q Not back in that area?

7 A Not in that area.

8 Q And did you continue looking?

9 A Yes. We followed it all the way up to the park. My
10 main concern was looking in trashcans. I asked
11 Officer Dingle to look in trashcans, areas that he
12 may have thrown it. And we did ultimately find a
13 shirt that was described as being Mr. Folkes' shirt
14 and identified as such.

15 Q I show you State's Exhibits 21 and 23. Do you
16 recognize this photo?

17 A Yes, ma'am. That's the trashcan at the top of the
18 park where the shirt was located.

19 Q Okay. And is that the condition which you found it?

20 A Yes. Photos. That's why I called the CSI guy back
21 out to take photographs of the area where the shirt
22 was found.

23 Q And State's Exhibit 23, is that just a close-up view?

24 A Yes, ma'am. And that's after it was pulled out and
25 laid up on the edge of the trashcan.

1 Q Okay. And who did you have with you when you found
2 that shirt?

3 A Retalia Green was with me. I believe there was
4 another officer up on top. Officer Huntley I believe
5 was up on top. He was in the area. But mainly I
6 remember Retalia Green being there.

7 Q And was Ms. Green able to positively identify that
8 shirt?

9 A Yes, ma'am.

10 Q Now, you said you talked to Jerome Patrick and
11 Retalia Green in the park that day?

12 A Yes, I did.

13 Q Did you ever take statements from them?

14 A They told me what happened. I put a general synopsis
15 of what happened in my case notes with their names
16 and information or contact information. I did not
17 get a written statement from them at that time.

18 Q Okay. Did you intend to go back and talk to them?

19 A I intended to. Unfortunately within a couple of
20 hours you've got another case. The next day you've
21 got three or four more cases. And my intent was to
22 go back but I did not do that.

23 Q But you did put contact information and a brief
24 synopsis of what they had said?

25 A Yes, ma'am.

1 Q And you heard in the testimony that there were
2 numerous people out there hanging out with Jerome and
3 Retalia including James Reddick and a couple of
4 others. Did you go back down to the park or talk to
5 anybody else in the park that day?

6 A I don't recall talking to anyone else. I talked with
7 Jerome. I talked with Retalia, Tiffany. I don't
8 recall anyone else, speaking with anyone else.

9 Q And did you ever go back down into the park and try
10 to find any other witnesses?

11 A Not after that initial incident, based on the number
12 of witnesses that I had.

13 Q Okay. Now, once you left the park that day, where
14 did you go next?

15 A I had Ms. Briggs transported up to headquarters and I
16 took a statement from her, a written statement, a
17 formal statement.

18 Q And is there any reason you didn't have Ms. Green or
19 Mr. Patrick transported to headquarters?

20 A Didn't have the personnel as far as investigators to
21 do it at that time. And I like I said, I was going
22 back to take care of it.

23 Q And you took a statement from Ms. Briggs?

24 A Yes, ma'am.

25 Q What is your normal form for taking a statement?

1 **A** We have an interview room and we have a statement
2 form and basically ask them what happened. Once they
3 initially write what they observed or what they saw,
4 a lot of times we have more specific questions that
5 we need to ask and then we'll do a Q and A, question
6 and answer type thing.

7 **Q** And then do you give them an opportunity to read over
8 the question and answer part?

9 **A** Yes, ma'am. They read over it. They do read over
10 it. And then they sign it and we swear it.

11 **Q** And are you a notary?

12 **A** Yes, ma'am.

13 **Q** And you notarized that form as a sworn statement?

14 **A** Yes, ma'am.

15 **Q** Was that the end of your investigation for this day?

16 **A** For that particular day; yes, ma'am.

17 **Q** Did you direct anything to be taken into evidence?

18 **A** I did ask at the time Mr. Folkes was arrested that
19 his belongings be taken into evidence. Of course the
20 shirt that would be taken into evidence.

21 **Q** And are you aware of what was taken into evidence?

22 **A** Yes, ma'am.

23 (WHEREUPON, State's Exhibit No. 31 is marked for
24 identification.)

25 **Q** Okay. I'm going to show you State's Exhibit 31 for

1 identification. Do you recognize this package?

2 **A** I recognize the package; yes, ma'am.

3 **Q** And what do you recognize the package as?

4 **A** That is -- that contains a broken beer bottle that
5 was taken into evidence. It was not broke at the
6 time it was taken into evidence but somehow it got
7 broke.

8 **Q** When did it get broken?

9 **A** Do not know.

10 **Q** But not when it was collected?

11 **A** Not when it was collected. It was after the fact in
12 our property room. Somehow it got broke.

13 **Q** Do you know where this was taken into evidence?

14 **A** At the location where Mr. Folkes was stopped.

15 **Q** And do you know what type of beer bottle this is?

16 **A** I believe it's a King Cobra. But without opening it
17 up I couldn't tell you. But it's in pieces.

18 **Q** So would you say it's not safe to open it up?

19 **A** Not without putting it in a box and cutting yourself.

20 **MS. WEISS:** Your Honor, at this time I'd like to
21 enter State's Exhibit 31 into evidence.

22 **MR. SHEALEY:** Your Honor, I would object to
23 that. It's not in the same condition as it was when
24 it was collected per the officer's own testimony. I
25 don't see how it's relevant in this condition.

1 **THE COURT:** So your sole objection is because it
2 is broken since it's been taken into custody?

3 **MR. SHEALEY:** Well, it's also -- I think in that
4 condition, it's prejudicial being broken.

5 **THE COURT:** All right. I'm going to admit it
6 over the objection of the defendant. It's
7 acknowledged, ladies and gentlemen, that the bottle
8 was not broken at the time it was taken into custody
9 and is broken now. So you're not to give any sort of
10 weight to the fact that it is broken.

11 (WHEREUPON, State's Exhibit No. 31 is admitted
12 into evidence.)

13 **Q** Did you that night have the opportunity to talk to
14 Karem Jones?

15 **A** No, ma'am. Sergeant Shuler called me and stated that
16 he had been taken into emergency surgery. So I could
17 not speak with him at that time.

18 **Q** Okay. So did you have the opportunity to see the
19 wound at all that day?

20 **A** No, ma'am. No.

21 **Q** When did you get to talk to Mr. Jones?

22 **A** I spoke with Mr. Jones the next day in his hospital
23 room.

24 **Q** Was anybody else in the room with you?

25 **A** I don't recall anyone being in there with me. No,

1 ma'am.

2 Q What happened when you went to the room?

3 A I went in. I spoke with Mr. Jones. I got a brief
4 verbal statement from him initially as to what
5 transpired. I asked him if he could identify the
6 person that had cut him. He stated adamantly that he
7 could. He had no doubt that he could identify the
8 person that cut him. He knew the person as "New
9 York". I had has photo line-up already prepared. I
10 showed him a photo line-up.

11 Q Now, how do you show a photo line-up when you do it?
12 What is your proceeding?

13 A When I do it I lay the photo line-up face down. As
14 he was in the hospital bed, I would have laid it face
15 down on my portfolio binder. I lay it face down so I
16 hold it out to them and I ask them to turn it over
17 and look at it. That way I don't have my hands on it
18 somewhere covering something up or pointing to
19 someone.

20 They turn it over. I ask them do they recognize
21 anyone in those photographs. Most of the time
22 they'll say yes, that's the person that did this,
23 that or the other. I can't remember his exact words,
24 but he identified Mr. Folkes. I asked him how does
25 he know Mr. Folkes. "He's the person that cut me."

1 Q Okay. And is this the photo line-up, State's Exhibit

2 1 --

3 A Yes.

4 Q -- you showed him?

5 A Yes, ma'am.

6 Q And is that your handwriting or Mr. Jones'?

7 A That's Mr. Jones' handwriting.

8 Q Do you instruct him to circle the picture?

9 A Correct. And put their initials on it.

10 Q And State's Exhibit 2, do you recognize this form?

11 A Yes, ma'am. That's a form that we fill out on top of
12 the circling and initialing the picture to identify
13 which photo he picks.

14 Q Okay. And do you fill the whole thing out or --

15 A I fill out everything except for the picture number
16 and the signature at the bottom which would be his
17 signature.

18 Q So he wrote the picture number?

19 A Yes.

20 Q And then --

21 A How many pictures and the picture number itself.

22 Q And then he signed it here?

23 A And he signs it and I notarize it.

24 Q And once again you have him swear this is the truth?

25 A Yes, ma'am.

1 Q Did you have the opportunity to see the wound at that
2 time?

3 A No, ma'am. He was bandaged up.

4 Q Did he appear to be under the influence of anything
5 when you talked to him?

6 A No, ma'am. He was coherent.

7 Q Did you do anything else that day involving this
8 case?

9 A The only thing I did was take a written statement
10 from him and I had to write it. So because he was
11 laid up in the hospital, I wrote it, had him sign it,
12 and he swore to that also before he signed it. And
13 then I asked him to come by headquarters once he got
14 out of the hospital so we could take photographs of
15 the wound.

16 Q And did he in fact do that?

17 A Yes, he did.

18 Q Okay. And, in fact, he came by the next day?

19 A I believe it was the next day. Yes, ma'am. He got
20 out the next day.

21 Q And when he came by did you instruct anyone to take
22 photographs?

23 A Yes. I contacted our CSI; I believe it was Currie at
24 the time, and he took the photographs.

25 Q And did you have the opportunity to observe the

1 wounds at that time?

2 **A** Yes, I did.

3 **Q** I show you State's Exhibits 18, 13, 14, 12, 17, 16
4 and 15. Do you recognize these pictures?

5 **A** Yes. This one is a picture of the wound on his neck.
6 Basically this is the same picture but with a scale
7 up under it. I think that's where he got cut under
8 the chin. Another photo of a picture with the scale
9 of his neck and a photo of the neck and the cut under
10 his chin and a photo of the cut on Mr. Jones' arm and
11 again two more photos of the cut on Mr. Jones' arm.

12 **Q** Those are the pictures that were taken that day two
13 days after the incident had occurred?

14 **A** It was after the incident occurred; yes, ma'am, when
15 he came to the headquarters.

16 **Q** Now, on July 26th which is four days after you have a
17 notation where you talked to Investigator McCracken,
18 did you sit down and review the case with him?

19 **A** I spoke with him briefly. The only thing he did was
20 the initial response. He spoke to the person that
21 called 911 and I got that information from him.

22 **Q** Okay. And then following that you have the
23 information about Retalia Green and Jerome Patrick?

24 **A** Yes, ma'am.

25 **Q** Is there that reason that those would be after that

1 entry on July 26th?

2 A It's notes I write down in my little notebook and
3 then I transfer it over to the actual form that I
4 fill out from my case notes. I don't take that form
5 out into the field. I can't.

6 Q And so the information that you gathered from Jerome
7 and Retalia is not a separate interview on July 26th?

8 A No, ma'am. Not at all.

9 Q This is from the initial?

10 A Correct.

11 Q Court's indulgence one moment. Thank you,
12 Investigator McCracken. No further questions for
13 this witness at this time.

14 THE COURT: All right. Mr. Shealey. Mr.
15 Shealey.

16 MR. SHEALEY: Thank you. May it please the
17 Court.

18 CROSS EXAMINATION

19 BY MR. SHEALEY

20 Q How you doing, Investigator?

21 A Good, sir.

22 Q Good. You've been with the City of Columbia a long
23 time, right?

24 A A good long time.

25 Q I think you said 19 years in law enforcement?

1 **A** In my 19th year; yes, sir.

2 **Q** I think you said all that was with the City of
3 Columbia?

4 **A** Yes, sir.

5 **Q** And I think you testified that everybody starts as a
6 patrolman, right?

7 **A** 99.9 percent do. Yes, sir.

8 **Q** Almost everybody?

9 **A** Almost everybody.

10 **Q** But you have advanced past that?

11 **A** Yes, sir.

12 **Q** I mean, you are the lead investigator on this
13 particular case, right?

14 **A** Yes, sir. Yes, sir.

15 **Q** I think you said you're in violent crimes?

16 **A** In the violence crimes unit. Yes, sir.

17 **Q** So, I mean, you've been promoted within the City of
18 Columbia?

19 **A** Yes, sir. I put in for investigator and that's where
20 I intend to stay.

21 **Q** And I guess it doesn't come easy. It takes hard
22 work, experience, training, correct?

23 **A** Yes, sir.

24 **Q** They don't just give away investigator positions, do
25 they?

1 **A** I don't think so.

2 **Q** So obviously you started off. You went through
3 initial police academy training that everybody gets,
4 right?

5 **A** Yes, sir.

6 **Q** Okay. And you had to go through some specialized
7 training I imagine to be an investigator?

8 **A** We get extra training. Yes, sir.

9 **Q** All right. Tell us about some of that extra
10 training?

11 **A** At some point initially before I became an
12 investigator when I was an MPO working as an
13 investigator in '98, either '98 or early '99 I had
14 went through an investigative class at the academy,
15 basic investigation. Since then I've had some other
16 classes involving specific death investigation,
17 interview classes, things like that.

18 **Q** And as the investigator in the case, pretty much all
19 the work that's done you're responsible for?

20 **A** I am responsible for it. Yes, sir.

21 **Q** A lot of these men that are on the scene are acting
22 at your direction?

23 **A** When I get there they are acting at my direction as
24 best I can direct them. A lot of situations the
25 sergeants have to direct their patrolman because I'm

1 tied up on things.

2 Q Okay. So obviously you know how to secure a crime
3 scene?

4 A Yes, sir.

5 Q Obviously probably very proficient in your police
6 issued, standard issued firearm?

7 A Yes, sir.

8 Q Obviously you know how to fill out an incident
9 report?

10 A Yes, sir.

11 Q And you actually know how to read one because you're
12 getting these reports from responding officers?

13 A Yes, sir.

14 Q Like we said, every little box means something?

15 A Yes, sir.

16 Q Places for the suspect's name, witness names,
17 correct?

18 A Yes, sir.

19 Q And as the investigator you also have a case summary
20 that you write out?

21 A I do case notes. Yes, sir.

22 Q Okay. I mean, the purpose of it is so that a year
23 later, like we are today, you can look at this and
24 you know exactly what happened?

25 A Yes, sir. That's the purpose.

1 Q I mean, it's documented for accuracy?

2 A Yes, sir.

3 Q So you can give a truthful account to the jury?

4 A Yes, sir.

5 Q Now, one of the big things you also do as an
6 investigator -- correct me if I'm wrong -- but you
7 interview witnesses?

8 A Yes, sir.

9 Q Okay. And like in this case you take statements from
10 these witnesses re-doing them to writing?

11 A Yes, sir.

12 Q And I think you did that with Ms. Briggs?

13 A Yes, sir.

14 Q Mr. Jones?

15 A Yes, sir.

16 Q Okay. Now, you'd agree that interviewing witness and
17 reducing to it writing is a fundamental part of
18 investigation?

19 A Interviewing a witness; yes, sir. And we try to
20 reduce it to writing when we can. Yes, sir.

21 Q I mean, you're not going to reduce a witness's
22 statement to writing unless they have something
23 helpful for you, right?

24 A No, sir. We take statements from witnesses even when
25 it's not helpful.

1 Q Excuse me?

2 A We would take statements from witnesses even when
3 it's not helpful.

4 Q Okay. When it's not helpful to you, you take a
5 statement?

6 A Yes, sir. We take statements.

7 Q Okay. So you took a statement from the mother of a
8 child playing in the park at the incident?

9 A No, sir.

10 Q I mean, I'm not sure I --

11 A My point is, if the person has something to say, then
12 we would take a statement from them if we can get it,
13 yes.

14 Q And the helpful statement is so that you can
15 accurately know what's going on years later when you
16 reduce those to writing?

17 A We try to.

18 Q Because that's how we know we can keep this thing
19 together years later?

20 A Yes, sir. It's pretty much from the witness's
21 memory.

22 Q You never reduced the statement from Tim Abney, did
23 you?

24 A No, sir.

25 Q You never got a written statement from Jerome

1 Patrick?

2 A No, sir.

3 Q You never got a written statement from Retalia Green?

4 A No, sir.

5 Q You never got a written statement from James Reddick?

6 A No, sir. I didn't know James Reddick at the time.

7 Q Now, you recall, since you're in charge of this

8 investigation, you do recall that the name of

9 Nathaniel Spann, don't you?

10 A Yes, sir.

11 Q And he was stopped pursuant to this investigation?

12 A He was stopped by Officer Oulette.

13 Q Pursuant to the investigation?

14 A He -- well, I guess you could say that.

15 Q You never took a statement from him, did you?

16 A No, sir.

17 Q You never took any statements from anybody in the

18 park that was telling you Mr. Folkes was changing his

19 clothes, did you?

20 A Nobody told me that in the park other than Ms.

21 Briggs.

22 Q You just got that from Ms. Briggs, right?

23 A That he had changed clothes, yes.

24 Q All right. Beg the Court's indulgence. Do you have

25 your notes in your case file with you today?

1 **A** It's in my case file, yes.

2 **Q** Being in charge of this investigation, I mean, you've
3 looked at all this before, right?

4 **A** Yes, sir. I looked at the notes.

5 **Q** You've also looked at property forms in this case,
6 right?

7 **A** I don't -- you'd have to show me and I'll tell you if
8 I looked at them or not.

9 **Q** You know how to read property forms, right?

10 **A** Yes, sir.

11 **Q** Being trained as you are -- Your Honor, may I
12 approach?

13 **THE COURT:** You may.

14 **Q** I'm handing you two property forms in this case.
15 Would you mind reading those to yourself?

16 **A** To myself?

17 **Q** Sure. Just let me know when you're done?

18 **A** Okay. What I can read I've read.

19 **Q** And basically that form is what was taken off Mr.
20 Folkes and entered into evidence. And one is a form
21 for Mr. Jones, the victim, right?

22 **A** Yes, sir.

23 **Q** Okay. And you'll agree by reading that that Mr.
24 Jones was listed as having a gray and black backpack,
25 right?

1 **A** Yes, sir. That's what's on here.

2 **Q** And Mr. Folkes was listed as having a tote bag,
3 correct?

4 **A** A tote bag. Yes, sir.

5 **Q** Okay. You've been sitting here through this whole
6 trial. So you know what's been entered into
7 evidence?

8 **A** Yes, sir.

9 **Q** But is it fair to say that a backpack is not a tote
10 bag?

11 **A** I would call that a backpack. Yes, sir.

12 **Q** Okay. Nothing further.

13 **THE COURT:** Anything?

14 **MS. WEISS:** Very briefly, Your Honor.

15 **THE COURT:** Ma'am?

16 **MS. WEISS:** Very briefly.

17 **THE COURT:** I'm sorry?

18 **MS. WEISS:** Just very briefly.

19 **THE COURT:** Oh.

20 (WHEREUPON, State's Exhibit No. 32 is marked for
21 identification.)

22 REDIRECT EXAMINATION

23 **BY MS. WEISS**

24 **Q** I show you what's been marked as State's Exhibit 32.

25 Do you recognize this backpack?

1 **A** Yes.

2 **Q** And would you say this is also a gray and back
3 backpack?

4 **A** Yes, ma'am.

5 **Q** It can also be described as a tote bag?

6 **A** Yes, ma'am.

7 **Q** And was this entered into evidence? I mean, was this
8 put in the evidence room as well?

9 **A** According to this; yes, ma'am.

10 **MS. WEISS:** Your Honor, at this time we'd like
11 to enter State's Exhibit 32 into evidence.

12 **MR. SHEALEY:** Do we know -- is there anything
13 else in there? I don't think I've seen what's in
14 there.

15 **MS. WEISS:** I showed it to you.

16 **MR. SHEALEY:** Bring it on.

17 **MS. WEISS:** Okay. It's listed on here if you
18 want this.

19 **MR. SHEALEY:** I have no objection.

20 **THE COURT:** So admitted, without objection.

21 (WHEREUPON, State's Exhibit No. 32 is admitted
22 into evidence.)

23 **MS. WEISS:** No further questions, Your Honor.

24 **THE COURT:** All right. Anything?

25 **MR. SHEALEY:** No, Your Honor.

1 **THE COURT:** All right. Thank you, Investigator.
2 You may step down.

3 **MS. WEISS:** Your Honor, this is all the
4 witnesses for the morning. Our next witness will be
5 here at 2:00, our final witness.

6 **THE COURT:** All right. Ladies and gentlemen,
7 the State has one more witness. I think it is a
8 physician.

9 **MS. WEISS:** Yes, Your Honor.

10 **THE COURT:** And they had to schedule the
11 physician to be here when they could. But he's
12 scheduled to be here at 2:00. We anticipated going a
13 little bit later this morning. So we're going to go
14 ahead and break for lunch. When we come back the
15 State indicates that's their last witness in their
16 case in chief. Don't discuss the case while we're
17 gone.

18 Let me get you when you come back, how about
19 come back about ten minutes before 2 and let me get
20 you all to select a foreperson of this jury for me if
21 you don't mind. That's the only discussions that you
22 need to have about the case. You all have a nice
23 lunch and we'll see you back here at ten 'til 2.

24 (Jury out at 12:02 p.m.)

25 **THE COURT:** Okay. You all got any charges you

1 want me to look at?

2 **MR. O'NEIL:** Yes, Your Honor.

3 **THE COURT:** What kind of charges? Does the
4 State have any charges?

5 **MS. WEISS:** Your Honor, I would just ask, do you
6 have your standard charge? If I can show what your
7 standard ABIK charge is, I think it will probably
8 just be standard charges.

9 **THE COURT:** My standard ABIK charge?

10 **MS. WEISS:** Yes, sir, Your Honor.

11 **THE COURT:** Is there something other than a
12 standard ABIK charge?

13 **MS. WEISS:** I don't know which versions of
14 malice and intent, whether or not -- how much you
15 tend to go into those.

16 **THE COURT:** Which version? Malice is hatred,
17 ill will or hostility towards another person, the
18 intentional doing of a wrongful act without just
19 cause or excuse and with an intent to inflict injury
20 or under circumstances the law will infer an evil
21 event.

22 And malice aforethought does not require that
23 malice exist for any particular time before the act
24 is committed but malice must exist in the mind of the
25 defendant just before and at the time the act was

1 committed. Therefore, there must be a combination of
2 previous evil intent and the act. Malice may be
3 expressed or inferred.

4 I describe express or inferred. Malice may be
5 inferred from conduct showing total disregard for
6 human life. Inferred malice they also arise when the
7 deed is done with a deadly weapon. A deadly weapon
8 is any article or instrument which is likely to cause
9 death or great bodily harm. Whether an instrument
10 has been used as a deadly weapon depends on the facts
11 and circumstances of each case.

12 **MS. WEISS:** I just wanted to make sure that's
13 the same thing that I would ask for, Your Honor. The
14 defense had just --

15 **THE COURT:** I feel better about that.

16 **MS. WEISS:** I'm sorry, Your Honor?

17 **THE COURT:** I feel better about that.

18 **MS. WEISS:** The defense kept talking about
19 attempted murder in the opening. I didn't think
20 there would be.

21 **THE COURT:** Attempted murder.

22 **MS. WEISS:** That's what they kept saying in
23 their opening. I just wanted to make certain there
24 would not be a mention of anything mentioning murder.
25 I wasn't sure in the standard charge. I just wanted

1 to make sure.

