

22428

STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM SALUDA COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

v.

JOHNNY JEROME BOYD,

APPELLANT

APPELLATE CASE NO. 2014-002715

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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2 County of Saluda) Of General Sessions
3 Case No.: 2013-GS-41-00357

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 Johnny Jerome Boyd,)
8 Defendant.)

9 December 8, 2014 through December 11, 2014

10 Saluda, South Carolina

11
12 BEFORE:

13 The Honorable DeAndrea Benjamin, Judge

14 APPEARANCES:

15 H. Franklin Young, Assistant Solicitor
16 Attorney for the State

17 Bennett Elliot Casto, Assistant Public Defender
18 Attorney for the Defendant

19 ALSO PRESENT:

20 Johnny Jerome Boyd
21 Latoya Abney
22
23
24
25

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December 8, 2014

* * *

(The prospective jurors sworn by the Clerk of Court.)

* * *

THE COURT: All right. Solicitor, please call our first case.

MR. YOUNG: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. YOUNG: Your Honor, the state now calls for disposition by trial the State of South Carolina versus Johnny Jerome Boyd, indictment number 2013-GS-41-357. This is an indictment which has been true billed by the Grand Jury for attempted murder. I hand up the indictment.

THE COURT: Yes, sir. Thank you.

Ladies and gentlemen of the jury, at this time we are about to begin the trial of the case of the State of South Carolina against Johnny Jerome Boyd.

Ladies and gentlemen of the jury, I have in my hands the indictment for attempted murder. That indictment reads that Johnny Jerome Boyd did in Saluda County on or about September 15th, 2013 with malice of forethought attempt to murder the victim Latoya Abney in that the defendant assaulted the victim about the head and body

1 with blunt concrete or a flowerpot and personal weapons,
2 closed fist with the intent to kill the victim Latoya
3 Abney in violation of and the penalties provided under
4 Section 16.329 of the South Carolina Code of Laws 1976
5 as amended.

6 Ladies and gentlemen of the jury, I'll go ahead and
7 tell you that what I hold in my hand is the indictment.
8 I will remind you that the fact that the defendant was
9 arrested and charged and indicted in this case is not
10 evidence in this case and cannot be considered by you as
11 evidence of guilt in this case nor does it create a
12 presumption or inference of guilt in this case. The
13 document is simply the formal written instrument which
14 contains the charge made against the defendant. It is a
15 formal document in which this case is brought into court
16 before you.

17 At this time I am going to ask the defendant,
18 Mr. Johnny Jerome Boyd to stand and face the jurors.

19 (Johnny Jerome Boyd complies with the request of the
20 Court.)

21 THE COURT: All right. Thank you. You may be
22 seated.

23 And the alleged victim in this case is Latoya Abney.
24 I'll ask her to stand and face the jurors.

25 (Latoya Abney complies with the request of the

10

1 verdict on the verdict form, but I will give you further
2 instructions about that at the conclusion of the case.
3 In order to preserve everyone's rights I will give the
4 parties an opportunity to object to anything that I have
5 said.

6 Any exceptions or objections from the state?

7 MR. YOUNG: No, ma'am.

8 THE COURT: Any from the defense?

9 MR. CASTO: No, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, at this time we will begin the trial. I will ask
12 Mr. Young to begin with his opening statement.

13 MR. YOUNG: Thank you, Your Honor.

14 Folks, I want to apologize for my voice. It's kind
15 of raspy this morning. I may come and go back and forth
16 to that water a little bit so bear with me.

17 Ladies and gentlemen, on the 15th of September,
18 2013, at law enforcement was
19 dispatched to this event location in response to a call
20 from Latoya Abney. The call from Latoya Abney was
21 recorded. It's on audio tape. She is live action open
22 mic. You can hear what's going on. She is in
23 conversation with the dispatcher and she has left her
24 house and she is outside her house and she has left
25 Johnny Jerome Boyd, that man sitting right over there,

1 inside the house thinking that he is bleeding out. She
2 cut him. She was chased all around the inside of that
3 house. She was hit with chairs. She was struck with
4 things. She was doing her best to stay away from him.
5 She had her baby in her arms and retreated into her
6 bedroom, and he had her backed up in the corner and he
7 starts bleeding all over the floor and says I think I'm
8 going to pass out. And he does apparently.

9 She has her baby on the bed and she runs outside and
10 has the house phone and is trying to find the neighbor.
11 Can't find the neighbor outside the house, but is on the
12 phone and you begin to hear a conversation that you will
13 hear as to what happens outside that house. Mr. Boyd is
14 not more than temporarily unconscious. Mr. Boyd is up
15 and about. He has the baby. She sees him at the front
16 of the house. She goes back toward the house and then
17 the screaming begins. Stay away from me. Stop. Stay
18 away from me. Stop. Over and over again. She gets hit
19 with a concrete block. She gets hit with a bicycle.
20 She is chased around outside the house. At some time
21 she just goes kind of silent. She probably has lost
22 consciousness at one point, but she gets back up maybe
23 at his urging and the assault begins again and she
24 finally retreats into a shed behind the house.

25 She is inside that shed and she is still on the

12

1 phone and he comes at her again. She has called --
2 Before she called the law, she called a friend called
3 Patrick, and you will find out, Patrick will be here,
4 you will find out from Patrick what he did, but I think
5 you're going to hear that Patrick came to get the baby
6 and did get the baby and had the baby. You will see
7 pictures of what the baby looks like. Covered in blood
8 from his daddy. And you will see a picture of the
9 daddy. The daddy is the defendant in this case Johnny
10 Jerome Boyd.

11 And when law enforcement gets there, you can hear
12 them probably as well as anything else, in the
13 background when they rush into the location and one of
14 the officers thinks he hears what sounds like blows
15 being delivered to a person, and when he comes around
16 the corner, he sees Johnny Jerome Boyd standing over
17 Latoya Abney whose arms are down by her side and he has
18 got his hand as far back as he can get it and he hits
19 her as hard as he can and they stop it and he goes
20 running off and he passes out a time or two. Gets up a
21 time or two.

22 You're going to find out that when Officer Raffield
23 gets here right behind those other two officers just
24 very shortly afterwards he sees this guy as a danger to
25 himself because he is bleeding so profusely and he has

1 to bring him to the ground because he won't settle down.
2 He's a threat to himself and eventually he's gonna have
3 to be transported for medical treatment as is Ms. Abney.
4 Both recovered. But at the point in time law
5 enforcement arrives what you're going to hear and see,
6 or hear, you're going to hear that testimony from Ms.
7 Abney and people that are going to take the stand is
8 that she was essentially out of wind, out of time, and
9 almost out of luck.

10 If law enforcement hadn't gotten there, it's hard to
11 say what would have happened, but she thought he was
12 going to kill her. And that's what we're here to decide
13 today. Did that happen? Did it happen that way? Does
14 the evidence support all of that? Does the state have a
15 case proof beyond a reasonable doubt to support those
16 charges?

17 We are here for you to decide evidence not from what
18 I say or from what any other lawyer, and I think there
19 are four lawyers in this room, we don't put up evidence,
20 so to speak. I put it up in the sense that I put up a
21 person to stand at that stand and sit down there and
22 tell you what happens or a photograph or an audio tape
23 or something like that, that's evidence, not what I say.
24 That's not evidence. I'm just trying to give you an
25 idea of what we are going to present.

14

1 And we are not here to do the job you have to do and
2 only you can do it. You are the only people in this
3 courtroom who can make a decision on what really
4 happened. You are it. And for that I'm very grateful
5 and everyone in this courtroom is grateful. You are in
6 essence the last vestige of a con volunteer element to
7 our government. We don't have a draft for the Army
8 anymore or the Marine Corps or the rest of the Armed
9 Forces. We don't have a draft anymore. We are all
10 volunteers nowadays. But folks who sit on juries, you
11 got drafted. You didn't have a choice. Your name got
12 picked and the lawyer set there and thought about it and
13 said you're it. You're going to be it. You're going to
14 sit today. You're gonna take part of your Christmas
15 time and sit in this courtroom and listen to us lawyers
16 put up evidence and tell you what the law is for you to
17 go back in that jury room and finally deliberate and
18 decide what happened. That's what you got to do. And
19 you didn't have a choice in that and I'm thankful for
20 that. And every American ought to be thankful for that
21 because that's our system of justice. We don't let
22 lawyers decide cases. We let juries decide cases. It's
23 the most important thing we have in our system of
24 justice. You're the bulwark, the very essence of what
25 we have as a system of justice. We brought it over from

1 England. It's been here since. It's served us well.
2 It continues to serve us well. You're the people who
3 make decisions on important matters like this. The
4 people of the county and the state. And that's what you
5 are here to do. So I want to thank you.

6 I know you probably have a lot of things especially
7 this time of year you would rather be doing than sitting
8 in this courtroom listening to some lawyers talk about a
9 case or putting up evidence or hearing about this. It's
10 probably something you really don't want to do, but it's
11 very essential. It's the most important thing you could
12 do for our country, for this state, for this county. It
13 is the thing that only you can do. So I want to thank
14 you.

15 I will ask you to do one thing. We will get to the
16 end of this case eventually. It will be after all the
17 evidence is in, after everything has been heard, and at
18 the end of that case you will go back in that jury room
19 and the Judge is gonna give you some instructions before
20 you do that, but she's going to ask you to return
21 something and give her something and the rest of us in
22 this courtroom something at the end of it. It's called
23 a verdict. A verdict. There is an old Latin word
24 called verdicto. That's where it comes from. It means
25 to speak the truth. That's what you are here to do.

16

1 Your verdict should speak the truth. It should be the
2 truth as you decide it as to what happened that night.
3 Only you can do that, and I again say thank you for
4 doing it.

5 THE COURT: Thank you. Mr. Casto.

6 MR. CASTO: Thank you, Your Honor. May it please
7 the Court.

8 To be certain in the early morning hours of
9 September 15th, 2013 there was a fight between Johnny
10 and Latoya. There was a fight and it was horrible and
11 it never should have happened, but in no way, shape or
12 form did Johnny have the intent to murder Latoya that
13 evening. In no way, shape or form did he have the
14 intent to murder Latoya throughout the entire incident.

15 As the trial unfolds you're going to hear that one
16 of these two people involved in this fight was slashed
17 numerous times, stabbed, cuts to the face, the top of
18 the head, the chest, the abdomen and the stomach area
19 and most significantly to the neck area on this person.

20 When law enforcement arrives there is still some
21 fighting going on and then Johnny and Latoya stop and
22 that same person when law enforcement shows up raises
23 their arms and sits down. They're scared to stand up
24 and law enforcement does what they need to do so that
25 person can be safe and not a danger to them self.

1 You're going to hear how this same person involved
2 in this fight is air lifted from here in Saluda County
3 particularly Batesburg/Leesville, is flown by helicopter
4 because of their injuries to Richland Memorial Hospital
5 in Columbia where they are able to save that person's
6 life. Well, who is that person that I speak of out of
7 the two people in that fight? Well, that person is
8 Johnny. Johnny is seated over there at the table with
9 me. To be certain there was a fight that night. It was
10 horrible, but at no time did Johnny have the intent to
11 murder Latoya.

12 How did we get here? How did we get from the state
13 seated at this table and us seated over there within the
14 walls of the courtroom? Well, let's back up. To set
15 the stage and the same trials are like real life plays.
16 Not to over simplify it, but the setting is going to be
17 at Latoya's house. Johnny is over at Latoya's house and
18 there's an argument about infidelity going on in the
19 relationship. That argument becomes physical, and
20 that's when she takes the box cutter and slashes and
21 stabs Johnny. The two separate at that time. Johnny is
22 hurt. He stays inside. She goes outside and there is
23 no fighting going on at that exact moment and that's
24 when she goes outside to contact folks and he's inside.

25 She calls her friend Patrick Johnson. She calls

18

1 911 once and then hangs up the phone, but then she calls
2 back and you hear a conversation. She is the only one
3 that speaks to 911. Everything that 911 hears comes
4 through her alone. When asked if Johnny has any
5 weapons, she tells them no. She is asked about weapons
6 and her response is three times it was self defense. It
7 was self defense. It was self defense. And you will
8 hear that tape in the trial of this case. And in that
9 moment that the fighting is stopped, he's inside, she's
10 outside, Johnny realizes he's horribly injured. He's
11 wearing a white shirt. He looks down and the blood is
12 starting to soak through and that's his blood on him.
13 Drips down and that's where we get the blood inside the
14 house.

15 He goes outside the front door. He doesn't grab any
16 knives, sharp objects, any weapons, guns, anything like
17 that, and he sits there outside on the front porch.
18 Eventually he's met by the person that Latoya calls,
19 Patrick Johnson. Patrick Johnson comes over. And then
20 he sees Latoya again and before he gets up to approach
21 her, he tells Patrick he feels - he feels sick. He
22 feels like he's going to die and he needs to go to the
23 hospital. He tells Patrick that about his own
24 condition. He approaches Latoya and he sees her walk
25 off towards the shed and not knowing what's in the shed,

1 what things that she could use against him, she's
2 already cut him that evening horribly, he goes to
3 prevent her from going inside. He throws things at her.
4 He throws cement at her and he's unsuccessful keeping
5 her from the shed. And you're gonna hear that she's on
6 the phone the whole time and he gets there and there's a
7 confrontation and there's more fighting and he hits her
8 and he hits her and he acknowledges that. You will hear
9 that on the tape as well. And then law enforcement
10 shows up and they are separated.

11 Again this is a horrible night. It never should
12 have happened, but he did not intend to murder Latoya
13 that evening. The intent is not there in this case.
14 When we hear allegations like this from the outset they
15 are not at all pleasant. I mean, nobody likes to hear a
16 couple that's involved in a relationship, nobody likes
17 to hear any type of fighting or physical altercations,
18 so everybody agrees with that so that's not our
19 question. Our question here is did he have the intent
20 to murder her that night? And the answer is no.

21 It's not some random act that each of you were sat
22 on this jury. To be certain we had strikes and we used
23 those accordingly, but really you were picked from a
24 group, a large group of folks out there for deliberate
25 reasons and deliberate choices, and you were each called

20

1 out. You were purposefully chosen to sit on this jury
2 and the reason is is to be fair. To make sure that
3 Johnny gets a fair trial and to not get sidetracked by
4 emotion, sympathy, but to look at the case for what it
5 is and then not get sidetracted which is difficult to
6 do, but you all were purposefully selected and you are
7 to apply the law as you hear from the Judge to this
8 case. And you can't look anywhere else other than the
9 evidence presented to you, what people say from that
10 chair on the witness stand. You can't look anywhere
11 else.

12 You know, what's at play here, what's really going
13 on, essentially to break it down, one of your own,
14 Johnny, a citizen of Saluda County stands accused of a
15 crime and you citizens of Saluda County are to determine
16 whether there's enough evidence to strip him of his
17 freedom. And the standard is reasonable doubt. We hear
18 so much about reasonable doubt in books and in shows and
19 movies and things, but let me give you this definition
20 that our South Carolina court system has handed down.
21 Reasonable doubt is the type of doubt that would cause a
22 person to pause or to hesitate before they act. I'll
23 say it again. Reasonable doubt is the type of doubt
24 that would cause a person to pause or to hesitate before
25 they act.

1 You know, I work out here in what we call the
2 tri-county and we're in the Saluda County courthouse
3 and, you know, in Lexington their court is a little bit
4 bigger. They have four floors and there's offices on
5 the first floor, but you go to that second floor, well,
6 that's where they have family court and family court
7 uses a different standard down there. It's really
8 preponderance of the evidence and really what that looks
9 like is do we think it's more likely than not that
10 something happened. The standard is lower than what's
11 the burden of proof here in criminal court. But in
12 family court there are serious things at play. Take
13 somebody's kids away. Award alimony. Divorces.
14 Custody. Things of that nature.

15 Well, then the floor above that is the third floor
16 and that's civil court. Same standard. They could take
17 your money away in civil court if they tell you run your
18 business, whatever, but on the fourth floor is where
19 they have criminal trials and that's a little picture of
20 the big picture. The standard there as it is here is
21 reasonable doubt. The type of doubt which would cause
22 an ordinary or reasonable person to pause or to hesitate
23 before they act. It's the highest standard. It's the
24 highest burden of proof that we have out of civil court
25 or family court or any other court. And the burden of

22

1 proof isn't on us at all, but it's on the state. And if
2 reasonable doubt, if you find that reasonable doubt
3 exists for just one of the elements, this crime charged
4 has several elements, if you find reasonable doubt
5 exists for just one of those elements or pieces of the
6 charge, you must find, you are commanded to find Johnny
7 not guilty of that offense.

8 Ladies and gentlemen, I won't take up all your time.
9 Reasonable doubt is alive and well in this case and we
10 would ask you to find not guilty, Johnny not guilty of
11 attempted murder in this case. There was no intent that
12 he attempted to murder Latoya that evening.

13 Thank you for listening to me.

14 THE COURT: Please call your first witness.

15 MR. YOUNG: Deputy Josh Price. I'm sorry, ma'am. I
16 wanted to get him out here so when you asked me that, he
17 would be here.

18 THE COURT: All right.

19 Thereupon,

20 JOSHUA STEVEN PRICE

21 after having been first duly sworn, testified as follows,

22 THE COURT: Please proceed.

23 MR. YOUNG: May it please the Court.

24 THE COURT: Yes.

25

1 DIRECT EXAMINATION

2 BY MR. YOUNG:

3 Q. Deputy Price, would you give us your full and
4 complete name and where you work and for how long.

5 A. Joshua Steven Price. I work for the Saluda County
6 Sheriff's Office for approximately four years.

7 Q. Okay. So you were employed with the Sheriff's
8 Office on the 15th of September, 2013?

9 A. Correct.

10 Q. Were you dispatched to a location at
11 or in Batesburg?

12 A. I was.

13 Q. Now, just for the record, is that in Saluda
14 County?

15 A. Yes, sir, it is.

16 Q. All right. When you got to that location, can you
17 describe who was with you and what you observed?

18 A. Yes, sir. When I got to the location, myself and
19 Lieutenant Donovan Shealy with the Sheriff's Office, we both
20 arrived at the same time. When I arrived on the scene, I
21 observed a young man standing in the front yard of the
22 residence. The residence is a double wide mobile home. He
23 was holding a at that time two year old child in his arms.
24 The child was covered with blood all over his clothing and
25 all over his body. When I first got on scene, seeing that my

24

1 initial contact was with that individual who was identified
2 as Patrick Johnson. I checked the child for injuries. He
3 did not have some. I was related by Mr. Johnson that he had
4 taken the child when he got on scene from the defendant
5 Mr. Boyd.

6 Mr. Johnson then relayed that the assault was taking
7 place behind the residence. At that time I could hear
8 screams and noises. The screams were female it sounded.
9 I went along the left side of the home to the back yard. As
10 I was coming around the trailer on the side I could hear just
11 what I could describe as blunt strikes. Just -- It sounded
12 -- They were strike noises. I could hear noise coming from
13 an out building as well as those strikes. I approached the
14 out building. It was a wooden out building behind the
15 residence. The light was on. As I approached and where I
16 could see into the out building I saw the defendant Mr. Boyd
17 standing over the victim Ms. Abney.

18 Q. Could I just briefly stop you there so we can
19 identify who specifically you're talking about. Is Johnny
20 Jerome Boyd the person you described in the courtroom?

21 A. Yes, sir. Sitting right here next to Mr. Bennett.

22 Q. Mr. Bennett Casto?

23 A. Yes, sir.

24 Q. Is the gentleman in the striped shirt, white striped
25 shirt that you're referring to?

1 A. Yes, sir. That's Mr. Boyd.

2 MR. YOUNG: I would ask that the record reflect he
3 has correctly identified the defendant in this case,
4 Your Honor.

5 THE COURT: So noted.

6 BY MR. YOUNG:

7 Q. And is the victim you described present in the
8 courtroom?

9 A. Yes, sir.

10 Q. Where is she?

11 A. She's sitting right on the bench here, Ms. Abney
12 sitting next to our victim's advocate.

13 Q. Is this Ms. Abney right here (indicating)?

14 A. Yes, sir.

15 Q. Okay. I'm sorry to interrupt you. At that point
16 you said you had gotten to the shed I believe?

17 A. Yes, sir.

18 Q. And you observed something in the shed. Tell us
19 what you observed?

20 A. Yes, sir. The lights were on inside the shed. It
21 was dark. It was at night. But I could see inside the shed.
22 When I approached, I could see inside. I observed Ms. Abney.
23 She was sitting down in a chair. Her arms were to her side,
24 face open, palms up. She appeared to be defenseless. At the
25 same time I saw Mr. Boyd who was standing over her deliver a

26

1 strike and when he delivered the strike, it was here to here
2 (indicating.)

3 Q. You mean here to here, the record won't reflect what
4 you just did in the courtroom. Could you describe that in
5 words what you just did? You showed it to the jury, but
6 would you describe it in words for the record what you
7 observed him to do?

8 A. Yes, sir. He took his right arm. His right arm was
9 over his head. His fist was balled, clenched shut, and he
10 proceeded with a strike coming from above his head that
11 struck the left side of Ms. Abney's face is what I observed.

12 Q. Now, tell me again how you observed Ms. Abney's body
13 to be. What was her body like?

14 A. She appeared to be limp. She did not have her hands
15 up in a defensive way. Her arms were stretched out down by
16 her side. Her face was - head was tilted. Neck. Her neck
17 was tilted to the side and her hands were down by, both hands
18 were down by her side in a, sitting in a way that she was not
19 defending herself at that time.

20 Q. Was she standing or seated or walking?

21 A. She was seated.

22 Q. She was seated?

23 A. Yes, sir.

24 Q. In a chair?

25 A. Yes, sir.

1 Q. And you observed her to be in this chair when the
2 blow was delivered?

3 A. Yes, sir.

4 Q. Okay. Now, what actions did you take?

5 A. At that time myself and Lieutenant Shealy announced
6 law enforcement and directed Mr. Boyd to put his hands up and
7 which he did. He stopped the assault at that time. He then
8 exited out of the shed. We give him commands to put his
9 hands up. He refused also to get on the ground which he also
10 refused.

11 Q. Okay. Would you just describe between the two
12 people here, who was the most active, Ms. Abney or
13 Mr. Boyd?

14 A. Mr. Boyd was the more active person. Ms. Abney was
15 not making any statements. She appeared to be exhausted.
16 When we were on scene -- When we first arrived there and
17 those commands were there, that law enforcement was present,
18 she did not say anything. She did not get up out of the
19 chair. Mr. Boyd did. He exited. He stopped after
20 delivering that blow and exited out of the out building.

21 Q. Did you see him go anywhere?

22 A. He exited out and went back around the side of the
23 house. He was not stopping. Myself and Lieutenant Shealy
24 both followed him. We followed him from the rear of the
25 house back around the house, down to the dirt road which

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1 would be Sandy Bottom.

2 Q. You have taken photographs, have you not, of this
3 area --

4 A. Yes, sir. I have.

5 Q. -- of the house, the inside of the house and areas
6 around the house, correct?

7 A. Yes, sir.

8 Q. All right. Would that assist you in describing what
9 you saw that night?

10 A. Yes, sir.

11 Q. All right. And then you also are aware there were
12 photographs taken that night of the interior of the house; is
13 that correct?

14 A. That's correct.

15 Q. And you were aware -- Did you go inside the house
16 itself and look inside?

17 A. I did.

18 Q. So have you been throughout the house itself?

19 A. Yes, sir.

20 Q. Okay. So more than once you have been to the
21 house?

22 A. Yes, sir.

23 Q. Most recently you went when?

24 A. This past Sunday. I believe it would be the 7th of
25 December.

1 Q. That was for the purposes of taking photographs?

2 A. Yes, sir. That night we were -- The night the
3 original photographs were taken of the scene we were dealing
4 with darkness. I went back to take better photographs just
5 to give a more better photograph lineup of the layout of the
6 residence.

7 Q. Okay. Now, I would like for you to take a look at
8 what has been -- If I don't get my glasses on me, I will
9 forget them. Excuse me. There. Apologize. I will show you
10 what has been marked State's A1, A2, A3, 4, 5, 6, 7, 8, 9,
11 10, 11. All right. I would like for you to take a look at
12 those photographs without explaining anything to the jury,
13 please.

14 MR. YOUNG: I would like each one of those
15 photographs --

16 THE COURT: Do you need to see them?

17 MR. CASTO: Yes, ma'am.

18 MR. YOUNG: Mr. Casto, you have been given copies of
19 these, but if you would like to take a look at them,
20 you're welcome to.

21 MR. CASTO: Yes, sir. Thank you.

22 BY MR. YOUNG:

23 Q. Okay. Detective, take a look at each one of those,
24 please.

25 A. (Witness complies.)

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1 Q. All right. Now, if you could hand them back.

2 A. (Witness complies.)

3 Q. Thank you. I would like to start with State's
4 Exhibit A5 and A6 and A7. I would like you to look at those
5 in sequence real quickly. Okay. I didn't hand them to you.
6 These are the ones I want to hand you. This is A4. Can you
7 tell me if that photograph and A5 through 7 fairly and
8 accurately describe the exterior portions of the house and
9 the relationship to other houses around it?

10 A. Yes, sir.

11 Q. All right. And that's A4 through A7. All right.
12 Now, A1, 2 and 3, now, just for the sake of making sure,
13 nothing about the exterior of the house in terms of its
14 position has changed, has it?

15 A. No, sir. Not since the night that I was there.

16 Q. The relationship to the other houses hasn't changed,
17 has it?

18 A. No, sir.

19 Q. So this would fairly and accurately show the
20 relationship of this house and the exterior portions of it
21 from these other homes; is that correct?

22 A. That's correct.

23 Q. These are fair and accurate representations of the
24 houses?

25 A. Yes, sir.

1 MR. YOUNG: Your Honor, we would offer A4 through
2 7.

3 THE COURT: Any objections?

4 MR. CASTO: Without objection.

5 (Whereupon, State's Exhibits A4 through A7
6 admitted.)

7 BY MR. YOUNG:

8 Q. Now, I would also like to show you, this also shows
9 the relationship of the house, but this is another portion of
10 the house. This is A8, A9, A11. I would like you to look at
11 those which shows a shed area and a carport and a shed area.

12 A. Yes, sir.

13 Q. All right. With regard to the vehicle that's parked
14 there, is the vehicle positioned roughly or approximately
15 where it was the night that you came there?

16 A. Yes, sir.

17 Q. All right. Is the shed in the same location?

18 A. Yes, sir.

19 Q. And is the relationship shown between those various
20 photographs showing and depicting the shed and the house, is
21 that a fair and accurate depiction?

22 A. Yes, sir, it is.

23 MR. YOUNG: All right. Your Honor, we would offer
24 into evidence, Your Honor, State's Exhibits A8, 9, and
25 11.

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1 THE COURT: Any objections?

2 MR. CASTO: Without objection, Your Honor.

3 THE COURT: Those will be entered into evidence.

4 (Whereupon, State's Exhibits A8, A9 and A11
5 admitted.)

6 BY MR. YOUNG:

7 Q. Now, as to the interior of the house, and I'm going
8 to ask these questions first. When you went in the house the
9 second time, some of the stuff had been moved around,
10 correct?

11 A. Correct.

12 Q. All right. But the relationship of basic items like
13 the table, chairs, position of the couch, position of other
14 like computer desks, the partitions in the home, the
15 locations of bedrooms, are those all the same?

16 A. They are.

17 Q. And those relationships between those various items
18 are pretty much the same?

19 A. Yes, sir.

20 Q. Okay. And would these assist you in explaining what
21 you saw in the house that night?

22 A. Yes, sir.

23 Q. All right. Well, I'm going to show you what's
24 marked as A1 through 3 and have you look at those.

25 A. Okay.

1 Q. All right. Do those pictures fairly and accurately
2 represent the relationship of the objects in the home as they
3 would have been on the night that you saw it as well? Are
4 they clear representations?

5 A. There is a - in the kitchen table --

6 Q. Yes, sir.

7 A. -- in the kitchen --

8 Q. Mm-hmm.

9 A. -- these pictures show that there are only two
10 chairs. There were originally three. One was broken on the
11 night of the incident.

12 Q. I see. I see. Would you be able to recognize a
13 photograph of that night of where that chair was?

14 A. Yes, sir.

15 Q. All right. Okay. Before I do that, I would like
16 for you to take a look at one other item. This is State's
17 Exhibit number A10. This is the side of a vehicle, I
18 believe. Do you recognize that photograph?

19 A. Yes, sir, I do.

20 Q. Is that a photograph taken of the vehicle that was
21 present at the scene on the night in question?

22 A. Yes, sir, it is.

23 Q. Is that a picture of the damage that you observed
24 that night present on the vehicle?

25 A. Yes, sir.

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1 Q. Okay. And it shows what? What does it show?

2 A. It shows scratch marks and dents in the body of that
3 vehicle.

4 Q. Okay. Is that a fair and accurate representation of
5 what you saw that night?

6 A. Yes, sir, other than that night the vehicle had
7 blood transfer on the vehicle. It had blood also on the
8 vehicle.

9 Q. Was the vehicle wet that night?

10 A. I do not recall.

11 Q. Okay. But that does show the scratch marks you're
12 referring to and the dents?

13 A. Yes, sir.

14 MR. YOUNG: Other than the blood. All right. We
15 would offer into evidence State's Exhibit A10.

16 THE COURT: Any objection?

17 MR. CASTO: No objection.

18 THE COURT: All right. Received.

19 (Whereupon, State's Exhibit A10 admitted.)

20 BY MR. YOUNG:

21 Q. Now, with regard to the next series of photographs,
22 sir, you say you went in the house?

23 A. Yes, sir.

24 Q. And you observed the interior of the home. And
25 would you be able to recognize photographs of the condition

1 of the interior of the home again if you saw them?

2 A. Yes, sir.

3 Q. All right. I will hand you what's been marked as
4 State's Exhibit B1 through B5. That's Bravo B1 through Bravo
5 5. Would you take a look at those photographs and tell me if
6 you can recognize them?

7 A. Yes, sir.

8 Q. Okay. Now, do they fairly and accurately represent
9 the condition of the interior of the home that you saw that
10 night?

11 A. Yes, sir.

12 MR. YOUNG: All right. Thank you. We would offer
13 these into evidence as well, B1 through B5.

14 THE COURT: B1 through 5. Any objection?

15 MR. CASTO: No objection.

16 THE COURT: All right.

17 (Whereupon, State's Exhibits B1 through B5
18 admitted.)

19 BY MR. YOUNG:

20 Q. Now, you mentioned the vehicle as having some
21 scratch marks on it with some blood, I believe; is that
22 correct?

23 A. Yes, sir.

24 Q. Would you be able to recognize photographs of the
25 vehicle that you described that night again if you saw

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1 them?

2 A. Yes, sir.

3 Q. B14 through 16. Do you recognize these?

4 MR. CASTO: Frank, if I could see those. That's a
5 different set, I think. Right.

6 MR. YOUNG: (Proffering.)

7 MR. CASTO: Thank you. Let me look at all of
8 them.

9 MR. YOUNG: They're right there. I don't want to
10 show them to the jury.

11 MR. CASTO: I understand. Let me see. No
12 objection, Your Honor.

13 (Whereupon, State's Exhibit B14 through B16
14 admitted.)

15 MR. YOUNG: I want to make sure we identify them
16 first. The foundation has been laid, Your Honor.

17 BY MR. YOUNG:

18 Q. 14 through 16. Would you take a look at those? Do
19 you recognize those?

20 A. Yes, sir. I do.

21 Q. What are they?

22 A. This is going to be the damage and blood that was
23 located on the vehicle we just observed.

24 Q. Okay. Now, if I can, please, sir, I would like to
25 at this point just briefly, I'm going to hold up certain

1 photographs.