2 **THE COURT:** They want a charge of lesser
3 included of ABHAN. Do you all have any objection to
4 that? Pardon me?

5 **MS. WEISS:** Just beg the Court's indulgence one
6 minute. Your Honor, I think we have shown that he
7 had an intent to kill him. There are statements that
8 he stated he should have killed him. He said, "I'm
9 going to" -- I believe the victim even testified he
10 said, I'm going to F you up. "I'm going to kill
11 you." I think we showed that there was an intent to
12 kill, and I don't know that there is necessarily a
13 need to charge ABHAN.

14 **THE COURT:** You don't know whether there's a
15 necessary need to charge it?

16 **MS. WEISS:** I would ask that you not charge
17 ABHAN, Your Honor.

18 **THE COURT:** What do you all want to say about
19 that, Mr. --

20 **MR. O'NEIL:** Your Honor, I think --

21 **THE COURT:** -- O'Neil?

22 **MR. O'NEIL:** Thank you, Your Honor. I apologize
23 for cutting you off.

24 **THE COURT:** Go ahead.

25 **MR. O'NEIL:** I think what the case law I think

1 in State v. Watson says is that the defendant is
2 entitled to a lesser-included offense if there is any
3 evidence showing that he's guilty of the lesser and
4 not the greater offense, Your Honor. I think there
5 is ample evidence that Mr. Folkes did not have the
6 intent to kill Mr. Jones. I think the testimony is
7 that --

8 **THE COURT:** I don't know that intent to kill is
9 the requirement. It's just malice, that he had
10 malice.

11 **MR. O'NEIL:** Your Honor, there is case law out
12 there that said at one point there at least needs to
13 be some general intent to kill. I think that's kind
14 of being merged into the theory of ABHAN. I think
15 what the case law says, Your Honor, is that if
16 there's any evidence of a lesser-included, he's
17 entitled to a lesser-included. I don't think there
18 is --

19 **THE COURT:** Well, I might agree with that. Tell
20 me what the evidence is that there's no malice.

21 **MR. O'NEIL:** Your Honor, I think the evidence
22 that there is no malice is the fact that, one, the
23 only time -- the evidence is the only time Mr. Folkes
24 cut the victim, cut the victim, Your Honor, was after
25 he had been struck twice, fell on the ground, and the

1 victim was either tussling with him on top of him or
2 he was standing over him, Your Honor. I think the
3 jury can reasonably conclude that Mr. Folkes was
4 merely trying to get the victim off of him at that
5 point and was in some way protecting himself, Your
6 Honor. I have looked at the law when it deals with
7 ABHAN and ABWIK.

8 **THE COURT:** Are you saying self-defense?

9 **MR. O'NEIL:** No, Your Honor. I'm not saying
10 that he's entitled to self-defense, Your Honor,
11 because he definitely -- I think he loses on all that
12 all the way. He brought the incident on himself,
13 Your Honor.

14 But I do think a plausible defense claim, Your
15 Honor, can reduce the malice the same way a plausible
16 claim in a murder charge reduces a murder to a
17 voluntary manslaughter, Your Honor. I looked at some
18 of the case law that I can pull when individuals are
19 charged with ABWIK and requested an ABHAN lesser
20 included.

21 Two of the cases I found, Your Honor, was Hill
22 v. State. Your Honor, that is 350 SC 465. And that
23 was a PCR case, Your Honor. And the claimant in that
24 case was saying that his counsel was ineffective for
25 not requesting an ABHAN charge when he was charged

1 with ABWIK, Your Honor. And what the court -- the
2 facts in that case essentially was the defendant
3 attacked his girlfriend who was seven months
4 pregnant, sat on her, stabbed her at least 14 times,
5 punched her, told her, "I'm going to kill you", and
6 only got off the victim in that case when somebody
7 kicked him off, Your Honor.

8 The court in that case held that there could be
9 no other conclusion reached by the jury but that the
10 defendant intended to kill the victim, Your Honor. I
11 think this is solely different from that case, Your
12 Honor. I think the jury could reasonably conclude
13 that Mr. Folkes did not have the intent -- or I'm
14 sorry, Your Honor -- didn't have malice in his heart
15 when it relates to the victim in this case.

16 And also, Your Honor, I submitted a second jury
17 instruction that says the absence of malice is not a
18 requirement of ABHAN, Your Honor. So -- and that
19 case is like a 2004 case, Your Honor. So, Your
20 Honor, based on the case law, the jury could find
21 that Mr. Folkes had malice and he still could be
22 guilty of ABHAN and not ABWIK, Your Honor. I think
23 that case is State v. Tyler, 340 SC 526.

24 **THE COURT:** Have you got a case that says that
25 you don't need malice?

1 MR. O'NEIL: The absence of malice is not an
2 element of ABHAN. That's State v. Tyler, Your Honor.

3 THE COURT: Well, I don't know what you mean
4 "the absence of malice". The difference between
5 ABWIK and ABHAN is malice in one and not in the
6 other.

7 MR. O'NEIL: Yes, Your Honor. But I think the
8 case law has been clear that absence of malice is not
9 an element of ABHAN.

10 THE COURT: You got a case that you want me to
11 look at?

12 MR. O'NEIL: Yes, Your Honor. State v. Tyler.

13 THE COURT: You got it?

14 MR. O'NEIL: No. I have the cite but I don't
15 have the actual case printed out for Your Honor.

16 THE COURT: Well, if you want me to look at it,
17 you'd better get it printed out.

18 MR. O'NEIL: I'll get that for you, Your Honor.

19 THE COURT: Or get the information so that --

20 MR. O'NEIL: Your Honor, in that case,
21 essentially what it was, it was -- the discussion in
22 that case was about the jury instruction. And the
23 actual jury instruction given in that case was that
24 ABHAN required an absence of malice. And according
25 to that case, the court said that absence of malice

1 is not an element of ABHAN. And I'm getting my law
2 clerk to pull that case for Your Honor.

3 **MS. WEISS:** Your Honor, if I may?

4 **THE COURT:** Well, ABHAN is an assault and a
5 battery and circumstances of aggravation.

6 **MR. O'NEIL:** Yes, Your Honor.

7 **THE COURT:** Those are the elements of it.

8 **MR. O'NEIL:** Yes, sir.

9 **THE COURT:** Malice is an element of ABWIK.

10 **MR. O'NEIL:** Yes, Your Honor.

11 **THE COURT:** I don't know what you mean absence
12 of malice is not. If you want me to look at that
13 case I'll be happy to do it.

14 **MS. WEISS:** Your Honor, if I may?

15 **THE COURT:** Huh?

16 **MS. WEISS:** If I may just add one more comment?

17 **THE COURT:** All right.

18 **MS. WEISS:** As far as the malice is concerned, I
19 was speaking to the requisite intent to kill from
20 State vs. Coleman. But as far as malice is
21 concerned, I think all of the evidence shows that the
22 defendant came to the park armed with a weapon with
23 the intent bent on causing harm, causing a fight and
24 the ability to use that weapon. I think that's what
25 you've heard. I think in the evidence most favorable

1 to the defense that the defendant came I think with
2 malice. I don't think there is any reason for ABHAN
3 to be charged, Your Honor.

4 **THE COURT:** All right. Well, if you all got
5 something you want me to look at, get it to me before
6 we go to the jury. All right.

7 **MR. O'NEIL:** Yes, Your Honor.

8 **MS. WEISS:** Thank you, Your Honor.

9 **THE COURT:** You all have a nice lunch. We'll be
10 back at --

11 **DEPUTY:** What time, Your Honor?

12 **THE COURT:** He needs to be back here at 2:00.
13 Oh, no. Let's bring him back here at ten 'til 2 and
14 we'll -- well, 2:00.

15 (Whereupon, a lunch break is taken)

16 **THE COURT:** All right. We ready to go?

17 **MS. WEISS:** Yes, Your Honor.

18 **MR. O'NEIL:** Your Honor, in addition to I guess
19 our previous arguments about jury instructions, my
20 law clerk gave you State v. Tyler. He dropped it off
21 by your office, the case I was referring to.

22 **THE COURT:** He came by and he said, "It's a
23 terrible case, but he told me to bring it to you."

24 **MR. O'NEIL:** I may need to talk to him about
25 that.

1 **THE COURT:** Well, he said he needs to talk to
2 you about the law.

3 **MR. O'NEIL:** Yes, sir. My only other argument
4 is in addition to that I think State v. Coleman says
5 that intent can be inferred by the nature of the
6 injuries. And we haven't heard from the doctor as of
7 yet. I would just wait for favorable testimony from
8 the physician in this case, Your Honor. But also
9 that's why Mr. Folkes asks for an ABHAN charge.

10 **THE COURT:** Well, I'm probably going to charge
11 it because it might -- I mean, it may be that the
12 jury can decide that the intent to kill was not there
13 because it really was a fight on the part even though
14 it was instigated by your client. But I'm going to
15 wait and see what the doctor has to say.

16 **MR. O'NEIL:** Thank you, Your Honor.

17 **MS. WEISS:** And, Your Honor, the only charge
18 that we would --

19 **THE COURT:** Do you have a case you want me to
20 look at? Is that what that is?

21 **MS. WEISS:** Your Honor, we would -- we have
22 State v. Coleman as well that just stated that it's
23 not error to refuse to charge the lesser-included
24 offense unless there's evidence tending to show the
25 defendant was guilty only of the lesser offense. We

1 think is there plenty of evidence to show that he's
2 guilty of the assault and battery with intent to
3 kill. But I think that's the same thing you were
4 just referring to, Your Honor.

5 And we would also ask that you charge voluntary
6 intoxication is not a defense. I think there has
7 been evidence the defendant was intoxicated, and I
8 would just ask that you charge that as it is not a
9 defense.

10 **THE COURT:** Well, you know, I pulled that
11 charge. But the reason I wasn't going to charge it,
12 because it didn't really seem to be put up as a
13 defense. It was sort of minimalized and was shown to
14 be a factual consideration involving several of the
15 people down there more so than he was drunk and as a
16 result of his drinking he --

17 **MS. WEISS:** Your Honor, I mean, we can wait and
18 see what they do in closing. I just wasn't sure what
19 they were going to try to argue.

20 **THE COURT:** I don't know. Is that something you
21 all are going to try --

22 **MR. O'NEIL:** No, Your Honor.

23 **THE COURT:** I mean, I pulled that charge. But
24 it just seemed to kind of disappear a little bit.
25 You know, we know that he had the bottle. At least

1 there is evidence that he had a bottle of beer and he
2 threw it at the person, that he'd been drinking. And
3 I think somebody said that he might have been drunk.
4 But I never heard that as a result of his being .
5 intoxicated he acted the way he acted from anybody.

6 **MS. WEISS:** Okay.

7 **THE COURT:** But we'll see.

8 **MS. WEISS:** Thank you, Your Honor.

9 **THE COURT:** I've got the charge. All right. Is
10 your doctor here?

11 **MS. WEISS:** Yes, Your Honor.

12 **THE COURT:** All right. Let's bring the jury in.
13 (Jury in at 2:05 p.m.)

14 **THE BAILIFF:** The jury is seated, Your Honor.

15 **THE COURT:** All right. Thank you. You've been
16 elected as the foreperson?

17 **FOREPERSON:** Yes, sir.

18 **THE COURT:** Tell me your name, please.

19 **Yes:** Marvin Foster.

20 **THE COURT:** All right, Mr. Foster. I certainly
21 appreciate your doing so. Ladies and gentlemen,
22 thank you for selecting Mr. Foster. And all right.
23 You ready to call your next witness, Madam Solicitor?

24 **MS. WEISS:** The State calls Dr. Stephen Fann.

25 **DR. STEPHEN A. FANN,** after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** Thank you. Have a seat in the
3 witness stand. Give the court reporter your name.

4 **WITNESS:** Steven Austin Fann.

5 DIRECT EXAMINATION

6 **BY MS. WEISS**

7 **Q** Good afternoon, Dr. Fann.

8 **A** Good afternoon.

9 **Q** Please introduce yourself to the jury, let them know
10 who you are, where you're employed, what your
11 qualifications are?

12 **A** I am Dr. Steven Austin Fann. I'm an employee of the
13 Palmetto Richland Memorial trauma service surgery as
14 through the University School of Medicine Department
15 of Surgery. I am board certified in general surgery
16 with added certification in trauma and critical care.

17 My education: Undergraduate was at Methodist
18 College in Fayetteville, North Carolina where I've
19 got a double major in biology and chemistry. I
20 completed medical school in 1998 from the University
21 at North Carolina system at East Carolina University
22 now, formerly the Brody School of Medicine.

23 My general surgery residency training was
24 completed here in Columbia at the University of South
25 Carolina Department of Surgery as well as my trauma

1 critical care fellowship.

2 **MS. WEISS:** Your Honor, at this time I would
3 like to qualify Dr. Fann as an expert in general
4 surgery and trauma critical care.

5 **MR. O'NEIL:** No objection for the record.

6 **THE COURT:** All right. Ladies and gentlemen, I
7 think I explained to you yesterday that if
8 scientific, technical or other specialized knowledge
9 will assist you, the trier of fact, in understanding
10 any matter that's in controversy or any issue that's
11 in controversy and a witness qualified by virtue of
12 his or her knowledge, experience, training or
13 education may testify as an expert and may offer
14 opinions in his or her fields of expertise.

15 I'm going to find Dr. Fann to be qualified as an
16 expert in the field of general surgery and trauma
17 medicine. And as such, he can offer opinions in his
18 areas of expertise. I tell you you are to give his
19 testimony such weight and credibility as you deem
20 appropriate, as you will with any and all witnesses
21 who testify in this trial. All right, Madam
22 Solicitor.

23 **MS. WEISS:** Thank you, Your Honor.

24 **Q** Dr. Fann, were you working the evening of July 22nd
25 of 2007?

1 **A** Yes. I believe I was.

2 **Q** And on an evening such as this, I guess you would
3 have been on call?

4 **A** Yes. We taken an in-house call when we're on trauma
5 call at Richland Memorial, meaning that we're
6 physically present in the building and have sleeping
7 quarters in the building so that we're available with
8 less delay.

9 **Q** So approximately 8:00 at night, you'd have been at
10 the hospital on call?

11 **A** Yes, ma'am.

12 **Q** And what are you generally anticipating when you're
13 on call on a Sunday evening?

14 **A** I am on call for general surgery, emergency general
15 surgery and trauma. And so basically we are there to
16 address the surgical needs that patients have at any
17 point in time that are emergent. It tends not to be
18 elective cases at night and after hours obviously.
19 But we are there for the gamut of what may present
20 with a surgical need.

21 **Q** Now, how many surgeries do you perform in a general
22 shift?

23 **A** It varies with time. There are call shifts where I
24 will perform no procedures and there are call shifts
25 where I can bring in additional staff to assist me.

1 It varies with presentation.

2 Q So since July 22nd of 2007, you've probably performed
3 hundreds of surgeries?

4 A Approximately 40 a month would be a nice round
5 estimate.

6 Q So is there any reason to believe that you
7 specifically remember the surgery we're talking about
8 today?

9 A It is very difficult to have specific recollection.

10 Q But were you able to review your notes from that
11 surgery?

12 A Yes, ma'am. I have reviewed my operative note.

13 Q On the evening in question when Karem Jones came into
14 the hospital, he was brought in by an ambulance,
15 where would you have met him?

16 A I would have met him in our trauma resuscitation bay.

17 Q And would you have talked to him at that time?

18 A Yes, ma'am.

19 Q Now, just to ask you some general opinion, some of
20 your general knowledge questions; if the victim was
21 in the altercation, was sliced in the neck, would it
22 be unusual for somebody not to know they had been
23 cut?

24 A Patients will frequently present unaware of the total
25 totality of their injuries. It is not uncommon for

1 one injury to override the presence of another.

2 Q If somebody is in the middle of an altercation and
3 gets cut, is it unusual for them to take a few
4 minutes before they even -- or a few seconds even
5 before they even recognize that they have been cut?

6 A Again, sometimes with the overwhelming shock of the
7 situation, that can be delayed. So it is not
8 uncommon to find missed injuries even days into a
9 hospitalization with some of our patients on the
10 floor even.

11 Q And somebody that has had a serious injury or serious
12 wound to the neck, would it be unusual for them to be
13 able to talk or to run?

14 A It depends on what structures were injured. Again,
15 if the larynx or some other voice component were
16 injured, that may affect speech. But there could be
17 injuries that would not affect speech.

18 Q And would you consider generally a cut to the neck,
19 to the side of the neck, to be a serious injury?

20 A It's something that we -- the obligation is on us as
21 the trauma surgeon to evaluate and exclude serious
22 injury with any neck trauma, penetrating neck trauma.

23 Q And is that something that when it comes in you would
24 initially begin to look to see if it is a serious
25 wound?

1 **A** Yes, ma'am. We follow the ATLS, the Advanced Trauma
2 Life Support Guidelines, as endorsed by the American
3 College of Surgeons which is a prioritized algorithm
4 for the evaluation of patients, starting with airway
5 breathing, circulation and then moving out in a more
6 generalized fashion for a systemic whole body
7 evaluation.

8 **Q** And airway and breathing would be your initial place
9 that you're looking?

10 **A** Airway and breathing followed by circulation.

11 **Q** And that's something that actually can be cut, can be
12 injured in a neck wound?

13 **A** The airway can be injured in wounds to the neck, yes.

14 **Q** Now, once you would have come into contact with him
15 in the resuscitation bay, what would you have done
16 next?

17 **A** Judging from the magnitude of the injuries and their
18 location, a decision was made that perhaps operative
19 exploration would be in the best interest to exclude
20 injury and to manage the wounds that we were
21 presented with.

22 **Q** And just because he was talking when he was in the
23 bay, does that mean that was not seriously injured?

24 **A** At that point it does not totally exclude. A
25 physical exam alone with a penetrating neck trauma is

1 not 100 percent reliable.

2 (WHEREUPON, State's Exhibit No. 33 is marked for
3 identification.)

4 Q I'm going to show you State's Exhibit 33 for
5 identification. Can you identify what this depicts?

6 A A human head and neck.

7 Q Okay. And does this fairly and accurately depict
8 what the human anatomy looks like?

9 A From a surface standpoint, yes.

10 Q Yes. All right. If you would, just show the jury,
11 when you are looking at a neck, you're talking about
12 a neck trauma and how neck trauma -- you're initially
13 going to look for airway problems and then, you know,
14 reviewing the neck to see if there is any serious
15 wounds, possibly fatal wounds; can you show the jury
16 using this marker the different areas that can be
17 potentially fatal wounds on the neck, however you
18 need to?

19 A Well, the sternocleidal mastoid which is the beefy
20 muscle that you can feel here when you turn your neck
21 extends from the mastoid process behind the ear down
22 through the collarbone or the clavicular head. And
23 it would run in this orientation here.

24 Q Okay.

25 A And that divides the neck into the anterior neck and

1 the posterior neck. The structures of concern to a
2 surgeon in the anterior neck are the internal carotid
3 artery which carries blood to the brain, the external
4 carotid artery which carries blood to the face and
5 the common carotid which is the trunk that those two
6 arteries branch from running out of the chest off of
7 the aorta.

8 The internal jugular vein will lay lateral or
9 towards the outside and more superficial to that
10 carotid artery and is located here. The vagus nerve
11 runs posterior or just behind the carotid artery
12 here. There are anterior jugular veins that run
13 along the trachea here that can be involved in the
14 anterior neck. And then the external jugular vein
15 courses external to the muscle that I have mentioned,
16 dives deep and inserts within the chest into the vein
17 under the collarbone.

18 Q Okay. And if a cut violates any of those, is it a
19 possibly fatal wound?

20 A Lacerations to the jugular vein, any of the
21 derivations of the carotid artery, the esophagus
22 which I did not mention, runs along the windpipe here
23 in the left neck or the airway itself. All of those
24 can create bleeding which can -- patients can die of
25 exsanguination. They can develop hematoma which

1 pushes the airway over and occludes their airway
2 which can injure the airway itself. Injuries to the
3 esophagus that are not detected will frequently
4 result in infection which can have severe
5 consequences in the neck as well.

6 Q Okay. And as far as making lacerations across that
7 area of the neck, is there anybody other than a
8 qualified surgeon who can do that without -- and know
9 that they're not going to kill somebody?

10 A Our surgical explorations are very deliberate.
11 They're done in an operating theater with various
12 levels of anesthetic depending on the technique or
13 the procedure being done with good lighting, with
14 surgical instrumentation and with instruments to
15 control any bleeding as we're going so that we can
16 visualize. When I do thyroid surgery I use
17 magnification actually to assist with this.

18 Q So even when you're cutting into those areas, you
19 have to be especially careful as well?

20 A Yes, ma'am.

21 Q Now, how deep would somebody have to cut in order to
22 cut those vital arteries and airways and esophagus
23 and all this?

24 A Surgical training is that -- I didn't really mention
25 the zones of the neck. But there is an anatomic

1 landmark here, the cricoid cartilage which is below
2 the larynx. Injuries below that are zone one.
3 Injuries from the angle of the jaw above are zone
4 three. Zone two constitutes the middle. The zone
5 two injuries that penetrate the platysma which is a
6 flat, broad muscle area just deep to the skin in fat,
7 it's what allows you to web your check which you
8 probably have seen children do; any laceration,
9 puncture, trauma that violates that muscle warrants
10 some form of evaluation to exclude injury.

11 Q And how deep would a wound have to be at the deepest
12 to be able to cut all of those?

13 A Once the platysma has been penetrated, there is no
14 bony structure or case to protect those structures
15 below it. So there's the potential for injury to the
16 anterior jugular vein, the internal jugular vein,
17 even the carotids, the esophagus, et cetera. Once
18 that muscle area is violated we know that with
19 penetrating traumas being violent the potential is
20 there that some of those structures could have been
21 injured.

22 Q When you say penetrating traumas being violent, you
23 mean with force, usually with force behind them?

24 A Typically, yes. Lacerations are created by some
25 force being applied to the skin with a sharp object.

1 Or there can be blunt trauma with injury to these
2 structures as well.

3 Q Now, an object such as this knife, would that be an
4 object that could make a laceration consistent with
5 the one that you saw in relation to this case?

6 A Any edged object. I have had patients injured with
7 screwdrivers, broken beer bottles, knives. Any sharp
8 object, edged utensil.

9 Q And do you think someone that was wielding this type
10 of weapon would have had the surgical deliberateness
11 to be able to know what he's cutting when he's
12 cutting at a neck; a person in a fight that's
13 wielding this weapon?

14 A I think in a fight with -- surgical deliberateness in
15 a fight would be difficult to achieve.

16 Q Okay. So at this point you took Mr. Jones up to the
17 operating room and began your operation?

18 A Yes.

19 Q Okay. And will you please explain what the surgical
20 procedure was that you performed on Mr. Jones?

21 A Basically he was intubated. The neck was prepped in
22 a sterile manner and then the wounds were explored
23 for depth of penetration for hemostasis to control
24 any bleeding that was there, to irrigate them and
25 cleanse them to prevent infection and then to close

1 them.

2 Q And using this marker, can you show approximately
3 where the laceration was that you explored on Mr.
4 Jones?

5 A It was a zone two injury that was anterior to the
6 sternocleidal mastoid; I don't think it quite made
7 the mid-line of the neck, and then extended more
8 posterior like this.

9 Q And was that the approximate length of it according
10 to your notes?

11 A I think I said 7 centimeters. I don't have a ruler
12 here to -- that would be a nice guess.

13 Q Okay. And he also had two other injuries under his
14 chin and on his arm?

15 A Per my note there was I think a laceration
16 submentally as we would call it somewhere here and
17 then on the arm.

18 Q Now, obviously the laceration to Mr. Jones' neck did
19 not kill him.

20 A No, ma'am.

21 Q And, in fact, per your exploration did not actually
22 cut any of those vital organs that the width of it
23 actually went across?

24 A There was no injury to the carotid artery, the
25 internal jugular vein or the esophagus, and the

1 airway was intact as well.

2 **Q** Now, you explored it for depth. What did you find in
3 your exploration?

4 **A** The zone two injury penetrated the platysma which is
5 what led me to delineate the structures deep to that
6 to ensure that they were free from injury.

7 **Q** And would you call this is a superficial wound?

8 **A** Technically I think it would be accepted in most
9 surgical circles that anything deep to the platysma
10 is not superficial. The platysma delineates injuries
11 that need evaluation from injuries that do not
12 require evaluation.

13 **Q** And in your notes did it not say it was a superficial
14 wound?

15 **A** When I read this it states that the platysma was
16 penetrated and that careful exploration down to the
17 subcutaneous tissue did reveal penetration through
18 the platysmal muscle of the major structure of the
19 neck, including --

20 **COURT REPORTER:** Could you slow down, please.

21 **WITNESS:** I'm sorry.

22 **COURT REPORTER:** And start over?

23 **WITNESS:** Careful exploration --

24 **COURT REPORTER:** Thank you. You don't have to
25 go that slow.

1 **A** -- down to the subcutaneous tissue did reveal
2 penetration through the platysmal muscle. Though the
3 major structures of the neck, including the common
4 carotid internal and external jugular -- it should be
5 veins; it was excluded -- were all spared. The wound
6 was simply superficial and therefore irrigated
7 copiously. And then it goes on to describe what was
8 repaired.

9 **Q** And are those your notes?

10 **A** That's the operative dictation performed by the
11 resident which I cosigned.

12 **Q** So would you describe this wound as simply
13 superficial?

14 **A** The wound that penetrated the platysma technically
15 would not be a superficial wound.

16 **Q** And because it penetrated the platysmal, that means
17 that it headed towards the vital organs?

18 **A** It was deep enough that it warranted exploration to
19 look for those vital structures.

20 **Q** And how far would you say that wound was from those
21 vital wounds?

22 **A** The anterior jugular veins are intimately associated
23 with the platysma. We have to be careful with our
24 thyroidectomies, et cetera, that those are preserved.
25 And the internal jugular vein is again very close to

1 that interface along the interior border of the
2 sternocleidal mastoid.

3 Q And so in laymen's terms, about how far would you say
4 that cut was from penetrating through the --

5 A It was very close to the jugular and the anterior
6 jugular veins.

7 Q Could you show --

8 A Millimeters probably.

9 Q -- with your fingers?

10 A Just the thickness of a few dimes.

11 Q Okay. And beg the Court's indulgence one minute.
12 Doctor, in your expert opinion, could you say that
13 Karem Jones is fairly lucky to be alive?

14 A It would have been a much more severe injury had any
15 of those structures been injured.

16 Q And considering the facts as you know them, that
17 could have just as easily happened?

18 A Had the wound been a little deeper, those structures
19 could have been injured, yes.

20 Q Thank you. No further questions for this witness,
21 Your Honor.

22 CROSS EXAMINATION

23 BY MR. O'NEIL

24 Q Now, Dr. Fann, as a physician, you are aware of all
25 the medical information provided by other personnels

1 in the medical chain, like the EMT, the emergency
2 department people?

3 A We gather as much as we can as we're moving forward
4 with the patient's care.

5 Q And all those people, like the EMT, the emergency
6 department nurses, they all generate reports that
7 provide you information about how they're proceeding
8 the care?

9 A They provide information and record facts about the
10 patient, yes.

11 Q And those reports are important to you?

12 A To varying degrees, yes.

13 Q And you understand that EMT responded around 6:30 on
14 this particular night?

15 A Without reviewing the medical records specifically, I
16 wouldn't have recollection of the times.

17 Q Do you have a copy of it?

18 A Not with me, no.

19 Q Let me provide you a copy then.

20 A Casio 7 -- I can't read the date. And then the brief
21 op note is 7-22-07 at 8:20 p.m.

22 Q And would the emergency department trauma flow sheet
23 help you out with actually the time that the primary
24 survey was done?

25 A Yes, sir. That should have.

1 (Document handed to the witness)

2 A 18:23 is the time listed.

3 Q So that's around 6:23?

4 A Yes, sir.

5 Q And what time did you come in contact with Mr. Jones?

6 A It should have been while he was in the trauma bay.

7 I am listed as attending, Fann, here on the sheet

8 with Dr. Cohen, Dr. Arford and Dr. Wood.

9 Q I think you testified earlier that you came in
10 contact with him about 8:30?

11 A I should have been with him in the trauma bay as the
12 trauma attending evaluating the wound there and then
13 moving upstairs. I have no specific recollection,
14 but they have documented my name here on this slip.

15 Q Dr. Fann, are you aware that the bleeding was
16 controlled prior to EMS arriving that day?

17 A Yeah. I don't think we had significant hemorrhage
18 when the patient was in the trauma bay.

19 Q And then he arrived to the trauma bay. And the
20 trauma bay personnel does a little bit of evaluation
21 on him when he first gets there?

22 A Well, the patient rolls into the trauma bay. There
23 is an ER attending present, a trauma surgeon present.
24 There are ER residents, surgery residents.
25 Respiratory therapy is frequently involved with

1 trauma alerts. There will be people from radiology
2 there as well as ER nurses. It's a team alert where
3 people respond.

4 Q And one of the first things they do is evaluate the
5 level of consciousness I think?

6 A It's airway. Can the patient speak.

7 Q I think they evaluate them on what's called the
8 Glasgow Scale?

9 A The Glasgow Coma Score?

10 Q Yeah.

11 A It's frequently used, yes.

12 Q Now, you are aware that that score ranges, has
13 different ranges, correct?

14 A Correct.

15 Q And a range -- a score of 15 would mean that you were
16 fully awake. That's the highest score you could
17 have?

18 A That would be the highest score.

19 Q And you are aware that Mr. Jones received a 15 on
20 that scale?

21 A I would have to look. But, yes. I mean, if I don't
22 have that --

23 Q I think it's in front of you.

24 A -- here, it would be in the trauma H&P. Yeah. Hold
25 on for just a minute. Pulse was normal. Arms. Yes.

1 You said -- it was listed as 15 on the run sheet.

2 Q So he's fully awake?

3 A Alert and oriented, yes.

4 Q No problem with consciousness. And the emergency
5 department personnel, they have to prioritize
6 patients that come in, correct?

7 A Yes. They are seen, criteria; and then criteria for
8 those that present to the emergency department.

9 Q One thing they use to prioritize patients is called
10 the Revised Trauma Score?

11 A Mm-hmm (affirmative).

12 Q And that score ranges anywhere from zero to twelve,
13 correct?

14 A Correct.

15 Q Zero to three I think is described as morbid or
16 morgue, anybody that receives anything between a zero
17 and a three?

18 A Morbidity I think it is probably. Morbidity.

19 Q And that person pretty much can't be helped really?

20 A It means that they're human anatomically very
21 unstable and critically ill. I don't know that it
22 means they're non-salvageable.

23 Q But critically ill?

24 A They are critically ill.

25 Q If this was a battlefield, they would be essentially

1 probably the last persons you would want to give help
2 to?

3 **A** I don't know if I can answer that.

4 **Q** But they're the most seriously injured. Put it that
5 way.

6 **A** They are the patients that are manifesting the most
7 deranged physiology in that they have low blood
8 pressure, high respiratory rate, altered sensorium.

9 **Q** And the next we have is I think three to ten. It
10 means you need immediate care? That's correct in
11 that range?

12 **A** My use of this score is more of a triage and an
13 epidemiologic scenario. You can transect your aorta
14 in an automobile accident which is a potentially
15 fatal injury and have a normal revised trauma score.
16 So I don't think that a revised trauma score is an
17 end all, be all for the evaluations that we do. It
18 is a tool that is used. And certainly a patient with
19 a low trauma score is critical. But I don't place
20 gospel on that score so far as the depth of my
21 evaluations of the patients.

22 **Q** But it is a tool that you use?

23 **A** It is a tool that is used, like many other evaluation
24 systems. But it is in of itself does not exclude
25 critical injuries such as aortic transections or a

1 host of other injuries that may not at their onset
2 manifest themselves with low blood pressure, altered
3 sensorium, difficulty with breathing, those type
4 things.

5 Q But it is a comprehensive assessment that can be used
6 by anybody in any medical field?

7 A It is an assessment that is used.

8 Q And then the next level I think is eleven. A score
9 of eleven is the next level to have. And this is
10 urgent but not -- I think not immediate. Okay?
11 That's correct?

12 A For that particular scoring system.

13 Q And then the next lowest scale on that is twelve?

14 A Mm-hmm (affirmative).

15 Q I think that's referred to as the walking wounded?

16 A I don't know.

17 Q But that the lowest you can possibly get on this
18 scale?

19 A The lowest severity.

20 Q Lowest severity. And what was Mr. Jones' revised
21 trauma score?

22 A It says here his RTS was twelve.

23 Q Twelve?

24 A Yes.

25 Q So he got the lowest possibility to score on this

1 scale?

2 A Correct.

3 Q Okay. And you actually didn't stitch up Mr. Jones,
4 did you?

5 A I was not there for the entirety. The resident
6 probably closed the wound.

7 Q That would be Kimberly Cohen?

8 A Kimberly Cohen and I think Matthew Arford were
9 present.

10 Q So Ms. Cohen, she actually closed the wound?

11 A I was there for a while. I'm certain I probably did
12 not stay until the entirety of the wound had been
13 closed.

14 Q Now, I think you said she's a resident?

15 A Yes.

16 Q And you're an attendee?

17 A Yes.

18 Q Explain to us the difference between a resident and
19 an attendee?

20 A A resident is a physician who has completed medical
21 school. They have been licensed by the state of
22 South Carolina for the practice of medicine and
23 surgery, and they are requiring additional training
24 in their field of expertise, be it surgery, medicine,
25 family practice, et cetera. So our surgery residents

1 undergo a tiered program of training that lasts from
2 five to seven years or even longer depending on
3 subspecialization with skill acquisition and autonomy
4 growing with each level of progression.

5 Q So trained for from five to seven years. You of
6 course already went through that training?

7 A Yes.

8 Q Plus you had additional training after that where you
9 have to get a fellowship?

10 A I did a fellowship.

11 Q And how long was that fellowship?

12 A It was one year.

13 Q Okay. How long -- how far into her training was Dr.
14 Cohen?

15 A I'm going to have to guess. I think she was a second
16 year student.

17 Q So she had only been out of med school two years?

18 A Correct. And then Dr. Arford would have been either
19 a fourth or a fifth-year resident.

20 Q And in the operative report she classified both the
21 4.5-centimeter and the 7-centimeter wounds as
22 superficial?

23 A Yes, she did.

24 Q So we have the 4.5 centimeter was superficial and the
25 7 centimeter was superficial. That was both wounds

1 to the neck?

2 A Well, again, I would agree with the 7-centimeter
3 wound being that it was through the platysma.

4 Q But the person who actually did the stitching up
5 testified --

6 A No. I was there for the exploration of the neck. I
7 was there for the identification of the deep
8 structures of the neck. And only at the completion
9 of the case where all that remains is closure to the
10 wound would I have exited the room.

11 Q Well, I think you said earlier you signed off on the
12 operative report though?

13 A Yes, I did.

14 Q In the operative report it said: "After careful
15 exploration down to the subcutaneous tissue, there
16 would be a penetration through the platysmal muscle.
17 Though the major structures of the neck, including
18 the common artery, the internal and external jugular
19 were all spared, the wound was simply superficial and
20 therefore irrigated copiously." That's correct?

21 A Correct.

22 Q And you signed off on that report?

23 A That missed my editorial. I did not notice that with
24 my review, but I did sign the note.

25 Q Okay. And the first wound, the 4.5-centimeter wound,

1 that didn't hit any muscle?

2 A That would have been skin and subcutaneous tissue.

3 Q And I'm sorry. The medical definition of superficial
4 is shallow, not deep?

5 A It depends on the application.

6 Q But in this setting it means shallow and not deep?

7 A Superficial would mean for the neck would mean
8 external to the platysma.

9 Q So above the muscle?

10 A Above the muscle.

11 Q And these wounds were actually characterized as
12 lacerations, not penetrating wounds?

13 A I would -- I think you -- the first delineation is
14 blunt versus penetrating the evaluation of injuries
15 to the neck, torso or otherwise. Have you injured
16 these structures from a blow of a steering wheel, et
17 cetera. So there is blunt and penetrating trauma.
18 And so lacerations would be under the penetrating
19 category.

20 Q And you talked about I think all of these red lines
21 are all major arteries?

22 A Well, it's the sternocleidomastoid muscle which is
23 the tangential line. I'm sorry I only had one color.
24 I only had one color to use. The muscle delineating
25 the anterior and posterior neck runs tangentially

1 here. The trachea and airway are mid-line. So
2 between the border of that muscle and the trachea are
3 the anterior jugular veins. The external jugular
4 vein courses here. You have the common carotid that
5 divides into the external/internal carotid. The
6 vagus nerve, the esophagus are all here.

7 Q Okay. And all of these arteries, carotids, jugular,
8 everything that you talked about, none of these
9 were --

10 A No, sir. None of them were injured.

11 Q None of these were injured?

12 A No, sir.

13 Q Not a single one of them?

14 A No, sir.

15 Q The airway wasn't injured?

16 A His airway was -- one, he could speak. And then with
17 looking within the wound, probing the wound and
18 delineating those strictures, there was no evidence
19 of injury to the airway.

20 Q Okay. And you also I think ran some other tests on
21 Mr. Jones that day? Like you ran a urine test on Mr.
22 Jones?

23 A We will frequently -- we're not 100 percent
24 compliant, but we try to obtain trauma labs on our
25 alerts as hematological evaluations, hemoglobins, et

1 cetera. Chemistries. We do urine tox screens
2 frequently.

3 Q And Mr. Jones tested positive for alcohol that day?

4 A Yes. I think he had alcohol.

5 Q And he tested positive for marijuana that day?

6 A Yes.

7 Q I think he actually said he had smoked marijuana
8 about 45 minutes prior to going to the hospital?

9 A I have no direct recollection of that.

10 Q Did you place that in your notes here?

11 A I frequently will not inquire about those things.

12 Q Did Dr. Cohen place that in those notes?

13 A We could look and see.

14 **MS. WEISS:** Objection, Your Honor. It's outside
15 the scope of his knowledge.

16 **MR. O'NEIL:** Your Honor, he's testified that he
17 looked over all the notes that involved this case as
18 the attending surgeon.

19 **THE COURT:** Well, if he relies on the history,
20 I'm going to allow him to testify what his treatments
21 were.

22 Q I'm going to show you the emergency department
23 documentation here, let you look at the social
24 history.

25 A Yeah. This documents tobacco use, alcohol

1 consumption and marijuana.

2 Q Marijuana 45 minutes before getting to the hospital?

3 A Yes.

4 Q Okay. And Mr. Jones also tested positive for having
5 cocaine in his system?

6 A Correct.

7 Q Okay. And because of that you all referred him to
8 the drug and alcohol counseling center?

9 A People with positive drug screens are seen by
10 psychiatry and then psychiatry leaves
11 recommendations.

12 Q And you also did a swallow test?

13 A Yes.

14 Q That's to make sure there's no problems with the --

15 A That was for the associated laceration to ensure that
16 his swallowing mechanism was intact.

17 Q And he passed that test as well?

18 A Yes.

19 Q So all of the swallowing mechanisms, everything was
20 intact?

21 A Correct.

22 Q And I think he got a number of stitches and you all
23 put some ointment on him?

24 A Mm-hmm (affirmative).

25 Q I think you all held them for like 23 hours for

1 observation?

2 A To get the psychiatric evaluation and the swallow, he
3 would have probably at least had to remain overnight
4 and would have received those tests most likely the
5 next day.

6 Q And what kind of effects can alcohol, tobacco,
7 marijuana and cocaine have on your perception?

8 A Any foreign substance can alter your perception.

9 Q So these things will alter your perception?

10 A They can.

11 Q And I think after the 24-hour waiting period, I think
12 you discharged Mr. Jones with some pain pills?

13 A Mm-hmm (affirmative).

14 Q And I'm showing you what's been marked as State's
15 Exhibit No. 12. That's Mr. Jones after he got the
16 stitches in?

17 A Mm-hmm (affirmative). Yes, sir.

18 Q And that swelling would have gone down a little bit a
19 couple of days after the stitches being in?

20 A It should be less swollen with time.

21 Q And did Mr. Jones have any injuries to his eye?

22 A I don't recollect.

23 Q You don't recall any injuries to the eye?

24 A I would have to again look at the H&P, the history
25 and physical. I have no specific recollection of

1 injuries to the eye.

2 Q Beg the Court's indulgence, Your Honor. And did Mr.
3 Jones have any cuts on his hands anywhere that you
4 recall?

5 A Again, I would have to refer to the H&P, the resident
6 documentation, what our documentation is. I don't
7 recall specifically.

8 MR. O'NEIL: No further questions, Your Honor.

9 THE COURT: All right. Ms. Weiss.

10 MS. WEISS: Just a couple of questions, Your
11 Honor.

12 REDIRECT EXAMINATION

13 BY MS. WEISS

14 Q The defense asked you, Dr. Fann, about the alcohol
15 and cocaine. Reviewing your notes, do you recall
16 what the alcohol level was in Mr. Jones' system?

17 A .05, or less than .08.

18 Q And so, I mean, that's less than the legal limit to
19 even be able to drive a car, right?

20 A Yes. That is my understanding.

21 Q And as far as the cocaine and the marijuana that came
22 up positive on that screen, is there any way for you
23 to know how much was in his system?

24 A The urine drug screen will simply note the presence.
25 Again, it's out of my realm of toxicology, drug

1 pharmacology. But I know that it is present. I have
2 no idea of when it was consumed or what magnitude was
3 consumed based on a urine drug screen.

4 Q So you have no idea when or where, how, or to what
5 extent?

6 A Based on that urine drug scene, no.

7 Q Or whether or not it was even taken with the person's
8 knowledge. You have no idea?

9 A I have no idea.

10 Q Okay. And the defense went into a big explanation of
11 this fully awake and zero to twelve, walking wounded,
12 all of that. Basically that shows that he was pretty
13 coherent and able to understand what was going on,
14 was fully awake, the code that was given, 15?

15 A The GCS of 15 would apply to someone who was awake,
16 alert and oriented.

17 Q So not deeply altered as far as his state of mind?

18 A Correct.

19 Q Okay. And if someone is cut in the neck, are you
20 going to find significant bleeding as long as it gets
21 through the general exterior of the neck?

22 A Well, again, the physical exam findings are not
23 100 percent for penetrating trauma of the neck.
24 There is a range. If someone presents with pulsatile
25 bleeding, that's easy to discern.

1 Q What's that mean?

2 A Meaning that the blood is squirting from the wound.
3 That is easy to discern. Large hematomas are also
4 evidence that are easily determined that there has
5 been injury. But those are not 100 percent. And so
6 with the patient care in mind, as a field, we tend
7 to -- if it's a wound deep to the platysma, some sort
8 of evaluation, either operative or investigative,
9 must be undertaken to exclude injury.

10 Q But just on a general laymen's -- I mean, if you just
11 have a cut, no matter how deep it is, I mean, there
12 can be a lot of bleeding from the neck. There are a
13 lot of veins?

14 A Yes. There could be a lot of bleeding from the neck.

15 Q And in your expertise in trauma care, if you're out
16 in the field and you were to see a neck wound, how
17 would you generally control that? If you had ice
18 available to you, would that be something --

19 A They generally apply pressure and pressure dressings.

20 Q And so that bleeding can be brought under control
21 even if it is a life threatening wound?

22 A Yes, ma'am. Venous bleeding would be easier to
23 manage than arterial damage, for instance.

24 Q And a person can be oriented; talking, walking around
25 even and have a wound that, you know, within hours or

1 days could prove to be potentially fatal that they
2 may not know about or you may not be able to see just
3 looking at them like I'm looking at you right now
4 without exploring that wound?

5 **A** As I have said, I have had patients with -- I had a
6 patient with an esophageal transection rendered from
7 a screwdriver injury without outward signs. Again,
8 physical exam and of itself is not 100 percent
9 reliable.

10 **Q** So that's why these are just assessments. They don't
11 show what the actual injury is?

12 **A** They are tools that we try to use with relative
13 weights and values that are situationally dependent.

14 **Q** And the defense asked you about the black eye. You
15 don't actually have a specific recollection of this
16 surgery in particular?

17 **A** No. No, ma'am. I don't.

18 **Q** So it's really unfair to ask whether you remember a
19 black eye or not?

20 **A** I would have to trust the surgical H&P and then the
21 other documentation.

22 **Q** And Dr. Cohen was a second-year resident and she put
23 simply superficial. And you said you do hundreds of
24 surgeries in a year. And that means you get a
25 surgical report like to this read with every single

1 one of those surgeries?

2 **A** That is correct.

3 **Q** So, had you read simply superficial with that, would
4 have you changed it?

5 **A** If I would have noticed it when I reviewed the
6 document, I would have changed that particular
7 instance.

8 **Q** And that's because you're the attending physician and
9 you have the ability to do that?

10 **A** Correct.

11 **Q** And, finally, if this -- well, Your Honor, at this
12 time I'd like to enter State's Exhibit 33 into
13 evidence.

14 **MR. O'NEIL:** No objection.

15 **THE COURT:** So admitted.

16 (WHEREUPON, State's Exhibit No. 33 is admitted
17 into evidence.)

18 **Q** Your Honor -- I mean, Dr. Fann, if that wound had
19 been two to three millimeters deeper, would we be
20 talking about a totally different case here today?

21 **A** Had the wound been deeper, I would have probably had
22 to perform vascular repairs to either a jugular vein
23 or an anterior jugular vein or some other structure
24 had the wound been deeper.

25 **Q** And how long could it have taken for someone to bleed

1 out with a wound like that?

2 **A** That's hard to say. It depends. A carotid artery is
3 much more rapid as far as its hemorrhagic rate as
4 compared to a venous injury. Venous injuries are
5 unique in that you can develop errant emboli from
6 them. So even with compression you may not bleed,
7 but the hole in the vein can allow air to enter the
8 circulatory system which can cause problems. Again,
9 esophageal injuries can present late with infection.
10 It's just hard to -- there's a whole scope of
11 structures in the neck that may or may not have been
12 injured, and each of those injuries carries different
13 morbidity or complications should they occur.