2 MR. YOUNG: Your Honor, with the Court's permission
3 I'll publish these photographs to the jury.

4 THE COURT: Yes.

5 MR. YOUNG: But with the assistance of this officer.

6 BY MR. YOUNG:

7 Q. Okay. I would like to, if I could, begin, sir, with
8 the picture noted here as State's Exhibit A4. I will hold it
9 up so that you can see it and the jury can see it. I'll hand
10 these to the jury later. But would you identify the area
11 which you're describing as the front side or rear of the
12 house in this photograph?

13 A. This is the front side of the house. This
14 photograph was taken from the roadway of Sandy Bottom Lane.

15 Q. And there appears to be some front of a vehicle
16 poking out, if you want to call it that, from the right
17 side?

18 A. Yes, sir.

19 Q. Is that the vehicle in the other photographs?

20 A. Yes, sir, it is.

21 Q. Okay. Now, I would like to show you what's been
22 admitted as State's Exhibit number A5. Can you relate the
23 front of the building, the front of
24 residence to the other buildings located in this picture?

25 THE COURT: Do you need him to step down?

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1 MR. YOUNG: It would be very useful, yes, please.

2 (Witness leaves the witness stand.)

3 BY MR. YOUNG:

4 Q. Josh, step back over a little bit here and just
5 hold it up right here so you're not standing in the way of
6 that lady over there.

7 A. This is the front of the residence. This home here.
8 These two homes here are the last two homes on the left of
9 that road. Sandy Bottom Lane dead ends right here past this
10 home.

11 Q. All right. Thank you. Stand right there. So this
12 is the front of that same residence. This is State's Exhibit
13 A4 you previously testified about?

14 A. Yes, sir, it is.

15 Q. Just so that we can show that. All right. Now,
16 this is a photograph of what? This is A6.

17 A. This is a photograph of what would be the right side
18 of the residence.

19 Q. If you were facing the front of the residence, this
20 would be the right side?

21 A. Yes, sir. The roadway would be back here. This
22 side here would be the front. This is the right side.

23 Q. There was a vehicle apparently moved from this
24 location that's not present in this?

25 A. Yes, sir. The vehicle that we just saw parked in

1 the previous picture would have been parked right here in
2 relation to the home.

3 Q. Okay. What is this picture? This is A7.

4 A. It's the same -- It's another picture showing the
5 same side of the residence, the right side that we previously
6 saw and then this would be the rear of the residence along
7 with a back porch area attached to the residence.

8 Q. What is this here?

9 A. Steps leading up to the back porch.

10 Q. So there is a front and a rear entrance with a porch
11 on both?

12 A. Yes, sir.

13 Q. Okay. All right. If you will stay right there,
14 I'll have some more. All right. If I could, sir, this is
15 State's Exhibit number A8. If you begin on the right side of
16 this photograph, explain what this is?

17 A. This is the porch. This is the back porch of the
18 house.

19 Q. Okay. And so we are looking back down toward a
20 string of homes that were in the other photograph?

21 A. That's correct. The same two in the previous
22 photograph.

23 Q. This vehicle now is positioned approximately at the
24 same location where it was the day of this event? The night
25 of this event.

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1 A. Yes, sir.

2 Q. What's this area?

3 A. This is the out building where we located Mr. Boyd
4 and Ms. Abney the night of the incident.

5 Q. Okay. I see. And this is another picture A9.
6 Where is this taken from?

7 A. This is taken from the back porch of the home. This
8 shows the building in relationship to the vehicle.

9 Q. And this building here is what?

10 A. This is the out building which when we arrived on
11 the scene where we found the assault taking place.

12 Q. Okay. What is this picture? This is State's A11.

13 A. This is going to be the same photograph showing the
14 - or the same building depicting the inside of the building
15 the way it looks now.

16 Q. Okay. And the chair that's located there, does that
17 chair bear any relationship to what you saw that night at the
18 scene?

19 A. Yes, sir. The same very general area is where Ms.
20 Abney was sitting the night of the incident. I do not
21 believe that's the same chair. This was in the building.
22 Some things have been changed around, but her location where
23 I found her was in the same position.

24 MR. YOUNG: I understand. I understand. Now, if I
25 could, Your Honor, did you previously admit B1 through

1 B5?

2 THE COURT: B1 through 5 is admitted.

3 MR. YOUNG: That's what I understood. I believe
4 that's correct.

5 THE COURT: Those are the inside.

6 MR. YOUNG: Yes, ma'am. That's correct.

7 MR. CASTO: That's what I have as well.

8 MR. YOUNG: Yes, sir. All right.

9 BY MR. YOUNG:

10 Q. Now, with regard to -- I would just like to hold up
11 B1. I would like to hold up another photograph here and see
12 if we can relate this to what's inside the building in terms
13 of being able to see better. Now, again A2, 3, and A1. A1,
14 2 and 3, they were taken recently?

15 A. Yes, sir.

16 Q. But these show the inside of the home and the
17 location of the structures and where things are inside the
18 house basically, correct?

19 A. Yes, sir.

20 Q. B1 through 5 shows what was there that night,
21 correct?

22 A. That's correct.

23 Q. Some of the photographs in B1 are just not as clear
24 as some of these here so to show the relationship of the
25 things; is that correct?

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1 A. That's correct.

2 Q. Okay. So if I could, can you tell me, if I show you
3 State's Exhibit number A2 and B1 together, can you relate
4 those two?

5 MR. CASTO: Objection. May we approach?

6 (Side bar off the record.)

7 THE COURT: Back on the record. Continue, Mr.

8 Young.

9 BY MR. YOUNG:

10 Q. Now, let's make sure we are straight on this. Step
11 around here, sir, for a moment to get this straight. I want
12 to show you what's been marked as State's A1, 2, and 3.
13 Would you take a look at these photographs and tell me if
14 those photographs reflect the relationship of large items of
15 furniture in the house which were present in part or whole on
16 the night that you were first in this house back on September
17 15th of 2013. Are the structures the same and the basic
18 relationship of partitions and kitchen and living room areas,
19 are they correctly and accurately reflected in those
20 photographs?

21 A. Yes, sir. The only thing as far as there have been
22 certain items of furniture slightly moved. This particular
23 computer desk was actually facing the wall, so if you sat
24 down at that desk, your back would actually be to the angle
25 which I took the photograph.

1 Q. But it was in that corner?

2 A. It was in that corner just slightly changed.

3 Q. All right. How about the kitchen area?

4 A. Yes, sir.

5 Q. Is there a missing chair?

6 A. Yes, sir. It's not a chair at that table. It's
7 only two. It's the same table that was there the night of
8 the incident.

9 MR. YOUNG: We would offer Exhibit A1 through 3.

10 THE COURT: Any objection?

11 MR. CASTO: None, Your Honor.

12 (Whereupon, State's Exhibit A1 through A3 admitted.)

13 BY MR. YOUNG:

14 Q. Now, if you could, sir, step back down and we'll go
15 right back where you were. I apologize. Stand where you
16 were and I'll hand these back up to you. Is there a
17 relationship that can be demonstrated between State's Exhibit
18 A2? I'll hold up B1 and B4 and I'll hold up all three of
19 these. This is State's Exhibit A2. Okay. This is the
20 photograph you took when?

21 A. On Sunday. This previous Sunday.

22 Q. Okay. Showing the interior?

23 A. That's correct.

24 Q. Okay. Let me hold up what's been marked as State's
25 Exhibit B1 and hold up B4 and you take your choice of which

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1 one of these you would like to describe first. I'll hold up
2 A2. Can you relate A2 to B4?

3 A. Yes, sir. This is the photograph that was taken on
4 the night of the incident. This photograph here was taken
5 several days ago. In this photograph you can see the same
6 table matching up with the same wall. Also there's things
7 scattered about the home on the floor that is depicted in
8 this particular photograph versus this photograph.

9 Q. Okay. So it shows signs of disarray there?

10 A. Yes, sir. Very much so.

11 Q. Let me hand you State's B1 and can you relate that
12 in any way to A2?

13 A. Yes, sir. Again this photograph was taken on the
14 night of the incident. This photograph was taken several
15 days ago.

16 Q. You're referring to A2 when you say that?

17 A. Yes, sir, I am. And in this photograph you can see
18 the kitchen table. Or the kitchen chair that matches this
19 set here which also matches this set that's currently still
20 in the home. This chair is broken. Pieces of the chair was
21 here. Also different items scattered.

22 Q. What's that on the floor there?

23 A. This item right here is a fish that was on the floor
24 and there were several fish thrown around on the floor there
25 that night.

1 Q. Are the refrigerator and the table basically in the
2 same position that they were that night?

3 A. Yes, sir.

4 Q. Okay. Thank you. All right. Now, with regard to
5 State's Exhibit number A3 and B2 and 3, I'm going to hand
6 these -- I'm going to hold A2 up and I'm going to hand you B2
7 and B3. There is A2. Excuse me. This is A3 and you have B2
8 and B3.

9 A. Yes, sir.

10 Q. Now, can you relate this to the location of what
11 appears to be a couch and a computer table in this picture
12 which is A3?

13 A. Yes, sir. Again pictures of B2 and B3 that I'm
14 holding were taken the night at the scene. This photograph
15 A3 was taken a few days ago. It shows the same living room
16 area. Again on this night we can see numerous items thrown
17 around on the floor including several more fish, plates,
18 jars, and just numerous items scattered around the home.

19 Q. Okay. And I want to just say this. Is the computer
20 table you say turned in some fashion in this picture which
21 I'm referring to now as B2? Is that computer turned in some
22 fashion differently than it is in A3?

23 A. Yes, sir, it is.

24 Q. Okay. How is it turned?

25 A. A3 would be better for me to describe to you, but

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1 the table is up against this wall here in this photograph.
2 On the incident night the rear of the table would have been
3 along this wall here.

4 Q. Okay. Is the couch basically in the same
5 position?

6 A. Yes, sir.

7 Q. Okay. All right. Thank you. All right. Now, with
8 regard to the -- You went into the interior of the home I
9 believe you indicated, correct?

10 A. I did.

11 Q. All right. Let me show you what's been marked has
12 State's A1 and tell me how that relates, if anything, to any
13 of the other photographs up here. I have B5 in particular.

14 A. Yes, sir. This photograph A1 was taken from the
15 living room of this room here with the door open was the and
16 still is the bedroom of Ms. Abney and this photograph here is
17 inside Ms. Abney's bedroom which this right here would be the
18 doorway going in.

19 Q. So this is a picture in B5 inside the bedroom?

20 A. Yes, sir.

21 Q. All right. Now, when you went into the bedroom on
22 the night of September 15th, 2013, did you notice anything on
23 the floor? Were there marks on the floor or objects on the
24 floor which appear to be dark in color?

25 A. Yes, sir. This red in color liquid is blood and

1 also appeared on this fan here.

2 Q. And this is in her bedroom?

3 A. Yes, sir, it is.

4 Q. All right. Was there any blood located in these
5 other photographs in the living room area?

6 A. There were drops of blood throughout the house, but
7 most of the blood that we located inside the house was
8 actually in that bedroom to my recollection.

9 Q. Okay. So that's the heaviest concentration?

10 A. Yes, sir.

11 Q. All right. If I could, I would like to hold up A2
12 and A1 again and if I could, could you relate in some fashion
13 the means by which a person if they were in the kitchen or in
14 the living room how they would get to this bedroom noted
15 here?

16 A. Okay. This bedroom again is taking of A1 of - this
17 picture here was taken from the living room. You would have
18 been -- This is the kitchen towards the rear of the residence
19 with this being the front with the front door.

20 Q. The front door is near this couch?

21 A. To the right of that couch. Back this way would be
22 the rear door that leads back to the back porch. If you were
23 going into this bedroom here --

24 MR. CASTO: Can you hold it up in front of you?

25 BY MR. YOUNG:

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1 Q. Just hold it up in front of you.

2 A. All right. It might be easiest if I go ahead --
3 Here, you can hold this one. But this photograph here again
4 is taken from the rear of the residence. You can walk around
5 the kitchen. This is a wall that separates the kitchen and
6 the living room. Also you can walk directly through here to
7 that bedroom and enter this particular doorway.

8 Q. So it's past, in short term it's past the
9 refrigerator down the hall?

10 A. Yes, sir, it is, past the refrigerator down the
11 hall.

12 Q. Short distance?

13 A. When you're coming out of the kitchen in this
14 particular photo, you pass a bathroom right there and then it
15 leads to an open bedroom.

16 Q. All right. Thank you. Now, these, I want to hand
17 you B15, 16 and 14. These are photographs from when? I'm
18 sorry. I can't hold them.

19 A. These were photographs --

20 Q. Hold them up for the jury, please.

21 A. These photographs here were taken on the night of
22 the incident. This shows there is damage on a vehicle that
23 was parked at the rear of the residence closer to the right
24 side of the residence. It's showing blood that is now on
25 this vehicle and also you cannot see the damage as well on

1 these photographs as you can on the other ones we previously
2 introduced.

3 Q. State's Exhibit A10, is the scratch apparent on this
4 more clearly than it is on those other photographs?

5 A. Yes, sir.

6 Q. Scratch and dent?

7 A. Yes, sir. And it's also dented inside into the
8 vehicle as well.

9 Q. Okay.

10 A. This is the way the vehicle looked that night to
11 us.

12 Q. This picture A8, does that correctly depict the
13 location of that vehicle you were referring on that night?

14 A. Yes, sir. It's parked in roughly the same area.

15 Q. In its relationship to the shed and the house?

16 A. Yes, sir.

17 Q. Okay. Would you retake your seat, please?

18 A. Yes. (Witness resumes the witness stand.)

19 BY MR. YOUNG:

20 Q. Now, you observed Ms. Abney that night, correct?

21 A. That's correct.

22 Q. You got very close to her?

23 A. I did.

24 Q. Would you be able to recognize photographs of her
25 condition and injuries that night if you saw them again?

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1 A. Yes, sir.

2 Q. Would you be able to do the same with regard to the
3 condition of the child?

4 A. Yes, sir.

5 Q. Would you be able to recognize a picture of
6 Mr. Johnson I believe that you described as being present?

7 A. Yes, sir.

8 Q. Or a partial picture. Let me hand you up what's
9 been marked as State's Exhibit number B24, B17, B18, B19,
10 B20, B21, B22, and B23. This includes a photograph of
11 Mr. Boyd that night. Would you be able to recognize those
12 photos? Tell me if you do recognize them.

13 A. I do.

14 Q. You have had a chance to previously see these, have
15 you not?

16 A. Yes, sir, I have.

17 Q. Do these fairly and accurately represent the
18 condition and the location of Ms. Abney, Mr. Boyd, and their
19 child?

20 A. Yes, sir.

21 Q. And Mr. Patrick Johnson?

22 A. Yes, sir.

23 MR. YOUNG: We would offer these in as an exhibit,
24 Your Honor.

25 THE COURT: What are the numbers again?

1 MR. YOUNG: I have B17 through 24.

2 THE COURT: Any objection?

3 MR. CASTO: Your Honor, we do have an objection and
4 a matter of law at this time.

5 THE COURT: All right, ladies and gentlemen of the
6 jury, at this time there is a matter of law that we'll
7 take up outside the presence of the jury. I'm going to
8 send you back into the jury room.

9 (Whereupon, the jury was sent out and the following
10 proceedings were held outside the presence of the jury.)

11 MR. CASTO: Your Honor, my objection is just with
12 only one of those photos, if I may.

13 THE COURT: Which one?

14 MR. CASTO: It is the picture -- I'm not sure which
15 one.

16 THE COURT: You can come up.

17 MR. CASTO: I wasn't sure if it was in this stack.

18 BY THE WITNESS:

19 A. I don't have any photographs.

20 THE COURT: It's one of B17 through 24 which he was
21 just trying to introduce just then.

22 MR. CASTO: Yes, ma'am. Our objection in particular
23 is with State's B24. This picture just to read into the
24 record is a picture of the one year old child, has blood
25 on him. It's not his blood. We have agreed with that,

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1 but I think that it rises to the level of appealing to
2 the passion and prejudice. I think that he can talk
3 about that, but I think it crosses the line. The other
4 pictures just show her injuries. I think that that's
5 relevant, but the child isn't involved in this and so
6 it's not something that goes to any one of the elements
7 the state has to prove and so we also question its real
8 relevance and I think it's not very relevant and it's
9 prejudicial, Your Honor.

10 MR. YOUNG: Relevance, Your Honor, would be as
11 follows: There will be testimony that the child was in
12 the arms of both the victim and the defendant in this
13 case. The blood was coming from him. It corroborates
14 the versions of the State's versions of the facts. We
15 also have Mr. Patrick Johnson coming on the scene and
16 taking custody of that child. I offered that in the
17 opening statement that he would come and take custody of
18 the child. He did. That corroborates that portion of
19 the testimony which will be coming forth. He will be in
20 the arms of the officers when they arrive there and
21 those are pictures that corroborate the versions of the
22 State's evidence. The fact that blood is on him is
23 going to be -- That has nothing to do with anything
24 other than the fact that he got blood on him. It's not
25 his blood. It's his daddy's blood and corroborates

1 everything we're saying. I'm sorry. Do you have
2 something?

3 THE COURT: All right. Can I see the picture,
4 please? That's B24 that we are referring to.

5 MR. YOUNG: What did you do with it?

6 MR. CASTO: It's on the very bottom, Frank. The
7 very bottom.

8 MR. YOUNG: With regard to malice and intent the
9 presence of a child in the arms of its mother, we
10 believe that if an assault continues with a child in the
11 arms of a mother, that malice increases, not decreases
12 and intent certainly rises. We have the obligation to
13 prove that element and the presence of that child in his
14 mother's arms is corroborated by what we have as
15 evidence here. Your Honor, we just believe that goes to
16 the State's case in chief.

17 THE COURT: Yes, sir. Anything else?

18 MR. CASTO: Your Honor, I have never heard of any
19 supportive South Carolina case law that says if you have
20 a child present, the intent of the actor increases.

21 THE COURT: Well, how would - with that argument
22 aside, there's been some testimony or there was some
23 testimony, I believe, from this officer that they were
24 holding the child. I think that it's admissible, but
25 the groundwork needs to be laid that this is not the

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1 child's blood.

2 MR. YOUNG: I will do that.

3 THE COURT: Something along the lines of who was
4 holding him. Whose blood is on the child so that it's
5 clear. And I'm not sure if there's any other ones, but
6 I think if you enter anything more than just this one
7 photo, then it becomes --

8 MR. YOUNG: That's it.

9 THE COURT: That may be the issue to the exhibits,
10 the numerous pictures of the child.

11 MR. YOUNG: Your Honor, I'll hand that up to the
12 Court. This is Mr. Boyd, a picture of him. That's the
13 only other one. We have - there are several pictures in
14 there of poor quality of the victim. There are several
15 of those. There's a picture of her hand. Two of them.
16 And her arm. That's it.

17 THE COURT: All right. The objection is overruled.
18 I find that the issue of the child and the blood is
19 relevant. There's already been testimony to that effect
20 of the child being there and in their arms. My only
21 instruction is that the proper foundation be laid from
22 the picture as to whose blood it is, where was the
23 child, when was it taken before the jury.

24 MR. YOUNG: I think he will be able to testify as
25 far as he could determine the person that was providing

1 the blood at the scene was Mr. Boyd. I think that will
2 be likely to come out. Your Honor, there is also the
3 issue mainly I think the blood on her primarily is his.
4 I don't believe she was bleeding profusely. There was a
5 terrible amount of damage to her head and face, but the
6 blood aspect, the bleeding aspect was not present at
7 that time. There was a tremendous amount of swelling.

8 THE COURT: All right.

9 MR. CASTO: Yes, Your Honor.

10 THE COURT: Your objection -- It will be entered
11 over the objection of the defense. That is B24. Any
12 objection to B17 through 23?

13 MR. CASTO: None, Your Honor.

14 THE COURT: All right. Thank you.

15 (Whereupon, State's Exhibit B17 through B24
16 admitted.)

17 THE COURT: Let's bring the jury back in.

18 (The jury returns to the courtroom.)

19 THE COURT: Yes, sir. You may continue.

20 MR. YOUNG: Thank you, Your Honor.

21 BY MR. YOUNG:

22 Q. With regard to those same photographs, sir, I'm
23 going to ask a specific question with regard to -- You have
24 taken a look at each one of these photographs?

25 A. Mm-hmm.

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1 Q. Who is the person bleeding at the scene primarily?

2 A. The defendant, Mr. Boyd.

3 Q. As far as you know most of the blood we see in these
4 photographs is whose blood?

5 A. Mr. Boyd's.

6 Q. From your investigation that's what you could see?

7 A. Yes, sir.

8 Q. There are injuries present on Mr. Boyd that are
9 obvious here. How about on the child, the blood on him?

10 A. Through every bit of the investigation it was
11 determined that the blood on the child is from Mr. Boyd.
12 It's his blood, not the child's blood.

13 Q. Thank you. All right. I would like for you to step
14 down, sir, and if you could, I'm going to ask you to take a
15 look at these photographs. I'm going to hand you what's been
16 previously admitted as B20, 21, 22 and ask you what those
17 pictures are?

18 A. These pictures right here were taken and they are of
19 Ms. Abney that showed her condition that we found her in that
20 night.

21 Q. Where was she when these pictures were taken?

22 A. She was in the shed when these pictures were
23 taken.

24 Q. So these pictures were taken when she was actually
25 in the shed?

1 A. In the shed in the same chair that we located her
2 in.

3 Q. If you would, sir, I'm going to hold up State's
4 Exhibit B21. I want you to tell the jury what you saw when
5 you walked into that room?

6 A. As far as her condition?

7 Q. Yes.

8 A. Okay. Her condition, she had tremendous swelling to
9 the left side of her face. These photographs really do not
10 do the justice of the injuries of the way they actually
11 looked that night. Some are -- She has swelling underneath
12 her eye, down the side of her face, her head, upper head
13 going back, all this was swollen out from her eye. Her eye
14 was swollen shut. She appeared to be bleeding from her lips,
15 and her lips were swollen along with her nose.

16 Q. Now, B22, would you take a look at that and tell me
17 does that show the swelling on the left side that you
18 observed?

19 A. Yes, sir.

20 Q. Where were the blows being delivered when you walked
21 into the shed?

22 A. To the left side of the face.

23 Q. With regard to --

24 A. She also had what appeared to be some type of
25 powdery substance located on her clothing. She did have some

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1 blood, some minor cuts on her arms when we took these
2 photographs.

3 Q. Let me hand you what is marked as State's B19.
4 These are also B17 and 18. What do these depict?

5 A. This photograph right here would be of the left arm
6 of Ms. Abney. You can see blood on her arm. There are some
7 small swelling.

8 Q. In your investigation was that primarily due to
9 transfer?

10 A. It was primarily from transfer to Ms. Abney from
11 Mr. Boyd.

12 Q. How about the hands here which is State's B18 and
13 B17?

14 A. Yes, sir. These are the photographs of Ms. Abney's
15 hands.

16 Q. Does she appear to have a cut on her hand here? Is
17 that a cut or is that just a transfer of blood?

18 A. I believe that's just a transfer of blood. I do not
19 recall her having any significant cuts to her hands or
20 knuckle area.

21 Q. Okay. And this is a picture of Mr. Boyd, is it not,
22 B23?

23 A. It is.

24 Q. Now, Mr. Boyd was on the ground at that time?

25 A. Yes, sir, he was.

1 Q. Basically what you all do is the right thing because
2 you all eventually call EMS, right?

3 A. We initially called EMS for both subjects. We were
4 concerned for Mr. Boyd and also concerned for the wife Ms.
5 Abney.

6 Q. Okay.

7 A. As far as their medical conditions.

8 Q. Okay. And we have talked about that the blood found
9 in and about the house belonged to Johnny. That's a fair
10 statement, right?

11 A. That's correct.

12 Q. The blood on any of the folks in the picture belongs
13 to Johnny is what you testified to, correct?

14 A. I would testify to that other than possibly blood,
15 small amounts of blood coming from the mouth of Ms. Abney
16 near the mouth area.

17 Q. Yes, sir. Now EMS is called. How long does it take
18 for them to arrive on scene? You all arrive on scene. How
19 long does it take for EMS to arrive would you say from when
20 you got there until they show up?

21 A. I couldn't give you an accurate description.

22 Q. Approximately. It's okay if you don't remember.

23 A. Well, I would say maybe 10 minutes.

24 Q. Okay.

25 A. 15 minutes.

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1 take a break at this time or further proceed to the next
2 witness?

3 THE COURT: Let me speak with you.

4 MR. YOUNG: Okay. That's fine.

5 (Side bar off the record.)

6 THE COURT: Back on the record. Okay. Call your
7 next witness.

8 MR. YOUNG: The state calls EMS provider Gary
9 Seibert.

10 Thereupon,

11 GARY SEIBERT

12 after having been first duly sworn, testified as follows,

13 MR. YOUNG: May it please the Court.

14 THE COURT: Yes. Go ahead.

15 DIRECT EXAMINATION

16 BY MR. YOUNG:

17 Q. Sir, would you give us your full and complete name
18 and spell your last name. Be sure the court reporter has it.

19 A. Yes, sir. My full name is Gary Adam Seibert,
20 Junior. Last name is S-e-i-b-e-r-t.

21 Q. Sir, do you go by the nickname Spanky?

22 A. I do.

23 Q. Okay. Get that out of the way so if somebody has to
24 ask the question who Spanky is if it comes up, we'll know who
25 it is.

1 A. Yes, sir.

2 Q. Sir, were you on duty the night of September 15th,
3 2013?

4 A. Yes, sir.

5 Q. What is your job and where do you work?

6 A. I'm a nationally registered EMT and paramedic. I
7 work for Southern Ambulance Service.

8 Q. Now, I don't want to get into all the nit-noid here,
9 but what does that mean and what qualifies you to do that
10 job?

11 A. Nationally registered EMT and paramedic is a step
12 below a paramedic and above a basic EMT. It gives me a
13 little bit more training than your basic EMT, not quite as
14 much as a paramedic.

15 Q. How long do you go to school for all of that?

16 A. The basic EMT is six months. The paramedic is
17 another six months.

18 Q. So you've had a whole year's worth of schooling at a
19 minimum to be what you do and how you are, right?

20 A. Yes, sir.

21 Q. And you're authorized to give immediate care at
22 locations where you are sent to to provide immediate
23 emergency assistance to people who are injured, correct?

24 A. Yes, sir.

25 Q. And that's what you do for a living?

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1 A. Yes, sir.

2 Q. Okay. On this night of September 15th, 2013, did
3 you get to go to Sandy Bottom Drive in Batesburg?

4 A. Yes, sir.

5 Q. Did you have a patient there at that time by the
6 name of Latoya Abney that you saw?

7 A. Yes, sir.

8 Q. Do you recall where you first saw her?

9 A. Yes, sir. When I got on scene, they directed me to
10 the little shed behind the house and that's where I first
11 made contact.

12 Q. What was she doing when you first came in there?
13 Was she standing, sitting, walking around?

14 A. I believe she was sitting.

15 Q. Okay. All right. And you did an immediate
16 assessment on her?

17 A. I did.

18 Q. Would you be able to recognize a photograph again of
19 her as you saw her that night?

20 A. Yes, sir.

21 Q. I'll show you what's been marked as State's Exhibit
22 B21 and ask you to look at that and then tell me if you can
23 recognize that?

24 A. Yes, sir.

25 Q. What is that?

1 A. That's a picture of the patient.

2 Q. Is that Ms. Latoya Abney that you're referring to?

3 A. Yes, sir.

4 Q. About what time did you get there?

5 A. My time that I got on scene -- I'll refer back. I
6 got on scene at 53:26 in the morning.

7 Q. What time in the morning?

8 A. 53:26. It's 53 minutes 26 seconds.

9 Q. Okay. So just after midnight?

10 A. Yes, sir.

11 Q. So when you're there and you see Ms. Abney, there
12 are, of course, other people at the scene. Who else was at
13 the scene?

14 A. Uhm, we had the first ambulance there called for
15 another ambulance due to the number of patients so they were
16 there taking care of their patient. I walked by them, got
17 directed behind the house. There was several sheriff
18 deputies I seen. Myself, my partner, and to be honest
19 with you I can't remember who else was there.

20 Q. What kind of injuries did she report and what did
21 you note?

22 A. She complained of severe pain to the left side of
23 her head where the swelling - she had a good bit of swelling.
24 Her eye was swollen as well. She had some abrasions in the
25 same area on her head. She stated she was hit with a cinder

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1 block in the head knocking her unconscious, knocking her
2 unresponsive and the injuries that she sustained looked
3 pretty severe from my initial assessment.

4 Q. Now, you do this for a living. For how long have
5 you been doing this now?

6 A. 19 years.

7 Q. Now, you have seen a lot of people come and go --

8 A. Yes, sir.

9 Q. -- with various kinds of injuries. When you look at
10 a person, you're kind of responsible for assessing threat to
11 life at the front end of this whole thing, are you not?

12 A. Yes, sir.

13 Q. If I put number 10 at the top most severe scale and
14 I put one as almost routine in terms of injury and threat to
15 life, where would she fall?

16 MR. CASTO: Objection. Matter of law, Your Honor.

17 THE COURT: All right. Let me see you all one
18 second.

19 (Side bar off the record.)

20 THE COURT: Back on the record. All right. The
21 objection is sustained. Please rephrase it.

22 MR. YOUNG: I'll rephrase the question.

23 BY MR. YOUNG:

24 Q. In terms of severity of injury, okay, that you are
25 required to assess and then make a decision on what treatment

1 to follow, that's what you're supposed to do for a living,
2 right?

3 A. Yes, sir.

4 Q. And you do this everyday?

5 A. Yes, sir.

6 Q. If a patient comes into you, if they have got a bad
7 knee scrape or something, they fall off a bicycle, you have
8 got to assess how bad that is versus someone else, correct?

9 A. Yes, sir.

10 Q. Where does this patient fall in severity?

11 A. With the injuries that I was able to assess straight
12 up and her description of mechanism of injury --

13 MR. CASTO: Objection. We do renew our objection.

14 THE COURT: Let me send the jurors out for a second,
15 just one second.

16 (Jury sent to jury room. The following proceedings
17 held on the record.)

18 THE COURT: All right. Let me have you proffer the
19 question again.

20 MR. YOUNG: All right. Your Honor, the question I'm
21 proffering, this is, I have placed this in the context
22 of what is known as triage so that's the context in
23 which I'm asking it. Triage is a process by which
24 patients are assessed as to severity as to how immediate
25 they need their treatment. It's not the severity of the

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1 injury itself that might be determined by a physician
2 later, but he has to assess what have I got to do --

3 THE COURT: I understand that part. Let me hear the
4 question again regarding him and I want to hear his
5 answer.

6 PROFFERED TESTIMONY OF GARY SEIBERT

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q. The question would be how would you assess this
10 person who had to be treated in terms of severity of
11 injury?

12 A. I would treat her pretty severe, as a pretty severe
13 injury due to the trauma to her head, with the eye swelling
14 and everything else, unable to see underlying injuries
15 possibly.

16 Q. And the follow up question would be would you have
17 to treat this as a potential threat to life?

18 A. Yes, sir.

19 THE COURT: All right.

20 MR. YOUNG: Because that's the question of immediate
21 need for treatment.

22 THE COURT: All right. I'm going to overrule the
23 objection as to the first part of the question. I'm
24 going to sustain the objection to the second question.
25 I think you can rephrase that.