14 **Q** So although this wound did not penetrate anything
15 fatal, a couple more millimeters and this wound could
16 have been fatal?

17 **A** It could have been had it hit some of those
18 structures, yes.

19 **Q** Thank you. No further questions, Your Honor.

20 **THE COURT:** Anything? All right. Thank you,
21 Doctor. You may step down. Doctor, you can be
22 excused if you'd like. Thank you.

23 **MS. WEISS:** Your Honor, at this point the State
24 rests.

25 **THE COURT:** All right, ladies and gentlemen. I

1 need to take up some matters with the lawyers. If
2 you would step back to the jury room. Please don't
3 discuss the case. We'll be with you in just a little
4 bit.

5 (Jury out at 2:50 p.m.)

6 **THE COURT:** All right. Anything we need to take
7 up at this time?

8 **MR. O'NEIL:** Your Honor, for the record at this
9 time I would move for a directed verdict. Viewing
10 the evidence in a light most favorable to the State,
11 I don't think they have presented evidence of all the
12 evidence of ABWIK sufficient enough to go to the
13 jury, Your Honor.

14 **THE COURT:** All right. Tell me what element did
15 they fail to offer any evidence, any direct evidence
16 or any substantial circumstantial evidence.

17 **MR. O'NEIL:** Your Honor, I think the element
18 that I would think that they have any substantial
19 circumstantial evidence I think, Your Honor, would be
20 malice.

21 **THE COURT:** All right. Anything you want to
22 say, Madam Solicitor?

23 **MS. WEISS:** Your Honor, I think malice can be
24 expressed or implied. The defendant brought a deadly
25 weapon, initiated a fight, pulled the deadly weapon

1 and struck the victim with it. I think that is
2 implied malice at its best. And then he also stated
3 things to the extent of, I'm going to F you up. "I
4 should have killed you." I think all of those are
5 express malice. I think we've proven the elements,
6 Your Honor.

7 **THE COURT:** All right. I'm going to deny your
8 motion. Clearly to me there is both express and
9 inferred malice. He did make -- there's testimony
10 that he made certain threats about what should have
11 happened to the defendant and as a result of his -- I
12 mean the victim as a result of his behavior. In
13 addition, there is inferred malice by virtue of the
14 use of a deadly weapon. And whether it's been used
15 or not as a deadly weapon depends on facts, and that
16 would be an issue for the jury. I'm going to deny
17 your motion.

18 **MR. O'NEIL:** Your Honor, for the record I would
19 renew all my previous objections, Your Honor.

20 **THE COURT:** All right. Mr. Folkes, let me get
21 you to stand and raise your right hand, if you would
22 please.

23 CLINTON FOLKES, after being duly sworn, is given
24 his Constitutional rights by the court as follows:

25 **THE COURT:** All right, Mr. Folkes. I'm going to

1 ask you some things, not about the facts of the case.
2 I won't go into that. But I do want to talk to you
3 about your Constitutional right to testify or not to
4 testify. I'm sure you've discussed this with your
5 two attorneys before now because Mr. O'Neil has
6 indicated that you have told him at least up to the
7 time of lunch that you did not intend to testify.
8 Have you talked to Mr. Shealey and Mr. O'Neil about
9 whether you wish to testify or not testify?

10 **MR. FOLKES:** Yes, Your Honor.

11 **THE COURT:** Have you had an ample opportunity to
12 review that decision or not with your lawyers?

13 **MR. FOLKES:** Yes, Your Honor.

14 **THE COURT:** Do you feel like you're in a
15 position now to make a decision as to whether you
16 testify or not testify?

17 **MR. FOLKES:** Yes, Your Honor. I choose not to
18 testify.

19 **THE COURT:** You understand of course that you
20 have a Constitutional right to testify. You have a
21 right to get up and tell your side of the story if
22 that's what you'd like to do. And you understand I'm
23 sure that if you do you're subject to being examined
24 by the solicitor. They would have the right to ask
25 you questions and attempt to impeach your testimony

1 if they could in some manner, including whether you
2 have a prior record. I think there's been some
3 indication that you do have a prior record that may
4 be used -- I don't know -- for impeachment purposes.
5 There may be other bases for attempting to impeach
6 your testimony. But you would be subject to being
7 cross examined by the Solicitor's Office. Do you
8 understand that?

9 **MR. FOLKES:** Yes Your Honor.

10 **THE COURT:** And of course you also understand
11 you have a Constitutional right to not testify. You
12 don't have to testify at a trial. And I will in fact
13 if you in fact go through with that decision, I'll
14 instruct the jury they can't even consider that
15 factor in the course of their deliberations. They
16 can't even talk about the fact that you didn't
17 testify when they are deliberating. Do you
18 understand that?

19 **MR. FOLKES:** Yes Your Honor.

20 **THE COURT:** All right. Now, nobody has
21 threatened you or coerced you or forced you or
22 pressured you into this decision, have they?

23 **MR. FOLKES:** No, Your Honor.

24 **THE COURT:** You're making this decision on your
25 own?

1 **MR. FOLKES:** Yes, Your Honor.

2 **THE COURT:** And you're making this decision
3 after having ample opportunity to counsel with your
4 lawyers. Is that correct?

5 **MR. FOLKES:** Yes, Your Honor.

6 **THE COURT:** All right. Have you got any
7 questions about this that you want to ask either Mr.
8 O'Neil or Mr. Shealey here today?

9 **MR. FOLKES:** No, Your Honor.

10 **THE COURT:** All right. Mr. O'Neil, Mr. Shealey,
11 anything further you want me to inquire of your
12 client or anything that you wish to ask of your
13 client regarding this issue?

14 **MR. O'NEIL:** No, Your Honor.

15 **THE COURT:** Do you believe he fully understands
16 his rights under the Constitution with respect to
17 testifying or electing not to testify?

18 **MR. O'NEIL:** I do.

19 **THE COURT:** And do you believe his decision is
20 being made freely and voluntary as well without any
21 threats or force or intimidation?

22 **MR. O'NEIL:** Yes, sir.

23 **THE COURT:** All right. All right, Mr. Folkes,
24 we certainly will honor your wish and you will not
25 have to testify. I will charge the jury at the time

1 about your election not to testify they can't
2 consider that in their deliberations. Okay?

3 **MR. FOLKES:** Yes, sir.

4 **THE COURT:** All right. Mr. O'Neil, are you
5 going to offer any evidence in the case?

6 **MR. O'NEIL:** No, Your Honor.

7 **THE COURT:** All right. So you all are in a
8 position that you want to -- that we can go forward?
9 I'm going to charge the lesser-included, just for
10 your information. Do you all need a few minutes were
11 before we go into closing?

12 **MR. O'NEIL:** I'm ready, Your Honor.

13 **MS. WEISS:** I mean, I'd like just about five
14 minutes if we could have it.

15 **THE COURT:** Why don't we take about five or ten
16 minutes. We'll let the jury have a couple of minutes
17 since we won't get another break. Then we'll come
18 in. And you'll get to go last in this regard because
19 they haven't offered any evidence. All right.

20 **MR. O'NEIL:** Your Honor, just for the record,
21 the defense rests and I renew my directed motion and
22 all of my previous motions.

23 **THE COURT:** Well, I'm going to give you -- when
24 the jury comes out I'll ask you whether you intend to
25 offer any evidence and you can tell me at that time

1 you don't. But I'm denying your motions based on
2 previous rulings of the Court.

3 **MR. O'NEIL:** Yes, Your Honor.

4 **THE COURT:** All right. We'll take a few
5 minutes.

6 (Whereupon, a break is taken)

7 **THE COURT:** All right. Let's ask them to bring
8 the jury in, if you would, Mr. Dye. You ready to go?

9 **MS. WEISS:** The State's ready, Your Honor.

10 **THE COURT:** You ready?

11 **MR. O'NEIL:** Yes, Your Honor.

12 **THE COURT:** All right.

13 (Jury in at 3:10 p.m.)

14 **THE BAILIFF:** The jury is seated, Your Honor.

15 **THE COURT:** All right. Thank you, Mr. Dye. All
16 right, ladies and gentlemen. The State has rested.
17 Mr. O'Neil, anything from the defendant?

18 **MR. O'NEIL:** Your Honor, at this time the
19 defense rests.

20 **THE COURT:** All right. Ladies and gentlemen,
21 that means that the evidence in the case and the
22 presentation of the evidence of the case is now
23 concluded and we are at the phase of the trial where
24 the lawyers are going to have an opportunity to talk
25 to you again, and this is our closing argument. And

1 I explained to you a little bit how that works. And
2 when we conclude the closing argument then I'll
3 charge you or instruct you as to the law and you can
4 begin your deliberations after that. So with that
5 said, Madam Solicitor, are you going to make the
6 closing argument?

7 **MS. WEISS:** Yes, Your Honor.

8 **THE COURT:** All right. If you would, please,
9 ma'am.

10 **MS. WEISS:** Thank you, Your Honor. May it
11 please the Court. Clinton Folkes came to Finlay Park
12 on July the 22nd, 2007 just after dinner armed with a
13 box cutter and a hook blade knife or a hawk blade
14 knife. He came, he was mad, he was gonna pick a
15 fight with somebody; and Karem Jones was his
16 unwilling target and became his victim. Ladies and
17 gentlemen, that's why we're here today.

18 Good afternoon. My name is Heather Weiss. This
19 is the first chance I've had to actually introduce
20 myself to you. And I along with Andrew Rogers
21 represent the state of South Carolina and Richland
22 County through the Richland County Solicitor's
23 Office.

24 It's our honor to prosecute these cases. We
25 bring the cases that are made by law enforcement and

1 we present the facts to you, the jurors and the
2 triers of the facts. It's our duty and it's our
3 honor. It's our duty to prove these facts to you
4 beyond a reasonable doubt.

5 So first off I want to thank you for being here.
6 None of this could happen unless there were jurors
7 like you that were willing to take time away from
8 your jobs and your lives and come and sit here and
9 listen to these trials. It is because of you that
10 the State can present the facts, that we can present
11 the stories of the victims. We can present what is
12 happening and represent Richland County and that the
13 defendant, Clinton Folkes, through his attorneys can
14 present their case. Without you none of this could
15 happen.

16 So first of all, thank you. I'm sure there is
17 someone else on these pretty July days that you'd
18 rather be than sitting in this courtroom, but we
19 couldn't do it without you. Though this has been a
20 rather short trial, this is a very important trial.
21 I just appreciate your being here and the attention
22 that you have paid to the case that we have put up.

23 Now I want to tell you a little bit about the
24 trial. You've heard all of the evidence. The
25 evidence, as the judge will tell you again, is what

1 comes from this witness stand. Nothing I say,
2 nothing Mr. Rogers says and nothing defense counsel
3 says is evidence. Evidence is only what you heard
4 from this witness stand and these things that you're
5 allowed to take back into the jury room with you to
6 deliberate. That's all can you consider in your
7 deliberations.

8 This is my last time, my only time to get to
9 address you. So I'm going to try to address
10 everything that I can as far as putting some pieces
11 together the way that the State sees them in this
12 case. After I speak you're going to hear from the
13 defense. After the defense speaks you're going to
14 hear from the judge.

15 Just as you are the ultimate triers of fact, he
16 is the ultimate trier of the law. I'm going to talk
17 about the law. If anything I say about the law
18 differs from what the judge tells you, please take
19 what the judge tells you. He is the ultimate trier
20 of the law. I'm just going to give you some
21 information as to the law that you're going to be
22 considering.

23 After I speak, obviously I can't anticipate what
24 the defense is going to say. But what I can ask you
25 to do is use the two things that you were expected to

1 bring in here with you. Those two things are your
2 common sense and your life experiences. Don't be
3 distracted or drawn astray from the evidence. Just
4 use your common sense and use your life experiences
5 and you can do your job as the jurors as the triers
6 of fact.

7 Before I get into too many of the facts I want
8 to talk a little bit about the law. First of all, I
9 mentioned something called a reasonable doubt. It's
10 my duty to prove, it's the State's duty to prove to
11 you beyond a reasonable doubt that Clinton Folkes is
12 guilty of assault and battery with intent to kill.

13 Now, what is a reasonable doubt? It's a legal
14 term. And you probably have some ideas of what it
15 means, but I'm just going to talk to you for a second
16 what the legal definition is of a reasonable doubt.
17 Reasonable doubt is proof -- proof beyond a
18 reasonable doubt is proof that leaves you firmly
19 convinced of the defendant's guilt.

20 There are very few things in this world that we
21 know with absolute certainty, and in criminal cases
22 the law does not require proof that overcomes every
23 possible doubt. If, based on your consideration of
24 the evidence, you are firmly convinced the defendant
25 is guilty of the crime charged, you must find him

1 guilty. If, on the other hand, you think there is a
2 real possibility that he is not guilty, you must give
3 him the benefit of the doubt and find him not guilty.

4 That's what a reasonable doubt is, proof that
5 leaves you firmly convinced of the defendant's guilt.
6 None of us know to an absolute certainty what
7 happened because we weren't there. You heard from
8 the people who were, but we weren't. So what the law
9 requires is that proof leaves you firmly convinced of
10 the defendant's guilt.

11 As I said, you heard from the people who were
12 there. The best witnesses are the ones who are
13 actually there to see what happened. Now, who were
14 those people? We could have put up all the different
15 officers. You heard there were numerous officers out
16 there. But what we focused on were the people who
17 were at the scene, the people who saw what happened.
18 These are real people.

19 The defense kind of went down on them a little
20 bit in their opening. But these are real people.
21 These are people who some of them were down on their
22 luck a little bit at this time, but they were there
23 and they did the right thing and they came forward.
24 And they came forward yesterday and today to tell you
25 what you they saw because as they said, right is

1 right and wrong is wrong. And this was wrong. They
2 came forward.

3 You're the judges of their credibility. You
4 need to use your common sense and your experiences.
5 Think about how they looked, whether they were
6 looking away, answering the questions truthfully or
7 forthright, whether they were hesitant in their
8 answers, whether their stories seemed to maintain
9 throughout the explanation of what had happened or
10 whether they veered in different directions, whether
11 one person's testimony corroborated another, whether
12 the facts corroborated each other.

13 Those are all the things just that you are
14 supposed to consider. So think through. Karem
15 Jones, the victim in this case; Tiffany Briggs, the
16 young woman who was out there talking to him. You
17 heard from James Reddick. You heard from James
18 Reddick who came forward and said not only -- he
19 said, "I saw that", he said, "but he tried to come at
20 me first." He says, "I was just standing there. He
21 got mad I had on a "New York" hat. He's "New York"
22 I'm not from "New York", so he got mad at me and
23 tried to pull that same blade on me."

24 He just came forward because right is right and
25 wrong is wrong. He told you what happened. Then you

1 heard from Jerome Patrick and Retalia Green and Tim
2 Abney. Those are the people we ask you to think
3 about. Those are the people that saw what happened.
4 They each saw it from a different angle. They each
5 saw it from a different vantage point, from a
6 different time when they looked over and what they
7 saw when they looked.

8 If each of their stories were exactly the same,
9 I hope you would look at me and wonder why. All of
10 these people are real people with real experiences.
11 They are talking about an event they saw on July 22nd
12 of 2007. It's not lost to the fact that this is July
13 of 2008. This was a year ago. There may some little
14 differences here and there. That's not reasonable
15 doubt, ladies and gentlemen. That's life. That's
16 reality. If these stories were exactly the same, I'd
17 ask you to look at me.

18 Eye witness testimony is what you need to look
19 at. These were all eye witnesses. Look at their
20 opportunity to view the defendant at the time of the
21 crime, their degree of attention to it, accuracy of
22 the description of the defendant, level of certainty
23 and the corroboration.

24 Just things for you to think about when you're
25 talking about the hawk blade, there was a hawk blade

1 with a bluish wooden, a wooden handle, a wooden
2 bluish handle. It's not reasonable doubt. The fact
3 is it was a hawk blade. We were very consistent
4 about that.

5 Deputy Briggs said, "I dated him. I know he had
6 a razor blade. I didn't see what he actually cut him
7 with. I know he had a razor blade. I saw the razor
8 blade." And the razor blade was seen by other
9 witnesses on the ground right after the attack.
10 There is a razor blade and there's a hawk blade out
11 there. Most of the witnesses, the witnesses that saw
12 the cutting saw the hawk blade.

13 Now I'm going to talk about the actual charge
14 itself. The defendant has been charged with assault
15 and battery with intent to kill. It's actually a
16 misnomer. The law calls it assault and battery with
17 intent to kill. But when it's defined, it does not
18 include a specific intent to kill.

19 What the law says, what the judge will instruct
20 you, that although this is the title, what the State
21 must prove beyond a reasonable doubt is that there
22 was an unlawful act of violent physical injury to the
23 person of another with malice aforethought, express
24 or implied. Express or implied malice.

25 The judge is also going to charge assault and

1 battery of a high and aggravated nature. Ladies and
2 gentlemen, I submit to you that's not what this is.
3 If it's assault and battery of a high and aggravated
4 nature with malice, it's assault and battery with
5 intent to kill. And that's what Clinton Folkes is
6 guilty of, an unlawful act. This was not a surgical
7 procedure with the consent of the victim. It's an
8 unlawful act.

9 This was a slicing of the neck with a hawk blade
10 knife, reaching up for the neck and cutting him right
11 along the side of his neck, cutting him possibly in
12 the same stroke under his chin, then cutting him on
13 his arm. It's an unlawful act. It's a violent
14 injury, a violent physical injury.

15 Any time a battery is going to be a violent
16 physical injury. The battery, it's a cutting; it's a
17 laceration; it's a violent physical injury. That
18 doesn't go to whether it was a couple of millimeters
19 deeper or not, whether he was on the verge of death
20 or whether he just could have been. A violent
21 physical injury means it was a physical injury to the
22 defendant. And there is not going to be any dispute
23 that this was a violent physical injury because it
24 was a cutting with a knife to his neck.

25 The person of another is to the person of Karem

1 Jones by Clinton Folkes. That's not in dispute.
2 What is in dispute today is whether there was malice
3 aforethought, express or implied. And that's going
4 to be the difference between assault and battery of a
5 high and aggravated nature and assault and battery
6 with intent to kill.

7 Since it comes down to that, I'll talk for a
8 minute about the inference of malice. Malice may be
9 inferred from facts and circumstances that are proven
10 by the State. Malice may be inferred from conduct
11 showing a total disregard for human life. Bringing a
12 knife, pulling it out and slashing at a person's neck
13 who is completely unarmed and trying to calm you down
14 is conduct showing a total disregard for human life.

15 Malice may be inferred from use of a deadly
16 weapon. What is a deadly weapon? One that is likely
17 to cause death or great bodily injury. Ladies and
18 gentlemen, I just ask you to look at this blade.
19 That's a knife, and I submit to you that can cause
20 death or great bodily injury. That's a deadly
21 weapon.

22 These are separate sentences. Conduct showing
23 total disregard for human life. Or you can infer it
24 from the use of a deadly weapon. Either of those
25 things, you may infer malice. Malice aforethought;

1 that is, aforethought just means he had to have come
2 up with the idea. It could be seconds before.
3 Ladies and gentlemen, I submit to you Clinton Folkes
4 came in that park with malice aforethought. He was
5 ready to cut, to fight, to assault somebody, and he
6 was going to do it with a weapon.

7 And you heard from James Reddick. As soon as
8 James said, "bring it on", he brought it on with a
9 knife. And James says, "Whoa. Okay. Done." You
10 heard it from a couple of witnesses. He backed off.
11 He was going with a knife whether anybody else was
12 armed or not, whether anybody else wanted to fight or
13 not.

14 There are also a couple of other definitions of
15 malice. The doing of a wrongful act intentionally
16 without just cause or excuse or the wrongful intent
17 to injure another, indicating a wicked or depraved
18 spirit intent on doing wrong. Ladies and gentlemen,
19 all of those separately can define malice. Each one
20 of those can be taken separately.

21 I submit to you Clinton Folkes is guilty of
22 every one of those. Clinton Folkes had malice. He
23 had express -- he had -- these are all implied
24 malice. These are all inferences that you can make
25 that he had malice.

1 And what about express malice? These came from
2 the witnesses. Go back to the facts on July 22nd,
3 2007. I want to address just one thing totally off
4 where I was going. There are two backpacks up here.
5 I tell that you that this backpack was actually the
6 backpack that was described as Karem Jones'. And
7 Retalia Green said, she said that looked like the
8 backpack that Clinton Folkes had; only when she saw
9 it, it was open with something sticking out of it.

10 Ladies and gentleman, we put in the second
11 backpack. As you can see, very similar. The
12 difference is this one is open with something
13 sticking out of it. This is actually Clinton Folkes'
14 backpack. Ladies and gentlemen, I submit to you
15 they're very similar. She described the difference
16 actually between these two in her testimony. And a
17 difference in backpacks, whichever backpack Clinton
18 Folkes had, that's not reasonable doubt.

19 Now, going back to the facts. Clinton Folkes
20 went to dinner and then came to the park with this
21 King Cobra beer, with his knives. Tiffany said he
22 usually had at least three on him, didn't know he'd
23 taken them with him from the work site. Intent to do
24 mischief?

25 He came in from the top of the park, headed down

1 the stairs to where everybody was sitting. When he
2 walked up he went straight to James Reddick and said,
3 "Why are you wearing that hat" and started right in
4 on him. Started right in on him with this knife
5 right in his back pocket ready to pull it at any
6 second. And as soon as James said, "Man, that's
7 enough, just bring it on", he said, "Okay" and
8 brought up the knife. And James backed off.

9 Then he turned to Kareem, Kareem Jones who was
10 standing there, just rededicated himself to Christ,
11 was ready to get on the right path which he has done;
12 getting two jobs, living with his finance. He's
13 gotten on the right path. He had rededicated himself
14 that day. He was merely standing there.

15 Tiffany Briggs said she walked up just to talk
16 to Clayton and to him. Clinton who is the jealous
17 type, who was mad, already intent on doing something,
18 Tiffany had broken up with him, turns his anger, his
19 vengeance on Kareem, and he starts to attack Kareem.

20 First he goes at him with his beer bottle,
21 swings the beer bottle at him, flies out of the bag
22 and misses Kareem altogether. The beer bottle, he
23 still had it on him. After that -- I submit to you
24 that shows malice right there. He began by throwing
25 a bottle at him. He then goes, swings, hits him in

1 the eye. That's when Kareem who has been saying,
2 "Man, I don't want to fight. Just back up. I don't
3 want to fight", boom, boom, he starts to fall and
4 pulls him down. Everybody saw him falling.

5 Whether they thought that he threw the beer
6 bottle or it flew out of the bag or if he had just
7 swung at him, whether they thought he was going down
8 to calm him down, as Kareem said, he actually was
9 being pulled, he didn't even go all the way down.
10 He's just saying, "Man, calm down. I don't want
11 this. I don't want this", when he pulls this out of
12 his back pocket and slashes his throat, slashes his
13 throat and his arms.

14 Ladies and gentlemen, that's malice. It's an
15 unarmed man trying to calm him down. And as Retalia
16 says, he pulls up and reaches to get his neck. It's
17 common sense, ladies and gentlemen. You're reaching
18 for somebody's neck, you're trying to kill them.