1 MR. YOUNG: If I just ask how soon would she need
2 treatment due to the severity of the injury?

3 THE COURT: Yes. You can ask that. Or what, based
4 on the injury what was your assessment as to what was
5 immediately needed or something to that effect.

6 MR. YOUNG: All right. That's fine.

7 THE COURT: All right. Bring them back in.

8 (The jury returns to the courtroom.)

9 THE COURT: All right. You may continue.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. YOUNG:

12 Q. Based upon that question I asked you before, same
13 question. The question is, in terms of the need for
14 immediate treatment, how would you assess the severity of
15 this injury?

16 A. She needed to be treated, assessed, treated and
17 transported as soon as possible.

18 Q. And that was based upon all your years of training
19 and experience that she needed to go right now?

20 A. Yes, sir.

21 Q. Okay. Do the pictures do justice to the amount of
22 basic injury you saw to the face?

23 A. Actually in person it looked a lot worse than what's
24 on the picture. Personally I think --

25 MR. CASTO: Objection. May we approach?

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1 THE COURT: Yes, sir.

2 (Side bar off the record.)

3 THE COURT: Back on the record. Objection
4 overruled.

5 BY MR. YOUNG:

6 Q. Now, let me make sure there's no confusion over my
7 question. I don't want you confused. That picture shows
8 something taken at a point in time?

9 A. Yes, sir.

10 Q. Okay. When you first got there, you saw her
11 yourself?

12 A. Yes, sir.

13 Q. Okay. What did you see?

14 A. She was sitting in the wood shed, eyes swollen.

15 Q. Was the swelling more apparent to you at that time
16 or less apparent to you at that time than appears in that
17 picture at that point in time?

18 A. More apparent to me because I had a three
19 dimensional object to look at versus a two dimensional object
20 so it looked more severe to me.

21 MR. YOUNG: I understand. Thank you. Would you
22 answer any questions Mr. Casto has of you.

23 CROSS EXAMINATION

24 BY MR. CASTO:

25 Q. Mr. Seibert, how are you?

1 A. Just fine.

2 Q. Let me ask you this: As I understand your testimony
3 and how you fit into our story, you arrive and you treat
4 Latoya; is that right?

5 A. Yes, sir.

6 Q. In other words, you don't treat Johnny?

7 A. No, sir.

8 Q. As you testified there's a separate group of EMS
9 personnel that work on Johnny; is that right?

10 A. Yes, sir.

11 Q. You really can't speak to what was going on with
12 Johnny, right?

13 A. No, sir.

14 Q. That's the other folks --

15 A. Yes, sir.

16 Q. -- that can do that?

17 A. Yes, sir.

18 Q. Okay. Now, I notice you brought to court a copy of
19 the report that you made when you were assessing Latoya; is
20 that right?

21 A. Yes, sir.

22 Q. And really when you respond to, you know, events
23 such as this, we have been using the term assessment, initial
24 assessment, right?

25 A. Yes, sir.

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1 Q. Is that a fair description of what you do? You show
2 up and you kind of just look at somebody head to toe and
3 evaluate what's needed? Is that a fair way to say that?

4 A. Yes, sir.

5 Q. You did that assessment in this case, didn't you?

6 A. Yes, sir.

7 Q. You made that assessment and I use the term head to
8 toe, but I'm sure in the medical field you don't refer to it
9 as that, but it's thorough and it's complete, right?

10 A. Yes, sir.

11 Q. And you assessed her mental status, right?

12 A. Yes, sir.

13 Q. Didn't find any abnormalities, right?

14 A. No, sir.

15 Q. You assessed the condition of her skin, no
16 abnormalities?

17 A. Yes, sir.

18 Q. You have a list that you did and you filled out.
19 You talked about the face and eye area. The neck area, no
20 abnormalities, right?

21 A. Yes, sir.

22 Q. You looked at, moving on down you moved to the
23 chest, no abnormalities, right?

24 A. Yes, sir.

25 Q. No abnormalities to heart sounds, right?

1 A. Yes, sir.

2 Q. Lung sounds, no abnormalities?

3 A. Yes, sir.

4 Q. Then you went lower to her mid section, the abdomen
5 area. In general no abnormalities, right?

6 A. Yes, sir.

7 Q. Looked at essentially her back area. No
8 abnormalities in the back, right?

9 A. Yes, sir.

10 Q. Then you looked at her extremities. Left arm, no
11 abnormalities?

12 A. Yes, sir.

13 Q. Right arm, no abnormalities?

14 A. Yes, sir.

15 Q. And then her left leg and right leg, no
16 abnormalities; is that right?

17 A. Yes, sir.

18 Q. Okay. And even, you know, neurologically what you
19 could tell there were no abnormalities; is that right?

20 A. Yes, sir.

21 Q. All right. And then after this she is transported
22 by ambulance driven by Mr. Morelli is it?

23 A. Morelli was in the back with me. We had a
24 firefighter drive us in.

25 MR. YOUNG: Okay. All right. Thank you, sir. No

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1 further questions.

2 THE COURT: Yes, sir.

3 MR. YOUNG: Your Honor, could I take a brief side
4 bar real quick?

5 THE COURT: Yes, sir.

6 (Side bar off the record.)

7 MR. YOUNG: Back on the record. Your Honor, I have
8 a few brief questions.

9 REDIRECT EXAMINATION

10 BY MR. YOUNG:

11 Q. You focused on what you observed to be the primary
12 injuries, correct?

13 A. Yes, sir.

14 Q. The ones that you felt may represent the greatest
15 risk to her, correct?

16 A. Yes, sir.

17 Q. And those were in what area?

18 A. Her head. That was my main concern. Her left eye.
19 Also everywhere she had the swelling on the left side of her
20 face.

21 Q. Nobody gets disrobed during this portion of an
22 evaluation, do they?

23 A. Not normally, no, sir, not as long as they're
24 conscious.

25 Q. Did you disrobe any portion of her?

1 A. No, sir.

2 Q. There wasn't a need to, was there?

3 A. No, sir. She was conscious, alert and oriented and
4 able to answer my questions so I knew primarily. They were
5 pointed questions.

6 Q. Did she describe a level of pain?

7 A. She said she was in a lot of pain. Also on my
8 paperwork I documented that she described her pain level as
9 being a ten on a one to ten scale, ten being the worse most
10 excruciating pain.

11 Q. Okay. All right. And the swelling that you
12 observed you say was, let's just say maybe greater than what
13 was on that photograph?

14 A. Yes, sir.

15 Q. So one point in time to another what you saw was
16 more?

17 A. Yes, sir.

18 MR. YOUNG: I have no further questions.

19 THE COURT: All right. Anything further?

20 MR. CASTO: No questions, Your Honor.

21 THE COURT: All right, sir. You may step down.

22 MR. YOUNG: Your Honor, my next witness will be not
23 quite as long as my first witness, but will be three
24 quarters as long. We might want to take a break at this
25 time.

1 THE COURT: What we'll do is we'll take our lunch
2 break at this time. Ladies and gentlemen of the jury,
3 at this time we'll take our lunch break. You have heard
4 some of the evidence in this case, but not all of it so
5 I ask that you not discuss this case. I ask that you
6 not form an opinion in your mind until you have received
7 all of the evidence. We'll see you all back at 2:00.
8 All right. Thank you. Have a great lunch.

9 (The jury was excused for luncheon recess.)

10 THE COURT: Just real quick. There was a side bar,
11 and I just want to put on the record, the state had an
12 issue on cross examination as to Mr. Casto opening the
13 door as to severity. The Court's ruling was that the
14 state could not get into asking him opinion testimony as
15 to severity, but he could cross examine in response to
16 the questions that were raised by the defense. All
17 right. I just wanted to put that on the record. 2:00.
18 Your next witness is who?

19 MR. YOUNG: (Indicating.)

20 THE COURT: All right. He may take a while.

21 MR. YOUNG: About three quarters of the length of
22 time of the first witness.

23 THE COURT: All right. Be back at 2:00.

24 (Whereupon, there was a luncheon recess.)

25 * * *

* * *

THE COURT: All right. Are we ready, Mr. Young?

MR. YOUNG: I'm ready, Your Honor. I don't know where Mr. Casto is.

THE COURT: All right.

MR. YOUNG: Your Honor, may it please the Court.

THE COURT: Yes.

MR. YOUNG: We had anticipated calling Deputy Mike Raffield as the next witness, but due to circumstances that occurred during the break, we're going to call Ms. Brenda Teague who is the dispatcher to validate the tape.

THE COURT: All right. Let's bring the jurors in.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen of the jury, we'll continue. I hope you had a good lunch. At this time we'll continue with the state's case. I will ask Mr. Young to call his next witness.

MR. YOUNG: Thank you, Your Honor. The state now calls Ms. Brenda Teague.

Thereupon,

BRENDA TEAGUE

after having been first duly sworn, testified as follows,

DIRECT EXAMINATION

BY MR. YOUNG:

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1 Q. Ms. Teague, would you give us your full and complete
2 name and spell your last name for the court reporter.

3 A. Brenda Ray Teague, T-e-a-g-u-e.

4 Q. Ms. Teague, I want you to tell the jury what you do
5 for a living?

6 A. I work for the Saluda County Sheriff's Office as a
7 911 dispatcher.

8 Q. What does that mean? Can you just tell us real
9 briefly what you do?

10 A. Briefly we take emergency calls from individuals
11 passing through our county and pass them onto whatever
12 department that is in need of help whether it be EMS or law
13 enforcement.

14 Q. Are you nervous today?

15 A. Yes, sir.

16 Q. Okay. All right. And does that include calls from
17 citizens who say they need help?

18 A. Yes. Definitely.

19 Q. All right. Were you on duty the night of September
20 15th, 2013?

21 A. Yes, sir.

22 Q. Okay. Now, can I ask you a very brief question
23 about that night and any other night you're on duty. When a
24 call comes into you on the 911 line, do you have an ability
25 to see where that call originates from?

1 A. Most of the time we do have the ability to see where
2 it comes from. It really depends on what phone they're
3 calling from and whether they have an updated cell phone if
4 they don't have a house phone.

5 Q. But if they call from a house phone, can you tell?

6 A. Yes. If they call from a regular land line, we can
7 tell where they're calling from.

8 Q. On that night shortly after midnight did you get a
9 call from, let me make sure I get the address right, 135 I
10 believe it is, in Batesburg?

11 A. I believe that we got a call from her cell phone and
12 we had to coax her of the information from her at that time
13 because I don't believe we had an updated--

14 Q. If you got the call though and it appeared on the
15 tape and you gave out the address and you didn't get it from
16 the person on the other line, that would mean you probably
17 got it from a land line?

18 | A. Yes, sir.

19 Q. So if it's on the tape that you have of that
20 conversation and you give out the address and you didn't get
21 it from the person, that means you probably got it from the
22 land line?

23	A. Right.

24 Q. Okay. That's why I'm asking because you actually
25 did download the conversation you had with the person on the

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1 other line?

2 A. Yes.

3 Q. And you actually reviewed that tape before you came
4 in here?

5 A. Yes.

6 Q. And you met the person who was on the other end of
7 the line, too?

8 A. Yes, sir.

9 Q. So who was the person on the other end of the
10 line?

11 A. Latoya Abney.

12 Q. Okay. And was it from ?

13 A. Yes, sir.

14 Q. There in Batesburg?

15 A. Yes, sir.

16 Q. Okay. And you downloaded that or had it downloaded
17 and you listened to that tape very carefully, did you not?

18 A. Yes, sir.

19 Q. How many times did you listen to it?

20 A. Several.

21 Q. Okay. And does your recording system pick up sounds
22 in addition to people on the line, like stuff happening
23 around?

24 A. Yes, sir.

25 Q. Okay. So if someone comes into the conversation

1 with the person you're talking to, you can get that?

2 A. Yes.

3 MR. CASTO: Objection. Leading.

4 THE COURT: All right. Sustained. Please rephrase
5 the question.

6 MR. YOUNG: All right.

7 BY MR. YOUNG:

8 Q. What, if anything, can be captured of a conversation
9 had by the person who is calling to you? What can be
10 captured?

11 A. If it's close enough to the phone, we can capture
12 a lot of the conversation, a lot of what's going on around,
13 around her.

14 Q. Okay. Would that include other persons?

15 A. Yes.

16 Q. And sounds?

17 A. If they were close enough to her and to the phone.

18 Q. So it's depending on how close they are to her?

19 A. Yes.

20 Q. So it could be any variety of things?

21 A. Yes, sir.

22 Q. Okay. And in reviewing this audio recording, this
23 came from, what source does it come from? Where does the
24 recording itself come from?

25 A. The recording comes from our 911 system.

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1 Q. Okay. That's kind of like -- How is that made? Is
2 it digital?

3 A. It's digital.

4 Q. So it gets everything down to the little --

5 A. Yes, sir.

6 Q. Okay. And you actually reviewed this tape and put
7 your initials on a copy after I asked you to review it, did
8 you not?

9 A. Yes, I did.

10 Q. Would you be able to recognize that recording if you
11 saw it again?

12 A. Yes.

13 Q. I want to hand you what's been marked State's
14 Exhibit number 4 which has some markings on it. Can you look
15 at that and tell me if that is the audio recording that you
16 listened to?

17 A. Yes, sir, it is.

18 Q. Is that audio recording a fair and accurate and
19 complete recording of the conversations and the sounds and
20 voices and whatever was captured by her phone on the other
21 end that went to your system?

22 A. Yes, it is.

23 Q. It's fair and accurate?

24 A. Yes, sir.

25 Q. Is there any doubt in your mind about that?

1 A. No.

2 Q. That includes your voice and whatever else?

3 A. Yes.

4 MR. YOUNG: The state would offer into evidence
5 State's Exhibit Number 4.

6 THE COURT: Any objections?

7 MR. CASTO: No objection, Your Honor.

8 THE COURT: Entered without objection.

9 (Whereupon, State's Exhibit #4 admitted.)

10 MR. YOUNG: Your Honor, I have no further questions
11 for this witness.

12 THE COURT: All right. Yes, sir.

13 CROSS EXAMINATION

14 BY MR. CASTO:

15 Q. Ms. Teague, how are you?

16 A. Good. How are you?

17 Q. Just fine. Very briefly, your entire conversation
18 that evening was with Latoya Abney, right?

19 A. Mm-hmm.

20 Q. Is that correct?

21 A. Yes. That's correct.

22 Q. And in other words, you never spoke with Johnny that
23 night, it was only Latoya?

24 A. Only with Latoya.

25 Q. And the information that you gathered came solely

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1 from your conversation that you had with Latoya, right?

2 A. Correct.

3 MR. CASTO: Thank you, ma'am.

4 MR. YOUNG: Your Honor, with the Court's permission
5 this lady is on duty now. We would ask that she be
6 dismissed and return to her duties.

7 THE COURT: Any objection to this witness being
8 excused?

9 MR. CASTO: No, Your Honor.

10 THE COURT: All right, ma'am. You're excused.

11 MR. YOUNG: The state calls Deputy Mike Raffield.
12 Thereupon,

13 MICHAEL J. RAFFIELD

14 after having been first duly sworn, testified as follows,

15 DIRECT EXAMINATION

16 BY MR. YOUNG:

17 Q. Deputy Raffield. I want you to give your full and
18 complete name and spell your last name and I'm going to step
19 over here so you can talk towards me.

20 A. Michael J. Raffield, R-a-f-f-i-e-l-d.

21 Q. What's your job? Where do you work?

22 A. I am a sergeant for the patrol division of the
23 Saluda County Sheriff's Office.

24 Q. Okay. Back on September 15th, 2013, had you been
25 recently brought onto the Saluda County Sheriff's Office?

1 A. I had.

2 Q. And your rank then was what?

3 A. At that time I believe I was a PFC.

4 Q. Okay. So you since have been promoted into the
5 position you hold now. All right. Do you recall back in
6 September on that date, September 15th, 2013 shortly after
7 midnight being dispatched to a location at

8 or in Batesburg?

9 A. I do.

10 Q. Okay. Now, in relation to the other officers
11 dispatched to the scene, where were you in order of
12 sequence?

13 A. When the call was first originated, I was more
14 toward the south end of the county, responded from that
15 direction out from Batesburg Highway on Ridge Spring Highway.
16 As I came through the town of Ridge Spring heading on 23 from
17 the Johnston heading towards the scene which would be toward
18 Batesburg, I then had Deputy Earl Williams get in line with
19 me and we also had the Chief Goldman from Ridge Spring follow
20 myself to the scene. We got there approximately a minute and
21 a half to two minutes behind Lieutenant Donovan Shealy and
22 Josh Price.

23 Q. So in order of sequence you were the first, second,
24 third or what?

25 A. I would have been the third officer.

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1 Q. Okay. So you were the third officer on the scene.

2 And when you got to the scene, what actions did you take?

3 A. The first thing I observed when I pulled up and
4 parked my patrol car was Lieutenant Shealy and Deputy Price
5 standing in the front yard with Mr. Boyd. My first
6 observation was Mr. Boyd and his injuries and the amount of
7 blood that he had on him. At that time they were basically
8 trying to get him to stand still and from there I let
9 Mr. Boyd in the care of Chief Goldman. Deputy Williams and
10 Deputy Price and I walked with the lieutenant around the left
11 side of the house to go back to check on the other party to
12 see what type injuries, if any, she had and to talk with her
13 to find out and try to get an idea of what occurred.

14 Q. Well, how long were you at the front of the house
15 with Mr. Boyd?

16 A. Initially for probably a minute and a half.

17 Q. Okay. All right. Is Mr. Boyd present in the
18 courtroom?

19 A. He is.

20 Q. Where is he?

21 A. Mr. Boyd is sitting to the left of his defense
22 attorney which is right here (indicating.)

23 Q. Okay. Did Mr. Boyd, when he was at the scene, tell
24 me how he looked to you?

25 A. He was completely covered in blood. I was really in

1 fear for his life. Again, when I first got there, I didn't
2 know what had happened. During the course of trying to get
3 him to calm down and not necessarily in chronological order
4 since you're asking about him right now --

5 Q. Well, if we could, start at the front when you're
6 still with him in that minute and a half portion when you're
7 with him?

8 A. I could see he had multiple cuts, lacerations. When
9 he turned his head to the left, I saw that he had what
10 appeared to be an arterial spurt from his neck. Previous EMS
11 experience, I was a national registered paramedic for 20
12 years. I could identify that he was in serious condition,
13 plus the amount of blood volume that I could see just on his
14 person, so I immediately contacted our dispatcher and advised
15 him that we needed a helicopter launched and notified EMS
16 that we were going to take that moment to go ahead and notify
17 them that it was that serious.

18 Q. No delay, get a helicopter?

19 A. Absolutely.

20 Q. Right. What was he doing? I want you to describe
21 his actions.

22 A. His actions were really bizarre. He wouldn't follow
23 commands. He was kind of incoherent. He would walk really
24 fast, you may say run, for approximately 15, 20 steps and
25 then he would fall down and collapse and then he would jump

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1 back up and continue that process.

2 Q. And that all happened in your presence in the first
3 minute and a half?

4 A. It started in the first minute and a half,
5 correct.

6 Q. All right. What actions did you take to control
7 that behavior?

8 A. Once he actually tried to leave the scene walking
9 away from us, again we were trying to get him to stop just so
10 he wouldn't bleed any worse than he was. We got into the
11 peach field. In order to get him to stop at one point I
12 reached out and grabbed his hand and straightened his arm
13 back as I stepped backwards and used that maneuver to
14 basically roll him over and get him on the ground at which
15 time he was secured in handcuffs.

16 Q. Okay. And that was as much for his own protection
17 as any other thing else because you didn't know what else had
18 happened yet, right?

19 A. I still didn't know what was going on. I just knew
20 if we didn't get him to sit still, he was going to bleed
21 out.

22 Q. Right. You needed to control him, right? He was
23 brought under control and you left. At that point did you
24 leave him with Goldman?

25 A. It was actually before -- That happened after I went

1 and checked on the other party.

2 Q. Then tell me what you did -- The first minute and a
3 half did you leave and then go to the back of the house?

4 A. Correct.

5 Q. Okay. So he's still in around Goldman and whoever
6 else is up there in the front of the house?

7 A. That's correct.

8 Q. As far as you know?

9 A. Yes, sir.

10 Q. When you left him?

11 A. Yes, sir.

12 Q. When you go to the back of the house, you go back
13 there and what do you see there?

14 A. When I go back to the back of the house, Lieutenant
15 Shealy had already been back there once. He's basically
16 giving me an overview of what occurred or what he had already
17 observed. We went back and at that point I was able to
18 identify the victim Latoya Abney sitting right here. I
19 noticed that Ms. Abney had severe contusion to the complete
20 left side of her head to include the orbit around her left
21 eye, the jaw and then the top of the skull as well.

22 Q. How did that look to you?

23 A. It looked pretty bad. There was no doubt in my mind
24 that potentially she could have a closed head injury.

25 Q. And you base that on your experience as a

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1 paramedic?

2 A. Yes, sir.

3 Q. Okay. And a closed head injury is the kind of thing
4 that causes you to need immediate medical help?

5 A. Absolutely. And then, of course, I indicated to
6 dispatch that we had two priority patients basically at some
7 point.

8 Q. You had one. Now you got two?

9 A. That's right. We spoke with her for a brief couple
10 minutes. She was able to tell us basically what had occurred
11 to get an idea of who did what and during that time -- You
12 want me to tell you what she stated to me?

13 Q. Well, let's just go through the process of finding
14 out what she was like at that time first. Tell me about her
15 situation in terms of her outward appearance. Was she, you
16 know, calm? Distressed? In pain? Did she have a more
17 urgent tone? Did she have a less urgent tone? Describe her
18 demeanor to me in some terms that gives us an idea of what
19 she was like at that moment?

20 A. I wouldn't say she was excited. I would say that
21 she looked absolutely exhausted. Her general appearance
22 obviously from the injury was serious. As far as from the
23 injury resulting from trauma from an individual, not a car
24 wreck or something to that degree it was pretty bad. I could
25 tell that she knew who -- She was talking and she was able to

1 talk to explain, but it appeared to me that whatever had
2 happened happened for a period of time and it was either that
3 or the injury to the head that made her have the appearance
4 of just almost being limp. I mean, her head was up and she
5 talked to me, but you know...

6 Q. So the injury was causing her to look limp or the -
7 she was just exhausted from some other activity?

8 A. Yes. I couldn't tell.

9 Q. You couldn't tell. It was up in the air. All
10 right. Well, tell me what kind of state of mind she was in?
11 Was she scared? Was she happy? What was going on?

12 A. She was definitely not happy. She was scared. She
13 was able to, again she was coherent enough to give me an
14 explanation of what occurred. Upon me asking her questions
15 --

16 Q. Let's still keep on about this. How long had this
17 been since the time you had initially entered the scene? I
18 think you said you were just behind Donovan Shealy and Josh
19 Price, correct?

20 A. Mm-hmm.

21 Q. You said how long after that?

22 A. A minute and a half to two minutes.

23 Q. So they had been there for about two minutes. You
24 went, I think you said a minute, minute and a half with him,
25 Mr. Boyd first?

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1 A. Correct.

2 Q. You walked around the side of the house so this had
3 been a total of how many minutes until you began the
4 conversation with her about what happened?

5 A. Somewhere between probably four and five.

6 Q. Okay.

7 A. But to answer the question, she basically had the
8 look of bewilderment or shock is the way I would classify
9 it.

10 Q. Are you familiar with is the signs of shock?

11 A. I am.

12 Q. Did she exhibit any of those?

13 A. She did.

14 Q. Okay. Is shock associated with any other form of
15 conscious or unconscious behavior such as --

16 MR. CASTO: Objection. May we approach?

17 THE COURT: All right.

18 (Side bar off the record.)

19 THE COURT: Back on the record.

20 MR. YOUNG: I'll keep going with his qualification
21 as a paramedic.

22 BY MR. YOUNG:

23 Q. How long did you perform those duties?

24 A. 20 years.

25 Q. What do you have to go through to become a

1 paramedic?

2 A. The current class school is about two years. At the
3 time I went through it was about ten months. Plus the
4 intermediate time would be another six months and the
5 original basic is six months.

6 Q. And as a paramedic are you required to identify the
7 signs of shock?

8 A. We are.

9 Q. And as a paramedic are you familiar with the signs
10 of shock?

11 A. I am.

12 Q. And as a paramedic in your experience have you seen
13 shock in such cases as these which is present in this case?

14 A. I have.

15 MR. YOUNG: Your Honor, we would offer him as an
16 expert in the outward signs of shock and the conditions
17 of shock as exhibited by a person under the
18 circumstances of shock for purposes of questioning him
19 as to whether or not this lady exhibited the outward
20 signs of shock.

21 THE COURT: All right. Any questions?

22 VOIR DIRE EXAMINATION

23 BY MR. CASTO:

24 Q. Have you ever testified in court as an expert before
25 prior to coming today?

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1 A. In the field of law enforcement, but not medical.

2 MR. CASTO: Your Honor, I would move that this falls
3 short of expert qualifications.

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, let me send you all out for a second and I'll have
6 you back shortly.

7 (The jury sent to jury room. The following
8 proceedings held on the record.)

9 THE COURT: All right. Mr. Young, I don't think on
10 703 that the - there's questions that need to be asked
11 under 703 to have him qualified as an expert, 701, and
12 he has not testified to publications, studies, any
13 specific training he's had in this area. I think those
14 things for him to be qualified as an expert in regard to
15 any medical training that he's had other than he said
16 he's had, but he has not testified to any of those
17 things that are --

18 MR. YOUNG: If I could explore this with him on the
19 stand for just a moment, I think I can satisfy the Court
20 about this, Your Honor. And if the Court will permit me
21 a little leeway with him right now with the jury absent.

22 THE COURT: Go ahead and proffer his testimony.

23 MR. YOUNG: If I could.

24 PROFFERED TESTIMONY OF MICHAEL RAFFIELD

25 DIRECT EXAMINATION

1 BY MR. YOUNG:

2 Q. Deputy Raffield, isn't shock taught as a basic first
3 aid merit badge instructive course when you go through your
4 scout training even?

5 A. Signs of shock are usually taught to a lay person.

6 Q. Isn't it something that's taught at the basic first
7 aid level?

8 A. It is.

9 Q. And then when you as a paramedic go through
10 understanding what shock is and how it does, do you receive
11 specific schooling on this topic?

12 A. We do as far as procedures.

13 Q. What does that mean?

14 A. Basically shock in itself is something we can slow
15 down. You can't stop it necessarily, but the lay person is
16 taught, even a basic EMT, when you identify the signs of
17 shock that you place the person in a certain position, raise
18 the feet up, blood flow such as that, keep the person warm.
19 It's very elementary. It's based on general appearance. As
20 far as the advanced signs, we look at pulse rate. Usually a
21 pulse rate goes up high, blood pressure starts to drop,
22 that's deeper or further into shock and that's where we would
23 use IV's in order to increase the volume and try to slow the
24 system down until we can get them to further definitive
25 help.

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1 Q. When you look at a person and you just look at them
2 and you see them, are there not outward signs of shock
3 visible by just looking at a person without conducting
4 immediate tests on them and so forth?

5 A. Yes.

6 Q. What are those outward signs?

7 A. The general would be level of consciousness.
8 Whether or not the person is coherent. How well they respond
9 back to questioning. If they know what day of the week it
10 is. Who the president is. That basic questioning like
11 that.

12 Q. Did you inquire of that nature to her?

13 A. I didn't ask her what day of the week it was or who
14 the president was, but I did ask her specific questions to
15 what had occurred and she was able to respond based on those
16 questions. Like I said, she was coherent. She was alert to
17 time and place.

18 Q. So what lead you to believe she may be undergoing
19 shock?

20 A. Her general appearance was that she was sluggish in
21 answering, slow. Someone who had been involved in an event
22 as she had just been involved in normally would be excitable,
23 restless. She didn't display those things. She was to the
24 point where she was limp. Again, it could have been
25 exhaustion.

1 Q. It could have been exhaustion, but it could have
2 been shock?

3 A. Exactly.

4 MR. YOUNG: So either one is possible. So, Your
5 Honor, I'm just going to ask him, that that's where
6 we're headed with this.

7 THE COURT: All right. I will be glad to hear from
8 you. I'm still not satisfied that he qualifies under the
9 -- I mean, there are certain things that the case law
10 tells me that -- Is there is a specific class that he
11 has taken? When did he take the class? Is he certified
12 as a paramedic now? When is the last time? Those are
13 the things and is there any publications that he's
14 familiar with? Is there any regarding a person in
15 shock? And he's testified in here today that he can
16 testify as to, he's used the word lay person two or
17 three times so an expert is supposed to provide
18 testimony beyond a lay person's knowledge. So I think
19 you can ask -- I'm trying to think the best way that you
20 can ask what appeared to him at the time without it
21 necessarily being him as an expert.

22 MR. YOUNG: All right. Your Honor, I'll find a way
23 to rephrase the question so he's not called upon to give
24 an opinion.

25 THE COURT: Yes. I think the first question you

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1 asked is was she in shock? Now he's saying he doesn't
2 know if it was exhaustion or shock.

3 MR. YOUNG: That's where I was heading with it. I
4 asked specifically, I think I recall asking did she
5 display any outward signs of shock? And I think he said
6 yes to that. And I was going to basically say what did
7 she display? That's based on his training and
8 experience as a paramedic.

9 THE COURT: Is he still a certified paramedic?

10 THE WITNESS: No, ma'am. In order to get my
11 certification back, I would have to go through a 40 hour
12 refresher course.

13 THE COURT: You still have a problem with him.

14 MR. YOUNG: All right, Your Honor. I'll move on
15 from this then. I'll move on from this.

16 THE COURT: All right. You can ask what was going
17 on with her and those things, but I'm not going to
18 qualify him as an expert in shock. But I think he can
19 testify as to what he noticed going on with her and I
20 think he said earlier that to a lay person it appeared
21 that she may have had some signs of shock or fatigue or
22 exhaustion.

23 MR. YOUNG: That's fine. That's fine.

24 THE COURT: All right. Bring the jury in.

25 (The jury returns to the courtroom.)

1 THE COURT: All right. Continue, please.

2 MR. YOUNG: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. YOUNG:

5 Q. During the course of your conversation with her, was
6 she still exhibiting signs of excitement from the event
7 itself in terms of how you might ordinarily see a person
8 excited, but nonetheless undergoing the effects of what had
9 already happened to her? Was she still, in other words,
10 undergoing the effects of whatever happened to her just prior
11 to this? Was it clear to you that's what was happening?

12 A. I would say that she was somewhat groggy, listless,
13 arms relaxed to the point of exhaustion. She was able to
14 tell me what happened, but she was slow in her process.

15 Q. Okay. That's fine. It just took her a while to get
16 through it?

17 A. Exactly.

18 Q. Okay. How long were you there with her on that?

19 A. For the initial time to find out exactly what
20 happened I would say about six minutes.

21 Q. Okay. So you had about six minutes with her and
22 then you went back to Mr. Boyd?

23 A. Correct.

24 Q. And he had started to walk off or something and
25 that's when you had I think you said to a peach field?

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1 A. Exactly. He had walked across the road in front of
2 the house and continued to walk further as the officers were
3 standing around him.

4 Q. Okay. So he was taken into, if you want to call it,
5 custody there and then at some point I guess you had EMS on
6 the way? I think you said --

7 A. Yes, sir.

8 Q. -- you had a flight for him and she got ground
9 transportation and they left and went to the hospital. Now
10 you have a job to do to collect evidence based upon what she
11 told you, right?