19 And then what does he do? Then what does he do?
20 This is key. Described by one witness as he
21 celebrated. Kareem said the first thing he did was
22 look at him and said, I'm going to f'g kill you.
23 Then he reaches up, slashes him on the neck.

24 And then when Kareem realizes he's bleeding and
25 starts to run, he starts to chase after him, says,

1 Run, MF, run. I should have f'g killed you. He is
2 celebrating with his knife in the air. And that's
3 when some of them got a good look at that knife.
4 That's express malice, ladies and gentlemen. Express
5 malice.

6 What does he do next? He doesn't stay, say it
7 was a fight, it was a fight. What does he do? He
8 leaves. And flight, you can infer from flight, the
9 fact he left that scene, that, you can infer guilt.
10 He left.

11 What did he do when he left? As he's going out
12 he tries to conceal his shirt, possible evidence. He
13 doesn't know I guess what's on that shirt, but he
14 knows he can be identified from it, throws it in a
15 trashcan, takes off his shirt, changes his clothes.
16 Clothes which are kept in that backpack are kept in
17 that area down there that he's walking up trying to
18 leave the park. Who knows where he got them, but he
19 changed his clothes.

20 Not knowing whether Kareem was going to live or
21 die, not knowing how serious the injury was, just
22 knowing he was bleeding from his neck, he leaves, he
23 changes clothes and tries to conceal his identity.

24 Ladies and gentlemen, those are the facts. I
25 ask you to listen to the defense and listen to the

1 judge. Then you're going to go back and have your
2 chance to deliberate and have all of this evidence
3 with you. Look at the evidence. Remember what you
4 heard and then use your common sense.

5 Malice, express or implied. Right is right and
6 wrong is wrong. He celebrated. He celebrated and
7 said, I should have f'g killed you. Express and
8 implied malice. This is not assault and battery of a
9 high and aggravated nature, ladies and gentlemen.
10 Please find Clinton Folkes guilty of assault and
11 battery with intent to kill. Thank you.

12 **THE COURT:** Mr. O'Neil.

13 **MR. O'NEIL:** Thank you, Your Honor. May it
14 please the Court?

15 **THE COURT:** Yes, sir.

16 **MR. O'NEIL:** If Clinton Folkes wanted to kill
17 Kareem Jones, he would have. That's the simplest way
18 I can explain this case to you. He is charged with
19 assault and battery with intent to kill. If he
20 wanted to kill Kareem Jones, he would have.

21 Now, I'm not going to come up here and show you
22 three or four boards dealing with legal laws and
23 definitions of legal things. You 13 people were
24 chosen for a reason. If we wanted a jury full of
25 legal experts, we would have done that. We picked

1 you 13 people because we wanted you to come in here
2 with your life experience and your common sense. Use
3 those to guide you in deciding whether or not Clinton
4 Folkes is guilty of assault and battery with intent
5 to kill.

6 Now, the State made some statements about Mr.
7 Folkes made these statements that show you express
8 malice, that he stated things like, "I should have
9 killed you." Ask yourself: Are those statements
10 written down by any of the witnesses who claim to
11 have heard them? Did they write any statement to law
12 enforcement telling law enforcement, yeah, we heard
13 these things?

14 The two people who wrote statements, Karem Jones
15 and Tiffany Briggs, that's nowhere in their
16 statements. The victim hisself (sic) put that
17 nowhere in his statement. If you are a victim in a
18 case and somebody says, "I should have killed you",
19 that would be the first thing you would put in your
20 statement. It's nowhere in their statements. Do you
21 know why? Because nobody said it.

22 Clinton Folkes is not guilty of assault and
23 battery with intent to kill. Let me show you why.
24 Let's look at the medical evidence. Before EMS even
25 arrived the bleeding was under control. That is not

1 the type of wound that you would have if somebody was
2 trying to kill you. He went to the hospital. They
3 ran all these kind of diagnostic tests on him. He
4 was fully aware. You heard about the consciousness
5 score that he had.

6 And what's probably most important was the
7 revised trauma score that the people in the emergency
8 department gave him. That's put there to determine
9 what priority you are in an emergency department. He
10 received a score of 12. That's the lowest score you
11 can have, the least priority, the same kind of score
12 you would have if you came in with a sprained ankle.
13 That's not an injury a person would have if somebody
14 was trying to kill him.

15 And one thing, he moved from the emergency
16 department upstairs to where the resident was. And
17 he had procedures done. And the resident was a
18 couple of years out of med school, not the doctor
19 with the years of experience, stitched him up. And
20 she testified the wounds that he had, the two wounds
21 to his neck, what were the two words she used?
22 Simply superficial. Simply superficial.

23 I asked the doctor what superficial means. He
24 told me it meant shallow, not deep. Those aren't the
25 wounds you get if somebody was trying to kill you.

1 He also told that you none of the arteries were hit.
2 None of the major arteries were hit in his neck.
3 That shows he is not guilty of assault and battery
4 with intent to kill. He had no defensive wounds.
5 All they did was get him a couple of stitches, gave
6 him some ointment and sent him home with a couple of
7 pain pills.

8 Let's look at what the eye witnesses said that
9 day. All the eye witnesses said there was a verbal
10 altercation between Mr. Folkes and Mr. Jones, that
11 Mr. Folkes swung once, depending on who you listen
12 to, and hit Mr. Jones in the eye. And there is no
13 swelling to Mr. Jones' eye. But then Mr. Jones
14 struck Mr. Folkes twice. That's consistent in
15 everybody's account. He struck Mr. Folkes twice and
16 Mr. Folkes fell to the ground.

17 Now, Mr. Jones wants you to believe that he was
18 just trying to hold him down, that he wasn't trying
19 to continue the fight. This is the same person who
20 was drinking that day, had cocaine in his system and
21 had just been smoking marijuana. He wants you to
22 believe that he didn't continue to fight.

23 But what's key about this, ladies and gentlemen,
24 is that Mr. Jones said he was on top of Mr. Folkes
25 tussling. And that was the only time Mr. Jones they

1 claim used a weapon, not when he walked up on Mr.
2 Jones. Mr. Folkes never used a weapon when he walked
3 up on him. If he came to that park with the intent
4 to kill Mr. Jones, he would have walked up on him and
5 used his weapon at that point. The only time anybody
6 alleged Mr. Folkes used a weapon was when he was down
7 on the ground with Mr. Jones on top of him. That's
8 not assault and battery with intent to kill.

9 Now, Ms. Weiss talked about the fact that he got
10 struck in the neck. There is no indication that Mr.
11 Folkes was aiming for Mr. Jones' neck. The only
12 indication there is that Mr. Jones was on top of Mr.
13 Folkes and that's when they claim he used a weapon.

14 Now let's look at what happened after they got
15 up off the ground. Mr. Jones said he ran to the pay
16 phone. Ms. Briggs came in and said that Mr. Folkes
17 didn't chase Mr. Jones, that he came towards her and
18 then ran the other direction.

19 If Mr. Folkes intended to kill Mr. Jones, he
20 would have followed him to that phone booth and
21 continued to attack him. The only time anybody says
22 Mr. Folkes used a weapon, swung a knife, when he was
23 on the ground. If he intended to kill him, he would
24 have got up, followed him to that phone booth and
25 kept swinging. Mr. Folkes got up and went the other

1 direction. Mr. Jones didn't even realize he was
2 injured. That's not the type of injury that you get
3 if somebody is trying to kill you.

4 Now, your job initially in this case is to
5 evaluate the witnesses. And you have to evaluate
6 their credibility. And the first thing you want to
7 look at is their perception. What was their state of
8 mind on that particular day?

9 Mr. Jones himself told you he was drinking that
10 day. He told you he had had marijuana. This is the
11 same day that he dedicated himself to Christ. And
12 there is cocaine in his system that same day. Ms.
13 Briggs and Mr. Patrick told you that that was their
14 birthday.

15 Ms. Briggs, she came in and testified. And I
16 want each one of you to think back and remember her
17 demeanor on the stand. Judge her demeanor. She told
18 you that in January of that year she stopped taking
19 her mental health medication. No doctor told her to
20 stop taking it. She stopped taking it on her own.
21 Judge her perception on that.

22 Ms. Briggs came in and told you that everybody
23 else in their whole little group were drinking that
24 day. And the doctor told you about how alcohol and
25 marijuana and drugs effect your perception. Keep

1 that in mind when you're thinking about what their
2 testimony about that day was. Is what everybody said
3 consistent?

4 Everybody has a different rendition of what the
5 weapon was. Ms. Briggs told you it was a gray box
6 cutter. Jones himself told you it was a blue hook
7 blade. Reddick said it was a brown hook blade.
8 Other people said it was a wood grain hook blade.
9 Judge for yourself. Are the things people are saying
10 consistent when they claim to have seen what they
11 thought they had saw?

12 Another thing for you to look at is, was
13 everybody believable? Jones told you on this
14 particular day he dedicated his life to the Lord.
15 The same day he's drinking, smoking marijuana and
16 crack.

17 Look at the prior record and prior convictions
18 of everybody in judging their believability and their
19 credibility. You have Mr. Patrick. He had a record
20 a mile long, including shopliftings, auto breakings,
21 other things. But most importantly, he had two
22 giving false information to police and one hindering
23 a police officer.

24 Mr. Reddick had prior convictions for attempted
25 armed robbery. Ms. Green had convictions for

1 shoplifting and other things. Mr. Patrick, he had
2 convictions for shoplifting; and, most importantly,
3 he had a conviction for breach of trust. That's
4 still pending. Is he the type of person that you
5 want to trust, that you can trust what they're saying
6 is true?

7 Ms. Briggs told you that all of them came
8 together here, that they'd all been talking about
9 this. Ms. Green and Mr. Patrick are engaged. They
10 live together. They've been together this whole past
11 year. They've had time to talk about their story.
12 They have been in the park before. Ms. Green told
13 you that she even sat out there and talked with
14 Mr. Abney on yesterday. Ask yourselves whether or
15 not they've had time to get their story together and
16 come up with a story.

17 Now, Ms. Weiss, she mentioned the book bags.
18 And this is not a vital part of the case, but think
19 about this. If Ms. Green was willing to come in and
20 say that's the book bag she saw when actually it
21 wasn't, when she put her hand on that Bible and swore
22 to tell the truth, what else is she not telling the
23 truth about? If she is lying about small things,
24 could she be lying about big things?

25 Now, we all have a job to do. I have a job to

1 do. The judge has a job to do. The State's
2 attorneys, they have a job to do. But you 13 people,
3 you have the most important job to do. Your job is
4 to determine whether or not the State has done their
5 job.

6 They have the job, what's called the burden of
7 proof. And it's their job to prove to you their case
8 beyond a reasonable doubt. And look at the witnesses
9 that they brought in here to do their job. Their
10 burden is beyond a reasonable doubt. That's the
11 highest burden we have in our criminal system because
12 when we're dealing with criminal cases you're dealing
13 with liberty.

14 Now, the judge will instruct you what reasonable
15 doubt means, what beyond a reasonable doubt means.
16 He will tell you things about like it means to
17 hesitate to act or to be firmly convinced. Think
18 about the witnesses you saw get up on this stand
19 right here. Are you firmly convinced by anything
20 they said?

21 Judge their demeanor. The way they look on the
22 stand, the words that come out their mouth, would
23 that cause to you hesitate to act? If you're not
24 firmly convinced, if you would hesitate to act, then
25 the law requires you to find Mr. Folkes not guilty.

1 Now, there's going to be three possible verdicts
2 that you have in this case. You can find Mr. Folkes
3 not guilty at all, you can find him guilty of assault
4 and battery with intent to kill, or can you find him
5 guilty of assault and battery of a high and
6 aggravated nature.

7 Now, if you totally disagree with everything
8 those witnesses said and you feel like the State
9 hasn't done their job, hasn't carried their burden,
10 find Mr. Folkes not guilty. But, on the other hand,
11 if you think something went on where you think it's
12 not assault and battery with intent to kill, then
13 consider assault and battery of a high and aggravated
14 nature.

15 Now, Ms. Weiss told you something early I do
16 believe about if you find malice that you can't find
17 him guilty of assault and battery of a high and
18 aggravated nature. Listen to what the judge tells
19 you about assault and battery of a high and
20 aggravated nature. He is going to instruct you that
21 absence of malice is not an element of assault and
22 battery of a high and aggravated nature.

23 And when you're doing these discussions, ladies
24 and gentlemen, look at the physical evidence. They
25 claim this is the shirt Mr. Folkes had on when he

1 tussling with Mr. Jones. Look if you see any blood
2 on this shirt. Mr. Jones is telling you that he was
3 bleeding profusely, that blood was going everywhere,
4 that they were fighting with this shirt on. Mr.
5 Folkes was on the bottom, he was on top, and he was
6 bleeding, he was cut; see if you see any blood on
7 this shirt.

8 Think back to what the crime scene people said.
9 The cops came in here and they looked at the crime
10 scene. They talked to the witnesses in this case,
11 and they only got statements from Ms. Briggs and Mr.
12 Jones. Ask yourself why is that. These are trained
13 officers with more than 60 years of experience on the
14 job. No statements from Mr. Reddick. Investigator
15 McCracken said he didn't even know Mr. Reddick even
16 existed.

17 No statement from Mr. Patrick, no statement from
18 Ms. Green, no statements from any of those. Why is
19 that? They didn't even take the time to waste one
20 sheet of paper on getting statements from those
21 people. Those are people they want you to believe in
22 proving their case.

23 Take a look at this knife. Now, I want to
24 remind you that this is not the knife they claim Mr.
25 Folkes had that day. This is not the box cutter they

1 claim he had that day. These are just so you can
2 know what we're talking about. They searched the
3 area. They didn't find any knives in the whole area.
4 They searched the park thoroughly they testified to.
5 They searched Mr. Folkes' person. There were no
6 knives, no weapons on Mr. Folkes both times he was
7 stopped. These are not the weapons Mr. Folkes had
8 that day. He didn't have these weapons. These
9 weapons were brought in just for you to understand
10 what we're talking about. But they want you to think
11 that Mr. Folkes used a knife like this on Mr. Jones.

12 Look how big the curve of this knife is. If Mr.
13 Folkes intended to kill Mr. Jones with a knife like
14 this, he would have. Simply put, if he wanted to
15 kill Mr. Jones, he would have. Find Clinton Folkes
16 not guilty of assault and battery with intent to
17 kill. Thank you.

18 **THE COURT:** All right. Mr. Foreman and Ladies
19 and Gentlemen of the Jury, the indictment charges the
20 defendant with the offense of assault and battery
21 with intent to kill. I remind you that the fact that
22 the defendant was arrested, charged and indicted in
23 this case is not evidence in the case and cannot be
24 considered by you as evidence of guilt, nor does it
25 create any presumption or inference of guilt.

1 The indictment is simply the formal written
2 instrument which contains the charge made against the
3 defendant. It is the formal document by which this
4 case is brought into this court.

5 Now, to this indictment the defendant has
6 entered a plea of not guilty which places upon the
7 State the burden of proving the defendant guilty. A
8 person charged with committing a criminal offense in
9 South Carolina is never required to prove himself
10 innocent.

11 I charge you that it is a vital, important rule
12 of the law of evidence that the defendant in a
13 criminal trial, no matter how great or serious may be
14 the offense for which he is charged, must always be
15 presumed innocent until his guilt has been proven
16 beyond a reasonable doubt.

17 This presumption of innocence remains with the
18 defendant at all times, from the moment of his
19 appearance in this court throughout the trial and
20 until the jury has upon the testimony and the
21 evidence presented reached a verdict of guilty beyond
22 a reasonable doubt, for it is the solemn duty of this
23 jury if not clearly convinced of the defendant's
24 guilt beyond a reasonable doubt to acquit the
25 defendant.

1 So the burden of proof is upon the State to
2 establish by evidence to your satisfaction the guilt
3 beyond a reasonable doubt of this defendant here on
4 trial for the crime of assault and battery with
5 intent to kill.

6 Now, what is a reasonable doubt? A reasonable
7 doubt is the kind of doubt that would cause a
8 reasonable person to hesitate to act. If you have
9 such a doubt as to the guilt of the defendant, then
10 he would be entitled to a verdict of not guilty.
11 Reasonable doubt may arise from evidence which is in
12 the case or from the absence or lack of evidence in
13 the case. You alone must make the determination of
14 whether or not reasonable doubt exists as to the
15 guilt of the defendant.

16 Now, there are two types of evidence which are
17 generally presented during a trial, direct evidence
18 and circumstantial evidence. Direct evidence is the
19 testimony of a person who claims to have actual
20 knowledge of a fact, such as an eye witness. It is
21 evidence which immediately establishes the main fact
22 to be proved.

23 Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact. It is evidence which immediately establishes

1 collateral facts from which the main fact may be
2 inferred. Circumstantial evidence is based on
3 inference and not on personal knowledge or
4 observation.

5 The law makes absolutely no distinction between
6 weight or value to be given either direct or
7 circumstantial evidence, nor is a greater degree of
8 certainty required of circumstantial evidence than of
9 direct evidence.

10 You should weigh all of the evidence in this
11 case. After weighing all the evidence, if you are
12 not convinced of the guilt of the defendant beyond a
13 reasonable doubt, you must find the defendant not
14 guilty.

15 Now, Mr. Foreman and Members of the Jury, under
16 the Constitution and laws of South Carolina you are
17 the finders of facts in this case. I do not have the
18 right to pass upon the facts or even to express any
19 opinion I may have as to those facts, nor may I
20 intimate in any way what I may think about the guilt
21 or the innocence of the defendant.

22 You are also the sole judges of the credibility
23 and by that I mean the believability of the witnesses
24 who have testified in this case. In passing upon
25 their credibility you may take into consideration

1 many things, such as the demeanor or manner of
2 testifying, whether the witness had reason to be
3 biased or prejudiced, whether a witness's testimony
4 was contradicted on the one hand or supported and
5 corroborated on the other hand.

6 You certainly do not determine credibility or
7 believability by counting the number of witnesses for
8 either side. You may believe a small portion of a
9 witness's testimony and disregard the larger or vice
10 versa. You may believe one witness against many or
11 many against one.

12 You've heard the testimony of a witness who has
13 special knowledge, skill, experience, training or
14 education in a particular profession or occupation
15 who has given his opinion as an expert as to matters
16 in which he is skilled. In determining the weight to
17 be given such an opinion you should consider the
18 qualifications and the credibility of the expert and
19 the reasons given for the opinion. You are not bound
20 by such opinion. Give it the weight, if any, to
21 which you deem it entitled. All of these things you
22 will consider bearing in mind that you should give
23 the defendant the benefit of a reasonable doubt.

24 Now, a person who has a past criminal record is
25 competent to testify during a trial. A past record

1 does not effect the ability of that witness to
2 testify. The past record may only be considered by
3 you, if at all, in determining the witness's
4 believability. Remember you are the sole judges of
5 the facts in this case and of the believability of
6 any of the witnesses.

7 An issue in this case is the identification of
8 the defendant as the person who committed the crime
9 charged. The state has the burden of proving
10 identity beyond a reasonable doubt. You must be
11 satisfied beyond a reasonable doubt of the accuracy
12 of the identification of the defendant before you may
13 convict the defendant.

14 Identification testimony is an expression or
15 belief or impression by a witness. You must
16 determine the accuracy of the identification of the
17 defendant. You must consider the believability of
18 each identification witness in the same way as any
19 other witness.

20 You may consider whether the witness had an
21 adequate opportunity to observe the offender at the
22 time of the offenses. This will be affected by
23 things such as how long or short a time was
24 available, how far or close was the witness, what
25 were the lighting conditions, and whether the witness

1 had the chance to see or know the person in the past.

2 Once again I instruct you the burden of proof on
3 the State extends to every element of the crime
4 charged, and this specifically includes the burden of
5 proving beyond a reasonable doubt the identity of the
6 defendant as the person who committed the crime. If
7 after examining the testimony you have a reasonable
8 doubt as to the accuracy of the identification, you
9 must find the defendant not guilty.

10 Now, Mr. Foreman and Ladies and Gentlemen, I
11 instruct you and emphasize that the fact that the
12 defendant did not testify is not a factor to be
13 considered by you in any way in your deliberations
14 and in your consideration on the question of the
15 guilt or the innocence of the defendant. It must not
16 be considered by you in any manner whatsoever.

17 A defendant has the Constitutional right to
18 remain silent, and the assertion of this right must
19 not be considered by you in your deliberations. I
20 repeat, under this oath, your oath, you are to draw
21 no conclusion whatsoever from the fact that the
22 defendant in this case did not testify.

23 The fact that this defendant did not testify
24 should not even be discussed by you in the jury room.
25 The burden of proof, as I have stated to you, is on

1 the State. The defendant is not required to prove
2 his innocence. The burden of proof remains on the
3 State to prove guilt beyond a reasonable doubt.

4 Now, ladies and gentlemen, the same Constitution
5 and laws which makes you the finders of the facts and
6 the evidence as I have discussed with you makes me
7 the sole and only instructor of the law. You must
8 accept as correct the law which I charge and apply it
9 to the evidence as you find it and then reach your
10 verdict. And I charge you in this regard that you
11 should not be concerned about what you think the law
12 should be or what you wish the law were, but rather
13 what I charge you the law to be.

14 The defendant has been charged with assault and
15 battery with intent to kill. In order to prove
16 assault and battery with intent to kill the State
17 must prove beyond a reasonable doubt that the
18 defendant committed an unlawful act of a violent
19 nature to the person of another with malice
20 aforethought.

21 An assault occurs when a person unlawfully
22 attempts or offers to commit a violent injury to
23 another person and has the present ability to
24 complete the attempted injury. An assault is the
25 intentional creation of a reasonable fear of

1 immediate bodily harm.

2 It is not necessary that the attempted injury or
3 harm actually take place. For example, if I walk up
4 to you and when we are within arm's reach I draw back
5 to hit you, that is an assault. A battery is the
6 unlawful touching of another person by a person who
7 has committed the assault.

8 An unlawful touching can be caused by a part of
9 the accused's body or by any object the accused puts
10 in motion. A battery is the completion of the
11 assault by using or applying force to another person,
12 however slight, in a rude, angry or resentful manner
13 without legal justification for doing so. Using my
14 earlier example, if I carry through with the assault,
15 then that is the battery.

16 Malice is hatred, ill will or hostility towards
17 another person. It is the intentional doing of a
18 wrongful act without just cause or excuse and with an
19 intent to inflict or injure or under circumstances
20 that the law will infer an evil intent.

21 Malice aforethought does not require that malice
22 exist for any particular time before the act is
23 committed, but malice must exist in the mind of the
24 defendant just before and at the time the act is
25 committed. Therefore, there must be a combination of

1 the previous evil intent and the act.

2 Malice aforethought may be express or inferred.
3 The terms express and inferred do not mean different
4 kinds of malice but merely the manner in which malice
5 may be shown to exist; that is, either by direct
6 evidence or by inference from the facts and
7 circumstances which are proved.

8 Express malice is shown when a person speaks
9 words which express hatred or ill will for another or
10 when the person prepared beforehand to do the act
11 which was later accomplished. For example, lying in
12 wait for a person or any other acts of preparation
13 going to show that the deed was within the
14 defendant's mind would be expressed malice.

15 Malice may be inferred from conduct showing a
16 total disregard for human life. Inferred malice may
17 also arise when the deed is done with a deadly
18 weapon. A deadly weapon is any article, instrument
19 or substance which is likely to cause death or great
20 bodily injury.

21 Whether an instrument has been used as a deadly
22 weapon depends on the facts and circumstances of each
23 case. The following are examples of instruments
24 which may be deadly weapons: A pistol, a shotgun, a
25 rifle, a dirk, a dagger, a knife, a sling shot, metal

1 knuckles, a razor. A gun may be a deadly weapon even
2 if it is not operating.

3 If facts are proved beyond a reasonable doubt
4 sufficient to raise an inference of malice to your
5 satisfaction, this inference would be simply an
6 evidentiary fact to be considered by you along with
7 the other evidence in the case, and you may give it
8 the weight you decide it should receive.

9 A specific intent to kill is not an element of
10 assault and battery with intent to kill, but there
11 must be a general intent to commit serious bodily
12 injury. Intent means intending the results which
13 actually occurs, not accidentally or involuntary.

14 Intent may be shown by acts and conduct of the
15 defendant and other circumstances which you may
16 naturally and reasonably infer intent. Evidence of
17 the character of the assault, character of the
18 instrument used, the manner in which it was used, the
19 purpose to be accomplished and the resulting wounds
20 or injuries may be considered in determining the
21 intent with which the assault was committed.

22 Intent may be inferred when it is demonstrated
23 that the defendant voluntarily and willfully commits
24 an act, the natural tendency of which is to destroy
25 another's life.

1 If you find the State has not proven the
2 defendant is guilty of assault and battery with
3 intent to kill, then you must determine whether the
4 State has proved that the defendant is guilty of
5 assault and battery of a high and aggravated nature.

6 Assault and battery of a high and aggravated
7 nature includes all of the elements of assault and
8 battery with intent to kill except express malice.
9 In addition, the State must prove beyond a reasonable
10 doubt an aggravating circumstance.

11 As I told you earlier, assault and battery of a
12 high and aggravated nature is an unlawful act of
13 violent injury to the person of another accompanied
14 by circumstances of aggravation. An assault occurs
15 when a person unlawfully attempts to offer or commit
16 a violent injury upon another person and had the
17 present ability to complete the attempted injury.

18 Assault is the intentional creation of a
19 reasonable fear of immediate bodily harm. Battery is
20 the unlawful touching of another person by a person
21 who has committed the assault. An unlawful touching
22 can be caused by a part of the accused's body or by
23 any object the accused puts in action. Battery is
24 the completion of the assault by using or applying
25 force to another person, however slight, in a rude,

1 angry or resentful manner without legal justification
2 for doing so.

3 The State must also prove a circumstance of
4 aggravation. Circumstances of aggravation include
5 the use of a deadly weapon, the intent to commit a
6 felony, the infliction of serious bodily injury.

7 Now, ladies and gentlemen, when voluntary
8 intoxication has not produced permanent insanity, it
9 is not a defense to a crime. A person who
10 voluntarily becomes intoxicated is just as
11 responsible for the acts committed while intoxicated
12 as when the person is not intoxicated.

13 Mr. Foreman and Ladies and Gentlemen, you have
14 been selected as fair and impartial jurors sworn to
15 impartially and determine the facts of this case, and
16 when you comply with your oath to do so, then no one
17 will have a right to criticize your verdict and you
18 will have fully disclosed your duty as jurors. You
19 are to decide this case according to the testimony
20 that you've heard from the lips of the sworn
21 witnesses along with other evidence introduced.

22 I charge you that as jurors you must decide the
23 issues in this proceeding without bias and without
24 prejudice to either party. You cannot allow yourself
25 to be governed by sympathy, by prejudice, by passion,

1 by public opinion or by any other arbitrary factor.
2 Both the State and the defendant have the right to
3 expect that each of you will carefully and
4 impartially consider all of the evidence in this case
5 and that you will follow the law as I have explained
6 it to you.

7 Now, Mr. Foreman, Ladies and Gentlemen of the
8 Jury, I have prepared a verdict form in this case.
9 And there are three possible verdicts that you can
10 reach in this case. You should not infer anything by
11 what goes first or what goes second or what goes
12 third on this verdict form because something has to
13 go first, something has to go second and something
14 has to go third.

15 The three possible verdicts are: Number one,
16 we, the jury, unanimously find the defendant guilty
17 of assault and battery with intent to kill; or,
18 number two, we, the jury, unanimously find the
19 defendant guilty of the lesser-included offense of
20 assault and battery of a high and aggravated nature;
21 or, three, we, the jury, unanimously find the
22 defendant not guilty.

23 As this verdict form says, Ladies and Gentlemen,
24 your verdict must be the unanimous verdict of all 12
25 jurors. It cannot be 11/1 or 7/5, 8/4. It has to be

1 the unanimous verdict of all 12 jurors.

2 What I'm going to ask you to do, Mr. Foreman, is
3 when the jury has reached a verdict, a unanimous
4 verdict with respect to either one of these, any of
5 these potential verdicts that you can reach, I'm
6 going to ask that you circle whatever that verdict
7 is. Circle the complete verdict. I'm going to ask
8 that you sign the verdict form as Foreperson of the
9 Jury and that you date the verdict form.

10 When you have completed that, if you or someone
11 will knock on the door, there will be a bailiff
12 seated outside the jury room. Advise the jury (sic)
13 that you have reached a verdict and we will bring you
14 back into the courtroom so that your verdict can be
15 published.

16 Now, in just a minute I'm going to ask that you
17 all, everybody but the alternate -- Madam Alternate,
18 if you would stay with me -- if you all would step
19 back into the jury room, but do not begin your
20 deliberations. I must review with the attorneys to
21 determine whether they believe I either failed to
22 instruct you in some manner or I instructed you
23 incorrectly in some manner.

24 If additional instructions are necessary, I will
25 bring you back in and give you those instructions.

1 If not, I will have the bailiff bring this verdict
2 form along with all exhibits that have been
3 introduced into this trial into the jury room. At
4 that time you can begin your deliberations.

5 All right. If you all would step back to the
6 jury room. Please do not discuss the case. We'll be
7 with you momentarily.

8 (Jury out at 4:10 p.m.)

9 **THE COURT:** Madam Alternate, apparently the 12
10 colleagues of yours have survived the two-day process
11 and are in a position to go forward with the
12 deliberations. As a result, I'm going to be able to
13 turn you loose. I thank you very much for your
14 service.

15 Some jurors, after they've been here for several
16 days, they like to participate in the process, and
17 some jurors are relieved that they don't have to.
18 But I don't know what your preference would be. But
19 I do appreciate, and I know that everybody involved
20 in this case appreciates your making yourself
21 available to serve on this jury here today. Madam
22 Clerk, what is it we need to do with her? Is she
23 gone?

24 **THE CLERK:** I'm right here.

25 **THE COURT:** She's not down there.

1 **THE CLERK:** If you're through with her, I'll
2 take her back and give her the instructions. I think
3 she's going to be excused for the rest of the week
4 but I want to make sure.

5 **THE COURT:** Well, if that's the case, I thank
6 you very much for your service this week. I hope if
7 you have an opportunity to do this again in the
8 future you'll make yourself available. And I hope
9 that it's something you learned from and you realize
10 how important you are to the whole process.

11 **Yes:** Thank you.

12 **THE COURT:** Thank you very much. Ms. Stevens
13 will take you back. All right. Anything from the
14 State with respect to the instructions?

15 **MS. WEISS:** No, Your Honor.

16 **THE COURT:** Anything from the defendant?

17 **MR. O'NEIL:** Yes, Your Honor. Your Honor, in
18 summary, I guess at this time I would object to the
19 ABHAN instruction, specifically the portion that says
20 that ABHAN encompasses all the elements of ABWIK
21 except malice and would ask Your Honor to instruct
22 the jury on defense request instruction number 1 on
23 ABHAN.

24 And also I would ask Your Honor to instruct
25 defendant's request number 2 on the absence of

1 malice, that absence of malice is not a required
2 element of ABHAN, and the fact that a defendant acts
3 with malice does not preclude a finding of ABHAN. A
4 defendant may be convicted of ABHAN regardless of
5 whether malice is present.

6 **THE COURT:** Okay.

7 **MR. O'NEIL:** That is State v. Tyler, Your Honor.
8 I'm sorry, Your Honor.

9 **THE COURT:** I read your instruction; I mean,
10 your proposed charges. I thought mine were
11 appropriate. Your exceptions are noted, but I'm
12 going to stick with my charge.

13 **MR. O'NEIL:** Yes, Your Honor. I just ask that
14 my requests to charge be made a court record.

15 **THE COURT:** No problem.

16 **MR. O'NEIL:** Thank you, Your Honor.

17 **THE COURT:** All right. Anything further?

18 **MR. O'NEIL:** No, Your Honor.

19 **THE COURT:** All right. If you all would get
20 with Ms. Williams to make sure that we have all of
21 the exhibits and then we'll wait on the jury.

22 (Pause)

23 **THE COURT:** Who is going to take stuff in? Mr.
24 Dye, tell them that if they want to hear the 911 tape
25 to let us know and we'll bring them in here to play

1 it.

2 **MS. WEISS:** Thank you.

3 **THE COURT:** All right. Any objection to that?

4 **MR. O'NEIL:** No, Your Honor.

5 **THE COURT:** Anything from the State?

6 **MS. WEISS:** No, Your Honor.

7 (Whereupon, the jury begins deliberating at
8 4:18 p.m.)

9 (WHEREUPON, Court's Exhibit No. 1 is marked for
10 identification.)

11 **THE COURT:** All right. I have received a note
12 from the jury in which they ask: "What is the
13 difference between intent to kill and assault and
14 battery of a high and aggravated nature?"

15 So I'm going to bring them in here and see
16 whether they want the short answer which is, one, is
17 an unlawful act of violent injury to the person of
18 another accompanied by circumstances of aggravation
19 which is high and aggravated nature, and the other is
20 an unlawful act of violent nature to the person of
21 another with malice aforethought. We'll see whether
22 that will satisfy them.

23 **MS. WEISS:** Okay.

24 **THE COURT:** If they want me to define assault
25 and battery and malice again and circumstances of

1 aggravation, I'll be happy to do that. Anybody have
2 any objection to that?

3 **MR. O'NEIL:** Your Honor, my only objection would
4 be I just at this point would ask that Your Honor
5 charge my ABHAN.

6 **THE COURT:** Well, I'm not going to change the
7 charge.

8 **MR. O'NEIL:** Yes, Your Honor. I just want to
9 put that on the record, Your Honor.

10 **THE COURT:** All right. Thank you. Do you have
11 any objection to what I just told you?

12 **MR. O'NEIL:** No, Your Honor.

13 **THE COURT:** All right. Let's bring the jury in.
14 (Jury in at 4:55 p.m.)

15 **THE BAILIFF:** The jury is seated, Your Honor.

16 **THE COURT:** All right. Mr. Foreman, Ladies and
17 Gentlemen of the Jury, I received your note. And I
18 am going to define these two, assault and battery
19 with intent to kill and assault and battery of a high
20 and aggravated nature, which I'm just going to give
21 the elements of the offenses. If you want me to
22 charge them again, I'll be happy to do so.

23 Assault and battery with intent to kill is an
24 unlawful act of a violent nature to the person of
25 another with malice aforethought. Assault and

1 battery of a high and aggravated nature is an
2 unlawful act of violent injury to the person of
3 another accompanied by circumstances of aggravation.

4 Now, if you want me to define an assault, a
5 battery, malice aforethought which are the elements
6 of assault and battery with intent to kill, I'll be
7 happy to do so. If you want me to define assault and
8 battery and circumstances of aggravation which are
9 the elements of assault and battery of a high and
10 aggravated nature, I'll be happy to do so. Is that
11 what you'd like me to do?

12 **MR. FOREMAN:** Yes, sir.

13 **THE COURT:** Now, the assault and the battery,
14 the definitions are the same for both offenses. An
15 assault occurs when a person unlawfully attempts or
16 offers to commit a violent injury upon another person
17 and had the present ability to complete the attempted
18 injury.

19 An assault is the intentional creation of a
20 reasonable fear of immediate bodily harm. It is not
21 necessary that the attempted injury or harm actually
22 take place. For example, if I walk up to you and
23 when we are within arm's reach, I draw back to hit
24 you, that is an assault.

25 A battery is the unlawful touching of another

1 person by a person who has committed the assault. An
2 unlawful touching can be caused by a part of the
3 accused's body or by any object the accused puts in
4 motion. A battery is the completion of the assault
5 by using or applying force to another person, however
6 slight, in a rude, angry or resentful manner without
7 legal justification for doing so.

8 Using my earlier example when I said if I walked
9 up to you and when I'm within arm's reach I draw
10 back, that is the assault; the battery is my carrying
11 through with the assault by hitting you. That is the
12 battery.

13 Now, with assault and battery with intent to
14 kill, malice aforethought is an element. Malice is
15 hatred, ill will or hostility towards another person.
16 It is the intentional doing of a wrongful act without
17 just cause or excuse and with an intent to inflict an
18 injury under circumstances that the law will infer an
19 evil intent.

20 Malice aforethought does not require that malice
21 exist for any particular time before the act is
22 committed, but malice must exist in the mind of the
23 defendant just before and at the time of the act.
24 Therefore, there must be a combination of the evil
25 intent and the act.

1 Malice aforethought may be expressed or it may
2 be inferred. The terms express and inferred do not
3 mean different kinds of malice but merely the manner
4 in which malice may be shown to exist; that is,
5 either by direct evidence or by inference from the
6 facts and circumstances which are proved.

7 Express malice is shown when a person speaks
8 words which express hatred or ill will for another or
9 when the person prepared beforehand to do the act
10 which was later accomplished. For example, lying in
11 wait for a person or any other acts of preparation
12 going to show that the deed was within the
13 defendant's mind would be express malice.

14 Malice may be inferred from conduct showing a
15 total disregard for human life. Inferred malice may
16 also arise when the deed is done with a deadly
17 weapon. A deadly weapon is any article, instrument
18 or substance which is likely to cause death or great
19 bodily harm.

20 Whether an instrument has been used as a deadly
21 weapon depends on the facts and the circumstances of
22 each case. The following are examples of instruments
23 which may be deadly weapons: A pistol, a shotgun, a
24 rifle, a dirk, a dagger, a knife, a razor. A gun may
25 be a deadly weapon even if it is not operating.

1 If facts are proved beyond a reasonable doubt
2 sufficient to raise an inference of malice to your
3 satisfaction, this inference would simply be an
4 evidentiary fact to be considered by you along with
5 the other evidence in the case, and you may give it
6 the weight you decide it should receive.

7 A specific element of intent to kill is not an
8 element of assault and battery with intent to kill,
9 but there must be a general intent to commit serious
10 bodily injury. Intent means intending the result
11 which actually occurs, not accidentally or
12 involuntarily. Intent may be shown by acts and
13 conduct of the defendant and other circumstances from
14 which you may naturally and reasonably infer intent.

15 Evidence of the character of the assault, the
16 character of the instrument used, the manner in which
17 it was used, the purpose to be accomplished and the
18 resulting wounds or injuries may be considered in
19 determining the intent with which the assault was
20 committed.

21 Intent may be inferred when it is demonstrated
22 that the defendant voluntarily and willfully commits
23 an act, the natural tendency of which is to destroy
24 another's life.

25 Now, as I told you, assault and battery of a

1 high and aggravated nature is an unlawful act of
2 violent injury to the person of another accompanied
3 by circumstances of aggravation. The State must
4 prove circumstances of aggravation. Circumstances of
5 aggravation include the use of a deadly weapon, the
6 intent to commit a felony, the infliction of serious
7 bodily injury, a great disparity between the ages or
8 physical conditions of the parties. Those are only
9 examples of aggravation, of circumstances of
10 aggravation.

11 Assault and battery of a high and aggravated
12 nature includes all of the elements of assault and
13 battery with intent to kill except malice
14 aforethought. In addition, the state must prove
15 beyond a reasonable doubt the aggravating
16 circumstances.

17 All right. I hope that's helpful to you. I'm
18 going to ask you if you would step back to the jury
19 room and continue your deliberations.

20 (Jury out at 5:04 p.m.)

21 **THE COURT:** All right. Anything from the State
22 with respect to the charge?

23 **MS. WEISS:** No, Your Honor.

24 **THE COURT:** Anything from the defendant?

25 **MR. O'NEIL:** Just so the record is clear, Your

1 Honor, I was going to object to the ABHAN charge,
2 Your Honor.

3 **THE COURT:** Pardon me?

4 **MR. O'NEIL:** I object to the ABHAN charge,
5 specifically --

6 **THE COURT:** Consistent with your previous
7 objection?

8 **MR. O'NEIL:** Yes, Your Honor.

9 **THE COURT:** All right. All right. We'll see
10 what they do. I'm going to make this a Court's
11 Exhibit No. -- what is it, Jenny?

12 **COURT REPORTER:** No. 2.

13 **THE COURT:** No. 2.

14 (WHEREUPON, Court's Exhibit No. 2 is marked for
15 identification.)

16 (Whereupon, a break is taken)

17 **THE COURT:** Let me see the lawyers up here just
18 a second.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** All right. It's been reported that
21 the jury has reached a verdict. Is the State ready
22 to receive the verdict?

23 **MS. WEISS:** Your Honor, our victim is not the
24 courtroom at this minute. We'd ask that we wait one
25 minute.

1 **ACE:** They're on the way down, Judge. I just
2 called them.

3 **THE COURT:** On their way down from where.

4 **ACE:** The fourth floor.

5 **THE COURT:** Other than that, is the State ready
6 to receive the verdict?

7 **MS. WEISS:** Yes, Your Honor.

8 **THE COURT:** Is the document ready to receive the
9 verdict?

10 **MR. O'NEIL:** Yes, Your Honor.

11 **THE COURT:** All right.

12 **ACE:** Here they are, Judge.

13 **THE COURT:** All right. Let's bring the jury in
14 if we could, Mr. Dye.

15 (Jury in at 6:19 p.m.)

16 **THE BAILIFF:** The jury is seated, Your Honor.

17 **THE COURT:** All right. Mr. Foreman, it has been
18 reported the jury has reached a verdict?

19 **MR. FOREMAN:** Yes, sir.

20 **THE COURT:** Is this the unanimous verdict of all
21 12 jurors?

22 **MR. FOREMAN:** Yes, sir.

23 **THE COURT:** All right. If you would hand the
24 verdict form to the bailiff, please, sir.

25 (Foreman complies)

1 **THE COURT:** All right.

2 **THE CLERK:** The State of South Carolina, The
3 State vs. Clinton Folkes, indictment number
4 2007-GS-40-6654, an indictment for assault and
5 battery with intent to kill; we, the jury,
6 unanimously find the defendant guilty of assault and
7 battery with intent to kill.

8 Mr. Foreman, is this your verdict and the
9 verdict of the entire jury?

10 **MR. FOREMAN:** The entire jury. Yes, ma'am.

11 **THE COURT:** All right. Anything from the State
12 with respect to the verdict?

13 **MS. WEISS:** No, Your Honor.

14 **THE COURT:** Anything from the defendant?

15 **MR. O'NEIL:** We ask to poll the jury.

16 **THE COURT:** All right. Madam Clerk.

17 **THE CLERK:** Ladies and Gentlemen of the Jury,
18 I'm going to ask each of you two questions. If you
19 would please respond to each of the questions.
20 Marvin Foster, was this your verdict?

21 **JUROR:** Yes, ma'am.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes, ma'am.

24 **THE CLERK:** Alan Knight, was this your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Joella Ryan-Cook, was this your
4 verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Is it still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Margaret McElveen, was this your
9 verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Is it still your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Edward Wilson, was this your
14 verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Is it still your verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Caroline Meyer, was this your
19 verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Carrie Glenn, was this your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** Sandra Roseborough, was this your
3 verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Jennifer Drumwright, was this your
8 verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Is it still your verdict?

11 **JUROR:** Yes.

12 **THE CLERK:** John Hutto, was this your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** Is it still your verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Michael O'Shaughnessey, was this
17 your verdict?

18 **JUROR:** Yes.

19 **THE CLERK:** Is it still your verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Daniel Wiedemann, was this your
22 verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** Is it still your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** The jury is polled, Your Honor.

2 **THE COURT:** All right. Thank you. Anything
3 else with respect to the jury?

4 **MR. O'NEIL:** No, Your Honor.

5 **THE COURT:** Mr. Foreman, Ladies and Gentlemen of
6 the Jury, I thank you very much for your service in
7 this case. I think we've got good news. Can we turn
8 the jury loose, Madam Clerk?

9 **THE CLERK:** Yes, Your Honor. They're through
10 for the week.

11 **THE COURT:** We're going to be able to turn you
12 loose for the week. Part of this, I don't know if
13 you've seen in the paper or on the news, there's some
14 program over at Bibleway Baptist Church is having
15 something where all the fugitives in the Midlands of
16 South Carolina can turn themselves in Wednesday,
17 Thursday and Friday. So the judges are going to be
18 working out there.

19 But I do thank you. I hope you realize how
20 important you are to this whole process and that you
21 found the experience to be informative and
22 educational and maybe even one that's enjoyable,
23 although these are tough cases and we certainly
24 understand that.

25 I'm going to let you go back to the jury room.

1 And Ms. Stevens, the clerk, will come back there and
2 talk to you for just a few minutes. And again I
3 thank you for your service. You are free to step
4 back. You all have a nice remaining portion of the
5 week. And thank you again.

6 (Whereupon the jury is excused)

7 (Whereupon, a bench conference is had)

8 **THE COURT:** I've just explained to the attorneys
9 prior to taking the verdict that I have a conflict
10 that I have to make myself available to, and it's
11 going to be difficult to do that now at 6:30. So I
12 told the lawyers if in fact there was a guilty
13 verdict that I would do the sentencing in the morning
14 regardless of what that was. I've also just informed
15 Mr. Deon -- I mean Mr. O'Neil -- that we will reserve
16 all post-trial motions 'til tomorrow morning, too, if
17 that's okay with you.

18 **MR. O'NEIL:** Yes, Your Honor.

19 **THE COURT:** All right. We'll start. We'll meet
20 back here at 9:30 in the morning and take up any
21 post-trial motions and anything else we need to deal
22 with in the morning. Okay?

23 **MS. WEISS:** Thank you, Your Honor.

24 **THE COURT:** I apologize I have to run. But you
25 all have a nice evening. I'll see you in the

1 morning.

2 (Whereupon, the proceedings are concluded for
3 the day, to be reconvened tomorrow morning)

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Wednesday, July 9, 2008

THE COURT: What is that statute on that life without parole?

MS. WEISS: 17-25-45, Your Honor.

THE COURT: 17-25 ...?

MS. WEISS: 25-45.

THE COURT: All right. What we got here, Madam Solicitor?