12 A. Correct.

13 Q. You start looking for stuff?

14 A. I did.

15 Q. Okay. Did you go in the house?

16 A. I did.

17 Q. You took pictures in the house?

18 A. I did throughout the house.

19 Q. Now, you have been present in the courtroom and have
20 seen these photographs?

21 A. I have.

22 Q. You're the one who took these inside the house,
23 aren't you, the ones inside the house that night?

24 A. I did.

25 Q. Let me hand up what's been marked and previously

1 admitted B1 through 5. You took those pictures?

2 A. I did.

3 Q. Okay. You took more pictures outside the house,
4 too, did you not?

5 A. I did.

6 Q. I'm going to hand up some additional photographs B6,
7 7, 8, 9, 10, 11, 12, and 13?

8 THE COURT: What's that?

9 MR. YOUNG: B6 through 13, Your Honor.

10 BY MR. YOUNG:

11 Q. Did you take those photographs?

12 A. Yes, sir. I took all of these.

13 Q. Do each one of those photographs fairly and
14 accurately represent what's in them?

15 A. They do.

16 Q. Okay. In other words, you took photographs at
17 various locations outside the house and captured things
18 related to what you thought was related to the event,
19 correct?

20 A. I did.

21 Q. Now, I would like to ask you for a moment here to
22 take a look specifically at State's Exhibit B6. Now, you
23 took a photograph.

24 MR. CASTO: Objection, Your Honor. May I approach?

25 THE COURT: Yes, sir.

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1 (Side bar off the record.)

2 THE COURT: Back on the record.

3 BY MR. YOUNG:

4 Q. Okay. B6, 7, seem to have some relation one to the
5 other. Can you just generically tell me what area of the
6 house this is, front or back and what it has to do with
7 this?

8 A. These pictures indicate the front of the house, the
9 steps coming down. Also indicates where there was two large
10 flower pots, one on the left side of the staircase, one on
11 the right which was missing, but it had the dirt indentation
12 that showed that that's where it had been sitting at.

13 MR. YOUNG: Your Honor, we would offer B6 through 8.

14 THE COURT: Any objections?

15 MR. CASTO: Without objection.

16 (Whereupon, State's Exhibits B6 through B8
17 admitted.)

18 BY MR. YOUNG:

19 Q. I'm going to put these aside for a moment. Now,
20 those relate to the front steps of the house?

21 A. That's correct.

22 Q. And to a flower pot that's missing, and there's a
23 flower pot present?

24 A. In a different location.

25 Q. Okay. Let's talk about the flower pot. If you

1 would take a look at State's Exhibit B9 and B10. This
2 appears to relate somehow to -- I'm sure that it does. Does
3 it relate in any way to B9?

4 A. Which one is B9?

5 Q. B8. Excuse me. This is B9. This is B8.

6 A. The flower pot was at the location in B8 opposite of
7 the mate that was with the other flower pot.

8 Q. What is this? What's B9?

9 A. That is the area where the flower pot sat next to
10 the --

11 Q. Is this a close up of what's in --

12 A. It is. It is. And that's the corner of the post.

13 Q. What's this here? This is B10. What is that?

14 A. That's the flower pot that was missing from the
15 front.

16 MR. YOUNG: Okay. All right. We offer into
17 evidence State's Exhibit number B9 and B10.

18 THE COURT: Any objection?

19 MR. CASTO: No objection, Your Honor.

20 (Whereupon, State's Exhibit B9 and B10 admitted.)

21 BY MR. YOUNG:

22 Q. Then we have B11 and B12. B11 appears to be
23 different than B12, but they look to be similar in what
24 regard. What are these two items, B11 and B12?

25 A. These are part of the same square. That's where a

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1 rectangular concrete block at some point was broke. The
2 smaller portion which is this one was located next to the
3 vehicle to the side and rear of the house. The bigger
4 portion was located in the front yard next to the basketball
5 goal area.

6 Q. B11, I'll hold that up. Is that what you are
7 referring to as the larger piece?

8 A. It is.

9 Q. And B12 is the smaller piece of concrete?

10 A. Correct.

11 MR. YOUNG: We offer B11 and B12.

12 THE COURT: Any objections?

13 MR. CASTO: No objection, Your Honor.

14 (Whereupon, State's Exhibit B11 and B12 admitted.)

15 BY MR. YOUNG:

16 Q. B13 appears to be a box cutter. What is that?

17 A. That is the box cutter that through our
18 investigation I found was used during this incident. It was
19 located to the right side of the house looking from the road
20 directly in front of the parked car just in front of that in
21 a sandy area.

22 Q. This reflects where it was located on the ground?

23 A. Before it was secured, correct.

24 MR. YOUNG: This is B13. We offer B13.

25 THE COURT: Any objections?

1 MR. CASTO: No objection, Your Honor.

2 (Whereupon, State's Exhibit B13 admitted.)

3 BY MR. YOUNG:

4 Q. All right. I'm going to get you to step down and
5 show these to the jury. Now I'll hold this up, B8. Describe
6 that to the jury. I will hold it up and you point out what
7 it is.

8 A. This area right here is the front of the house.
9 It's the steps. There's a small area right here where you
10 can see where the dirt is disturbed. That's where the flower
11 pot was located originally.

12 Q. Okay. This appears to be, this is B7. What is
13 that?

14 A. That's also a close up of the front porch showing
15 blood that was located on the front steps.

16 Q. Is that the spot of blood that appears in the center
17 of the photograph on B6?

18 A. It is. It's on the wood and then it comes down onto
19 the ground.

20 Q. Okay. Now, what is B8?

21 A. B8 is another photograph of the front porch coming
22 from the front of the house and again showing the area where
23 the flower pot which was the mate to this one was missing.

24 Q. Okay. So if this is B9. Does B9 relate to B8?

25 A. B9 directly reflects to the same location where the

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1 flower pot had been.

2 Q. A close up?

3 A. A close up, yes.

4 Q. All right. Here is B10.

5 A. That's the flower pot.

6 Q. That's the flower pot. Where was this located?

7 A. It was located around the left side of the house if
8 you're facing the house to the right between the house and
9 the vehicle.

10 Q. Okay. So this was located -- Did you not indicate
11 that, I think you said the small piece of concrete was B12?

12 A. It was also located in the same area.

13 MR. CASTO: Objection to the leading.

14 BY THE WITNESS:

15 A. They were both located in the same area.

16 THE COURT: Objection sustained.

17 MR. YOUNG: I'll rephrase.

18 BY MR. YOUNG:

19 Q. What is B12 and where was it located?

20 A. B12 was located beside the passenger side of the car
21 toward the rear in between the car and the house. They were
22 very close in proximity.

23 Q. And this was located near that?

24 A. Within about a ten foot circumference.

25 Q. Okay. So we'll call this the small block. But

1 what's that in that picture there?

2 A. That's a mountain bike that was in the same area
3 between the car and the house.

4 Q. A lot of debris there between the house and the
5 car?

6 A. The bicycle and the concrete items, yes, sir.

7 Q. Now, this item which is a concrete block, where was
8 this located again?

9 A. That's the larger piece of block that was located in
10 the front yard next to the basketball goal.

11 Q. Okay. All right. Now, with regard to what appears
12 to be red on the outside of this pot, what is that? What did
13 you attribute that red to?

14 A. The red on all the blocks and all of the evidence
15 that I see in these pictures appear to be blood.

16 Q. Okay. So this block by the basketball goal area --

17 A. Also had blood.

18 Q. -- also had blood on it?

19 A. Yes, sir.

20 Q. Now, this is State's Exhibit B13. That is the box
21 cutter. Where was that located precisely again?

22 A. It was directly in front of the car, the front end
23 of the car. It was in a sandy area right there located right
24 there in front of the car three to five feet directly in
25 front of the car in the dirt.

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1 Q. Now, the car you're referring to in this, there's a
2 picture of the car also, correct?

3 A. You showed it earlier. It was the grey in color
4 vehicle to the right of the house.

5 Q. Would you take your seat again?

6 A. Yes. (Witness complies.)

7 Q. Now, I'm going to show what's been previously marked
8 and admitted into evidence as State's A4, A8, and A9. These
9 are -- If you could step down here. These are three
10 photographs which I'll hold up in this fashion, okay?

11 A. Yes, sir.

12 Q. You see those?

13 A. I do.

14 Q. Do you see the position of the car in relation to
15 the house?

16 A. I do. The house --

17 Q. Let me ask you a question. Does the vehicle
18 situated, for instance, in these photographs, relate in any
19 way to what you saw that night? Are they in the same rut
20 position it was the night you saw it?

21 A. The car was a little bit further forward, but, yes,
22 it's in the same position and it was facing in the same
23 direction.

24 Q. So that's pretty close?

25 A. Yes, sir.

1 Q. So the knife you said was found in the very front of
2 that car?

3 A. Correct.

4 Q. The ground area laying around there?

5 A. About three foot in front of the car on the
6 ground.

7 Q. Okay. All right. Take your seat.

8 A. (Witness complies.)

9 Q. I'm going to hand up a plastic bag which is - the
10 seal has been broken and it's marked as State's Exhibit
11 number 5. I'm going to place it next to you right here. I'm
12 going to leave it there for a moment. I want to ask you
13 first, State's Exhibit B12, did you take that piece of
14 concrete into evidence?

15 A. I did.

16 Q. What did you do with it?

17 A. I put it on the chain of custody which is on the
18 outside of the bag, packaged it because of biohazard, the
19 blood on it, and turned it into our evidence locker for
20 court.

21 Q. I want you to take a look at State's Exhibit number
22 5. I want you to open that bag up, turn it around not facing
23 the jury. Turn it around. Turn it around that way.
24 That's right. Take it away to where the jury can't see it.
25 I want you to look in that bag and tell me if you can

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1 recognize that?

2 A. It's a small portion of concrete that was located in
3 the back portion of the house.

4 Q. Is that the block that's in State's B12?

5 A. It is.

6 MR. YOUNG: We offer this into evidence as State's
7 Exhibit number 5.

8 THE COURT: Any objection?

9 MR. CASTO: Your Honor, if I could see it before.

10 THE COURT: Okay.

11 MR. CASTO: No objection, Your Honor.

12 THE COURT: Without objection.

13 (Whereupon, State's Exhibit #5 admitted.)

14 MR. YOUNG: Thank you, Your Honor.

15 BY MR. YOUNG:

16 Q. I'm going to ask you a similar question. This box
17 cutter knife, that's a picture which is taken in B13 that you
18 previously testified to, did you take that knife into
19 custody?

20 A. I did.

21 Q. I want you to examine the contents of State's
22 Exhibit number 6. Tell me if you recognize it?

23 A. I do.

24 Q. What is that?

25 A. It's a package with my penmanship on it, my

1 signature where I placed the box cutter after I collected
2 it.

3 Q. Is this the box cutter in that picture?

4 A. It is.

5 MR. YOUNG: Thank you. The state offers into
6 evidence State's Exhibit number 6.

7 THE COURT: Any objection?

8 MR. CASTO: Your Honor, we don't have any
9 objection.

10 THE COURT: All right. Without objection.

11 (Whereupon, States' Exhibit #6 admitted.)

12 BY MR. YOUNG:

13 Q. All right. Now, when you collected that, and I'm
14 going to ask you because of time restraints, State's Exhibit
15 B10, did you collect that flower pot, too?

16 A. I did.

17 Q. Is it present in the courtroom?

18 A. It is.

19 Q. Is it over here in this big bag?

20 A. It is. It's heavy.

21 Q. How much does that thing weigh?

22 A. It's probably 50 pounds. 40, 50 pounds.

23 Q. Okay. That's it right here?

24 A. Yes, sir.

25 Q. And the other piece concrete block is over there

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1 too?

2 A. It is. It should be right beside it.

3 Q. These are fair and accurate pictures of both the
4 concrete block and the pot, right?

5 A. Yes.

6 Q. Now, when you did your investigation, you went
7 through a process of collecting this evidence and then taking
8 into account what she had told you, and what you did, you
9 made a decision on what had happened, did you not?

10 A. I did.

11 MR. CASTO: Objection to the leading.

12 THE COURT: Overruled.

13 BY MR. YOUNG:

14 Q. You had to make a decision whether to find and issue
15 a warrant in this case; is that correct?

16 A. I did.

17 Q. Did you obtain a warrant in this case?

18 A. I did.

19 Q. Who did you obtain that warrant against?

20 A. Mr. Boyd.

21 Q. And that's based upon your investigation of the
22 evidence, what the victim had told you, and what you gained
23 from the scene and what you learned at the time; is that
24 correct?

25 A. It was. It was a collection of all the evidence,

1 the totality of everything that I looked at while I was on
2 scene and in the investigation.

3 Q. Where was he when that warrant was served?

4 MR. CASTO: Objection. Relevance.

5 MR. YOUNG: I withdraw the question.

6 THE COURT: All right.

7 BY MR. YOUNG:

8 Q. I want to hand up this picture of Ms. Abney which is
9 State's Exhibit number B21 and previously admitted as such.
10 You stated you took this picture, correct?

11 A. I did.

12 Q. Now, this is taken at a point in time when you had
13 been there how long? How long was it that you had been there
14 when you took that picture?

15 A. I actually had my camera in my pocket when I got
16 out. That picture was taken very early within the incident.
17 I would say from within five to six, seven minutes on the
18 scene.

19 Q. So within five or six minutes?

20 A. Correct.

21 Q. Okay. Now, you saw Ms. Abney repetitively --

22 A. I did.

23 Q. -- during that time frame. From what you saw in
24 this picture, did her condition in terms of swelling get
25 better or worse?

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1 A. It increased significantly.

2 Q. Okay. By the time EMS got there and she was
3 transported, how would you describe the condition of her
4 head?

5 A. It looked like a basketball on that left side.

6 Q. Significant swelling?

7 A. Significant.

8 Q. Okay. Now, you also took pictures of the car that
9 was at the scene, correct, that night?

10 A. Correct.

11 Q. All right. And the pictures you took of the car,
12 are these reflected in State's Exhibits 14 through 16?

13 A. Correct.

14 Q. Based on what you collected at the scene were you
15 able to relate any of the physical evidence that was
16 collected, flower pots, bricks, whatever, to what had
17 happened to the car?

18 A. Based on my investigation it appeared based on the
19 make up of the large flower pot that the flower pot struck
20 the side of the vehicle. There's indentations within the car
21 within this picture that match up to the flower pot. There
22 was also a long scratch mark. I don't know if that was from
23 the bicycle or from the small piece of cinder block, but
24 there was two different style of strikes to the vehicle. One
25 was a sharp smooth strike and then one was like that which

1 left a print in the vehicle with dots consistent with the
2 flower pot.

3 MR. YOUNG: Would you please answer any questions
4 that Mr. Casto may have for you.

5 THE COURT: Cross examination.

6 MR. CASTO: May it please the Court.

7 CROSS EXAMINATION

8 BY MR. CASTO:

9 Q. Officer Raffield, how are you?

10 A. Fine. How are you, sir?

11 Q. Just fine. Now, just to get a running start as far
12 as where you fit in, you weren't the first officer that
13 arrived on scene, were you?

14 A. No, sir. I was the third officer approximately a
15 minute and a half behind the first two on the scene which was
16 Lieutenant Shealy and Officer Price.

17 Q. Yes, sir. The third behind Officer Price and
18 Shealy, right?

19 A. Correct.

20 Q. And when you get there, by the time you arrive you
21 don't personally witness any fighting going on; is that
22 correct?

23 A. That's correct.

24 Q. Okay. In other words, you don't personally witness
25 Johnny putting his hands on her or her putting her hands on

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1 him at all? You don't witness any of that, right?

2 A. I do not.

3 Q. Okay. Now, most everything that you learn about
4 this case you learn from your conversation with Latoya; is
5 that right?

6 A. No. Most of the information I learned from what
7 happened was factual information which was evidence that I
8 found in the house and the evidence I found outside the house
9 which along with her interview assisted me in making a
10 determination of what actually happened.

11 Q. Yes, sir. When you first arrive and as far as
12 evidence, one of the things that you said on direct was that
13 when you first saw Johnny, you know, it was obvious that he
14 was injured; is that right?

15 A. That's correct.

16 Q. You could see that he was just bleeding profusely,
17 right?

18 A. He had bled profusely. He was covered in blood.
19 When he turned his head to the left, I could see the arterial
20 spurt of blood.

21 Q. All right.

22 A. He was already soaking in blood.

23 Q. And it's just like it sounds. It geysers up and
24 out? Is that what you're testifying to?

25 A. Correct.

1 Q. Okay. In order to have that, that takes a severe
2 cut or gash when you're cut that deep; is that correct?

3 A. What was actually cut I didn't know. I didn't know
4 if it was his jugular vein or his carotid artery. It was not
5 very far in the neck, but it doesn't have to be super deep to
6 nick either one.

7 Q. Okay. But it was squirting nonetheless?

8 A. It was squirting.

9 Q. And basically that's not the only cut that he has on
10 him. You see that cut is on his neck, right?

11 A. Correct.

12 Q. You see cuts I believe on his face?

13 A. He had cuts all over him.

14 Q. Okay. So there were cuts on his face, yes?

15 A. Face, chest and arms, the front part of his arms.

16 Q. Okay. The top of the head anything?

17 A. I would have to look back at the pictures.

18 Q. You don't recall?

19 A. I don't recall exactly where every exact cut was. I
20 know the majority of cuts were his head, his neck, his arms
21 in the front, anterior more than his posterior.

22 Q. Yes, sir. Okay. And one of the other things you
23 saw as evidence that, you know, he's cut and based on what
24 you learned you see blood on the floor of the house, right?

25 A. I see blood throughout the house.

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1 Q. Okay. And, you know, he's the one with the
2 bleeding, right? And so that more than likely than not
3 that's his blood; is that right?

4 A. I would think that would be a fair assumption.

5 Q. All right. And based on your recognition of his
6 injuries when you first see him, your thought, I believe it
7 was you that called EMS, right?

8 A. I'm not sure when EMS was actually called. I know
9 that I called for -- Normally we let EMS make a decision
10 whether to contact the helicopter. Based on the injuries I
11 saw when I immediately arrived at the scene I went ahead and
12 called for a helicopter.

13 Q. In other words, EMS normally makes that call, but
14 what you did to get help very quickly you skipped that step
15 and called for the helicopter, right?

16 A. Correct.

17 Q. During the wait from when EMS is on -- I'm sorry.
18 When you first arrived and during that wait between when you
19 first arrived and when you all are waiting on the helicopter,
20 there were periods of time where Johnny lost consciousness;
21 is that right?

22 A. I wouldn't say he lost consciousness and the reason
23 I say that was I was trying to photograph him and he was
24 uncooperative and at one point he would run and drop every
25 ten feet and at one point it appeared that he closed his eyes

1 and when I flashed the camera to take a picture of him trying
2 to get a picture of that injury, he immediately jumped back
3 up to his feet very angry that I took a photograph of him.

4 Q. But you all did the right thing as far as he was in
5 a standing position and then you all got him back down on the
6 ground because of his injuries; is that right?

7 A. It was because of the way he was acting. His
8 actions were not cooperative. We tried to explain to him,
9 look, if you don't sit down, you're going to die. You have
10 got a severe cut on your neck. He wouldn't listen to any
11 verbal commands of us trying to get him -- He kept walking
12 away from the scene. By the time I got back to him and I did
13 the maneuver to put him on the ground, I already knew that he
14 potentially was the suspect in the case and not necessarily
15 the victim. I placed him on the ground and placed him in
16 handcuffs because his actions were bizarre. The way he acted
17 made no sense.

18 Q. Okay. That was what I was just going to say. What
19 he was doing didn't make a lot of sense; is that right?

20 A. It made no sense.

21 Q. Okay. It made no sense. And, you know, you have
22 testified that eventually you stayed on scene until he's
23 transported; is that right?

24 A. I stayed on the scene for the entire episode since I
25 took the lead position on the case.

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1 Q. Okay. And so in that one picture that we have of
2 Johnny, that's one that you took; is that right?

3 A. That's the only one that he would let me take,
4 correct.

5 Q. That's the only one that we have, right?

6 A. Correct.

7 Q. And basically we see him and he's kind of back
8 looking up; is that right?

9 A. Correct.

10 Q. Okay. But we can't, in that picture we can't see
11 his front in that because it's touching the ground; is that
12 correct?

13 A. That's correct.

14 Q. And ultimately it's -- Do you remember how long it
15 takes to board him up in the helicopter and him flying to
16 Richland County?

17 A. He left from the scene. I directed Deputy Williams
18 to go with the ambulance to stay with him. Once I determined
19 that he was going to be the primary aggressor and the
20 defendant in the case and not the victim, I advised him he
21 was under arrest for the charge of the attempted murder. I
22 had Deputy Williams go with him to the site where the
23 helicopter would have a landing zone and then from there I
24 made him go straight to the hospital.

25 Q. Do you remember how long that was though?

1 A. I don't know. I don't have times on it.

2 Q. Okay. But ultimately thankfully they saved his life
3 that evening; is that correct?

4 A. Correct.

5 Q. All right. Because you had testified earlier that
6 this arterial squirt, he would have bled out and that's why
7 you called the helicopter, right?

8 A. No. I thought that his carotid artery was cut and
9 had it been cut, at any moment he could have bled out and
10 died and it end up being the small vein above the carotid
11 artery. Of course, being medically trained and not know
12 which it is until you actually look at it, I didn't know. I
13 thought it was his carotid artery. Luckily for him it was
14 just the vein that sits and rests above it.

15 Q. It bled profusely, but he still needed treatment; is
16 that correct?

17 A. I believe he got some stitches and staples put in,
18 but I really believed he was going to be going to vascular
19 surgery, but he was stapled up and released that night within
20 short order.

21 Q. Upon him receiving staples and stitches and things
22 of that nature?

23 A. Correct. Exactly.

24 MR. CASTO: No further questions. Thank you.

25 THE COURT: Anything else from the state?

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1 MR. YOUNG: No further questions.

2 THE COURT: All right, sir. You may step down.

3 MR. YOUNG: Your Honor, I can put up a relatively
4 short witness if you like or take a break.

5 THE COURT: Go ahead and put up a short witness.

6 MR. YOUNG: We call Patrick Johnson. Would you get
7 Mr. Johnson, please?

8 Thereupon,

9 PATRICK JOHNSON

10 after having been first duly sworn, testified as follows,

11 DIRECT EXAMINATION

12 BY MR. YOUNG:

13 Q. Would you give us your full name and spell your last
14 name?

15 A. Patrick John Johnson, J-o-h-n-s-o-n.

16 Q. Mr. Johnson, where did you live on September 15th,
17 2013?

18 A. , Batesburg, South
19 Carolina.

20 Q. How far away is that from ?

21 A. Maybe a mile and a half or so.

22 Q. Okay. Are you friends with Latoya Abney?

23 A. Yes.

24 Q. Is she in the courtroom?

25 A. Yes.

1 Q. And you know her, the mother of her child? Excuse
2 me. The father of her child?

3 A. Yes.

4 Q. And who is he?

5 A. Well, Johnny Boyd. Red.

6 Q. He goes by Red?

7 A. Yes.

8 Q. Okay. And on the night and I want to talk about
9 just shortly around the midnight time frame, shortly after
10 midnight, did you get a call from Ms. Abney for you to come
11 to her house?

12 A. Yes, sir.

13 Q. What time did you get that call just roughly?

14 A. Probably a little after 12:00.

15 Q. Okay. Did she ask you to please come quickly or
16 anything like that?

17 A. Yes, sir.

18 MR. CASTO: Objection. Hearsay.

19 MR. YOUNG: I'll rephrase that.

20 THE COURT: Sustained.

21 BY MR. YOUNG:

22 Q. Did she have any urgency with regard to her
23 request?

24 A. Yes.

25 Q. Okay. And that urgency was expressed in terms of

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1 how?

2 A. I'm sorry? I didn't hear you.

3 Q. How did she express that?

4 A. She was like could you please come --

5 MR. CASTO: Objection. Calls for hearsay.

6 THE COURT: Sustained.

7 MR. YOUNG: Fine.

8 BY MR. YOUNG:

9 Q. Would you tell me, sir, please, how long it took you
10 to get to the house?

11 A. It might have took me five or six minutes.

12 Q. When you got to the house, where did you go?

13 A. Well, when I first got there, I didn't go straight
14 in. I went down the road because there was a distress call.
15 She called me and told me to come quick, something was going
16 on and I didn't know what was going on, but when I get there,
17 I heard a noise so I went down the road to try to get help,
18 then I came back up the road to the house.

19 Q. What kind of noise did you hear?

20 A. Screaming.

21 Q. And when you got there --

22 A. Mm-hmm.

23 Q. -- to the house, how long was it -- You went down
24 the road you said and you came back?

25 A. Mm-hmm.

1 Q. When you got to the house, where did you go when you
2 got to the house?

3 A. I'd pulled in her driveway.

4 Q. And who did you see?

5 A. I saw Red on the front porch holding the baby.

6 Q. How old is this baby?

7 A. At the time he was one I believe.

8 Q. Okay. So he actually had the baby in his arms?

9 A. Mm-hmm.

10 Q. All right. When he had the baby in his arms, was he
11 talking to you about it or saying anything to you? I'm not
12 asking you to say what he said. Was he talking to you? Was
13 he talking to the baby, or just sitting there?

14 A. I mean, he said something, but I don't think I
15 should repeat it.

16 Q. No. We don't want to hear it.

17 A. Okay.

18 Q. Just tell me what he was doing? Was he talking to
19 you? Was he talking to the baby?

20 A. Well, I'm pretty sure he was speaking to me at the
21 time. When I took the baby from him, he was letting me know
22 that he was a little messed up.

23 Q. Okay. All right. And how did he look to you when
24 you saw him?

25 A. I mean, he wasn't a nice scene.

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1 Q. How did he look to you though?

2 A. Bloody.

3 Q. He was covered in blood?

4 A. Yes.

5 Q. How was the baby?

6 A. He had blood on him, too.

7 Q. Okay. And did you take the baby from him?

8 A. Yes, I did.

9 Q. Let me show you what's been marked as State's
10 Exhibit B24. Do you recognize that?

11 A. Yes, sir.

12 Q. Is that you?

13 A. Yes, sir.

14 Q. Is that the baby?

15 A. Yes, sir.

16 Q. Okay. And that's taken after law enforcement got
17 there, right?

18 A. Yes, sir.

19 Q. So when you got the baby in your hands, what did you
20 do?

21 A. I went and tried to find Latoya.

22 Q. Where did you find her?

23 A. I found her in the shed in the backyard.

24 Q. Where was Red at that time?

25 A. On the front porch.

1 Q. So you went from the front porch to the back of the
2 house?

3 A. Actually I went through the house.

4 Q. Through the house?

5 A. Yes.

6 Q. You got through the house and found her. How did
7 you find her?

8 A. Well, after I searched through the house, I went out
9 the back door. She was -- I was looking around out there.
10 She was in the shed.

11 Q. Okay. Did you go up to her and approach her with
12 the baby?

13 A. When I opened the door, I was talking to her through
14 the thing. She was sitting down in the chair.

15 Q. The door was closed?

16 A. Mm-hmm.

17 Q. Lights on or off?

18 A. Off.

19 Q. And so the lights were off. You talk to her. How
20 long did you talk to her?

21 A. I'm not going to say it was a long conversation.
22 For a few seconds or so. I was asking her what was going
23 on.

24 Q. Then what did you do with the baby?

25 A. I end up going back into the house trying to get

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1 something to clean him off because he was covered with stuff
2 and as I was in the house doing that looking around, that's
3 when the officers came and I went back out the door.

4 Q. So how long do you think you were back there? How
5 long were you there until officers got there do you think?

6 A. It was over five minutes. I was there before
7 them.

8 Q. Okay. So it was about five minutes before they got
9 there?

10 A. Mm-hmm.

11 Q. And she was in the back of the house --

12 A. Mm-hmm.

13 Q. -- in the shed --

14 A. Mm-hmm.

15 Q. -- when you left her?

16 A. Mm-hmm.

17 Q. Okay. Did you at any time until the officers got
18 there go back to where she was?

19 A. No. After I saw her, I didn't make it back there
20 where she was again.

21 Q. Did you hear anything?

22 A. I'm sorry.

23 Q. Could you hear anything?

24 A. After that?

25 Q. While you're in the house?

1 A. While I was in the house? There was no noise while
2 I was in the house. It was like as the officers was pulling
3 in the yard, that's when the yelling and stuff started back
4 up.

5 Q. You heard it then?

6 A. Yes.

7 Q. Okay. I got you. So that's the sequence of events
8 as best you can recall?

9 A. Yes, sir.

10 MR. YOUNG: Would you answer any questions Mr. Casto
11 has for you.

12 THE WITNESS: Sure.

13 CROSS EXAMINATION

14 BY MR. CASTO:

15 Q. Mr. Johnson, how are you doing today?

16 A. I'm wonderful.

17 Q. When you first arrived, you see Johnny, right?

18 A. Mm-hmm.

19 Q. And he's sitting on the front porch?

20 A. Mm-hmm.

21 Q. But and just to be clear, he's not with Latoya at
22 that point, is he?

23 A. No. He was on the front porch.

24 Q. He's out front and she's as you will later learn
25 she's out back; is that right?

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1 Thereupon,

2 LATOYA ABNEY

3 after having been first duly sworn, testified as follows,

4 DIRECT EXAMINATION

5 BY MR. YOUNG:

6 Q. Ms. Abney, I would like for to you give us your full
7 name and spell your last name for the court reporter.

8 A. Latoya Anita Abney, A-b-n-e-y.

9 Q. Ms. Abney, where did you reside on September 15th,
10 2013?

11 A. , Batesburg, South Carolina.

12 Q. Okay. I want to make this as comfortable for you as
13 possible so if we can, let's twist this a tiny little bit so
14 they can hear you.

15 A. All right.

16 Q. Let me step back over here. Ms. Abney, you lived at
17 this location with whom?

18 A. With my dad and my three sons.

19 Q. Okay. On the night of September 15th how many folks
20 were in the house? Let's start, let's say after 11:00.

21 A. Myself, Red, Johnny Boyd and our son .

22 Q. What do you call him . or

23 A. -

24 Q. Okay.

25 A. Mm-hmm.

1 Q. How old is

2 A. He's two now. He was one at the time.

3 Q. All right. And who owns the home?

4 A. My dad.

5 Q. And your other sons were somewhere else?

6 A. Correct.

7 Q. Okay. All right. So let's just ask the question.

8 How did Mr. Boyd come over to your house that night?

9 A. Uhm, there was a previous incident that happened at
10 the home. Uhm, law enforcement was called. Uhm, DSS got
11 involved, and I contacted Mr. Boyd, Red, to let him know that
12 maybe possibly he needed to get our son.

13 Q. Okay.

14 A. With that being said, uhm, he --

15 Q. Let me stop you there.

16 A. Okay.

17 Q. Let me stop you there. This happened much earlier
18 in the evening, correct?

19 A. Correct.

20 Q. And it involved your dad, right?

21 A. Right.

22 Q. And it didn't involve you?

23 A. No.

24 Q. So what happened was that you wanted to let him know
25 that DSS had been out to the house and you might want to know

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1 about that because it's our child?

2 A. Correct.

3 Q. Okay. That's why you called him?

4 A. Right.

5 Q. And during the course of the conversation, did you
6 make any -- I'm going to ask you this: Your dad was not -
7 did your dad have a good relationship with having a good
8 feeling with having Mr. Boyd over to the house or not?

9 A. No. My dad has never liked him.

10 Q. Okay. So he wasn't considered welcomed at your
11 house ordinarily?

12 MR. CASTO: Objection as to the leading.

13 BY THE WITNESS:

14 A. No.

15 BY MR. YOUNG:

16 Q. Well, was he or was he not considered welcomed at
17 your home by your dad?

18 A. No. He wasn't.

19 Q. Okay. But on this night you chose to do what?

20 A. Defy my dad. Uhm, I went and I had a ride to go and
21 pick Mr. Boyd up. He made the suggestion that since my dad
22 was gone, he could spend the night and I agreed to that.

23 Q. Okay. So about what time do you think he got over
24 there?

25 A. I picked - we picked Mr. Boyd up around 10:45,

1 11:00.

2 Q. All right. And who picked him up?

3 A. Me and Patrick Johnson and, uhm, was in the car
4 as well.

5 Q. So you drove to your home where you were living and
6 you got there about what time did you say?

7 A. We got there, it was around 10:45, 11:00. Mr. Boyd
8 only lives about six minutes away from me.

9 Q. Okay. That's good. So you're at the house. Tell
10 me how was Mr. Boyd in terms of his -- How was he doing that
11 night? Was he a happy person? Unhappy person? How was he
12 when you first got together that night?

13 A. When we first got together, uhm, we did a lot of
14 arguing. Once we got back to the house we argued for about
15 an hour.

16 Q. Had you been drinking? He been drinking?

17 A. No. He was drinking. I wasn't drinking.

18 Q. Okay. What was his state of intoxication, if he was
19 intoxicated?

20 MR. CASTO: Objection. Calls for speculation.

21 THE COURT: Sustained.

22 BY MR. YOUNG:

23 Q. Did he appear to be having any effects from the
24 alcohol he had been consuming?

25 A. Yes. He also had a red coke with alcohol in it.

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1 Q. Okay. So he was drinking while he was there?

2 A. Yes, sir.

3 Q. Okay. And had you seen him before when he was under
4 the influence?

5 A. Yes.

6 Q. And the effects of that. Was he more or less under
7 the influence than you have seen him before?

8 A. Uhm, it was about the same.

9 Q. All right. So he's in the house and you all are
10 arguing about what?

11 A. He made the statement -- Well, at first he wanted to
12 know what happened with the prior situation with my dad.

13 Q. Okay.

14 A. And I proceeded to tell him and he cut me off and he
15 was like, and I quote, "Your dad" -- he was like, "LC must
16 have caught you fucking and that's why he ended up going to
17 jail."

18 Q. Okay. So he accused you of having some kind of a
19 relationship with someone else?

20 A. Yes.

21 Q. Who?

22 A. He just said he must have caught me in the house.

23 Q. Just someone?

24 A. Yeah.

25 Q. There was nothing about that... So is that where

1 things started going south?

2 A. Yes. This argument lasted about an hour. Towards
3 the end, you know, I started laughing at him. Uhm, once I
4 started laughing, he got up and he proceeded to poke me in my
5 head. At this time I had --

6 Q. All right. Let me stop you right there for a
7 second.

8 A. Okay.

9 Q. I want to place things in context as to where you
10 are in the house. Where is all this happening?

11 A. I'm sitting at my computer stand. Uhm, if I may,
12 I'm rolling a blunt up. And, uhm, we're still arguing as I'm
13 preparing my stuff. And, uhm, I guess that went on for about
14 an hour at the computer center.

15 Q. All right. If I could, I want to hand up State's
16 Exhibit number A3 and that's a photograph of what? Can you
17 recognize that?

18 A. Yes. This is in the living room in the corner where
19 the computer stand is.

20 Q. Was the computer stand in that configuration or
21 another configuration on the night this happened?

22 A. On the night in question it was actually more
23 catty-corner in the corner.

24 Q. Okay. I'm going to hold that up. Just step down
25 here briefly. I don't want you to - just point out where it

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1 was instead of where it is so the speak.

2 A. The computer stand was, it was like actually in the
3 corner. It was in front of the lamp. If you could see the
4 lamp is in the corner and it was kind of turned. Well, like
5 this corner here, it was in the corner (indicating.)

6 Q. Okay.

7 A. Yeah.

8 Q. All right. So and you had a chair in front of it?

9 A. Yes.

10 Q. All right. Have a seat, please. And you say you
11 started having words with him in that area or you had been
12 having words around the house or what?

13 A. Yes. We had been arguing. I was sitting in this
14 particular spot predominantly during the whole argument.

15 Q. Okay. Where is

16 A. was sitting on my lap at first. Once he came
17 over and started poking me in my temple, I put down.

18 at the time he was one. He can walk. He went and got
19 on the couch.

20 Q. Okay. The couch is in the same picture?

21 A. Yes.

22 Q. Okay. Describe this pushing you in the temple. How
23 is it?

24 A. When he was pushing me, you know, he's doing all
25 this (indicating) and --

1 Q. With your head moving just like you just moved it?

2 A. Yes. And I'm like, Red, stop. Leave me alone.

3 Quit playing.

4 Q. How long does that go on?

5 A. This goes on for about ten minutes.

6 Q. Okay.

7 A. And this is at the ending of the argument, beginning
8 of the physical.

9 Q. Okay. What, does he just stand over you and do this
10 and you're seated or where are the two of you in relation to
11 one another?

12 A. He is -- I'm seated as he's poking me in my temple.
13 Once I put my son down, he got on the couch, I reached over
14 and there was, uhm, another table here at the time, I reached
15 over in my purse and I got my box cutter hoping that was
16 gonna stop him or, you know, scare him so he wouldn't come
17 any further. Once I stood up, he slapped me. It wasn't
18 like, you know, a full on slap, but it was hard enough to
19 turn my head. He's taller than me so his reach is longer
20 than mine. So when he slapped me and turned my head to the
21 side, I just reached out with the box cutter.

22 Q. Do you think you cut him at that time?

23 A. No. I didn't think I had cut him at that time.

24 Q. Okay. Did he jump back? How did he react to you in
25 other words?

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1 A. Uhm, he just -- He kept coming.

2 Q. So he didn't slack off?

3 A. No.

4 Q. So when you say he kept coming, what does that mean?
5 Did he continue what he started before?

6 A. Yes. He was still picking, still provoking me,
7 still coming at me.

8 Q. Are you in the same area of the house at this
9 point?

10 A. Uhm, at this time we started going around the living
11 room, the kitchen and we were going around in a circle.

12 Q. All right. I'm going to show you these pictures.
13 I'm going to pass up State's Exhibit number A2. I would like
14 for you to look at that and tell me if you can recognize
15 that. What is that, if you can recognize it?

16 A. This, uhm, is my kitchen and then that's the wall
17 portion separating the kitchen and the living room. You can
18 enter or exit on both sides of the partition.

19 Q. I would like to relate these two photographs. One
20 is A2 and A3. I want you to step down and I want you to
21 label them. I'm going to hold them up. I want you to show
22 -- If there's a couch in both of these, I want you to point
23 the couch out in both of them. Do you see the couch?

24 A. Yes. This is the couch and this is the same
25 couch.

1 Q. Okay. So this is looking from the kitchen and into
2 that living room area?

3 A. Correct.

4 Q. And this wall here, is that a partition or a wall
5 that's completely closed?

6 A. No. It's a partition.

7 Q. So when you say you went around, how did you go
8 around?

9 A. I came this way through by the refrigerator and I
10 went back through this way on this side. My dad's room is
11 this way, so I went back this way and I came over and got my
12 son off of the corner of the couch and I tried to proceed to
13 my room.

14 Q. Okay. During that time, what is happening? When
15 you get up and you move, do you have the box cutter in your
16 hand? Do you have anything else in your hand other than your
17 son?

18 A. No.

19 Q. Tell me what you got in your hands then?

20 A. At that point in time I only had the box cutter and
21 my son and I was trying to - and the house phone and I was
22 trying to get in my room and close the door. My lock is
23 broken on my door so I was trying to put the nightstand in
24 front of the door.

25 Q. All right. Now, I want to go to another photograph

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1 here. What is he doing to you during this period of time, if
2 anything?

3 A. At this time he's coming at me and I didn't get a
4 chance to get the door closed and --

5 Q. Well, I want to talk about going around and around
6 now.

7 A. Okay.

8 Q. I want to talk about in that kitchen and that living
9 room and dining room area and I want you to look at these
10 photographs here which are reflected in State's Exhibit B1,
11 2, 3, and 4. Look at this. All right. I'm going to have
12 you step down and I'm going to hold up B1. Do you recognize
13 B1?

14 A. Yes.

15 Q. All right. What is that? What is B1?

16 A. B1 is a picture of the kitchen with a broken kitchen
17 chair that was broken across my back.

18 Q. There's a bucket down on the floor there. What's
19 that?

20 A. Yes. That was a bucket. My dad had some fish, I
21 think, maybe my uncle had wet fishing earlier that day and
22 gave them to him and he was cleaning fish.

23 Q. Okay. Well, I'm going to hold that up. Now, this
24 is the kitchen area you say?

25 A. Yes.

1 Q. Now, is this chair, is that related to this chair,
2 that piece of wood laying on the ground over there?

3 A. Yes.

4 Q. What is that?

5 A. That's, uhm, one of the support little bars that's
6 under the chair.

7 Q. Okay. How did it come to be on the floor? How did
8 the chair come to be on the floor?

9 A. He picked it up and came across my back with the
10 chair.

11 Q. Is that when you were in the kitchen?

12 A. Yes, sir.

13 Q. Was in your arms?

14 A. Not at that moment.

15 Q. Okay. So this is when you had left and went into
16 the kitchen from the area where you had the computer?

17 A. Yes.

18 Q. So this is your trip through the kitchen?

19 A. Right.

20 Q. All right. Let me ask you what this is right here?
21 This is B2. Go ahead. B2, where is this?

22 A. That's, uhm, in the living room. That's in the
23 living room and, uhm, I mean he completely trashed the house.
24 It was red.

25 Q. What's this? I want to make sure what that is.

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1 A. That's the computer chair and computer stand. In
2 this picture you can actually see that --

3 Q. Hold on. I'm going to get you to point that out.
4 Now, you point out to the jury what you just told me. Where
5 is this computer stand?

6 A. This is the computer chair. This is the computer
7 stand. Uhm, if you can actually - you can actually see that
8 the computer stand is actually not parallel to the wall, but
9 it's in the corner.

10 Q. Okay. So these items that are on the floor here,
11 how did they come to be there?

12 A. That's the stuff that he was throwing at me.

13 Q. Does that include some fish tails?

14 A. Yes. There's fish here.

15 Q. Is there anything else in the kitchen?

16 A. A mason jar. I got hit in my back this that also.

17 Q. So this happened while you made one trip around?

18 A. Yes.

19 Q. All right. And so was in your arms when you
20 got hit with this jar?

21 A. No.

22 Q. Apparently you made a couple trips around there?

23 A. I made -- It was one trip. We were going at it, you
24 know, the whole time I'm going around. When I get through
25 the kitchen area, you know, I'm a big girl so I have to turn

1 a little bit so I can get through so once I turn to get
2 through, that's when the chair came down across my back. The
3 mason jar hit me in my back. I picked up my baby. He's
4 still coming. I try to go into the bedroom.

5 Q. Okay. Now, this is B3. Look at that real quick.
6 Do you recognize that?

7 A. Yes.

8 Q. All right. What's that on the floor?

9 A. Fish and paper plates.

10 Q. Which room is this?

11 A. This is still in the living room.

12 Q. All right. Hold that up. Point out where this is.
13 Where is that couch that you're referring to?

14 A. Yes. The couch is here. My baby was in the corner
15 of this couch when I came back from getting him to go in the
16 bedroom.

17 Q. Were you throwing things on the floor at him?

18 A. No.

19 Q. Were you throwing things at him?

20 A. No.

21 Q. Who was in front, who was in back so to speak? Who
22 was being chased and who was chasing whom?

23 A. I was being chased and, I mean, he kept coming.
24 Anything he could get his hands on he was throwing it. It
25 was light bread everywhere. It was flour and fish breading

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1 and just --

2 Q. All right. And what is this? This is B4.

3 A. This is part of the kitchen going into the living
4 room.

5 Q. What's on this cabinet here?

6 A. Uhm, this is a picture of the mason jar like what I
7 got hit in my back with.

8 Q. Point that out to the jury. Where is the -- These
9 are the mason jars?

10 A. Yes.

11 Q. All right. And these are going in -- What direction
12 does this take you?

13 A. This goes back through the living room.

14 Q. Okay. And this is on the night it happened?

15 A. Yes.

16 Q. Okay. All right. Take the stand again, please. So
17 I think you told us earlier that you had been first at the
18 computer table?

19 A. Yes.

20 Q. You were - he was pushing you?

21 A. Yes.

22 Q. In the head repetitively. You reached down and got
23 a box cutter out?

24 A. Yes.

25 Q. He came at you and you stood up, swung at you and

1 you swung back?

2 A. Yes.

3 Q. And then he kept coming at you then. I want to make
4 sure it's clear to the jury, when do you start to leave the
5 location of the area around that computer and when do you
6 stop slashing at him and stop running or moving fast away
7 from him?

8 A. Can I get up and demonstrate?

9 Q. Yes.

10 A. So it first started at the computer stand, you know,
11 he's doing all this and I get up and, you know, he's taller
12 than me so he slaps me. I had the box cutter in this hand so
13 I cut and as we're going at it, I'm just walking backwards so
14 every time he swing at me, I swing at him. So I'm not really
15 thinking that I cut him, but it's just, I mean, you're
16 swinging at me, so I'm swinging at you and we're just still,
17 I'm still going backwards. He's still coming and we're going
18 around this partition. We went around one time.

19 Q. Now, just a minute now. That's what I want to ask
20 you about. You say we're going around the partition. When
21 did you stop swinging at him and he get behind you and start
22 hitting you with the chair and throwing things?

23 A. Can I pick this up?

24 Q. Sure. Which picture are you picking up? Let's find
25 the number. This is State's Exhibit A2.

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1 A. Okay. So I'm backing up. I'm backing up this way
2 so I'm coming this way (indicating.) The table --

3 Q. You're pointing to an area that enters around the
4 side partition it looks like nearest the computer?

5 A. Yes.

6 Q. Toward the refrigerator?

7 A. Yes.

8 Q. And you're backing up you say?

9 A. I'm backing up. When I get in --

10 Q. So you're facing him?

11 A. Yes. When I get in this area, I turn so I could see
12 not to miss the table or run into the refrigerator. When I
13 turned, that's when the chair comes across my back and the
14 mason jar. I keep going and pick my baby up.

15 Q. So you get over here and you pick the baby up?

16 A. Yes.

17 Q. And you head where?

18 A. To my room.

19 Q. All right. Let's find out about your room. Take a
20 seat right there real quick. All right. I'll show you
21 what's marked as State's Exhibit A1. Take a look at that.
22 Now, I'm going to stand over here and hold it up. You just
23 stay right there. All right. What is that?

24 A. This is my bedroom. That's the bathroom, and a
25 little bit past the bathroom is the refrigerator.

1 Q. The refrigerator is in this direction over here?

2 A. Yes.

3 Q. So you go from -- I'm going to hold up State's

4 Exhibit number A2. If you go from this side of the partition
5 which is in A2 which you said earlier; is that right?

6 A. Yes.

7 Q. You're on this side. You pick the baby up?

8 A. Yes.

9 Q. And you go behind the partition?

10 A. Yes. I go through here, come out on the other side
11 and, uhm --

12 Q. And then you go into your bedroom?

13 A. I go into my bedroom.

14 Q. Which is in A1; is that correct?

15 A. Correct.

16 Q. All right. So that's the path you take, right?

17 A. Right.

18 Q. Okay. So when you get in there, you said you try to
19 shut the door, but it doesn't have a lock on it, is that what
20 you testified to earlier?

21 A. Right. The lock is broke.

22 Q. Tell me about what you did when you got to that
23 room?

24 A. Uhm, when I got in the room, I still had my son in
25 my arms and I had the phone and the box cutter and while I'm

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1 holding all this I'm still trying to somehow get the door
2 closed.

3 Q. Well, how do you try to keep the door closed? What
4 do you do?

5 A. I try to keep the door closed with my nightstand,
6 but I'm not able to, you know, move it with my feet or
7 anything to get it in front of the door. I didn't have time
8 to completely shut the door or get the door where he couldn't
9 come inside.

10 Q. Okay. All right. So you couldn't get the door shut
11 and he keeps forcing it open?

12 A. Correct.

13 Q. All right. Once he gets the door open, where are
14 you. Where do you position yourself in the room?

15 A. Against my closest door.

16 Q. Would you be able to recognize a picture of that
17 area if you saw it?

18 A. Yes.

19 Q. All right. Let me show you what's marked as,
20 admitted as State's Exhibit B5. Do you recognize that?

21 A. Yes.

22 Q. What is that?

23 A. That is right in front of my closet door.

24 Q. All right. There is something laying on the floor.
25 What is that?

1 A. Blood.

2 Q. What is that laying on the floor?

3 A. Oh, the fan.

4 Q. Okay. All right. Where are you in relation to that
5 fan and was the fan upright or on the floor when you first
6 come in the room?

7 A. The fan was standing up and I was against the closet
8 door right here.

9 Q. This is the closest door that you pointed out right
10 here?

11 A. Yes, with the full length mirror.

12 Q. All right. And you were up against that?

13 A. Yes, sir.

14 Q. What's in your hands at that time?

15 A. At this time I'm up against the closet door like
16 this (indicating.)

17 Q. Where is the baby?

18 A. The baby, he's on the bed.

19 Q. All right. Now, when he first comes in --

20 A. Mm-hmm.

21 Q. -- and your in there, you said you had the baby in
22 your arms?

23 A. Right.

24 Q. And you had a phone and you had the box cutter,
25 right?

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1 A. Right.

2 Q. So how does the baby get on the bed and what
3 happened between the time he comes in and you put the baby on
4 the bed?

5 A. When he comes in, so I'm -- This is my door. He
6 comes in. I'm backing up and now I'm turned. I still have
7 the baby. I'm against the closet door. We're still
8 tussling. The baby is here. I go this way. The baby is on
9 the bed. The baby goes to the farthest corner of the bed to
10 get away from us and we are still tussling and now I'm back
11 up against my closet door like this (indicating.)

12 Q. You say you're still tussling?

13 A. Yes.

14 Q. Have a seat up there. What does tussling mean?

15 A. He's still coming at me. We're still being
16 physical.

17 Q. What is being physical mean?

18 A. We are still fighting.

19 Q. Are you using open hands? Closed fists? What does
20 fighting mean? Tell me what that means. What parts of the
21 body are being used against you by him and what parts of your
22 body are you using against him?

23 A. At this time, uhm, when he comes in the room, he
24 goes and he tries to swing to hit me. I, you know, kind of
25 move out of the way. The baby, I'm still holding the baby.

1 The baby kind of moves out of the way. He lays his head on
2 my shoulder. That's when I turned, I put the baby on the
3 bed. We're still -- Like once I got the baby out, I, you
4 know, pushed back.

5 Q. When he swings at you and the baby is in your arms,
6 does he hit you or hit the baby?

7 A. No. He didn't hit either one of us.

8 Q. He missed you?

9 A. Right.

10 Q. Okay. So he swings at you. Can you see him
11 bleeding now through that white T-shirt?

12 A. At this point in time I'm starting to see his white
13 T-shirt turn red.

14 Q. Okay. So he's already been cut then?

15 A. Yes.

16 Q. Did you cut him at all while -- You think you swung
17 at him with a knife. At any time after you said you entered
18 the kitchen backing up, I think you said you entered the
19 kitchen backing up?

20 A. Right.

21 Q. And then you turned and you went from there around
22 and picked up got him off the couch and went to your
23 bedroom. At any time did you swing at him with that blade at
24 all until you got in your bedroom?

25 A. No.

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1 Q. Okay. When he got in the bedroom though, you still
2 had the box cutter, right?

3 A. Yes.

4 Q. And it's in one of your hands?

5 A. Yes.

6 Q. Which hand was your box cutter in during this
7 time?

8 A. My right hand.

9 Q. Are you right or left handed?

10 A. I'm left handed.

11 Q. Okay. So you've got the baby in your arm and you
12 got what, you said what, your left arm?

13 A. Yes.

14 Q. And you got the phone in your left arm?

15 A. I have the phone. At this time the phone and the
16 box cutter is in my right hand.

17 Q. So you've got them together?

18 A. Yes.

19 Q. Kind of grasp around?

20 A. Yes.

21 Q. All right. Is the blade pointed up or down, do you
22 know that?

23 A. I'm not sure which direction the blade was in, but I
24 do know it was still out.

25 Q. The blade was out?

1 A. Yes.

2 Q. And you were being pushed up against, I think you
3 explained, up against --

4 A. The closet.

5 Q. -- the closest?

6 A. Correct.

7 Q. And after the baby goes down, you say your hands are
8 pushed up. How did they get pushed up?

9 A. He -- Johnny Boyd was holding my wrists and then he
10 placed his head on my chest and he says, "I think I'm about
11 to pass out." So when he says that, I push him off of me, he
12 ends up on the floor. I grab the house phone. I still have
13 the box cutter. My son is on the bed. I run out of the
14 house.

15 Q. All right. I want to stop you. When you leave the
16 room, is that fan up or down as far as you know?

17 A. It's down.

18 Q. So sometime during that tussle this fan fell on the
19 floor?

20 A. Correct.

21 Q. And is this blood on the floor?

22 A. Yes.

23 Q. And is this the closet?

24 A. Yes.

25 Q. So this is where most of the blood fell on the floor

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1 in that area with the fan being on the floor right there in
2 front of that closet?

3 A. Correct.

4 Q. All right. And you take off. You take off because
5 he collapses and says I think I'm about to --

6 A. I think I'm about to pass out.

7 Q. -- pass out?

8 A. Correct.

9 Q. And he falls?

10 A. Correct.

11 Q. And he's on the floor and you think he's out?

12 A. Right.

13 Q. What do you think has happened at this point?

14 A. At this point I'm thinking, oh, my God, I've cut him
15 real bad. I need to get him some help.

16 Q. All right. Latoya, when you leave the house, you go
17 out the front or the back door?

18 A. I went out the front door.

19 Q. Okay. Where did you head?

20 A. I was heading to a neighbor's house.

21 Q. All right. Are the neighbors' houses, are any of
22 those neighbors' houses reflected in State's Exhibit A5?

23 A. Yes.

24 Q. All right. Tell me where you went?

25 A. I didn't get a chance to go all the way to this last

1 house because this house no one lives in it. I only got to
2 the steps of the unlived in house or unused house.

3 Q. The steps of that house?

4 A. Yes. I only got to the steps.

5 Q. So that's the one immediately next door?

6 A. Immediately next door, yes.

7 Q. So you got that far and then what happened there?

8 A. Uhm, I dialed 911.

9 Q. Well, did you start dialing anybody first other than
10 911?

11 A. No. Well, I dialed 911, then I hung up and then I
12 dialed Patrick Johnson.

13 Q. Okay. So you tried to dial 911. Then you dialed
14 Patrick?

15 A. Right.

16 Q. Who did you dial then after that?

17 A. And then after I dialed the phone with Patrick, I
18 called 911.

19 Q. What did you ask Patrick to do?

20 A. I asked Patrick to come up so he could help, you
21 know, get and, you know, come to --

22 Q. You wanted taken care of?

23 A. Right.

24 Q. And so then you called 911?

25 A. Correct.

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1 MR. CASTO: Objection to leading.

2 MR. YOUNG: She's already testified to that, Your
3 Honor. I'm just repeating.

4 THE COURT: Sustained.

5 BY MR. YOUNG:

6 Q. All right. At this point in time you then made the
7 call to 911?

8 A. Yes.

9 Q. And 911, this is something you have actually had a
10 chance, an opportunity to listen to. You have listened to
11 the audio recording itself?

12 A. Yes, I did.

13 Q. Have you listened to this particular audio
14 recording? This is State's Exhibit number 4.

15 A. Yes. This is the exact CD that I listened to. My
16 initials are on it.

17 Q. Okay. And you verified that this is your voice on
18 this and the communication between you and the dispatcher are
19 true and correct as far as -- You can never tell.

20 A. Exactly.

21 MR. YOUNG: All right. With the Court's permission,
22 Your Honor, I would like to play the audio tape at this
23 time.

24 THE COURT: All right. That's okay.

25 MR. YOUNG: Your Honor, the best I can do is the

1 office computer. I apologize. This all I can manage.
2 We don't have any amplification device, period, that
3 works with this so we're going to do the best we can.

4 MR. CASTO: Your Honor, may I approach briefly.

5 THE COURT: Yes, sir.

6 (Playing CD of 911 call.)

7 BY MR. YOUNG:

8 Q. All right, ma'am, at this point what did you see
9 happen?

10 A. Uhm, I observed Mr. Boyd coming down the front steps
11 with my baby and the last time I seen him I pushed him off me
12 and he was on the floor so I thought he was passed out on the
13 floor.

14 Q. Thank you.

15 (Playing CD of 911 call.)

16 BY MR. YOUNG:

17 Q. All right. At this point did you tell anything to
18 the 911 operator about getting an ambulance?

19 A. Yes.

20 Q. What did you ask for?

21 A. She asked if anyone needs an ambulance and I said
22 yes.

23 Q. Okay. So you asked for an ambulance. Did you need
24 an ambulance at that point?

25 A. No. Not at that point I didn't.

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1 (Playing CD of 911 call.)

2 BY MR. YOUNG:

3 Q. You said you had your home phone with you in your
4 hand?

5 A. Yes.

6 Q. Where were you positioned now in relation to your
7 home?

8 A. I had went back to the right side of my home on the
9 side where my dad's car and my bedroom window is.

10 MR. YOUNG: All right.

11 (Playing CD of 911 call.)

12 BY MR. YOUNG:

13 Q. Ms. Abney, what was happening at or around this
14 vehicle, your dad's car?

15 A. At this time we were going around and around the
16 vehicle. I was trying to get away from him and he was still
17 coming at me. In some kind of way I went one way and he cut
18 me off in the opposite decision and at that point we were
19 face-to-face and I see him with the cinder block and he
20 picked it up and I did this number (indicating) and he just
21 boom, right on top of my head.

22 Q. Okay. A cinder block. I'll show you what's marked
23 as State's Exhibit B12. Did it look like that? Do you
24 believe that to be the cinder block he struck you with?

25 A. Yes.

1 Q. There's a bicycle next to it. Appears to be a tire
2 anyway.

3 A. Yes.

4 Q. Okay. Does that come into play at some time
5 later?

6 A. Yes. After I was --

7 Q. Just hold on. But not at that point necessarily?

8 A. No.

9 Q. But in the same area where this block was found --

10 A. Yes.

11 Q. -- that bicycle came into play?

12 A. Yes.

13 Q. And this is around the car?

14 A. Yes.

15 MR. CASTO: Objection to the leading, Your Honor.

16 THE COURT: All right. Objection sustained.

17 BY MR. YOUNG:

18 Q. Where was this area where this occurred?

19 A. I'm sorry.

20 Q. Where was the area in which this occurred in
21 relation to your house?

22 A. It was on the right side of the house between my
23 dad's car and my bedroom window.

24 Q. Okay.

25 A. On the passenger side of the car.

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1 Q. Okay. On the passenger side of the car?

2 A. Yes.

3 Q. Now, I can hand up a photograph here which is marked
4 State's Exhibit A7. That appears to be a window. What is
5 that?

6 A. That's my bedroom window.

7 Q. What is that to the right of the bedroom window?

8 A. This is the back porch going into the backyard
9 area.

10 Q. Okay. All right. This is another picture A6. Is
11 that also a picture of the same area?

12 A. Yes.

13 Q. All right. Is your window apparent in that?

14 A. Yes.

15 Q. This is State's Exhibit A8 and A9. Was the vehicle
16 that you're referring to, does that appear anywhere in this
17 photograph?

18 A. Yes.

19 Q. Are they in both photographs?

20 A. Yes.

21 Q. Are they in approximately the location where this
22 event occurred that night --

23 A. Yes.

24 Q. -- on September 15th? And you said you were on the
25 passenger side?

1 A. Yes.

2 Q. Show me approximately where you were?

3 A. Uhm, in this picture you can see it better. I was
4 between this side and the house. My window is just right
5 there.

6 Q. Okay. And you had been chased you said around it?

7 A. Yes.

8 Q. Did you have this box cutter in your possession when
9 you left the house?

10 A. Yes. When I left out of the house, yes, I did.

11 Q. How long did you have it in your possession after
12 you left the house?

13 A. Uhm, I can't recall exactly how long. It seemed
14 like everything was happening so fast and it was taking
15 forever at the same time. Uhm, when I was on the phone with
16 the dispatcher and the first little scuffling over the 911
17 tape, that was during the time I dropped the box cutter and
18 ran around the car.

19 Q. So when this tape first begins and there's a first
20 scuffle you believe that's when you dropped it?

21 A. Yes.

22 Q. You believe you no longer had the box cutter in your
23 possession at that time?

24 A. Correct.

25 Q. It was on the ground as far as you know?

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1 A. Right.

2 Q. Who was chasing whom?

3 A. Johnny Boyd was coming after me.

4 Q. You said he cut you off and faced you and he hit you
5 with the block?

6 A. Correct.

7 Q. All right. And somewhere in this sequence do you
8 know exactly where in this sequence all that happened or you
9 just think?

10 A. Uhm, I can't say exactly where.

11 MR. YOUNG: Okay.

12 (Playing CD of 911 call.)

13 BY MR. YOUNG:

14 Q. At any time during this taped sequence is there a
15 point which you were on the ground around the car?

16 A. Yes. Yes. Uhm, once we got face-to-face and he hit
17 me in my head with the cinder block, I went down. I mean,
18 you can't fight that. And I tried to just shake it off, but,
19 uhm, I just - I blacked out and I fell. The car was more
20 over here and I was between the house and the car laying
21 here.

22 Q. All right. And at any time during this period of
23 time and I'm talking about throughout the tape, did you ever
24 feel like you lost consciousness for however long or
25 briefly?

1 A. Yes. I could hear the dispatcher talking to me, but
2 I just - I couldn't respond. I couldn't say anything to her.
3 She sounded like she was very far away, but the phone was
4 just under my shoulder so it just, it sounded like she was
5 very far away, but she was just, she was right there the
6 whole time.

7 Q. And the phone was active and you were laying on the
8 ground?

9 A. Yes.

10 Q. Okay. And during this period of time while you're
11 laying on the ground, do you know whether or not you received
12 any other blows while you were on the ground?

13 A. Uhm, after I got hit with the block, I remember
14 looking up and seeing him standing over me and then I got hit
15 with a bike.

16 Q. A bike?

17 A. Yes.

18 Q. A bike. Is the bike in that picture that I showed
19 you earlier with the cinder block in it?

20 A. Yes.

21 Q. Same bike?

22 A. Same bike.

23 Q. Can you describe that bike for me?

24 A. Uhm, it's more kind of like a mountain bike. It has
25 the, or maybe the young boys these days call it a trick bike.

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1 It has the two things on the side where you can stand up on
2 the wheels and do tricks and things and what not and that's
3 the type of bike it was.

4 Q. Now, you had injuries on your shoulders, both of
5 them, did you not?

6 A. Yes.

7 Q. Okay. You had injuries that were photographed
8 several days after this during the bond hearing?

9 A. Yes.

10 Q. Do you recall that?

11 A. Yes.

12 Q. And you have seen those photographs?

13 A. Yes.

14 Q. Would you be able to recognize them again if you saw
15 them?

16 A. Yes.

17 Q. I hand up what's been marked State's Exhibit C6 and
18 C7 and ask you to take a look at these and tell me if you can
19 recognize them?