MS. WEISS: Thank you, Your Honor. May it please --

MR. O'NEIL: Your Honor, I think before --

THE COURT: Oh, yeah. We need to do our post-trial motions at this time, if you don't mind.

MS. WEISS: Okay.

MR. O'NEIL: Your Honor, at this time I would renew all my previous objections, Your Honor. And I would ask for a new trial based on my previous objections and specifically the testimony relating to Mr. Folkes' altercation with Mr. James Reddick that day, that that evidence would be violative of Rule 403; and also based on the jury's question concerning the difference between ABWIK and ABHAN and Your Honor's denial of defendant's request to charge number 1 and 2 concerning ABHAN, Your Honor. Based on those things, I would ask for a new trial at this

1 point, Your Honor.

2 **THE COURT:** All right. Anything from the State?

3 **MS. WEISS:** No, Your Honor.

4 **THE COURT:** All right. I'm going to deny your
5 motion. I think I felt like my rulings were
6 appropriate at the time I made them. I don't know of
7 anything that would indicate to me otherwise at this
8 time. I'm going to deny your motions.

9 **MR. O'NEIL:** Thank you, Your Honor. Just one
10 motion with regard to sentencing, Your Honor. I
11 would ask that Your Honor decline to sentence Mr.
12 Folkes under 17-25-45 and find that statute to be
13 violative of both the state and the federal
14 Constitutional provisions of the separation of
15 powers, the Eighth Amendment, the ex post facto
16 provision, burden shifting and also due process, Your
17 Honor.

18 **THE COURT:** All right. Anything you want to
19 say?

20 **MS. WEISS:** Your Honor, I just wanted to present
21 in case Your Honor is interested, the State served
22 notice of intent to seek life without parole under
23 17-25-45 on May 19th, 2008 in front of Judge Childs.
24 And we have attached the prior convictions. He had
25 two prior convictions for assault and battery with

1 intent to kill back on August 17th, 1994 which
2 pursuant to state law makes him eligible and actually
3 says that we shall seek life without parole. And if
4 Your Honor would like to see that, I can hand it up
5 at this time.

6 **THE COURT:** All right.

7 (Document handed to the Court)

8 **THE COURT:** Okay. Anything in response to the
9 motion for me to not sentence under that statute on
10 the basis that it's unconstitutional?

11 **MS. WEISS:** Your Honor, we think that it is not
12 unconstitutional. It is part of our state law. And
13 it actually requires to us seek life without parole
14 if somebody commits two most violent offenses. So we
15 would ask that you seek it, that you sentence him
16 accordingly.

17 **THE COURT:** Well, over the history of this
18 country from time to time General Assemblies and U.S.
19 Congresses have passed laws that have been considered
20 to be unconstitutional. So the fact that it is a
21 state law doesn't in and of itself make it
22 Constitutional. Do you all have anything you want me
23 to look at with respect to this issue? Have you got
24 any cases, Mr. O'Neil?

25 **MR. O'NEIL:** Your Honor, I did a thorough search

1 of the case law, Your Honor, and there is no case law
2 that supports my position at this point, Your Honor.
3 I just want to preserve that position for the record.

4 **THE COURT:** All right. Well, I'll be frank. I
5 have real concerns about the issue of separation of
6 powers myself.

7 **MR. O'NEIL:** Yes, sir.

8 **THE COURT:** But I don't know of anything that
9 would allow me to do so. I mean, it seems like the
10 purpose of sentencing is the province of the Court.
11 Obviously the Legislature and the Executive Branch
12 are involved in passing laws and signing laws into
13 effect and those laws can set forth what sentences
14 are. But with these mandatory life without parole as
15 prior offenses, it seems to me to at least raise a
16 question. But I'm going to deny your motion because
17 I don't have any legal basis for doing otherwise.

18 **MR. O'NEIL:** Your Honor, I just want to point
19 out for the record State v. Delacruz is a case that's
20 on point when it deals with separation of powers.
21 And it's cited different from this case. Just so
22 that's preserved for the record, Your Honor.

23 **THE COURT:** All right. Anything further?

24 **MS. WEISS:** No, Your Honor.

25 **THE COURT:** Anything you want to tell me, Mr.

1 O'Neil? I mean, you understand that my hands are
2 sort of tied in this matter.

3 MR. O'NEIL: I do, Your Honor. I just would
4 like to speak on Mr. Folkes' behalf. I told him that
5 I owe him at least that much, Your Honor. Mr. Folkes
6 is 45 years old. He only went to the tenth grade,
7 Your Honor. He's originally from Jamaica. He came
8 to The States I guess at an early age and lived in
9 New York and has been down here in South Carolina
10 since his twenties, Your Honor.

11 He does have two kids, Your Honor, a 20-year-old
12 and I think a 15-year-old at this point. Your Honor,
13 I've known Mr. Folkes probably about eight or nine
14 months at this point. He's always been one of the
15 more mild mannered clients that I could have had. I
16 have had other clients in the dorm with Mr. Folkes
17 during my representation of Mr. Folkes, and they told
18 me how he have kind of counseled them and talked to
19 them about trying to change their lives when they got
20 out of prison and get out of the gangs and things of
21 that nature.

22 He's actually been assaulted a couple of times
23 in prison, in jail, Your Honor. He didn't even try
24 to fight back or anything like that, Your Honor. I
25 think he's been a pleasure to work with.

1 And, Your Honor, he had some problems in his
2 life very early on with some convictions, Your Honor,
3 but I think his last conviction was in 2000 for a
4 CDV, Your Honor. It's just a shame that we're in
5 this position at this point, Your Honor.

6 **THE COURT:** Anything you want to say, Mr.
7 Folkes?

8 **MR. FOLKES:** Yes, Your Honor. Yes, Your Honor.
9 With due respect to the courts and Your Honor, I
10 would like to state the simple fact that I felt that
11 I didn't have full justice on my trial because of the
12 simple fact that some evidence that was presented was
13 altered and tampered with while they was in the
14 investigating officer or the -- what you say --
15 investigating room, as far as the beer bottle was
16 concerned.

17 I was arrested. I wasn't read my
18 Constitutional -- by Amendment rights. And also when
19 they took my property, my bag was closed. I had
20 certain property in my bag that was not mentioned
21 that was vital to my case. And also the bottle, the
22 beer bottle was full and it wasn't broken. And the
23 paper bag that it was in was not even broken.

24 And all this was mentioned in my trial, stating
25 that I swung off on Mr. Jones with the bag and the

1 beer came out the bag. You know what I'm saying.
2 But when the DA showed them the beer bottle, it was
3 broken. It was wrapped up in plastic and also
4 bubble, bubble bag that they use in the evidence room
5 to cover the beer bottle. And she stated herself
6 within the minutes that the beer bottle broke in the
7 evidence room. So that's mishandling and tampering
8 with evidence.

9 **THE COURT:** All right. Well, with respect to
10 any statement, I mean, there was never brought to the
11 Court's attention any statements made. When you were
12 Mirandized I don't know. But the Miranda advises you
13 that you don't have to say anything. And nothing
14 came out in the court that you ever said anything.
15 So I don't know of any Constitutional violation that
16 occurred.

17 **MR. FOLKES:** But it wasn't --

18 **THE COURT:** Because there was no statement that
19 was ever offered in this case.

20 **MR. FOLKES:** Oh.

21 **THE COURT:** Wait a minute. Wait a minute. With
22 respect to the beer bottle, in my opinion, based on
23 the evidence that was issued, I mean, offered in this
24 case, it was overwhelming if you believe what those
25 witnesses said. If you didn't believe them, it was a

1 whole different story. But if you believed them,
2 there was overwhelming evidence that you may have
3 committed this offense.

4 The beer bottle really was not an issue in the
5 case other than the consistency of the story because
6 the beer bottle never struck the defendant (sic),
7 never really had any effect on the defendant (sic) at
8 all. It was the alleged knife that was the cause.

9 I personally thought your lawyer did an
10 outstanding job in this case. I had not seen Mr.
11 O'Neil try a case as lead counsel before, and I
12 thought he did an excellent job in the matter.

13 But I understand your concern. What I never
14 understood is this situation about a guilty plea.

15 All right. The sentence in this case is that
16 you be committed to the state Department of
17 Corrections to life without parole pursuant to
18 17-25-45 of the statutes of the state of South
19 Carolina, plus costs and assessments as applicable.
20 Good luck to you.

21 **MR. O'NEIL:** Yes, sir.

22 **MS. WEISS:** Thank you, Your Honor.

23 **THE COURT:** Did he want to say anything? Mr.
24 Jones?

25 **MS. WEISS:** No, sir. That was fine.

(Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 7th, 8th and 9th days of July, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 23, 2008

Jenny H. Williams
Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLINTON C. FOLKES,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err reversibly in refusing to issue the requested charge on the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN) indicating that the absence of malice is not a required element for an ABHAN conviction?

STATEMENT OF THE CASE

Clinton Folkes, appellant, was indicted by the Richland County Grand Jury for Assault and Battery with Intent to Kill (ABIK). On July 7, 2008, appellant proceeded to trial before the Honorable James Barber, III and a jury. Upon the jury's finding appellant guilty as charged, Judge Barber sentenced him to life in prison without the possibility of parole.

because Tiffany was still standing there. And I'm like you know, you going to say something or something. She was pretty much ignoring him." Jones testified that he stayed in the same spot as the "trash talking" escalated to blows. Jones testified, "He punched me in my eye. He was just saying the same old thing, 'I'll fuck you up and such and such and such and such.'" R. p. 95). Jones recalled, "And that's when he took a step closer, and then that's when he punched me in the eye. . . . I defended myself, I hit him back. . . . when I hit him, he staggered. [I] hit him a two piece. That's when you hit somebody twice. . . .right and left [hands]" (R. p. 97-98).

The State's witnesses confirmed that when appellant slung his book bag towards Jones, a full King Cobra beer can flew out but did not strike Jones. Jones testified that Tiffany Beck was still standing there, but that she was ignoring appellant. At that point, appellant hit Karem Jones in the eye and Jones responded by giving appellant a "two set." Appellant fell to the ground as a result of the blows. Witnesses testified that Jones appeared to be getting the best of appellant. Karem Jones was standing over him as appellant struggled to get back up. The fight ended when appellant came up with a work knife and swung it at Karem Jones twice, striking him in the neck and in the arm. Jones testified that at that point he was "still wrassling him." (R. p. 100). Bystanders called out to Karem Jones that he was cut and bleeding. When he realized that he was bleeding, Jones ran to the phone booth where he placed a call to 911. Appellant reportedly yelled at Jones, "I should have killed you."

A bystander gave Karem Jones ice and a cloth which he held on his neck. When EMS arrived the bleeding was under control; when Karem Jones was asked, he indicated that he did want to go to the hospital. (R. p. 354). Jones was taken to the hospital where his

neck and arm injuries were cleaned and stitched up. Appellant was taken into custody later that night.

Dr. Stephen Fann was qualified as an expert in general surgery and in trauma critical care. (R. p. 339). He testified that on July 22, 2007, he met the victim, Kareem Jones, in the trauma resuscitation bay at approximately 8:30 p.m.. (R. p. 340-341). The assistant solicitor asked if the doctor would consider generally a cut to the neck to be a serious injury. Dr. Fann indicated, "It's something that we -- the obligation is on us as the trauma surgeon to evaluate and exclude serious injury with any neck trauma, penetrating neck trauma." (R. p. 342). Dr. Fann testified that the arteries in the neck are protected by the platysma muscle. He testified that even surgeons must be careful when cutting into a person's neck and that, in his opinion, surgical precision would be difficult to achieve during a fight. (R. p. 346).

Dr. Fann testified that Kareem Jones sustained a 7 centimeter cut to the side of his neck, a 4.5 centimeter cut on his chin, and a cut on his arm. (R. p. 349). Dr. Fann testified that although the platysma muscle was penetrated, the major structures of the neck were spared injury. Jones' injuries were not actually repaired by the surgeon; Dr. Fann testified that Jones was treated by a second year resident. (R. p. 360). Dr. Fann testified that if the wound had been deeper, the major structures of the neck could have been injured. He testified that he would not characterize a wound that penetrated the platysma as "superficial." However, Dr. Fann read from the operative report, "The wound was simply superficial and therefore irrigated copiously." (R. p. 351). Dr. Fann testified that the surgical resident had classified both the 4.5 and the 7 centimeter cuts to Jones' neck as "superficial." (R. p. 360; 361).

Dr. Fann agreed that upon Karem Jones' arrival in the trauma bay, trauma bay personnel performed a triage evaluation. The doctor confirmed that on the evaluation, a score of zero to three is morbid and a score of four to eleven means that the patient's situation is urgent but not immediate. He testified that the lowest level on the scale is a twelve, indicating the lowest severity of injury. Dr. Fann confirmed that Karem Jones revised trauma score was a twelve. (R. p. 358).

Dr. Fann confirmed that Karem Jones tested positive for alcohol, marijuana, and cocaine. (R. pp. 364-365). Dr. Fann testified that Jones was released after 23 hours with stitches and ointment and a recommendation that he seek substance abuse counseling. (R. p. 365).

ARGUMENT

- I. The trial judge erred reversibly in refusing to issue the defense requests to charge related to ABHAN and indicating that the absence of malice is not a required element for an ABHAN conviction.

During the charge conference, counsel for appellant requested that the judge issue a charge on the lesser included offense of ABHAN. He argued, "I think what the case law I think in State v. Watson says is that the defendant is entitled to a lesser-included offense if there is any evidence showing that he's guilty of the lesser and not the greater offense, Your Honor. I think there is ample evidence that Mr. Folkes did not have the intent to kill Mr. Jones. I think the testimony is that - - " (R. pp. 328-329). However, the trial judge indicated, "I don't know that intent to kill is the requirement. It's just malice, that he had malice." (R. p. 329, lines 8-10). Counsel for appellant observed, "Your Honor there is case law out there that said at one point there at least needs to be some general intent to kill. I think that's kind of being merged into the theory of ABHAN. I think what the case law says, Your Honor, is that if there's any evidence of a lesser included, he's entitled to a lesser-included." (R. p. 329, lines 11-17).

Counsel explained that there was a view of the evidence from which the jury could have determined that appellant did not act with malice. Counsel argued, "Your Honor, I think the evidence that there is no malice is the only time Mr. Folkes cut the victim, cut the victim, Your Honor, was after he had been struck twice, fell on the ground, and the victim was either tussling with him on top of him or he was standing over him, Your Honor. I think the jury can reasonably conclude that Mr. Folkes was merely trying to get the victim off of him at that point and was in some way protecting himself, Your Honor. I have looked at the law when it deals with ABHAN and ABWIK." (R. p.

329, line 21-p. 330, line 7). The trial judge inquired, "Are you saying self-defense?" Trial counsel indicated that he was not claiming that appellant was entitled to self-defense because "he brought the incident on himself." (R. p. 330, lines 8-13). However, counsel continued:

But I do think a plausible defense claim, Your Honor, can reduce the malice the same way a plausible claim in a murder charge reduced a murder to a voluntary manslaughter, Your Honor.

(R. p. 330, lines 14-17). Counsel indicated that he had done research into the issue: "Two of the cases I found, Your Honor, was Hill v. State. Your Honor, that is 350 S.C. 465. And that was a PCR case, Your Honor. And the claimant in that case was saying that his counsel was ineffective for not requesting an ABHAN charge when he was charged with ABWIK, Your Honor. And what the court - - the facts in that case essentially was the defendant attacked his girlfriend who was seven months pregnant, sat on her, stabbed her at least 14 times, punched her, told her, 'I'm going to kill you' and only got off the victim in that case when somebody kicked him off, Your Honor." Defense counsel argued that the court in the Hill case held that there could be no other conclusion reached by the jury but that the defendant intended to kill the victim.

Counsel argued that in this case, wholly different from the Hill case, the jury could reasonably conclude that Mr. Folkes did not have the intent - - or I'm sorry, Your Honor, - - didn't have malice in his heart when it related to the victim in this case." (R. p. 331, lines 8-15). Counsel submitted a charge specifically defining ABHAN, identifying aggravating circumstances, but indicating that neither serious bodily harm nor the use of a deadly weapon was an essential element of ABHAN.

In addition to the definitional ABHAN charge, counsel for appellant submitted an instruction specifically indicating that the absence of malice is not a requirement for a verdict of ABHAN, citing, State v. Tyler, 348 S.C. 526, 560 S.E.2d 888(2002) :

ABHAN – Absence of Malice

Absence of Malice is not a required element of ABHAN and the fact that a defendant acts with malice does not preclude a finding of ABHAN. A defendant may be convicted of ABHAN regardless of whether malice is present.

(Defense Request to Instruct #2). Counsel argued, “So, Your Honor, based on the case law, the jury could find that Mr. Folkes had malice and he still could be guilty of ABAN and not ABWIK.” (R. p. 331, lines 19-33). However, the trial judge disagreed, indicating, “Well, I don’t know what you mean ‘the absence of malice.’ The difference between ABWIK and ABHAN is malice is one and not in the other.” (R. p. 332, lines 3-6). Counsel for appellant indicated to the contrary that the case law had clearly established that absence of malice is not an element of ABHAN. Counsel indicated that he would provide a copy of the Tyler decision for the judge’s consideration..(R. p. 331, lines 19-33). However, the trial judge indicated that the elements of ABHAN were an assault and a battery with circumstances of aggravation. He indicated, in contrast, that malice is an element of ABWIK. The trial judge observed, “I don’t know what you mean absence of malice is not. If you want me to look at that case I’ll be happy to do it.” (R. p. 333, lines 11-13).

The assistant solicitor argued, “As far as malice is concerned, I was speaking to the requisite intent to kill from State v. Coleman. But as far as malice is concerned, I think all of the evidence shows that the defendant came to the park armed with a weapon with the intent bent on causing harm, causing a fight and the ability to use that weapon. I

think that's what you've heard. I think in the evidence most favorable to the defense that the defendant came I think with malice. I don't think there is any reason for ABHAN to be charged, Your Honor." (R. p. 334). The judge indicated that he would review any authorities the State chose to provide before the case was given to the jury. (R. p. 334).

Prior to the testimony of the surgeon, Dr. Fann, counsel for appellant additionally argued that, according to State v. Coleman, intent could be inferred from the nature of the injuries. Counsel argued, "And we haven't heard from the doctor as of yet. I would just wait for favorable testimony from the physician in this case, You Honor. But also that's why Mr. Folkes asks for an ABHAN charge." (R. p. 335). However, the trial judge responded, "Well, I'm probably not going to charge it because it might - - I mean, it may be that the jury can decide that the intent to kill was not there because it really was a fight on the part even though it was instigated by your client. But I'm going to wait and see what the doctor has to say." (R. p. 335).

During closing argument, the assistant solicitor advised the jury that this was not a case of ABHAN and she reviewed the various definitions and inferences of malice. (R. pp. 389-390). The prosecutor indicated, "If it's assault and battery of a high and aggravated nature with malice, it's assault and battery with intent to kill." (R. p. 388, lines 2-5). The prosecutor concluded, "Malice, express or implied. Right is right and wrong is wrong. He celebrated. He celebrated and said, 'I should have killed you.' Express and implied malice. This is not assault and battery of a high and aggravated nature, ladies and gentlemen. Please find Clinton Folkes guilty of assault and battery with intent to kill." (R. p. 395, lines 5-11). In contrast, during his closing argument, defense counsel advised the jury, "Now Ms. Weiss told you something early I do believe

about if you find malice that you can't find him guilty of assault and battery of a high and aggravated nature. Listen to what the judge tells you about assault and battery of a high and aggravated nature. He is going to instruct you that absence of malice is not an element of assault and battery of a high and aggravated nature." (R. p. 404, lines 15-22).

The judge charged the definition of ABIK: "In order to prove assault and battery with intent to kill, the State must prove beyond a reasonable doubt that the defendant committed an unlawful act of a violent nature to the person of another with malice aforethought." (R. p. 413, lines 14-20). Regarding malice, the judge charged:

Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict or injure or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

The judge further charged the jury as to express and inferred malice and the circumstances from which malice may be inferred, including use of a deadly weapon. (R. p. 415). The judge charged the jury that a specific intent to kill was not an element of ABIK and he explained the circumstances under which the jury could naturally and reasonably infer intent. (R. p. 416).

The trial judge defined ABHAN: "Assault and battery of a high and aggravated nature includes all of the elements of assault and battery with intent to kill except express malice. In addition, the State must prove beyond a reasonable doubt an aggravating circumstance." (R. p. 417). The judge proceeded to identify possible aggravating

circumstances, including the use of a deadly weapon. However, the judge did not instruct the jury, as requested, that absence of malice is not a necessary element of ABHAN.

Upon conclusion of the charge, counsel for appellant noted his objection to the ABHAN instructions' indication that ABHAN encompasses all the elements of ABWIK except malice and he again requested the judge to issue his requested instructions. The trial judge responded, "I read your instruction; I mean, your proposed charges. I thought mine were appropriate. Your exceptions are noted, but I'm going to stick with my charge." (R. p. 423, lines 9-12). During deliberations, the jury sent out a note asking, "What is the difference between intent to kill and assault and battery of a high and aggravated nature?" (R. p. 424). The judge proposed responding to this question by issuing the definition of ABHAN again. Counsel for appellant indicated, "Your Honor, my only objection would be I just at this point would ask that Your Honor charge my ABHAN." (R. p. 425, lines 3-5). The judge indicated, "Well, I'm not going to change the charge." (R. p. 425).

The judge re-instructed the jury: "Assault and battery with intent to kill is an unlawful act of a violent nature to the person of another with malice aforethought. Assault and battery of a High and Aggravated Nature is an unlawful act of violent injury to the person of another accompanied by circumstances of aggravation." (R. p. 426). The judge further explained, "Now, with assault and battery with intent to kill, malice aforethought is an element. Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury under circumstances that eh law will infer an evil intent." The judge then reviewed his basic charge on malice aforethought, including the explanation

of express or implied and the circumstances under which malice may be inferred, and the circumstances under which intent may be inferred. The judge concluded, "Assault and battery of a high and aggravated nature includes all of the elements of assault and battery with intent to kill except malice aforethought. In addition the state must prove beyond a reasonable doubt the aggravating circumstances." (R. p. 430, lines 11-16). Thus, the trial judge never informed the jury that the absence of malice is not an element of ABHAN and he never advised the jurors that they could find the accused guilty of ABHAN regardless of the presence of malice. Counsel for appellant indicated that he objected to the ABHAN charge on the previously raised grounds.

The judge erred reversibly in refusing the requested charge. The law to be charged must be determined from the evidence presented at trial. State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct.App. 2006). "To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." "Due process requires that a lesser included offense be charged when the evidence warrants it but only if the evidence would permit a jury rationally to find the defendant guilty of the lesser offense." Here, from the evidence presented, the jury could have concluded that appellant was in the middle of a fight over a girl and that he was losing the fight. The jury could have concluded that appellant resorted to the use of the weapon in an effort to protect himself and that there was no malice. However, but for the judge's instructions, even if the jury concluded that appellant acted maliciously, under the law, the jury nevertheless could have found appellant guilty only of ABHAN. The judge's instructions clearly indicated that the jury would have to find that appellant did not act with malice before reaching an ABHAN verdict. Thus, the judge effectively instructed

the jury that the absence of malice is a required element of ABHAN. This instruction was reversibly erroneous.