20 A. Yes.

21 Q. What are they?

22 A. Uhm --

23 Q. Which shoulders and what are they?

24 A. C6 is my right back shoulder and C7 is my left
25 shoulder.

1 Q. Okay. And do you know which of these two relates
2 possibly to the injury that was inflicted from the bicycle?

3 A. C7.

4 Q. C7?

5 A. Yes.

6 Q. Do you know what caused C6 precisely?

7 A. No, I don't.

8 Q. Okay. Did you have this injury though before this
9 incident that night? Did you have that kind of injury?

10 A. No. I didn't have any injuries.

11 Q. You didn't come to this incident with that injury on
12 your back?

13 A. Correct.

14 Q. You had it afterwards?

15 A. Correct.

16 MR. YOUNG: The state offers into evidence C6 and
17 C7.

18 MR. CASTO: No objection, Your Honor.

19 (Whereupon, State's Exhibit C6 and C7 admitted.)

20 BY MR. YOUNG:

21 Q. Now, I'm going to hold up C7. Is C7 the one you
22 referred to that shows the injury to your shoulder that you
23 say you believe to be caused by the bicycle?

24 A. Yes.

25 Q. Okay. Now, C6 you're not sure what that was, but

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1 you didn't have it before this night?

2 A. Correct.

3 Q. All right. And at this point you feel like you were
4 on the ground when you got that injury to your back from the
5 bicycle, right?

6 A. Yes.

7 (Playing CD of 911 call.)

8 BY MR. YOUNG:

9 Q. Who is that we're hearing in the background? Did
10 you recognize those voices?

11 A. That was my son and that was Red and he told me to
12 get my ass up.

13 Q. Okay. And you responded?

14 A. Yes.

15 (Playing CD of 911 call.)

16 BY MR. YOUNG:

17 Q. Do you know where you are at this point?

18 A. Uhm, I'm still on the ground at this point.

19 MR. YOUNG: Okay.

20 (Playing CD of 911 call.)

21 BY MR. YOUNG:

22 Q. At some point prior to this statement, did you not
23 tell the dispatcher something about a cinder block?

24 A. Yes. I told the dispatcher that I had been hit in
25 the head with a cinder block.

1 (Playing CD of 911 call.)

2 BY MR. YOUNG:

3 Q. Where are you at this time, do you recall?

4 A. I was in my shed behind the house.

5 Q. Okay. Lights on or off?

6 A. They were off at the time and then, uhm, when
7 Patrick got on the scene, Patrick came to the back. He was
8 looking for me and I cracked the shed door and turned the
9 light on so Patrick would know that I was in the shed. When
10 he got closer to the shed, I opened the door. He saw me and
11 he went, "Oh, my God, what happened? Do you need to go to
12 the hospital?" And the next thing I know Patrick went to the
13 left and it seems like Mr. Boyd just appeared out of nowhere.

14 (Playing CD of 911 call.)

15 BY MR. YOUNG:

16 Q. Who is that in the background now?

17 A. That was the officers, the first officers that
18 responded.

19 Q. Those are the officers who responded to the scene,
20 the first ones there?

21 A. The first officers on the scene.

22 Q. And that's them in the background. So they're there
23 now?

24 A. Yes.

25 Q. Between those Red, stop statements that you made,

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1 what were those sounds that were between Red, stop? What
2 were those sounds?

3 A. Him punching me in my face.

4 Q. Okay. I'm going to ask you a few more questions
5 here. Ms. Abney, you have admitted that this night you
6 defied your father and you brought him over to your house
7 against what your father would want, and you got him - he was
8 in the house. You started rolling a blunt. You've got a
9 background that's, you've had some criminal convictions in
10 your background, haven't you? You've got a CDV when you were
11 about what, 17?

12 A. Yes.

13 Q. You had a possession of cocaine in 2003. Maybe
14 about 18, might be the same year in terms of your age.
15 Possession of marijuana in 2005. I guess you're a couple
16 years older then and another possession of marijuana in
17 November of 2010 and a shoplifting in January of this year,
18 right?

19 A. Yes. That's me.

20 Q. You don't claim to be anybody other than who you are
21 though, right?

22 A. Correct.

23 Q. Who was chasing who during that tape?

24 A. On the 911 recorder you heard Johnny Boyd constantly
25 pursuing to fight, me trying to run away from him, me telling

1 him to stop. Leave me alone. Begging. Upset like.

2 Q. Did you see him in possession of this big pot here,
3 this big flower pot? Did you see him with that?

4 A. No. I don't recall seeing him with it.

5 Q. You don't recall seeing him with that?

6 A. No.

7 Q. So you don't know whether he had it in his
8 possession or not whenever he moved it from where ever it
9 was?

10 A. Correct.

11 Q. You don't know how your dad's car got damaged, do
12 you?

13 MR. CASTO: Objection to leading.

14 BY MR. YOUNG:

15 Q. Do you know or do you not know how your father's car
16 got damaged?

17 A. Yes.

18 Q. How did it get damaged?

19 A. My dad's car got damaged, uhm, during the time that
20 Johnny Boyd hit me with the bike and the cinder block.

21 Q. So that's how that happened. And when you got
22 inside the shed, why did you go to that shed?

23 A. I was hiding like I told the dispatcher I was.

24 Q. And you turned the light on when Patrick got near.
25 You could hear him?

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1 A. Yes.

2 Q. While you were in the shed did you think you were
3 safe?

4 A. Yes.

5 Q. How did you feel when Mr. Boyd opened the door?

6 A. Terrified.

7 Q. I want to show you State's Exhibit B19. What's that
8 right there? What's B19?

9 A. Uhm, that's me covered with, uhm, scars, his blood
10 also and --

11 Q. What's that white stuff on your clothing?

12 A. Dirt.

13 Q. Dirt. That's on your left side?

14 A. Yes.

15 Q. How did you get that dirt on you?

16 A. That's the side that I landed on when I got hit in
17 the head with the cinder block.

18 Q. I'm going to show you B17 and 18. What is that?

19 A. Those are my hands covered with the defendant's
20 blood.

21 Q. Okay. That's the blood on you?

22 A. Yes.

23 Q. I want to take you back to the point in time you
24 were sitting. Now, did you go sit in the shed? Were you
25 standing in the shed? Did you go in the corner in the shed?

1 What did you do in the shed?

2 A. Uhm, well, the doors, they really can't lock, uhm,
3 but I was in the shed and I was just standing there holding
4 the knob so whoever was on the outside, preferably Johnny
5 Boyd, couldn't turn the knob. I had a death grip on it until
6 I heard Patrick Johnson is when I opened the door and turned
7 the light on.

8 Q. Okay. Before Johnny Boyd came into the room, what
9 did you do after Patrick left?

10 A. I closed the door.

11 Q. Did you turn the light off?

12 A. Yes.

13 Q. What happened?

14 A. He appeared out of nowhere. I couldn't lock the
15 door so, uhm, he forced his way in. When he came in, it was
16 my older son's moped and some chairs were in the shed. Uhm,
17 he was coming at me. The fight started up again and I kind
18 of tripped, but I didn't fall. It was kind of like I lost my
19 balance and ended up sitting in the chair.

20 Q. How many times were you struck until you wound up in
21 that chair?

22 A. As soon as he came in, uhm, as best I can remember,
23 uhm, I didn't feel the first blows until I sat down once I
24 was in the chair.

25 Q. So you remember blows after you were in the chair,

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1 is that what you're saying?

2 A. Yes. When he came -- When he came in, I was walking
3 back and as I was walking back, he was still coming towards
4 me. The chair was right behind me and it bent my knees at
5 the back a little bit so I sat down in the chair and he just
6 went for what he knew.

7 Q. This is State's B20. Where are you in this picture
8 in relation to the chair?

9 A. I'm sitting in my chair in the same chair.

10 Q. That's you sitting in the chair?

11 A. Yes.

12 Q. Okay. Now, if you're seated in this chair, tell me
13 what you were doing when he started delivering blows. Where
14 were your arms?

15 A. The first blow I was trying to block it, but I had
16 been hit in the head and I was weak and I just, I couldn't
17 fight it and, uhm --

18 Q. Were your arms up or not the first time?

19 A. No. The first time -- Well, the first blow my arms
20 were like this (indicating.) But in the midsts of the second
21 and third and fourth blow I had - because I mean, I was - I
22 was tired. I was exhausted. I couldn't - I couldn't --

23 Q. Did you have anything in your hands to fight back
24 with?

25 A. No. I was completely defenseless.

December 10, 2014

THE COURT: Good morning. You may be seated. All right. Before we get started, we'll just put real quick on the record the reason for the delay. It's my understanding that the state extended an offer to the defendant and that Mr. Casto will speak with him regarding the offer. I just want to ask you some questions real quick about that. You can stand there. Raise your right hand.

Thereupon,

JOHNNY JEROME BOYD

after having been first duly sworn, testified as follows,

THE COURT: Sir, I just want to make sure that there is an informed - that you're informed and I want to make sure we are all on the same page so there is not an issue later about there was an offer made to you from the state to plead guilty to assault and battery first degree. Is that your understanding, sir?

MR. BOYD: Yes, ma'am.

THE COURT: And so you understand that you're charged with attempted murder and it carries up to 30 years in jail. Do you understand that, sir?

MR. BOYD: Yes, ma'am.

THE COURT: And it's classified as - it's a strike, I believe, a strike is classified as, is it most serious

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1 or serious?

2 MR. YOUNG: Most serious.

3 THE COURT: It's classified as most serious and so
4 therefore under our two strike law if you were to get
5 another most serious, the state could move before the
6 court for life without parole. Do you understand that,
7 sir?

8 MR. BOYD: Yes, ma'am.

9 THE COURT: All you understand it's classified also
10 as violent which means you would have to serve 85
11 percent of any sentence that you were to get on the
12 attempted murder. Do you understand that, sir?

13 MR. BOYD: Yes, ma'am.

14 THE COURT: All right. Now, the state has offered
15 you assault and battery first degree. That carries up
16 to ten years. Do you understand that, sir?

17 MR. BOYD: Yes, ma'am.

18 THE COURT: The maximum amount of time that I could
19 give you is ten years. Do you understand that?

20 MR. BOYD: Yes, ma'am.

21 THE COURT: It's classified as non violent, and
22 there is no strikes associated with it. Do you
23 understand that, sir?

24 MR. BOYD: Yes, ma'am.

25 THE COURT: All right. You have had some time this

1 morning about 30, 40 minutes to speak with your
2 attorney. Have you spoke with him as long as necessary
3 for him to explain all of this to you?

4 MR. BOYD: Yes, ma'am.

5 THE COURT: He's gone over everything that I am
6 telling you with you; is that correct?

7 MR. BOYD: Yes, ma'am.

8 THE COURT: It is your decision after speaking with
9 your family, my understanding it's your decision after
10 speaking with your attorney and your family that you
11 wish to reject the plea offer; is that correct?

12 MR. BOYD: Yes, ma'am.

13 THE COURT: All right. Thank you. All right.
14 Ma'am, if you could come and take the stand.

15 (Witness Latoya Abney resumes the witness stand.)

16 (The jury returns to the courtroom at 10:47 a.m.)

17 THE COURT: All right. Good morning, ladies and
18 gentlemen of the jury. Once again I have to apologize.
19 We were taking up some matters that I could not address
20 in your presence so that is the reason for the delay,
21 but we are ready now to continue with the cross
22 examination at this point of Ms. Abney by Mr. Casto.

23 Yes, sir.

24 MR. CASTO: Thank you, Your Honor.
25

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1 Q. Okay. And then once they arrive and approach you, I
2 believe Johnny goes with somebody and y'all are separated
3 again, right?

4 A. Yes. But can I say that you making it seem like one
5 plus one equal two, okay?

6 Q. The question respectfully --

7 THE COURT: Let her finish answering the question.

8 Ask your question again and let her finish answering.

9 BY MR. CASTO:

10 Q. All I'm asking you is once law enforcement shows up,
11 they essentially separate you and Johnny is all I'm asking?

12 A. Yes, they do.

13 Q. Okay. And you are, as I understand it, treated and
14 taken to the hospital that night, right?

15 A. Yes, I am.

16 Q. So is Johnny?

17 A. Yes, he was.

18 Q. Okay. And then you are eventually treated at the
19 hospital and then at that point you're released, correct?

20 A. Yes.

21 MR. CASTO: I beg the Court's indulgence. No
22 further questions. Thank you.

23 THE COURT: All right. Redirect.

24 REDIRECT EXAMINATION

25 BY MR. YOUNG:

1 you what efforts you made to try to secure yourself in the
2 shed and you said something about holding onto the door?

3 A. Yes.

4 Q. All right. Did you -- I'm not going to ask it that
5 way. Let me ask it this way: What efforts did you make to
6 prevent other persons from entering, if any, into the shed?

7 A. I tried to prevent the knob from being turned so the
8 door couldn't come open.

9 Q. Was there a lock on that or not?

10 A. No.

11 Q. Okay. And then when eventually Mr. Boyd did enter
12 the shed at that point, were you holding onto the shed door
13 at that point?

14 A. Yes. When he first came in, I was holding onto the
15 door. He snatched the door open. As you could hear on the
16 911 recording I'm telling him to get away from me. Stop.

17 Q. Did you have anything in your hand other than the
18 phone? I think you indicated you had the phone.

19 A. No. The house phone.

20 Q. And until such time as you wound up on that chair
21 that's all you had in your hand?

22 A. That's it.

23 Q. And at some point did you lose the phone?

24 A. At some point I did, yes.

25 Q. Okay. All right. Now, he also asked you about

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1 being treated and released. Do you have any problems now
2 with that side of your face or your eye?

3 A. The vision.

4 MR. CASTO: Objection. May we approach?

5 (Side bar held off the record.)

6 THE COURT: Back on the record.

7 BY MR. YOUNG:

8 Q. Now, Ms. Abney, let me make sure you understand the
9 point of my question. I am seeking an answer to whether
10 you're currently having problems from what happened that
11 night with regard to the eye and the area of your face that
12 was struck and your head.

13 A. Yes.

14 Q. Are you currently having any problems? Would you
15 just briefly tell us what they continue to be, if there are
16 any?

17 A. The vision in my left eye is more blurry than in my
18 right eye.

19 Q. Okay. And that's something that you have not sought
20 help for; is that right?

21 A. Correct.

22 Q. Okay. But you continue to have the problem?

23 A. Correct.

24 Q. And I believe upon your release you were pretty much
25 instructed to follow up if you needed to, right?

1 A. Correct.

2 MR. YOUNG: I don't have any further questions.

3 MR. CASTO: No further questions, Your Honor.

4 THE COURT: All right. Ma'am, you may step down.

5 Call your next witness.

6 MR. YOUNG: Briefly, Your Honor, may I consult just
7 one moment?

8 THE COURT: Yes.

9 MR. YOUNG: Your Honor, the state at this time
10 rests.

11 THE COURT: All right. Thank you. Ladies and
12 gentlemen of the jury, the state has presented their
13 case. At this time there is a matter of law that I need
14 to take up outside your presence. I'm going to send you
15 into the jury room. Remember you're not to discuss the
16 case. You do not have all of the evidence. I'm going
17 to send you in the jury room at this time and we'll have
18 you back out shortly. Thank you.

19 (The jury is sent to the jury room.)

20 THE COURT: Back on the record. All right. Any
21 motions?

22 MR. YOUNG: None from the state.

23 THE COURT: All right. Mr. Casto?

24 MR. CASTO: Thank you very much. May it please the
25 Court. At this time we would move for a directed

1 verdict. Your Honor, in looking at this case it falls
2 far short of what is required by statute for attempted
3 murder based on the facts that have been presented
4 through the testimony and evidence.

5 Your Honor, the statute reads a person with the
6 intent to kill, attempts to kill another person with
7 malice of forethought, and I believe that in this case
8 with the facts of what we have in front of us it falls
9 far short of that.

10 The testimony that we hear is, you know, Johnny and
11 Latoya made plans. They end up over there. The
12 testimony is he has not armed himself or anything like
13 that. You know, with regard to any type - anything that
14 rises to the level of planned or an attempt, but
15 specifically, Your Honor, the intent to kill and perhaps
16 as close as we get to that, Your Honor, is that scene in
17 the shed and based on Ms. Abney's testimony he doesn't
18 have anything in his hands when other objects are
19 around. He doesn't leave the house, Your Honor, with
20 anything in his hands.

21 Your Honor, this is a fight to be certain, but it
22 does not rise to the standard that must be met within
23 the law to convict him of attempted murder.

24 THE COURT: All right. Yes, sir.

25 MR. YOUNG: The state's case basically, Your Honor,

1 is that this is a jury question. It's the existence of
2 evidence, not the quality or quantity. The evidence in
3 this case is very clear, that the defendant was left in
4 the house and basically in a situation where he was
5 believed to be unconscious and may have been for
6 a certain period of time after which Ms. Abney is
7 outside the home and thereafter the defendant comes out
8 of the house and retrieves not just one, but several
9 different weapons.

10 There is blood all over a 40 to 50 pound flower pot
11 that he clearly removed from the area that was beside
12 the house and attempted to bring it over to her and use
13 it in some fashion. That 40 to 50 pound pot is right
14 there. He went to another location and retrieved cement
15 block pieces from a basketball goal out in the front of
16 the house. There's blood on that. And then used that,
17 held it over his head and tried to hit her in the head
18 with it and did in an attempt to try to kill her.

19 And there were numerous instances in situations
20 where there was a cooling off time frame in which he
21 could use that opportunity to either call 911 or take
22 other steps or do whatever he felt like. She was not
23 representing a threat. There's no evidence she was
24 representing a threat to him at any time after she left
25 the house. That particular blade involved was found at

1 the front of the vehicle.

2 When law enforcement arrives and there is evidence
3 on the tape of multiple blows being delivered and law
4 enforcement testifies they hear those blows and she is
5 found defenseless and sitting in a chair in the shed of
6 her home while he's delivering blow after blow to the
7 front of her face and head and the side of her head, had
8 law enforcement not intervened, she might have been very
9 well dead. Sufficient blows could have been delivered
10 to cause her to die. And the use of a deadly weapon
11 like a block could have caused her to die outside the
12 car itself. And the use of a bicycle against her to
13 throw at her on the ground. All of those are clear
14 evidence sufficient for a jury question on the question
15 of whether he intended to kill her and premeditation
16 arising at any point in time where he had sufficient
17 time to think about what he was doing and not act when
18 he was not being threatened with a knife or a blade.
19 The state submits this is a clear case for a jury
20 question.

21 THE COURT: All right. All right. And your
22 position is that the state has not proven the intent
23 part? Is that your position?

24 MR. CASTO: That's correct. Formulated an intent.
25 This is a specific intent offense, Your Honor, and I

1 believe it's lacking, but it's an essential element of
2 the statute to make it go past the stage. We believe
3 it's lacking.

4 THE COURT: All right. Uhm, all right. Uhm, in
5 reviewing the testimony that has been presented to the
6 Court thus far presented by the state I do find that
7 there is sufficient evidence to present this matter to a
8 jury. There's been testimony regarding the use of, I
9 think, a cinder block and a flower pot and, of course,
10 you know, the case law says that the hand can also be
11 considered deadly force in terms of considering malice.
12 I do find that there has been sufficient evidence to
13 show - sufficient evidence in the light most favorable
14 to the non moving party and that it is an issue of fact
15 as to the facts in the case and that this matter should
16 be presented to the jury so the motion for the directed
17 verdict is denied at this time.

18 MR. CASTO: At this time, Your Honor, we would just
19 renew any other prior motions, objections, before the
20 trial continues at this time.

21 THE COURT: All right. And Let me just put your
22 last objection on the record. There was a side bar.
23 Mr. Young was questioning on redirect the witness
24 regarding problems she has experienced since this
25 incident. There was an objection by the defense. That

1 objection is overruled. The objection was that it was
2 outside the scope. That objection was overruled due to
3 the question asked by Mr. Casto of the witness regarding
4 her treatment and her release from the hospital so
5 therefore the objection was overruled. I just wanted to
6 put that on the record. I think that covers everything
7 that we have discussed at the side bar. Y'all, we need
8 to make sure that it's been moved in, placed on the
9 record. Just let me know and we'll do that.

10 All right. So, Mr. Boyd, we are at the point in the
11 trial where you as I have stated to the jury and I will
12 state to you now that you have the right to remain
13 silent. You do not have to present any evidence. You
14 do not have to testify. You do not have to call any
15 witnesses. The burden is upon the state to prove you
16 guilty beyond a reasonable doubt. We are at the point
17 in the trial where if you wish to present any evidence,
18 you may do so at this time. The reason I ask that is,
19 Mr. Casto, do you have a potential witness list? Do you
20 have any plans on calling any witnesses?

21 MR. CASTO: We do, Your Honor.

22 THE COURT: All right. And I will -- All right.
23 Mr. Boyd, I'm not sure if your attorney is going to call
24 you as a witness, but I will go over your rights
25 with you at this time and y'all can discuss it and when

1 Thereupon,

2 JACOB STARNs

3 after having been first duly sworn, testified as follows,

4 DIRECT EXAMINATION

5 BY MR. CASTO:

6 Q. All right. Mr. Starns, how are you today?

7 A. I'm doing fine. How are you doing?

8 Q. Just fine. Start off by introduction. Where do you
9 work?

10 A. Saluda County Ambulance Service.

11 Q. And what do you do?

12 A. I'm a paramedic shift supervisor.

13 Q. How long have you worked there?

14 A. 13 years.

15 Q. And in the time that you have done that, how many
16 calls do you think you have gone on in your career?

17 A. Uhm --

18 Q. Is it a lot?

19 A. A lot of them.

20 Q. Let's go back a little bit further. Where did you
21 go to school?

22 A. Went to EMT school through Piedmont Tech and then
23 paramedic school through Midlands EMS.

24 Q. Walk me through the type of training that you have
25 gone through to be an EMS provider?

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1 MR. YOUNG: Your Honor, if this is intent to qualify
2 him as an EMS paramedic provider, we agree he's
3 qualified.

4 THE COURT: Is that what you are trying to do?

5 MR. CASTO: It is, Your Honor.

6 MR. YOUNG: We agree, he's qualified.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury -- All right. What is it that you're qualifying
9 him in? What is it you wish to qualify him in?

10 MR. CASTO: Expert in emergency medical responder.

11 THE COURT: All right. And there's no objection.
12 Ladies and gentlemen of the jury, normally a person
13 cannot give opinion testimony. Normally when a person
14 testifies, they must testify as to what they either saw,
15 heard or sensed by smell or something of that nature.
16 However, there is an exception when someone is qualified
17 because of education or experience. They are permitted
18 to give their opinion in certain areas, if the court
19 qualifies them that way. The witness in this case
20 Mr. Starns will be qualified in emergency medical
21 response and in the area of emergency medical response.
22 To give opinion testimony in that area does not mean
23 that you must accept that opinion, but it is evidence
24 for you to use in any way that you see fit and give it
25 the weight and credibility that you believe is

1 appropriate. All right. Thank you. You may
2 continue.

3 BY MR. CASTO:

4 Q. Mr. Starns, if we could turn to the incident at
5 hand, were you working the early morning hours of September
6 15th, 2013?

7 A. Yes.

8 Q. Did you have a chance to respond to
9 in Saluda County that evening?

10 A. Yes, sir.

11 Q. And do you know about what time you received the
12 call?

13 A. Uhm, through my dispatch I received the call at
14 00:36.

15 Q. What time did you all arrive?

16 A. We arrived on scene at 01:01.

17 Q. Do you remember whether or not you treated, you
18 exclusively treated Mr. Johnny Boyd that night?

19 A. Yes, sir.

20 Q. Okay. Did you treat anyone else that night?

21 A. No, sir.

22 Q. You were the sole EMS responder for Johnny Boyd; is
23 that right?

24 A. Yes.

25 Q. And when you first arrived, when did you first see

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1 Johnny?

2 A. As I was pulling up.

3 Q. Okay. And what was he doing?

4 A. He was standing in the roadway covered in blood.

5 Q. Okay. Do you recall the type of injuries that
6 Johnny had?

7 A. I noted that he had, uhm, a possible throat
8 laceration to the right side of his face with his mouth
9 exposed. He had a five inch, a possible five inch laceration
10 from the right ear to midline trachea with his neck exposed
11 to muscle. The trachea was exposed and the carotid artery
12 was exposed. The patient was bleeding profusely. He also
13 had lacerations, possibly stab wounds. I couldn't tell to
14 the left side of the chest and the right side of the chest
15 which was also bleeding profusely and he also had a
16 laceration from mid sternum to lower abdomen.

17 Q. Okay. And of all of these injuries in observing
18 Johnny that evening, which was the most serious?

19 A. I would consider the neck due to the blood squirting
20 from the neck.

21 Q. Okay. Was it bleeding a lot?

22 A. Yes. Bleeding profusely.

23 Q. Okay. And if he did not receive treatment, could it
24 have been life threatening?

25 A. I agree it could be life threatening.

1 Q. And was it so bad that you could actually see inside
2 of the neck? Is that fair to say?

3 A. Yes. You could see. I noted in my paperwork that
4 the trachea, which is the windpipe, and the jugular and
5 carotid was open. You could see the muscle.

6 Q. As I understand, the cut on his face you could see
7 inside the mouth; is that right?

8 A. Yes, sir. The mouth was completely exposed from the
9 side.

10 Q. And based on what you saw, could Johnny have bled
11 out if he didn't receive treatment?

12 A. Yes.

13 Q. Based on the injuries that you saw on Johnny, walk
14 me through step by step what you did to treat Johnny there at
15 the scene?

16 A. Well, initially I placed a dressing over his neck,
17 then we proceeded to put a C collar on him to stabilize his
18 neck. We put him on a spine board for spinal precautions.
19 At this time we started trying to stop the bleeding elsewhere
20 with dressings. I did note that the patient had decreased
21 breath sounds on his left side. He also had blood in his
22 airway so we started suctioning his airway so he wouldn't
23 aspirate.

24 Q. When someone has blood in their airway, what does
25 that indicate to you?

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1 A. It could indicate multiple things. It could
2 indicate, well, he had decreased breath sounds so I was
3 thinking either he had a possible hemothorax which is blood
4 filling in the lungs due to a trauma or it could have been
5 from his mouth being exposed bleeding into his mouth he
6 wasn't able to swallow everything so...

7 Q. As I understand it, your steps 1, 2, 3, the first
8 thing you did was put the wrap on him; is that right?

9 A. Yes.

10 Q. Then followed by the C collar. That is, I guess, in
11 case to stabilize his head and neck region?

12 A. Yes, sir. Any time there's a trauma to the neck
13 area, we try to make sure we use a spine immobilizer to make
14 sure that - at that moment in time we didn't know if he was
15 stabbed in the back of the neck or cut in the back of the
16 neck. Any spinal injury we take precautions for his spinal
17 cord.

18 Q. Do you remember if Johnny ever exhibited signs of
19 losing consciousness that night?

20 A. Yes. I actually noted in my paperwork that he had a
21 decrease in level of consciousness and was confused.

22 Q. Okay. And did his blood pressure remain the same
23 the whole time?

24 A. No, sir. He had a decrease in blood pressure.

25 Q. What does that, if anything, indicate?

1 A. Indicates shock, bleeding loss.

2 Q. And you get into that dangerous part where somebody
3 maybe could bleed out; is that right?

4 A. Yes, sir.

5 Q. Now, you stay with him from when you first arrive on
6 scene until when is the last time that you see Johnny?

7 A. As he's being put into the helicopter.

8 Q. You were with him the whole time?

9 A. Yes.

10 Q. And approximately how long was that time?

11 A. Uhm, from the time I was on scene at 1:01 until the
12 time he was put into the helicopter at 1:31 so 30 minutes.

13 MR. CASTO: Thank you, sir. Please answer any
14 questions Mr. Young may have.

15 MR. YOUNG: Just one moment, Your Honor.

16 THE COURT: Okay.

17 CROSS EXAMINATION

18 BY MR. YOUNG:

19 Q. Mr. Starns, could you just briefly tell me where he
20 was in the roadway when you saw him, first saw Mr. Boyd?

21 A. He was standing just kind of center, to the side of
22 the dirt road.

23 Q. Are you talking about the driveway or the road in
24 front of the house?

25 A. Road in front of the house.

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1 Thereupon,

2 JOHNNY JEROME BOYD

3 after having been first duly sworn, testified as follows,

4 DIRECT EXAMINATION

5 BY MR. CASTO:

6 Q. All right. Johnny, I'm going to stand back here and
7 ask you some questions and you're kind of soft spoken so
8 speak up so I can hear you all the way back here, all
9 right?

10 A. Okay.

11 Q. Johnny, right out of the gate, did you try or intend
12 to kill Latoya Abney the night that this incident happened?

13 A. No, sir, I did not intend to kill Latoya Abney on
14 the night in question.

15 Q. Stated another way, at any point during this very
16 altercation did you attempt to murder Latoya Abney during
17 this incident?

18 A. No, sir, I did not attempt to murder Latoya Abney in
19 this incident on the date in question.

20 Q. Johnny, let's back up for a moment or two here. Let
21 me ask you this: Johnny, how old are you?

22 A. 38.

23 Q. Where did you grow up?

24 A. In Batesburg, South Carolina.

25 Q. How far did you go in school, Johnny?

1 A. To the eleventh grade.

2 Q. Where did go to school?

3 A. I went to Ridge Spring high the majority of my life
4 and I ended in Batesburg/Leesville.

5 Q. And as far as the type of work that you have mainly
6 done in your life, what kind of work have you mainly done in
7 your life?

8 A. Mostly like animal farm, farm work and, you know,
9 places like that.

10 Q. And what town do you live in now?

11 A. Batesburg.

12 Q. Who do you live with?

13 A. My mother.

14 Q. Johnny, do you have kids?

15 A. Yes, sir. I have three.

16 Q. Okay. And as an initial matter you have been in
17 trouble before and isn't it true that you have a conviction
18 for common law robbery?

19 A. Yes, sir. It's a robbery charge. Yes, sir.

20 Q. Well, now that we have got that out of the way,
21 let's turn to your relationship with Latoya. Let me ask you
22 this: Approximately how long have you known Latoya?

23 A. If we add the dates up to date it would be like ten
24 years.

25 Q. Okay. Of that ten years how long did you all

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1 date?

2 A. Our child is, will be three this year so I would say
3 four years.

4 Q. Okay. And during that time that you all dated, did
5 you all ever live together?

6 A. No, sir.

7 Q. Did you live with your family?

8 A. Yes, sir.

9 Q. Did she live with hers?

10 A. Yes, sir.

11 Q. I'm sorry?

12 A. Yes, sir.

13 Q. And let's turn to the night that this happened. Do
14 you understand?

15 A. Yes, sir.

16 Q. And earlier in the evening that this happened, were
17 you with Latoya?

18 A. No, sir. I was not.

19 Q. And where were you?

20 A. I was at my cousin's house. She was having a little
21 get together.

22 Q. And at some point that evening do you receive a
23 phone call from your aunt?

24 A. Yes, sir, I do.

25 Q. Do you remember about what time that was

1 approximately?

2 A. I would say around between 11:00 and 11:30.

3 Q. All right. And after you hang up the phone with
4 your aunt, did you make another phone call?

5 A. Yes.

6 Q. Who did you call?

7 A. Latoya.

8 Q. All right. Did you all make plans?

9 A. Yes.

10 Q. Okay. And when you left where you were, where did
11 you go from there?

12 A. When I left from where I was, I went to Latoya
13 house.

14 Q. Okay. How did you get there?

15 A. Her and Patrick Johnson came and picked me up.

16 Q. Now, who was driving the car?

17 A. Patrick Johnson.

18 Q. And where did he drop y'all off?

19 A. At Latoya house.

20 Q. When he drops y'all off, does he stay?

21 A. No.

22 Q. And it's just you and Latoya at that house, right?

23 A. Yes.

24 Q. Her parents are not home, correct?

25 A. Correct.

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1 Q. And when y'all go into Latoya's house, what, if
2 anything, do y'all do? Where is Latoya?

3 A. She at her computer stand.

4 Q. Now, in what room again is that computer stand?

5 A. In the living room.

6 Q. All right. And where are you in relation to her?

7 A. More closer to the door.

8 Q. Okay. What is she doing at the computer stand?

9 A. She rolling up a blunt.

10 Q. Okay. Is a blunt a marijuana cigarette basically?

11 A. A marijuana cigarette.

12 Q. And did she have anything else with her?

13 A. At the time she had the razor that she used to split
14 her cigars with.

15 Q. Was it in her purse or was it out?

16 A. It was out, but she had split the cigar.

17 Q. In other words, are you saying that she was using
18 that to help roll this marijuana?

19 A. Yes.

20 Q. All right. And what type of razor did she have,
21 Johnny?

22 A. A box cutter.

23 Q. At some point when y'all are in this room is there
24 an argument?

25 A. Yes.

1 Q. All right. And was this argument, was it about, you
2 know, cheating in the relationship?

3 A. Not exactly. It was -- I just said your daddy got
4 mad at you and shot at a man because he done caught you with
5 a man in the house. Not saying that, you know, I was all
6 upset about a man but, you know, just saying your daddy got
7 mad at you and shot at him because he caught you with a man
8 in the house.

9 Q. But at some point in that room there was an
10 argument, is that what you're telling us?

11 A. Yes, sir.

12 Q. Okay. And at some point, Johnny, does that argument
13 become physical?

14 A. Yes, sir.

15 Q. Okay. And does Latoya use her box cutter?

16 A. Yes, she does.

17 Q. And that box cutter, did you ever have that in your
18 hands at all the entire evening?

19 A. No, sir.

20 Q. She had it with her, is that what you're saying?

21 A. Yes, sir.

22 Q. And, Johnny, let me ask you this: Where -- If you
23 would come down. Stand right here. Where on your body did
24 you get cut that evening? Would you point as you talk about
25 it?

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1 A. Uhm, I don't, like I say, I don't know which one
2 happened first, but it was my face.

3 Q. Now, there is a scar there. Is that scar from
4 this?

5 A. Yes. It's my ear. They had to sew my ear back on.
6 I had staples back here. I had a cut in my neck. I got a
7 big gash right here, right here and on my stomach right here.
8 I got them like all over my arms. In my head. I even have
9 one on my back (indicating.)

10 Q. Okay. All right. Johnny, sit down. When she is
11 cutting you with that box cutter, Johnny, what, if anything,
12 did you do at that point?

13 A. Well, I tried to unarm her from having the box
14 cutter and I think that's where a lot of my cuts come from
15 trying to unarm her from with the box cutter.

16 Q. Now, this argument takes place and at some point is
17 there a time that she leaves the room?

18 A. Uhm, I can't recall.

19 Q. In other words --

20 A. If she leaves the house? Or yes. She leaves the
21 house.

22 Q. When y'all are fighting, at what point inside the
23 house does the fight stop?

24 A. Uhm, when she leaves out the house.

25 Q. Okay. And now does she - where does she go once she

1 goes outside the house?

2 A. When she went outside, I don't - I don't really
3 know where she went.

4 Q. Okay. She's outside, but you're inside the house?

5 A. Yes.

6 Q. Now, in other words, with you all being in two
7 different places, that fight's not going on right then, is
8 it?

9 A. No, sir.

10 Q. All right. And how long approximately do you think
11 that you were in the house by yourself at that point well
12 with Latoya outside approximately?

13 A. I would say between two and four minutes..

14 Q. Okay. And did you remain in the house or did you
15 eventually go outside?

16 A. I eventually went outside.

17 Q. Did you go out the front door or did you go out the
18 back door?

19 A. Front.

20 Q. When you step out of the front door, what do you do
21 right then?

22 A. I walked out. At this point I had my son in my hand
23 and I was just sat there on the porch for maybe three to five
24 minutes.

25 Q. And you're sitting there on the porch for another

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1 three to five minutes; is that right?

2 A. Yes, sir.

3 Q. And you're holding your son?

4 A. Yes, sir.

5 Q. Do you remember at that point it's still only you
6 and Latoya on that property there, is that right, and your
7 son is that right?

8 A. Yes, sir.

9 Q. Now, eventually does anybody else come walking up?

10 A. Patrick pulled up.

11 Q. At what point -- How long were you out there on that
12 porch before Patrick comes over?

13 A. Uhm, I would say between two to four minutes, maybe
14 five.

15 Q. Okay. And what, if anything, does Patrick do when
16 he arrives?

17 A. He, uhm, me and him had a conversation, a brief
18 one.

19 Q. Okay. And let me ask you this: Inside the home, it
20 being a normal home that Latoya lives in, are there other
21 knives other than the box cutter or sharp objects in there?

22 A. In the kitchen.

23 Q. Where most people store their normal things,
24 right?

25 A. Yes, sir.

1 Q. When you were inside and then you walked outside,
2 did you grab any of those things or anything of that sort?

3 A. No, sir.

4 Q. When you're sitting there out there on the porch,
5 the only thing you have in your hands is your son; is that
6 right?

7 A. Yes, sir.

8 Q. Now, you're on the front porch holding your son.
9 When Patrick walks up, what do you do with your son?

10 A. I give him to Patrick.

11 Q. When is it that you see Latoya again from that
12 moment?

13 A. Uhm, I think when he pulled up, I think that's when
14 she started making her way from around the house.

15 Q. Okay. And when you see her again, where is she?
16 What do you do?

17 A. Well, when I see her again, she is making her way
18 around the corner of the house like going back to the utility
19 shed.

20 Q. Okay. You said that she is walking towards the shed
21 --

22 A. Yes.

23 Q. -- is that right?

24 A. Yes.

25 Q. Let me ask you this: Did you try to keep her from

200

1 getting in the shed?

2 A. Yes, I did.

3 Q. And why did you do that?

4 A. Because her dad keeps all kind of utilities in the
5 shed also and from being through things with her before and
6 she just hit me, hit on me and stuff, the first thing that
7 came to my mind is that maybe she going out to that shed to
8 get something else.

9 Q. All right. And is it at that time did you throw
10 things at her?

11 A. Well, it was a, like a partial piece of concrete.

12 Q. Okay.

13 A. And --

14 Q. And when you -- Now, does she make it to the shed?

15 A. Yes.

16 Q. I'm sorry?

17 A. Yes, she made it.

18 Q. Okay. And once she makes it to the shed, eventually
19 is there some more fighting that goes on inside the shed?

20 A. Yes.

21 Q. Okay. And admittedly during this time did you hit
22 Latoya in the shed?

23 A. Yes.

24 Q. Did you use your hand or did you have an object in
25 your hand?

1 A. Just my hand.

2 Q. Did you, in other words, you didn't use any objects
3 in the shed?

4 A. No.

5 Q. And neither did -- Did she use any objects in the
6 shed?

7 A. Not in the shed. No.

8 Q. Now, when y'all are both in the shed, approximately
9 how long were you all there before you hear law enforcement
10 arrive?

11 A. I would say less than a minute.

12 Q. All right. And when they arrive, do you have any
13 weapons on you?

14 A. No, sir.

15 Q. And you're still at this point you have already been
16 cut. You're still seriously injured at this point, right?

17 A. Yes, sir.

18 Q. Is the bleeding that you have, is it still very,
19 very heavy; is that right?

20 A. Well, they said it was heavy, but to my knowledge
21 like I don't, I don't really recall how much blood. I don't
22 really recall.

23 Q. Do you remember what you had on that night,
24 Johnny?

25 A. Uhm, a white T-shirt and a pair of black short

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1 pants.

2 Q. Okay. And do you remember from when law enforcement
3 arrives, do you remember how long it took for the EMS to
4 arrive?

5 A. No, sir, I don't.

6 Q. All right. At that point or at any point during the
7 evening once you're outside, do you remember losing
8 consciousness at any time?

9 A. I can remember getting up off the ground a couple
10 times, yes.

11 Q. And was that outside?

12 A. Outside, yes, sir.

13 Q. Okay. And do you have any memory at all of being
14 flown to the hospital that evening?

15 A. Yes, sir. Bits and pieces of it.

16 Q. Okay. But not the whole thing?

17 A. Not everything. Not the whole thing. Just bits and
18 pieces. I just remember the lady telling me, please, don't
19 go to sleep.

20 Q. Okay. And, Johnny, as a result you're taken to the
21 hospital and you received more treatment there; is that
22 right?

23 A. Yes, sir.

24 Q. And do you receive stitches?

25 A. Stitches and staples.

1 Q. You receive stitches and staples?

2 A. Yes, sir.

3 Q. Let's start with the stitches. Do you remember how
4 many stitches you received?

5 A. I think for my face it was somewhere between 25 and
6 35 because they had to reconnect my ear.

7 Q. Okay. And you said you received staples. Let me
8 ask you this: Do you remember how many staples you
9 received?

10 A. I think it was like 57.

11 Q. Okay. And where about on your body did the doctor
12 use the staples?

13 A. My head. I had like, I think I had a line of them
14 behind my ear. I had one over here on this side of my face.
15 It was just one. Don't ask me why it was just one, but it
16 was just one. And on my neck and my chest and my abdomen.

17 Q. Okay. Johnny, the next day there were pictures
18 taken of you and your injuries; is that right?

19 A. Yes, sir.

20 Q. Do you remember that?

21 A. At the Saluda jail, yes.

22 Q. And would you remember these pictures if I showed
23 them to you?

24 A. Yes.

25 Q. All right. See if you recognize those. All right.

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1 Have you seen all of them?

2 A. Yes, sir.

3 Q. All right. Johnny, I'm showing you what's been
4 marked as Defense Exhibit number 1. Johnny, do you recognize
5 that?

6 A. Yes.

7 Q. Okay. What is it of?

8 A. It's the injury to my abdomen.

9 Q. Okay. Does it fairly and accurately show what your
10 injuries looked like at that time?

11 A. Yes.

12 Q. All right. Johnny, I'm going to show you what's
13 been marked as Defendant's Exhibit number 2. Do you
14 recognize that?

15 A. Yes.

16 Q. And what's that a picture of?

17 A. That's the one across my chest. I think this is the
18 deepest one across my chest, I think. I'm not sure. It look
19 like a stab wound.

20 Q. Does that fairly and accurately depict what that
21 particular injury looked like at that time?

22 A. Yes, sir.

23 Q. All right. I'm going to show you Defendant's
24 Exhibit number 3. Do you recognize that?

25 A. Yes, sir.

1 Q. All right. And what is it a picture of?

2 A. Of my ear.

3 Q. Okay. And does it fairly and accurately depict what
4 you, or of those particular injuries when these pictures were
5 taken?

6 A. Yes.

7 Q. Okay. Same question. I'm going to show you
8 Defendant's Exhibit number 4. Johnny, do you recognize
9 that?

10 A. Yes, I do.

11 Q. Okay. What's that a picture of?

12 A. My head. The injuries to my head.

13 Q. Okay. Does it fairly and accurately --

14 A. Yes.

15 Q. -- depict -- Well, does it fairly and accurately
16 depict how you looked when these pictures were taken?

17 A. Yes.

18 Q. Okay. I'll show you Defendant's Exhibit number 5,
19 and what is that a picture of?

20 A. My face. My neck.

21 Q. Okay. Does it fairly and accurately show how you
22 looked two days after this incident?

23 A. Yes.

24 Q. And the last one Defendant's Exhibit number 6, do
25 you recognize that?

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1. A. Yes.

2 Q. And what is it of?

3 A. Another picture of my abdomen.

4 Q. All right. Does it fairly and accurately show what
5 you looked like two days after the incident?

6 A. Yes, sir.

7 MR. CASTO: Your Honor, at this time I would like to
8 move --

9 MR. YOUNG: No objection.

10 MR. CASTO: Thank you.

11 THE COURT: That's 1 through 6?

12 MR. CASTO: Yes, ma'am. And permission to publish
13 these to the jury at this time?

14 THE COURT: Yes, sir.

15 (Whereupon, Defendant's Exhibits #1 through #6
16 admitted.)

17 BY MR. CASTO:

18 Q. Johnny, when all of this is going on, do you
19 remember that incident? Do you remember it pretty well?

20 A. Not every minute of it, but I remember it pretty
21 well.

22 Q. When that was going on, Johnny, was there ever an
23 instance where you felt that you were going to die?

24 A. Yes.

25 MR. CASTO: I don't have any further questions.

1 Please answer any questions that Mr. Young may have.

2 CROSS EXAMINATION

3 BY MR. YOUNG:

4 Q. I'm holding up a copy of the picture that the jury
5 is passing around. Now, this is one of those that has been
6 admitted as a defense exhibit; is that right?

7 A. Yes.

8 Q. And that's your face. When was this taken?

9 A. Uhm, on the date that me being at the Saluda jail
10 house.

11 Q. Okay. So this is how you looked. This is the
12 booking photo then?

13 A. Yes, the booking photo.

14 Q. All right. First two questions you were asked, did
15 you try or intend to kill the victim on the night in question
16 or did you attempt to murder the victim on the night in
17 question? The answer was no to both of those. So I'm going
18 to ask some questions related first off to what you had been
19 doing before you got to the house of Latoya Abney in terms of
20 drinking. What had you been doing before that?

21 A. Uhm, I was at a party -- Before I was drinking or
22 before this went on?

23 Q. Say again?

24 A. I say ask me the question again. Can you repeat the
25 question?

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1 Q. What had you been doing in terms of drinking?

2 A. Well, like I say, I was at a party, my neighbor
3 party and I ain't had no money so I couldn't buy beer.
4 That's what I like to drink is beer and so they had a little
5 party to throw so I went up there. My cousin was bartending.
6 And I asked her like, I didn't want to seem like not knowing
7 like everybody else, so I just told her to fix me a drink,
8 but I told her, you know, just put me like about this much
9 alcohol (indicating.) I forget what kind of alcohol it was.
10 I told her to put me about this much in a cup with soda in it
11 about this high (indicating.)

12 Q. You seem to remember that pretty good?

13 A. With soda.

14 Q. You seem to remember that pretty good, right?

15 A. Yes, sir.

16 Q. Okay. Was this at your cousin's house?

17 A. Yes, sir.

18 Q. Is that the only drink you had that night?

19 A. Yes, sir, it is.

20 Q. Okay. Were you still nursing that drink when you
21 got in the car with Latoya?

22 A. Yes, sir, I was. Like I said, it was a cup full of
23 soda and a little bit of liquor.

24 Q. Okay. And you say this all started at Latoya's
25 computer table, right?

1 A. Yes.

2 Q. Let he me show you State's Exhibit number B2. It's
3 kind of fuzzy. Is that chair associated in that picture, is
4 that chair associated with the computer table in any way? Is
5 that the living room area where this occurred?

6 A. If that chair goes right there, then yes, that's the
7 chair.

8 Q. Okay. All right. And is that the couch in that
9 living room area?

10 A. The last time I was there, yes.

11 Q. Okay. Is that fish on the floor?

12 A. I don't remember fish on the floor.

13 Q. Is that a jar on the floor from the kitchen like a
14 mason jar right there?

15 A. It don't - that don't - it doesn't look like a mason
16 jar.

17 Q. How about this right here, B1. This is a picture of
18 the kitchen area itself and I want to ask you if that chair
19 is laying on the ground there in that kitchen and a piece of
20 that chair leg broke off of it laying on the ground?

21 A. Yes, it is.

22 Q. That's from the kitchen, right?

23 A. Yes, it is.

24 Q. Was that chair that way when you came in the
25 house?

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1 A. No, it wasn't.

2 Q. And you used that chair against her back side,
3 didn't you?

4 A. No, sir. I did not.

5 Q. Oh, you didn't? You didn't hit her with that
6 chair?

7 A. No, sir. I did not.

8 Q. Okay. So it just got broke?

9 A. No, I did not hit Latoya with a chair, sir.

10 Q. Okay. You don't know how these fish got scattered
11 all over the floor in this picture B3?

12 A. I guess through our scuffle.

13 Q. Scuffle. What kind of scuffle are you talking
14 about?

15 A. The scuffle where I'm on trial for right now.

16 Q. Are you on trial for a scuffle?

17 A. No. I'm not on trial for a scuffle.

18 Q. You're on trial for attempted murder, right?

19 A. Yes, sir.

20 Q. All right. If you're on trial for attempted murder,
21 then let's just talk about if you want to call it a scuffle,
22 the scuffle in the living room area and in the kitchen area
23 because it went through the kitchen and the living room,
24 didn't it?

25 A. All I remember is it going through the living room,

1 sir.

2 Q. You don't remember anything about the kitchen?

3 A. I remember being in the kitchen, but I don't
4 remember a scuffle in the kitchen.

5 Q. But you remember that much in that cup, don't you?

6 A. Yes, sir, I do.

7 Q. All right. How about in the bedroom. Do you
8 remember something happening in the bedroom?

9 A. It's fuzzy, sir. At this point I was cut up and, I
10 mean, things were happening so fast.

11 Q. So all the cutting happened in that room, in the
12 living room area you think?

13 A. All the cutting happened in the living room.

14 Q. Okay. And then when you got in the -- Do you think
15 you did get in the bedroom? Do you remember Latoya having
16 the baby and go into the bedroom?

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

18 Q. But you remember that little bit in that cup,
19 right?

20 A. Yes, sir, I do.

21 Q. Okay. Were you the only one bleeding?

22 A. Yes.

23 Q. I want you to look at State's Exhibit B5. Does that
24 refresh your recollection about being in that room and
25 falling down in that room?

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1 A. If there's blood, yeah. Okay. Like I say, it's
2 fuzzy. It's kind of fuzzy --

3 Q. That's fuzzy?

4 A. -- about everything that happened that night.

5 Q. Okay.

6 A. But I remember.

7 Q. Yes, sir. All right. You said this argument was
8 not exactly about cheating, right? That's what you said when
9 you were asked some direct questioning about this argument
10 beginning over cheating. So it wasn't exactly about
11 cheating. Wasn't about that, was it?

12 A. Not exactly about cheating.

13 Q. Wasn't it about the fact that Patrick had been over
14 there earlier in that day?

15 A. No. It was not.

16 Q. It wasn't about that?

17 A. No, sir, it was not.

18 Q. Was it about cheating with Patrick?

19 A. No, sir.

20 Q. Just about cheating? What was it about?

21 A. It was about her dad catching her in the house with
22 a man. I was like your dad done caught you in the house with
23 a man and that's why he shot in the air.

24 Q. The only man that had been in the house though was,
25 wasn't the only man that had been in that house was Patrick,

1 wasn't it?

2 A. Yes, sir.

3 Q. So if it was cheating, it was with Patrick?

4 A. I doubt if it was with Patrick, sir.

5 Q. So this argument made no sense then, did it?

6 A. Uhm, no, it didn't.

7 Q. You're right. It didn't make any sense. All right.

8 So you go from - you go from argument to she's sitting in the
9 chair rolling a blunt and you go over there and you start
10 poking her in the head saying this thing about cheating on me
11 and messing around with me and not being faithful to me and I
12 don't like what you're doing poking her in the head, right?

13 A. I didn't say those words though.

14 Q. Well, you poked her in the head though, right?

15 A. I walked over there. She was sitting rolling a
16 blunt. I was like your daddy caught you. Your daddy caught
17 you (indicating.) And --

18 Q. Wait a minute. Show me how you did that again.

19 A. I said, your daddy caught you. Your daddy caught
20 you.

21 Q. And you didn't poke -- You're talking about poking
22 in the back of the head here?

23 A. No.

24 Q. Right here in the back of the neck?

25 A. In the neck area.

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1 Q. And real lightly like, right, tapping?

2 A. Like a nudging.

3 Q. Okay.

4 A. And, uhm, after that, she just - she said, Red, I
5 done told you. Red, I done told you. She just turned around
6 with a box cutter and she --

7 Q. Went to work on you?

8 A. Yes, sir.

9 Q. Okay. And you didn't do a thing to swing at her or
10 nothing?

11 A. Well, I tried to -- I attempted to get the razor out
12 of her hand.

13 Q. Okay. All right. You attempted to get the razor
14 out of her hand?

15 A. Yes, sir.

16 Q. So this happened -- So all the cuts happened to you
17 while you're trying to get the razor out of her hand?

18 A. Uhm, I don't know, sir. Maybe. Maybe not. I don't
19 know. But I'm thinking probably that is why my injuries are
20 so extent.

21 Q. Okay. And so you didn't chase her around inside the
22 house and didn't bust her upside the head or her back side
23 with a chair or throw a jar at her or anything?

24 A. No, sir.

25 Q. Didn't do that at all?

1 A. No, sir.

2 Q. And so when she ran -- Did she run into that
3 bedroom?

4 A. Like I said, sir, it was kind of fuzzy --

5 Q. Is your --

6 A. -- and the bedroom part --

7 Q. Okay. Go ahead. I'm sorry.

8 A. The bedroom part is like I don't - I don't - I don't
9 like -- I can't really tell you what happened in the bedroom.
10 I really can't. The honest truth. I can't. I really can't
11 tell you what happened in the bedroom.

12 Q. All right. Tell me about this then. Is the baby
13 important to you?

14 A. I love my kids.

15 Q. Okay. All right. Wouldn't it be important to you
16 if the baby was in her arms and in that bedroom and you
17 trying to deal with her in that bedroom, wouldn't that be
18 important to you? Wouldn't you remember that?

19 A. Would you repeat the question?

20 Q. If the baby was in her arms and in that bedroom and
21 you were in there trying to deal with her in that bedroom,
22 would you not remember that?

23 A. Yes, I would remember that.

24 Q. But the baby wasn't in the bedroom, was he?

25 A. No. The baby wasn't in her arms.

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1 Q. Oh, okay. Okay. Now, the first time you were asked
2 the question does she leave the room and we were talking
3 at that point about the bedroom, your answer was you couldn't
4 recall. And then did she leave the house? And then you said
5 you stopped fighting when she leaves the house, right? Is
6 that correct?

7 A. Yes.

8 Q. Okay. But you admit you were in that bedroom
9 because your blood is in that bedroom, ain't it?

10 A. Like I said, you showed me a picture of my blood was
11 in it, but I have no recollection of being in the bedroom.

12 Q. Okay. Your memory comes and goes then, is that what
13 you're telling me?

14 A. No. That's not what I'm telling you, sir.

15 Q. All right. All right. So you say you go to the
16 porch and you're outside. She's gone somewhere and you're
17 outside on the front porch with the baby, right?

18 A. Yes, sir.

19 Q. Where did you get the baby from?

20 A. Out of the house.

21 Q. Where?

22 A. In the living room area.

23 Q. Living room area. The baby is in the living room.
24 All right. So you go to the front porch and you sit on the
25 front porch and then while you're up on the porch, Patrick

1 pulls up; is that right?

2 A. Yes, sir.

3 Q. Is that your version of it?

4 A. Patrick pulls up, yes.

5 Q. Uh-huh. But you're sure your memory doesn't, isn't
6 clouded here? You're sure about that?

7 A. Yes, I'm positive, sir.

8 Q. Okay. You give your boy to Patrick and she comes
9 from around the house as I understand it; is that right?

10 A. Yes. When she hears the car pull up, she comes from
11 around the house, yes.

12 Q. So which side of the house did she come from?

13 A. Which side?

14 Q. Mm-hmm.

15 A. If you pull into the driveway, it would be the right
16 side.

17 Q. All right. That's the side where the car is parked,
18 right?

19 A. He park there sometimes. Sometime he don't.

20 Q. The car is parked on that side of the house though,
21 isn't it, that night?

22 A. That night, yes.

23 Q. Okay. And it's sitting there, right?

24 A. Yes, sir.

25 Q. And there is a pot, two flower pots by the front

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1 door, right?

2 A. Uhm, by me being -- By me just sneaking to their
3 house and having to look out to see whether her dad coming, I
4 never really like paid any attention to things around the
5 yard so...

6 Q. Okay. Well, there is a basketball goal out there
7 though, isn't there?

8 A. Yes.

9 Q. It's got some concrete blocks on it, right?

10 A. To hold it up.

11 Q. Mm-hmm. And there's two flower pots by the front
12 porch?

13 A. Okay.

14 Q. Okay. And then somewhere in here you pick up one of
15 those flower pots, don't you?

16 A. No, sir.

17 Q. You didn't pick this flower pot up?

18 A. No, sir.

19 Q. You were the only one bleeding, right?

20 A. Yes.

21 Q. Take a look at that State's Exhibit B10. You don't
22 know how that blood got on there?

23 A. Uh, it had to come from me but, uh --

24 Q. You don't know how that pot got there right by that
25 car?

1 A. No, sir.

2 Q. No recall. But your blood is on the front porch,
3 right? And the flower pot is missing from that front porch.
4 All right. And then there is a concrete block like that.
5 Piece of concrete block. Another piece of concrete block.
6 And you got those off that basketball goal, didn't you?

7 A. No, sir.

8 Q. You didn't get them off that?

9 A. No, sir, I did not.

10 Q. Okay. All right. You said you threw something at
11 her. Is this what you threw at her?

12 A. No. That is not what I threw at her, sir.

13 Q. You didn't throw this at her?

14 A. No. It wasn't that big.

15 Q. You see those brown stains all over that?

16 A. Yes. I know it's blood, but it wasn't that big.

17 And I don't think I'm that strong enough to throw a concrete
18 block like that as she walking away to do --

19 Q. Not that strong?

20 A. I don't think I'm that strong.

21 Q. How about this bicycle that's next to -- And I'm
22 going to show you State's B12. There's that block in B12,
23 right? That's that block and there's that bicycle sitting
24 right next to it, and it's right next to the car, right?

25 A. Uh-huh.

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1 Q. Now, that blood got there somehow, didn't it? And
2 that bicycle got there somehow, didn't it?

3 A. Yes, it did.

4 Q. You picked that bicycle up and you hit her with
5 that, too, didn't you?

6 A. No, sir, I did not.

7 Q. Did not?

8 A. No, sir, I did not.

9 Q. All right. I want to make sure what's in evidence
10 here. Let me show you what's admitted as State's C7. Take a
11 look at that mark right there on her shoulder. Does that
12 look like it might have been a bicycle mark?

13 A. I'm not sure, sir.

14 Q. Well, what did you hit her with to cause that
15 mark?

16 A. Not a bicycle. That might have been a bruise
17 through our scuffle.

18 Q. From the scuffle. There's no pattern in that that
19 you see?

20 A. It look like a pattern, but I didn't hit her with a
21 bike.

22 Q. You didn't hit her with a bike?

23 A. No, sir.

24 Q. All right. So if I understand correctly, at the
25 point in time you're sitting on that porch you have done

1 nothing but try to disarm her, right? You have not struck
2 her at all?

3 A. In the house I only disarmed her, tried to disarm
4 her and through all that obviously I wasn't successful, but
5 as far as hitting her with chairs and throwing mason jars,
6 no, sir, I did not.

7 Q. Don't know how the fish got all over the place or
8 anything else?

9 A. Huh?

10 Q. You don't know how the fish got all over the place
11 or anything else, right?

12 A. Through the struggle.

13 Q. Okay. Through the struggle. All right. Let's ask
14 the next question. You said when Patrick pulls up on the
15 porch and you give your son to Patrick, and to your knowledge
16 Latoya never had the child inside the house in her arms at
17 all, right?

18 A. I didn't say to my knowledge. I said when I went
19 and got the child, he was in the living room and she never,
20 like she said she was sitting at the computer with him in her
21 lap rolling a blunt. That's not accurate. That's not
22 accurate at all. Uh, she was holding the child. She was
23 holding the child in the living room. I can't remember
24 exactly where in the living room on the picture, but I did
25 not -- Uh, I did not -- Me and Latoya was not in an assault

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1 against each other with the baby in her arm. She didn't have
2 the baby because I think if she had the baby in her arm with
3 all this that was going on, the baby would have got hurt.

4 Q. But somehow, some way you had a need to get somehow
5 in that room when she was in her bedroom, right? You just
6 had to go in there for some reason, right?

7 A. Sir, like I said, I have no recollection of the
8 bedroom.

9 Q. Okay.

10 A. I just have no recollection of the bedroom.

11 Q. Okay. Is it possible you passed out in that
12 bedroom?

13 A. I have no recollection of that bedroom.

14 Q. You don't know whether -- You don't know where you
15 got up from when you woke up or where you came from when you
16 left the house?

17 A. I don't even remember passing out in the house.

18 Q. Okay.

19 A. But I have no recollection of being in that
20 bedroom.

21 Q. Do you remember passing out at all?

22 A. Yes, I remember that.

23 Q. Okay. All right. So you give your son to Patrick
24 and you say she comes from around, if you're facing the
25 house, the right side of the house. And if she's coming

1 around the house toward the front of the house, how is it
2 that you see her going to the shed?

3 A. Because when I came, when I - Patrick got my son, I
4 got up and I seen her and like I said, she did multiple
5 things to me with multiple objects and I know her dad keeps
6 his yard and all kind of tools in his shed so I figured she
7 was going to that shed to try to get something else to harm
8 me with.

9 Q. Okay. Would you agree that this box cutter is what
10 she had that night, that box cutter right there? See that?
11 See that?

12 A. Mm-hmm.

13 Q. That's it?

14 A. Mm-hmm.

15 Q. She had that on her possession and she lost it
16 around that car, didn't she?

17 A. Like I say, I tried to, sir, I tried to disarm her
18 with the razor in the house. Where the razor got from there
19 I don't know.

20 Q. Oh, you disarmed her all right. You hit her with
21 that cement block and knocked it out of her hand.

22 A. No, sir, I never hit her.

23 Q. You hit her with that bicycle and she was on the
24 ground.

25 A. No, sir, I did not.

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1 Q. She didn't go to the ground at all outside around
2 that car, did she?

3 A. Huh?

4 Q. Did she? Is that your statement?

5 A. I don't think she -- I think she just made her way
6 to the shed.

7 Q. So there's nothing on the tape about get your ass up
8 off the ground? You didn't say that?

9 A. Repeat the question.

10 Q. On the tape, there's nothing on the tape about you
11 get your ass up off the ground?

12 A. Not the tape that I heard.

13 Q. And you didn't have the baby in your arms standing
14 there with her while she's laying there on the ground?

15 A. No, sir.

16 Q. A the baby wasn't around that event where she was
17 being assaulted by you at any point, was she?

18 A. The baby was in the house when the whole thing
19 happened, but as far as the baby being like around us outside
20 when this was going on, no, sir.

21 Q. So you can't hear the baby on that tape?

22 A. Yes, sir, I did hear the baby on the tape.

23 Q. You hear it. I see. Well, where was the baby when
24 the tape was recording the voice? Where was the baby?

25 A. Patrick had the baby. Patrick had the baby around

1 the house. That's why you heard the baby on the tape.

2 Q. Have you listened to that tape?

3 A. I listened to the one that I was given.

4 Q. Do you want me to play it again for you?

5 A. No, sir.

6 Q. Do you want to hear it again?

7 A. No, sir, I'd rather not.

8 Q. Who's screaming on that tape?

9 A. Latoya.

10 Q. And about one minute fifty seconds into that she
11 says Red. That's your name, right, Red?

12 A. Yes. A nickname.

13 Q. Red, stay away over and over again about three
14 times?

15 A. Yes.

16 Q. That's when you had that block?

17 A. No, sir.

18 Q. Stay away.

19 A. No, sir.

20 Q. You didn't have that block?

21 A. No, sir.

22 Q. Red, stop. Multiple screams. Somehow, some way you
23 get that block and you're going around that car back and
24 forth with her. I mean, she's trying to get away from you
25 and you've got that block in your hand and you try to hit her

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1 with it, but you come face-to-face and you do, you hit her
2 with it?