In State v. Tyler, 348 S.C. 526, 531, 560 S.E.2d 888, 890 (S.C. 2002), the South Carolina Supreme Court held that, "to the extent a jury instruction equates ABHAN with manslaughter, it precludes a jury from finding ABHAN if it finds the defendant acted with malice. This Court affirmed in Pilgrim II. In Fennell, supra, we reiterated these holdings, noting that a defendant may be convicted of ABHAN regardless of whether malice is present." The erroneous charge identifying malice as an element of ABHAN was found harmless in Tyler, however, the Court plainly stated that a judge's charge which identifies malice as an element of ABHAN so as to preclude a jury from finding ABHAN if finds the accused acted with malice is erroneous.

In Hill v. State, 350 S.C. 465, 472, 567 S.E.2d 847, 851 (S.C. 2002), the Supreme Court found, "ABIK is an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. Although the absence of malice is not an element of ABHAN, the presence of malice is a required element of ABIK." Malice is defined as a "formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it." The Hill Court found, "There is no question that an ABHAN charge, like the one given in this case, including absence of malice or legal provocation as an element would be erroneous." However, the Court further held that Hill was not prejudiced by the erroneous ABHAN charge. The Court detailed the overwhelming evidence that Hill was guilty of ABIK: "In light of the overwhelming evidence presented, including (1) the eyewitness accounts naming Hill as the sole aggressor, (2) the victim's testimony, (3) the number and severity of the victim's injuries,

and (4) the victim's physical state (she was seven months pregnant), we find the erroneous ABHAN charge constituted harmless error."

The Court observed, "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." Hill v. State, 350 S.C. 465, 472, 567 S.E.2d 847, 851 (S.C. 2002). The Court noted that in Hill the victim testified that Hill told her he was going to kill her; all eyewitnesses testified that Hill pinned the victim on the ground and repeatedly stabbed her despite her profuse bleeding, her cries for help, her attempts to get away from him, and the presence of numerous witnesses; Hill ceased attacking her only when he was knocked unconscious by an eyewitness. The Hill Court found that there was no evidence to indicate Hill intended anything but to kill the victim, or that he had any legal excuse to do so. The Court found, "In light of the evidence presented, there is no reasonable probability that the jury would have convicted Hill of ABHAN, a lesser included offense of ABIK (for which Hill was indicted), even if the judge had given the correct ABHAN charge. Hill's guilt of ABIK was so conclusively proven at trial that there is no reasonable probability that the trial judge's faulty ABHAN instruction would have affected the result." Hill, 350 S.C. at 472-473, 567 S.E.2d 847 at 851.

Appellant's case contrasts sharply with the circumstances presented in Hill. Here, appellant was identified as the instigator; however, the State's witnesses testified consistently that Jones punched appellant in the face twice, knocking him to the ground, and that Jones was on top of or at least over appellant when appellant produced a weapon, arguably to fend him off. The number and severity of Karem Jones' wounds

does not compare to those inflicted in Hill. Here, Jones sustained two "superficial" cuts to his neck and one to his arm; the cuts were inflicted as appellant struck out twice and the cuts were not life-threatening. Unlike the pregnant victim in Hill, Kareem Jones was the stronger, taller, younger, and fitter of the combatants. (R. p. 120). In addition, Jones was reportedly better able to fight because appellant was drunk. This case is not one where the erroneous jury instruction can be found harmless because the accused was overwhelmingly guilty of ABIK as a matter of law.

The judge clearly erred in charging the jury that the absence of malice is an element of ABHAN. The erroneous jury instruction was compounded by the fact that the assistant solicitor likewise informed the jury that if they found that appellant acted with malice they were required to find him guilty of ABIK and not ABHAN. The error was further exacerbated by the fact that defense counsel, presumably sure that the doctor's testimony had convinced the judge to issue the requested charge, wrongly predicted that the judge would be instructing the jury that absence of malice was not an element of ABHAN. This jury's instructions were clear, if they determined that appellant acted with malice, regardless of the other facts and circumstances, they were required to find appellant guilty of ABIK.

The judge's charge was erroneous as a matter of law and the error was not harmless where appellant's guilt of ABIK was not proven so overwhelmingly that even a properly instructed jury would necessarily have reached a similar verdict.

CONCLUSION

For all the forgoing reasons, appellant's conviction and sentence should be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

This 12th day of October, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 12, 2009

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

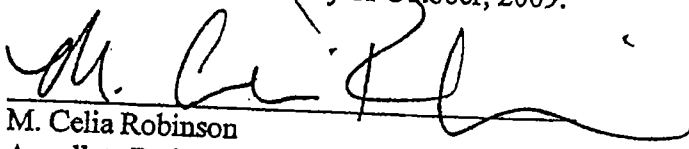
V.

CLINTON C. FOLKES,

APPELLANT

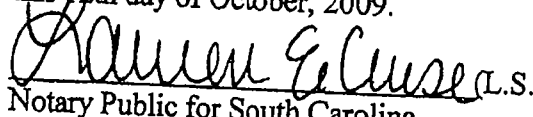
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC, this 12th day of October, 2009.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 12th day of October, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
James Barber, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

CLINTON FOLKES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge give the correct jury instruction with respect to assault and battery of a high and aggravated nature (ABHAN)?

STATEMENT OF THE CASE

Appellant, Clinton Folkes, was indicted by the Richland County Grand Jury for assault and battery with intent to kill (ABWIK). (2007-GS-40-6654). On July 7-9, 2008, he proceeded to trial before the Honorable James Barber, III, and a jury. The jury found him guilty as indicted and pursuant to S.C. Code Ann. § 17-25-45, Judge Barber sentenced Appellant to imprisonment for life without parole. This appeal follows.

STATEMENT OF FACTS

A fight occurred in Finlay Park on the evening of July 22, 2007. Several witnesses testified that Appellant came to the park in an obviously intoxicated state and that he was looking for a fight. He approached James Reddick and confronted him, apparently unhappy with the hat worn by Reddick. Appellant pulled a knife and Reddick backed off. Appellant then approached Karem Jones in an aggressive manner. It was suggested that Appellant was angry because his former girlfriend, Tiffany Briggs, was talking to Jones. Briggs and Appellant apparently broke up three days before this incident, although in the three months they had dated, they broke up and got back together several times. (R.p.60; p.94; pp.105-106; p.111; pp.136-139; p.143; pp.168-171; p.212).

Appellant approached Jones and began arguing with him. Appellant held a bottle of beer in a brown paper bag in one hand; he swung out at Jones with this hand and the bottle came out of the bag, but did not hit Jones. Appellant then swung his fist and hit Jones in the eye. Jones responded by hitting Appellant twice, once with each hand. Appellant then fell and Jones either fell on top of him or leaned down over him. Appellant then pulled a knife out and reached out and cut Jones across the throat. Jones also sustained another cut to his throat and one to his arm. (R.pp.65-75; pp.80-81; pp.90-92; pp.111-115; pp.122-127; pp.140-142; pp.145-147; pp.172-174; 183-186; p.202; p.213-217; p.227).

During a charge conference, defense counsel requested a charge on ABHAN. Counsel also requested the judge, as part of the ABHAN charge, to charge that absence of malice is not an element of ABHAN. The trial judge indicated that he was probably going to charge ABHAN, but he did not specifically address defense counsel's request to charge

absence of malice is not an element of ABHAN. (R.pp.301-308).

The trial judge gave the standard charge for ABHAN and did not include the request made by Appellant:

If you find the State has not proven the defendant is guilty of assault and battery with intent to kill, then you must determine whether the State has proved that the defendant is guilty of assault and battery of a high and aggravated nature.

Assault and battery of a high and aggravated nature includes all of the elements of assault and battery with intent to kill except express malice. In addition, the State must prove beyond a reasonable doubt an aggravating circumstance.

As I told you earlier, assault and battery of a high and aggravated nature is an unlawful act of violent injury to the person of another accompanied by circumstances of aggravation. As assault occurs when a person unlawfully attempts to offer or commit a violent injury upon another person and had the present ability to complete the attempted injury.

Assault is the intentional creation of a reasonable fear of immediate bodily harm. Battery is the unlawful touching of another person by a person who has committed the assault. An unlawful touching can be caused by a part of the accused's body or by any object the accused puts in action. Battery is the completion of the assault by using or applying force to another person, however, slight, in a rude, angry, or resentful manner without legal justification for doing so.

The State must also prove a circumstance of aggravation. Circumstances of aggravation include the use of a deadly weapon, the intent to commit a felony, the infliction of serious bodily injury.

(R.pp.390-391).

At the conclusion of the charge, defense counsel objected to the ABHAN charge and requested that the trial judge charge absence of malice is not a required element of ABHAN and the fact that a defendant acts with malice does not preclude a finding of ABHAN. The trial judge declined to so charge the jury and found that the charge he had given on ABHAN

was appropriate. (R.pp.395-396). At some point not too long after jury deliberations had begun, the jury sent the following note to the judge: "What is the difference between intent to kill and assault and battery of a high and aggravated nature?" (R.p.397). The judge then gave the basic definitions of ABWIK and ABHAN and asked if the jury wanted a recharge on the definitions of assault, battery, malice, and circumstances of aggravation. They indicated they did and the trial judge recharged essentially the language he had used the first time. (R.pp.398-399). Defense counsel objected to the charge. (R.p.404).

ARGUMENT

The trial judge gave the correct jury instruction with respect to assault and battery of a high and aggravated nature (ABHAN).

The Respondent submits the trial judge did not err in refusing to charge the specific language requested by Appellant. While absence of malice is not an element of ABHAN, there is no requirement for a judge to charge the jury on what are not elements. If trial judges were required to charge the jury on what are not elements of particular crimes, the charges would never end and juries would likely be very confused. The Respondent submits that while case law has indeed found that absence of malice is not an element of ABHAN, nowhere in those cases is there a requirement that the trial judge so charge the jury. State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000); State v. Pilgrim, 320 S.C. 409, 465 S.E.2d 108 (Ct. App. 1995) (Pilgrim I), aff'd as modified State v. Pilgrim, 326 S.C. 24, 482 S.E.2d 562 (1997) (Pilgrim II); State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002); Hill v. State, 350 S.C. 465, 567 S.E.2d 847 (2002). The trial judge correctly charged the jury on the law of ABHAN when he used the standard charge for that offense.

ABHAN is an unlawful act of violent injury to the person of another accompanied by circumstances of aggravation. State v. Fennell, supra. ABIK is an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. Id.

In South Carolina, a trial judge must "declare the law" to the jury. See S.C. Const. art. V, § 17 (1895). Generally, the trial judge is required to charge only the current and correct law of South Carolina. State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct.

App. 2005). A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. *Id.* The law to be charged must be determined from the evidence presented at trial. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008); State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Gaines, *supra*; State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002).

The Respondent submits that the ABHAN charge given by the trial judge was the correct charge on the law of ABHAN and that he did not err in refusing to give Appellant's requested charge. The charge was almost verbatim to the standard charges approved by the South Carolina Supreme Court and provided to all the judges in this State. The Respondent submits that the trial judge in this case did not charge the jury that absence of malice is an element of ABHAN.

Appellant argues that the trial judge erred when he refused to charge the jury that absence of malice is not a required element of ABHAN. Appellant further argues that the trial judge erred in charging the jury that the absence of malice is an element of ABHAN.

The problem in the jury instruction given in State v. Tyler, *supra*, relied upon by Appellant, was that the trial judge equated ABHAN with voluntary manslaughter and charged that ABHAN contains all of the elements of voluntary manslaughter except the actual death of the person assaulted. He also charged, "I charge you that assault and battery of a high and aggravated nature is an assault and battery committed with a deadly weapon or dangerous instrumentality without malice but in a spirit of wantonness and with a reckless

disregard for the rights and safety of others.” The South Carolina Supreme Court noted that it and the Court of Appeals had previously held that it is error for a trial court to give instructions that equate ABHAN with voluntary manslaughter. See State v. Fennell, supra; State v. Pilgrim, supra. The Supreme Court in Tyler ultimately found that any choice the jury had between manslaughter and ABHAN was not premised upon malice or the absence thereof, and was therefore harmless.

Contrary to Appellant’s assertion, the trial judge in the case at bar did not charge that absence of malice is an element of ABHAN. He charged that ABHAN is an assault and a battery with circumstances of aggravation. The trial judge instructed the jury in part, “Assault and battery of a high and aggravated nature includes all of the elements of assault and battery with intent to kill except express malice.” That is a correct statement of the law. He did not say that the absence of malice is an element of ABHAN, he said that malice is not an element. The Respondent submits that charging the jury that the absence of malice is not an element of ABHAN would only confuse the jury. The Respondent further submits that requiring trial judges to instruct juries what are not elements of the crime charged would bog down the instruction phase of the trial to the point of ridiculousness.

Appellant also complains that the assistant solicitor incorrectly told the jury during closing argument that the difference between ABIK and ABHAN was whether or not malice existed. (R.pp.361-362). However, no objection was made, thus, this argument is not preserved for review. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) (In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge; issues not raised and ruled upon in the trial court will not be considered on

appeal). Appellant further complains that defense counsel told the jury that the judge was going to charge them that absence of malice is not an element of ABHAN and that Appellant was prejudiced because the judge did not so charge the jury. (R.p.377). However, closing arguments are not evidence. This was fully explained to the jury by the judge during his introductory remarks. (Supp.R.p.1). The assistant solicitor also told the jury at the beginning of her argument that the evidence in the case came from the witness stand and not from her or from defense counsel. (R.pp.354-355). Thus, the fact that defense counsel told the jury that the judge was going to give an instruction that he did not give is irrelevant.

The Respondent submits that the trial judge did not err and that Appellant's conviction and sentence for ABWIK should be affirmed.

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CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

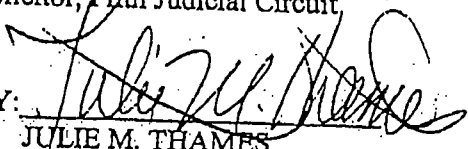
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September 1, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
James Barber, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

CLINTON FOLKES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with the Rule 211(b), SCACR.

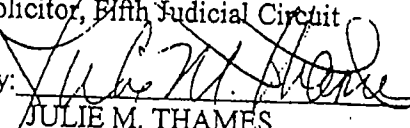
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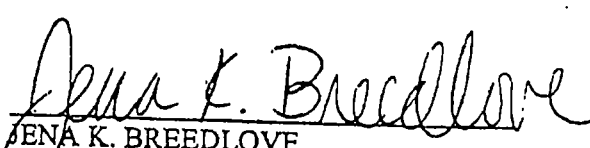
PROOF OF SERVICE

I, Jena K. Breedlove, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 1st day of September, 2009.


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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Clinton C. Folkes,

Appellant.

Appeal From Richland County
James R. Barber, III, Circuit Court Judge

Unpublished Opinion No. 2010-UP-420
Submitted August 2, 2010 – Filed September 24, 2010

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Assistant Deputy Attorney General Salley W. Elliott,

Assistant Attorney General Julie M. Thames, and Solicitor Warren Blair Giese, all of Columbia, for Respondent.

PER CURIAM: Clinton C. Folkes was convicted of assault and battery with intent to kill and was sentenced to life imprisonment without the possibility of parole. On appeal, Folkes argues the trial court erred in failing to charge the jury the absence of malice is not an element of assault and battery of a high and aggravated nature (ABHAN). We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Tyler, 348 S.C. 526, 530-31, 560 S.E.2d 888, 890 (2002) ("[T]he absence of malice is not a required element of the offense of ABHAN."); State v. Curry, 370 S.C. 674, 682, 636 S.E.2d 649, 653 (Ct. App. 2006) ("A charge is sufficient if, when considered as a whole, it covers the law applicable to the case. The substance of the law is what must be charged to the jury, not any particular verbiage.") (internal quotation marks and citations omitted).

AFFIRMED.

FEW, C.J., KONDUROS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

DS
cin

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TULIPPHONE: (803) 734-1390
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

October 18, 2010

REMITTITUR

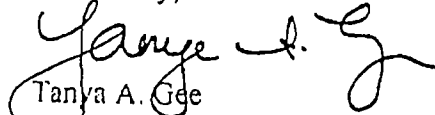
The Honorable Jeanette W. McBride
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202

Re: The State v. Folkes, Clinton C.
2007-GS-40-06654

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Tanya A. Gee
Clerk of Court

TAG/lf

cc: Appellate Defender M. Celia Robinson
Assistant Attorney General Julie M. Thames
Warren Blair Giese, Esquire

57/18P

2010C P4007500

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Clinton Folkes, #216508*Full name and prison number (if any) of Applicant,*

vs.

State of South Carolina*Name of Respondent.*APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2010 OCT 26 AM 9:38
 JEANNETTE L. MCBRIDE
 C.C.P.

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Richland County General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-40-6654 - Assault & Battery with Intent to Kill
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Life without parole - July 9, 2008
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty X _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

Affirmed.

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. September 24, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2010-UP-420

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Judicial Error

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Please see attached.

(b) Please see attached.

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No.

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.

(d) any other petitions, motions or applications in this or any other Court?
No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

14. If you answered "yes" to _____, identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Not available for direct appeal.

(b) Not available for direct appeal.

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Deon O'Neal, Public Defender, PO Box 192, Columbia 29202

ii. M. Celia Robinson, Appellate Defense, PO Box 11589, Columbia, SC 29211.

iii. _____

(b) the proceedings at which each such attorney represented you:

i. 16 A, B, and C, above.

ii. 16 D, above

iii. _____

18. State clearly the relief you seek in filing this application.

Reverse or vacate all convictions and sentences and remand for a new trial.

19. Are you now under sentence from any other court that you have not challenged?

No.

ATTACHMENT TO PCR APPLICATION

Response to Question 10:

In support of the allegation of ineffective assistance of counsel, applicant states that 1) Counsel failed to *call Key* witnesses for the defense; 2) that Counsel failed to properly investigate a defense presented by applicant; and that 3) Counsel failed to object to the use of a knife in the courtroom (State's 25) that was not even used in the crime (pg. 108). See State v. McDonald. 4) Counsel Failed to object to other

issue, like closing argument from solicitor's See State v Simmons

In support of the allegation of judicial error, applicant contends that the court failed to inform him of his right to put up a defense without him having to testify, only that he could remain silent.

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Clinton Folkes, #216506, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attached in this application; and that the matters and allegations therein set forth are true.

Clinton Folkes

SWORN to and subscribed before me this 22
day of Oct, 2010

Shirley J. Sims (L.S.)
Notary Public

My Commission Expires: 5-16-12

RICHLAND COUNTY
FILED
2010 OCT 26 AM 9:38
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Clinton Folkes, #216506, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Clinton Folkes
Applicant

SWORN or affirmed to and subscribed before me this

22 day of Oct, 2010
Shirley J. Sims
Notary Public

My Commission Expires 5-16-12

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

FOLKES Clinton -
00216506,

2010CP4007500

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED
2010 FEB 28 PM 2:40
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 26, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Deon O'Neal, Esquire. On July 9, 2008, the Applicant was convicted following a jury trial and was sentenced by The Honorable James R. Barber, III. The Applicant was indicted and/or convicted of the following: ABWIK - (2007-GS-40-6654).

1

<http://www4.rcgov.us/publicindex/PI/CaseDetails.aspx?County=40+&Casenum=2010CP4007500&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2010CP4007500) - Applicant: FOLKES Clinton

Page 1 of 7

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Asslt & Batt W/intnt Kill
<u>Sentence Start Date</u>	07/22/2007
<u>Sentence Length</u>	LIFE SENTENCE
<u>Admission Date</u>	07/10/2008
<u>Committing County</u>	Richland
<u>Location</u>	Lee
<u>Projected Release Date</u>	Not Eligible
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence:

PER CURIAM: Clinton C. Folkes was convicted of assault and battery with intent to kill and was sentenced to life imprisonment without the possibility of parole. On appeal, Folkes argues the trial court erred in failing to charge the jury the absence of malice is not an element of assault and battery of a high and aggravated nature (ABHAN). We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Tyler, 348 S.C. 526, 530-31, 560 S.E.2d 888, 890 (2002) ("[T]he absence of malice is not a required element of the offense of ABHAN."); State v. Curry, 370 S.C. 674, 682, 636 S.E.2d 649, 653 (Ct. App. 2006) ("A charge is sufficient if, when considered as a whole, it covers the law applicable to the case. The substance of the law is what must be charged to the jury, not any particular verbiage.") (internal quotation marks and citation omitted).

AFFIRMED.

State v. Clinton C. Folkes, Op. No. 2010-UP-420 (S.C. Ct. App. filed September 24, 2010) (Remittitur date October 18, 2010).

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00216506&youth=N&type=F>

STATEMENT OF THE CASE

Applicant, Clinton Folkes, was indicted by the Richland County Grand Jury for assault and battery with intent to kill (ABWIK). (2007-GS-40-6654). On July 7-9, 2008, he proceeded to trial before the Honorable James Barber, III, and a jury. The jury found him guilty as indicted and pursuant to S.C. Code Ann. § 17-25-45, Judge Barber sentenced Applicant to imprisonment for life without parole.

STATEMENT OF FACTS

A fight occurred in Finlay Park on the evening of July 22, 2007. Several witnesses testified that Applicant came to the park in an obviously intoxicated state and that he was looking for a fight. He approached James Reddick and confronted him, apparently unhappy with the hat worn by Reddick. Applicant pulled a knife and Reddick backed off. Applicant then approached Karem Jones in an aggressive manner. It was suggested that Applicant was angry because his former girlfriend, Tiffany Briggs, was talking to Jones. Briggs and Applicant apparently broke up three days before this incident, although in the three months they had dated, they broke up and got back together several times. (Tr.p.87; p.121; pp.132-133; p.138; pp.163-166; p.170; pp.195-198; p.239).

Applicant approached Jones and began arguing with him. Applicant held a bottle of beer in a brown paper bag in one hand; he swung out at Jones with this hand and the bottle came out of the bag, but did not hit Jones. Applicant then swung his fist and hit Jones in the eye. Jones responded by hitting Applicant twice, once with each hand. Applicant then fell and Jones either fell on top of him or leaned down over him. Applicant then pulled a knife out and reached out and cut Jones across the throat. Jones also sustained another cut to his throat and one to his arm.

(Tr. pp.92-102; pp.107-108; pp.117-119; pp.138-142; pp.149-154; pp.167-169; pp.172-174; pp.199-201; 210-213; p.229; p.240-244; p.254).

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files (if any).³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance

of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Nancy Arvay, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

February 8, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2010CP4007500) -- Applicant: FOLKES Clinton
Page 7 of 7

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

FOLKES Clinton -
00216506,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4007500

CERTIFICATE OF SERVICE

JEANETTE M. BRIDE
C.C.P. & G.S.

2010 FEB 28 PM 2:40

FILED

7. I am an employee of the Respondent in the above-captioned action.
8. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
9. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Nancy Arvay
8000 Farrow Raod
Columbia, SC 29203

DATED February 8, 2011.


Jean R. Indriago
Legal Assistant