3 A. No, sir, I did not hit Latoya with a block in her
4 face. No, sir.

5 Q. Well, you hit her in her head. You hit her in her
6 head.

7 A. Not with a block, sir.

8 Q. You didn't hit her with a block?

9 A. No, sir.

10 Q. So she was running away when you hit her?

11 A. She was making her way to the shed.

12 Q. Getting away from you?

13 A. Uh, I don't know, sir.

14 Q. You don't know?

15 A. I don't. I was thinking she was going to the shed
16 to get something else to maybe do more harm to me than she
17 had already. I seen her go around that corner and I seen
18 her, something laying in the yard. It was a block. It was a
19 block about this big (indicating.) Probably about this big.
20 And I picked it up and I threw it to try to keep her from
21 going in that shed to get something else to harm me with.

22 Q. Okay. All right. So you had to chase her down to
23 stop her from harming you although you're sitting up on the
24 front porch with Patrick and the baby?

25 A. Yeah.

1 Q. Yeah. And it's just she's gonna come after you?
2 You're afraid of her. Okay. So you listened to the tape.
3 You don't even agree that she's trying to call an ambulance
4 for you?

5 A. Uhm, no, sir, I don't, because if she was trying to
6 call an ambulance for me, she would have. The first 911 call
7 would have went through and she wouldn't have called a
8 friend.

9 Q. Isn't it true that she was knocked down on the
10 ground and when she was laying on the ground and the phone
11 was still active laying on the ground next to her and you can
12 hear her breathing? Laying on the ground hear her breathing.
13 She's in and out of consciousness, isn't that true?

14 A. On the tape you can hear her breathing.

15 Q. And you weren't around then, are you?

16 A. No, sir.

17 Q. That's because she's on the ground. But later you
18 show up and you say get your ass up off the ground. Get your
19 ass up.

20 A. I don't recall telling her that, sir.

21 Q. Okay. Three forty-five into the tape somewhere in
22 there, stop, Red. Stop. Five thirty-six. Red, stop. The
23 baby somewhere about five thirty-six you can hear what sounds
24 like a baby in the background and the words come out sounds
25 like get your ass up; isn't that right?

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1 A. I didn't hear that on the tape, sir. Not the tape I
2 was given.

3 Q. Did you hear her say he's gonna kill me?

4 A. Yes, I did.

5 Q. He keeps hitting me in my face?

6 A. I heard her say that on the tape.

7 Q. She actually mentioned something about a concrete
8 block, too?

9 A. No. I didn't hear that part on the tape.

10 Q. Somewhere about seven or so into the tape, seven
11 minutes and a half, thereabouts, she's begging for
12 Batesburg/Leesville police department which is real close by
13 to get there because they can get there quicker, but it's not
14 their jurisdiction. But you can hear her begging please get
15 someone there, can't you? Can you hear that?

16 A. Yes, sir.

17 Q. About nine minutes twelve seconds, somewhere in that
18 area she tells them I'm outside hiding.

19 MR. CASTO: Objection. This is all hearsay, Your
20 Honor.

21 MR. YOUNG: Your Honor, it's on the record. It's an
22 admission. This is part of the evidence.

23 THE COURT: Rephrase the question. Objection
24 sustained. Just rephrase the question.

25 MR. YOUNG: I'll rephrase it.

1 BY MR. YOUNG:

2 Q. Did you not hear her say words to the effect I'm
3 outside hiding on the tape?

4 A. It sounded like she said that. It's low on the
5 tape, but it sounded like she said that.

6 Q. And actually at about ten minutes into the tape you
7 hear the voice of Patrick saying where you at?

8 A. No. I don't recall hearing that. Like I said, sir,
9 the tape I have, I don't hear Patrick.

10 Q. Was that your voice?

11 A. Hmm?

12 Q. Was that your voice?

13 A. Repeat that.

14 Q. The words were something to the effect where are you
15 at? There was something like that on the tape. Where you
16 at?

17 A. I don't remember hearing that.

18 Q. You don't remember that?

19 A. I --

20 Q. Do you remember saying that to her? Do you remember
21 you saying --

22 A. No. I don't remember saying that to her.

23 Q. At about eleven minutes, the last sequence of Red,
24 stop. Now you're going to admit because you have already
25 said that you hit her, right? You went in the shed right

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1 about that time, right?

2 A. Yes.

3 Q. Okay. Did you count the number of blows you
4 delivered while you were in the shed to her?

5 A. No, sir, I didn't.

6 Q. Would you agree with me that you were doing a full
7 wind up? You had your hand all the way back hitting her
8 upside the head with your right fist?

9 A. No. I wouldn't agree that I was going full wind
10 up.

11 Q. Oh, you weren't doing the full wind up?

12 A. No, sir, I wouldn't agree that it was a full wind
13 up.

14 Q. How much of a wind up?

15 A. Well, when I got in the shed, she was in there
16 standing in the shed and that's when on the tape she was
17 screaming something. She was screaming something on the
18 tape. And when I got in there, I just rushed towards her and
19 she like leaned over a little bit and I could hear the police
20 on the way or the ambulance or one of them was on the way and
21 so that's where they ended that 911 tape call come from.
22 That's what it come from.

23 Q. But you can hear somebody hitting somebody on the
24 tape, can't you? You agree with me?

25 A. I just said that.

1 Q. So those blows that are being delivered on that
2 tape, you're delivering them?

3 A. Yes, sir.

4 Q. Okay. B21, State's exhibit, that's what she looked
5 like, right?

6 A. Well, I didn't see her afterwards but...

7 Q. So it got worse probably, right?

8 A. I don't know. I don't know, Your Honor. I mean,
9 sir.

10 Q. Okay. You don't know. I'm going to pose a question
11 to you. If a block this size and this weight was used in an
12 overhand fashion to strike another person --

13 MR. CASTO: Objection.

14 THE COURT: What's the objection?

15 MR. CASTO: Speculation.

16 THE COURT: Let him finish the question.

17 MR. YOUNG: I haven't asked the question yet.

18 THE COURT: Let him finish the question.

19 BY MR. YOUNG:

20 Q. I'll start over. A block like this held overhead by
21 a man and using a strike down, could that kill a person?

22 MR. CASTO: Objection. We have a matter of law.

23 THE COURT: Ladies and gentlemen of the jury, I'm
24 going to send you all out for a brief moment, all right?

25 Thank you.

1 (The jury was sent to the jury room.)

2 THE COURT: All right. Yes, sir.

3 MR. CASTO: Your Honor, this questioning, I was
4 thinking this is where we were headed. I mean,
5 ultimately it's very speculative as far as, well, could
6 this be the case is the very nature of the question.
7 And also, too, it's objectionable because, I mean, he's
8 a lay person. Ultimately what's he going to testify to
9 as far as whether it could kill somebody or not? Your
10 Honor, I think it's wildly prejudicial and it's highly,
11 highly objectionable.

12 MR. YOUNG: May I be heard, Your Honor?

13 THE COURT: Yes, sir.

14 MR. YOUNG: Your Honor, the application of force
15 associated in this case with the issue here before the
16 Court is intent and malice and premeditation. The use
17 of a weapon during the course of such an assault, a
18 logical and a reasonable question which any person can
19 answer is to whether or not an object could inflict
20 either grievous bodily harm or death might result.
21 Could this kill a person? Just the same kind of
22 question could be asked with regard to a pistol, a dirk,
23 a knife. The application of force using brass knuckles,
24 anything that's used as a weapon the question becomes
25 could this kill you?

1 MR. CASTO: Your Honor, if I may?

2 THE COURT: Yes, sir.

3 MR. CASTO: The burden of proof is on the state. I
4 mean, you know, honestly I just have to sit there if
5 they were posing this question to a doctor or something
6 like that, but this is, you know, just a hypothetical.
7 He's given --

8 THE COURT: All right. Well, I'm going to allow him
9 -- The objection is overruled. I'll allow him to ask
10 the question. He can answer whichever way he knows or
11 if he can answer. He can say I can't answer it. But I
12 think it's a question that I'm not sure that a doctor
13 would have to be able to tell you whether or not the
14 object could kill someone. I think that's something
15 that a lay person can answer. So I don't think he has
16 to have expertise to be able to answer that. All right.

17 MR. YOUNG: You want to hold here, Your Honor, for a
18 break so the jury can --

19 THE COURT: Yes. Okay. All right. We'll take
20 about a ten minute break.

21 MR. YOUNG: Thank you, Your Honor.

22 THE COURT: You cannot discuss your testimony with
23 anyone while on the stand.

24 (Brief recess.)

25 THE COURT: You may be seated.

1 MR. CASTO: Your Honor, just to flesh out the last
2 objection, I raised a few different grounds. I'm not
3 quibbling with the Court's ruling at all, but just to
4 make sure the record is clear --

5 THE COURT: If you can give me the rule that you're
6 referring to, I'll be glad to look at it. I believe
7 your objection was speculation.

8 MR. CASTO: It was speculative. I don't think a lay
9 person can speak to that and that brings me to Rule 704
10 that he would be giving an opinion on the ultimate issue
11 and we don't think that should be admissible.

12 THE COURT: But that would be for an expert to give
13 an opinion on, the ultimate issue, not for the lay
14 person.

15 MR. CASTO: Yes, Your Honor.

16 THE COURT: 704 deals with --

17 MR. YOUNG: Your Honor, I'm not sure it supports the
18 position he's taking.

19 THE COURT: What now?

20 MR. YOUNG: 704 says if testimony is given in the
21 form of opinion or an inference otherwise permissible,
22 is not objectionable because it's embracing the ultimate
23 issue to be decided. I'm kind of concerned it's a
24 misapplication of the rule just by his argument.

25 THE COURT: 704 applies to experts.

1 MR. CASTO: In that context.

2 THE COURT: Yeah. So I think he can ask him and he
3 can answer it whichever way he knows. If he knows, he
4 knows. If he doesn't know, he can answer however.

5 MR. YOUNG: He's denied the intent to kill. I'm
6 asking him could that possibly kill. That's
7 different.

8 THE COURT: All right. So your question is you're
9 just asking him if someone -- He's denied that you deny
10 that you intended to kill. If someone were to hit
11 someone in the head with the brick, could that possibly
12 kill them.

13 MR. YOUNG: Yeah. With a brick like that. That
14 brick. That block. If you hit someone in the head
15 holding it with both hands and hit them in the head,
16 because that's my case, could that possibly kill a
17 person.

18 THE COURT: All right. I think it's admissible for
19 him to ask that. Like I said, your client can answer
20 that however he desires to do so. Whatever he knows.

21 MR. CASTO: The last thing that I brought to the
22 Court's attention, I didn't feel like that was an
23 objection that I raised before and that's why I wanted
24 to bring it up.

25 THE COURT: Okay. All right.

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1 MR. CASTO: Thank you, Judge.

2 THE COURT: You're welcome. Thank you. It's noted
3 for the record the objection will be overruled.

4 MR. CASTO: All right.

5 THE COURT: All right. Bring the jury in.

6 (The jury returns to the courtroom.)

7 THE COURT: Sir, you may continue.

8 MR. YOUNG: Thank you, Your Honor.

9 BY MR. YOUNG:

10 Q. Let me repeat the question. If a person picked up
11 this block which I'm referring to State's Exhibit 5, if a
12 person picked up a block like this and held it over their
13 head and then struck another person in the head with it,
14 couldn't that possibly kill another human being?

15 A. I think if that person had a, as they say, had their
16 hands over their head like this (indicating) when the impact
17 came, I think it would have to be a strong person, like very
18 strong to cause death with that block. But without this
19 (indicating), it's possible.

20 Q. So are you saying that that's how Latoya had her
21 hands when you hit her with that block?

22 A. No. I'm saying that like Latoya said on the record
23 yesterday that's how she had her hands.

24 Q. Okay. All right. Let me ask you this question:
25 You caused the damage to the car, did you not?

1 A. I don't remember causing damage.

2 Q. B16, B15, B14?

3 A. I don't remember causing damage.

4 Q. Anybody else bleeding around that car other than
5 you?

6 A. I don't know if that's blood.

7 Q. It's over here. Were you wearing a hat that night?

8 A. Yes, sir.

9 Q. Would you be able to recognize your hat again if you
10 saw it?

11 A. Yes, sir.

12 Q. State's Exhibit B1, is that your hat?

13 A. Yes, sir.

14 Q. When you go into that shed, the doors are closed,
15 aren't they?

16 A. No, they're not.

17 Q. They're not closed?

18 A. No, sir.

19 Q. Latoya wasn't standing there trying to hold the door
20 closed?

21 A. No, sir.

22 Q. You didn't shove her back?

23 A. The door was open.

24 Q. You didn't shove her back?

25 A. No, sir, I did not.

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1 Q. Were you trying to disarm her again?

2 A. No, sir. She didn't have a weapon at the time I
3 don't think.

4 Q. She didn't have a weapon then?

5 A. Not at that time. Not then I don't think that I
6 remember.

7 Q. Did you shove her back down into that chair?

8 A. No, sir.

9 Q. So did you just come back there to talk to her?

10 A. No. I did not come back there to talk to her.

11 Q. What did you come back there to do, Johnny?

12 A. I came back there to see was she going back there to
13 grab, like I said, weapons out of her dad's utility shed like
14 anything she could find to hurt me with.

15 Q. She didn't have anything in her hand, did she,
16 except that phone?

17 A. No. She didn't have anything in her hand.

18 Q. So your decision to go ahead and apply force to her
19 head, why did you do that, Johnny?

20 A. Well, sir, after going through what I went through
21 that night and we got in the shed, I don't -- To be honest
22 with you I can't tell you like what was going through my mind
23 or -- I know my intentions. I had no intentions to kill
24 Latoya, but I can't tell you what was going through my mind
25 at the time I felt that trauma.

1 Q. But you know there was only that much in the cup,
2 right?

3 A. Yes. That's the only reason why I remember because
4 it was only that much. If it was more, I probably wouldn't
5 be able to remember.

6 MR. YOUNG: No further questions of this witness,
7 Your Honor.

8 THE COURT: Mr. Casto.

9 REDIRECT EXAMINATION

10 BY MR. CASTO:

11 Q. Johnny, you weren't cut at the party that you went
12 to before all this happened, right?

13 A. No, sir.

14 Q. All right. And you weren't cut until you were in
15 you own living room; isn't that right?

16 A. Repeat the question.

17 Q. You weren't cut until you were in your own living
18 room, right?

19 A. In Latoya's living room.

20 Q. I'm sorry. I'm sorry. In Latoya's living room.
21 You're right. You weren't cut until that part of the
22 evening, right?

23 A. Yes, sir.

24 Q. And then there's blood in the bedroom, right?

25 A. Yes, sir.

1 MR. YOUNG: Okay. No further questions.

2 THE COURT: All right. You may step down, sir.

3 Call your next witness.

4 MR. CASTO: Your Honor, we have a matter of law.

5 THE COURT: All right. Let me see you for a second.

6 (Side bar held off the record.)

7 THE COURT: Back on the record. All right. Ladies
8 and gentlemen of the jury, I'm going to have to send you
9 all out again for a technical matter of law.

10 (The jury sent to the jury room.)

11 THE COURT: Back on the record. All right. Yes,
12 sir.

13 MR. CASTO: Your Honor, thank you for indulging me.
14 I thought it more appropriate to send the jury out
15 before we took the next witness' testimony.

16 As I understand the testimony that will develop
17 through the next witness, he is a witness to somebody
18 that witnessed Latoya as the first aggressor on Johnny
19 before. When she was asked on the stand, I believe her
20 answer to whether she had ever been a first aggressor,
21 physical aggressor on Johnny, her answer was no. She
22 said she was mouthy. That kind of thing, but I'm
23 talking about being physical aggressor and I think that
24 by doing that that she's opened the door.

25 THE COURT: All right. I'm not sure. I don't

1 remember. I don't know if I recall the testimony, but
2 we can go back and have the court reporter see if he can
3 find it. The only thing I recall her saying is that she
4 had - this wasn't the first time she pulled a box
5 cutter.

6 MR. CASTO: And it was exactly in that line of
7 questioning, Your Honor.

8 MR. YOUNG: I don't have any notes on that so I'm
9 not sure. I wasn't taking notes specifically
10 at that point but...

11 THE COURT: Do you have any position regarding --

12 MR. YOUNG: Your Honor, if she did say that she was
13 the - that she had used the box cutter before and that
14 she had, I think she used it in a defensive posture once
15 before or told him - used it to cut him, I think she
16 actually said I used it to cut him to get him off me and
17 it worked pretty much. I think that's what she said.

18 THE COURT: All right. But his position is that she
19 testified that basically she was - she's not been the
20 aggressor. That he's been the aggressor and she's
21 responding. And now he says he has a witness that's
22 going to testify that they have seen her being the
23 aggressor.

24 MR. YOUNG: I remember the mouthy part. I remember
25 that. I'm mouthy. I don't remember what she said after

1 that though. Honestly I don't. Your Honor, if the
2 Court's recollection is better than mine, if it's
3 appropriate for him to put up someone to contradict --

4 THE COURT: Well, I don't know. The only thing I
5 remember is the part about being mouthy and the part
6 about her using the, I guess, the box cutter in the
7 past, but it seems to be in a defensive manner. I can
8 have the court reporter go back and see what we can
9 find, but we'll have to stop talking in order for him to
10 do that. We'll let him do that.

11 MR. YOUNG: Your Honor, I do have someone at my
12 table who was paying better attention apparently than I
13 was who did hear the question during the course of, I
14 believe, that same line of questioning words to the
15 effect of were you the first aggressor and she said no.
16 Is that your recollection? This is Sergeant Raffield,
17 Your Honor.

18 MR. RAFFIELD: It was real fast, Your Honor.
19 Basically he asked have you been the aggressor first in
20 the past and she stated no.

21 THE COURT: Okay.

22 MR. YOUNG: That's fine. If that's the case, I
23 don't have a problem.

24 THE COURT: The question --

25 MR. YOUNG: Then it would be appropriate in this

1 situation in response to that.

2 THE COURT: Of course --

3 MR. YOUNG: Specific instances of misconduct, there
4 is limitations upon that, Your Honor.

5 THE COURT: Yeah. I was going to say, you know, you
6 have got to be careful with --

7 MR. YOUNG: You know, the use of that to contradict
8 the witness, I believe, as impeachment evidence --

9 THE COURT: As impeachment?

10 MR. YOUNG: As character of evidence is different.

11 THE COURT: Yeah. Let's do this. Let me hear you
12 first before. Let's call the person up. Let's hear him
13 testify and I'll go from there. I hope it's not anybody
14 that was sitting in the courtroom. The witnesses were
15 supposed to be sequestered.

16 MR. CASTO: No, ma'am, he's not. We're okay.

17 THE COURT: All right. Okay.

18 MR. CASTO: No, ma'am, he's not.

19 THE COURT: Okay.

20 MR. CASTO: The defense calls Ricky Harris.

21 Thereupon,

22 RICKY HARRIS

23 after having been first duly sworn, testified as follows,

24 THE COURT: Speak up so the court reporter can hear
25 you and take down your testimony and you want to answer.

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1 his questions.

2 THE WITNESS: Yes, ma'am.

3 PROFFERED TESTIMONY OF RICKY HARRIS

4 DIRECT EXAMINATION

5 BY MR. CASTO:

6 Q. Ricky, how are you today?

7 A. I'm doing all right.

8 Q. All right. I want to skip down to the main part of
9 what we are here to ask you. Do you know Johnny?

10 A. Yes, sir, I do.

11 Q. Okay. And how long have you known Johnny?

12 A. I have been knowing Johnny now about eight, nine
13 years.

14 Q. How long?

15 A. About eight years.

16 Q. Oh, okay. And are y'all friends?

17 A. Yes, sir.

18 Q. And would you ever try and lie for Johnny under any
19 circumstances?

20 A. No, sir. Never.

21 Q. And do you know Latoya Abney?

22 A. Yes, sir, I do.

23 Q. And how long have you known her?

24 A. I have been knowing her for about six years.

25 Q. Okay. And how do you know her?

1 A. I know her through Johnny.

2 Q. All right. Have you ever known Latoya to physically
3 assault Johnny Boyd?

4 MR. YOUNG: Your Honor, I'm going to object to the
5 form of that question. I think a more specific question
6 needs to be asked. A known is a question that leads to
7 all kind of hearsay implications. I would prefer
8 another question specifically identifying what date,
9 time or circumstance we're talking about. That's my
10 preference, but I'm objecting because I think he's
11 fixing to get into hearsay.

12 MR. CASTO: I'm not calling for a statement of any
13 kind.

14 THE COURT: Why don't you ask regarding the specific
15 incident?

16 MR. CASTO: Absolutely, Your Honor.

17 THE COURT: Because you're using it for -- You're
18 trying to impeach your own -- Remember the question is
19 whether or not he has ever seen her be the first
20 aggressor.

21 BY MR. CASTO:

22 Q. Have you ever, or do you ever recall a specific time
23 that you remember Latoya Abney being the first aggressor on
24 Johnny Boyd?

25 A. Yes, sir.

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1 Q. Okay. And specifically can you give me a specific
2 example of when that happened?

3 A. You want me to tell you the story?

4 Q. Yes, sir. First tell me approximately when it was.

5 A. Approximately back in the summer of 2012. I want to
6 say between June or July. I'm not quite exactly sure of the
7 date. Uhm, Johnny asked me would I take him to Latoya's
8 house so he can --

9 Q. You can't get into what the conversation was about,
10 but where were y'all?

11 A. We were at Johnny's. We were at Latoya's house and
12 I took him to Latoya's house. Uhm, when we got there, Latoya
13 came outside. Uhm, Johnny got out of the car. Uhm, started
14 an argument and Johnny came back to the car. Uhm, Latoya
15 grabbed him. Uhm, as Latoya grabbed him, I got out of the
16 car and, you know, I told them to chill out. Due to that her
17 brother came outside, uhm, so, uhm, I was trying to go ahead
18 and have my car in their yard because I was in their yard so
19 due to that, uhm, her father came out the door, uhm, and he
20 fired off a gun. Uhm, I had backed my car out into the --

21 MR. YOUNG: Your Honor, before we go any further,
22 the portion that he's describing here exceeds the bounds
23 of the question with regard to Latoya Abney and gets
24 into matters which are extrinsic in nature. An instance
25 of misconduct affecting other persons has no relevance

1 to this and it has nothing to do with what we're here to
2 determine as to whether or not he knows she was the
3 first aggressor and what it was. So far I'm hearing
4 about a bunch of other people involved, her just
5 grabbing him through the door. I don't understand what
6 this has got to do with what we are talking about.

7 MR. CASTO: And we can limit that, Your Honor.

8 THE COURT: All right.

9 BY MR. CASTO:

10 Q. Only give us what Latoya did.

11 A. Okay. Latoya grabbed Johnny and tussled for a
12 little bit. Uhm, after that, uhm, we were in the middle of
13 the road. Latoya went and got a hammer from somewhere. I
14 have no clue where she got it from, and she took it and she
15 threw it and she struck Johnny right between the legs.

16 Q. What did you all do at that point?

17 A. Uhm, at that point, uhm, I got Johnny into the car.
18 Uhm, I got in the car and we pulled off and I left.

19 Q. Does that complete that particular incident?

20 A. Yes, sir.

21 Q. Do you know of another incident?

22 A. Yes, sir, I do.

23 Q. Okay. And when was that approximately?

24 A. Uh, this one was approximately about February or
25 March of '13.

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1 Q. Okay. And this was still before this incident that
2 we are at trial for, right?

3 A. Yes, sir.

4 Q. And tell us what happened with regard to only Johnny
5 and Latoya.

6 A. Well, uhm, Latoya showed up in front of Johnny's
7 house. Uhm, Johnny went out to the car. Uhm, Johnny and
8 Latoya got into a struggle. Latoya grabbed Johnny. Uhm,
9 they tussled for a little while. His aunt came out trying to
10 break it up. Uhm, after they broke - after she got it broken
11 up, uhm, Latoya got into the car and she left and Johnny came
12 back to the car.

13 Q. Okay. Do you know of any other specific examples
14 that Latoya was physically aggressive first towards Johnny?

15 A. Yes, sir. I have another one.

16 MR. YOUNG: Your Honor, if I could with regard
17 before we go to this third one, I didn't hear any
18 instance of first aggression in that statement at all.

19 THE COURT: One more time, sir.

20 MR. YOUNG: In the second instance I heard nothing
21 that demonstrated that she was the first aggressor.

22 BY THE WITNESS:

23 A. Well, when Latoya got out there, uhm, Johnny walked
24 out to the car. She asked Johnny to walk out to the car.
25 Uhm, Johnny walked around to the passenger side. Uhm, Latoya

1 got out of the car. Uhm, she grabbed Johnny, uhm, hit him a
2 couple of times. Uhm, there was a tussle. Uhm, Johnny's
3 aunt came out and broke up it, broke the fight up, and Latoya
4 got back in the car and she left.

5 MR. YOUNG: May I ask a question at this point about
6 that particular -- Can I do a little voir dire here on
7 that?

8 THE COURT: Why don't you let him finish, then I'll
9 let you.

10 MR. YOUNG: I'm sorry. That's out of order. I
11 apologize.

12 THE COURT: Okay.

13 BY MR. CASTO:

14 Q. And you had, I believe that you were saying that you
15 had a final example; is that right?

16 A. Yes, sir, I do.

17 Q. Do you remember approximately when this final
18 example happened of Latoya being the first aggressor towards
19 Johnny?

20 A. Yes, sir.

21 Q. About when did it happen?

22 A. Uhm, this happened around, uhm, summer around about
23 June or July, up in that time frame.

24 Q. Of what year?

25 A. Of 2013.

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1 Q. Okay. And that's still before the incident that we
2 are at trial for, right?

3 A. Yes, sir.

4 Q. Okay. Tell us what happened with regard to just
5 Latoya and Johnny.

6 A. Uhm, Latoya showed up at, uhm, Johnny's father
7 house. She got out of the car. Her and Johnny talked, uhm,
8 approximately for a couple of seconds. Uhm, Latoya grabbed
9 Johnny in the shirt. Uhm, she had a razor in her hand. She
10 cut at his shirt. Uhm, he was trying to pull way from her
11 and she cut at his arm. Uhm, I want to say across his left
12 arm. Uhm, and after that, the tussle went on for a little
13 while and she chased him around the car. She got back in the
14 car and she left.

15 Q. Did she cut Johnny?

16 A. Uhm, I didn't see a cut. I seen like a scrape. I
17 didn't see an actual split where it left blood.

18 Q. Did she cut his clothing?

19 A. Yes, sir. She did cut into his shirt.

20 MR. CASTO: Okay. That's the final example,
21 Judge.

22 THE COURT: All right. Yes, sir.

23 CROSS EXAMINATION

24 BY MR. YOUNG:

25 Q. Okay. Let me go back to the first instance. The

1 first instance Latoya goes to the car I understand first; is
2 that what you're saying? The first instance you referred to
3 where the shotgun was fired by the father.

4 A. Yes, sir.

5 Q. Okay.

6 A. Uhm, Johnny got out of the car. Uhm, Latoya came
7 off the porch. Uhm, I want to say they made it about maybe
8 about mid ways in the yard. Uhm, the argument started. Uhm,
9 Johnny started to walk back towards the car. Latoya grabbed
10 Johnny. Uhm, it was kind of a tussle from there. Her
11 brother came out so Johnny was trying to get away from her
12 and her brother. Uhm, so I was trying to back my car out of
13 the yard. The father came outside, fired off the gun.

14 Q. Okay. All right. That's fine. So your testimony
15 is that Latoya grabbed him as he was trying to do what?

16 A. As he was walking away.

17 Q. Walking away to do what?

18 A. As he was walking away to come back to my car.

19 Q. Did you hear the words between the two?

20 A. Uhm, I did not. I can't recall where I was --

21 Q. Wait a minute. Wait. Did you hear the words
22 between the two?

23 A. No, sir, I didn't.

24 Q. Okay. You don't know what was said before that?

25 A. Repeat that.

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1 Q. You don't know what was said between Johnny and
2 her?

3 A. Uhm, not leading all the way up until I got there.

4 Q. I'm sorry?

5 A. Not leading all the way up until I got there. Uhm,
6 they were arguing out in the yard, uhm --

7 Q. Sir, I'm just asking you a question. Did you hear
8 what the words were between the two people Johnny and Latoya,
9 yes or no?

10 A. No, sir.

11 Q. So you don't know what they were saying to each
12 other or what he said to her?

13 A. No, sir.

14 Q. Could you see what he was doing to her?

15 A. No, sir.

16 Q. Well, how do you know she was the first aggressor?

17 A. Uhm, she grabbed him first, uhm --

18 Q. That's what you saw?

19 A. That's what I saw. She grabbed him first.

20 Q. But you don't know what --

21 A. I was sitting in the car.

22 Q. You don't know what he did?

23 A. And he was walking away. He was trying to get back
24 to the car.

25 Q. That goes to weight and not admissibility I realize,

1 but I'm just trying to understand that. The second instance
2 - the second instance -- All right. The second instance
3 occurs where?

4 A. Sir?

5 Q. Where does the second instance occur?

6 A. The second incident occurred at the front of
7 Mr. Johnny's house.

8 Q. Johnny's house. Mr. Johnny's house?

9 A. Yes.

10 Q. Okay. And this occurs. You're present for all of
11 it?

12 A. Yes, sir, I was there.

13 Q. Okay. And you saw everything and heard
14 everything?

15 A. Yes, sir. I didn't hear everything. I was standing
16 back from a distance, but I saw that Johnny went around to
17 the car and she grabbed him. Uhm --

18 Q. Johnny went around to the car. Whose car?

19 A. Patrick. Uhm, Patrick brought her down there and
20 Johnny went around to the passenger side of the car.

21 Q. Okay. And?

22 A. Uhm, Latoya got out. Uhm, they talked for a minute.
23 I was standing off from a distance. I wasn't listening, uhm,
24 and I seen Latoya grab Johnny. Uhm, she grabbed him. She
25 hit him a couple times and his aunt came out, uhm, to break

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1 it up and after that she got back in her car where - she got
2 back in the car with Patrick and she left.

3 Q. Okay. So where are you in relation to this car?

4 A. Repeat that.

5 Q. Where were you in relation to this car? Were you on
6 the opposite side of the car from where they were?

7 A. Yes, sir. I was on the opposite side of where the
8 car is parked. But the way they came up, I was still
9 standing in the yard so I could see the passenger side of the
10 car was facing the house.

11 Q. Okay. So you could see the back of Johnny?

12 A. Yes, sir.

13 Q. And you could see what part of her?

14 A. Uhm, I could see the front part of her because when
15 they got out of the car, the door was shut so I could see
16 both of them.

17 Q. Okay. And then at that point you could see the back
18 of Johnny and the front of her?

19 A. I could see both of them.

20 Q. Okay. You could see both of them, but which part of
21 her could you see?

22 A. Uhm, when they were tussling, I could see the side
23 and the back of them.

24 Q. Okay. Did you see him do anything?

25 A. Uhm, I seen him just try to pull away from Latoya.

1 Q. Pull away. That's all you saw him do?

2 A. Yeah. I seen him try to, you know, push away from
3 her, but she had a hold of him.

4 Q. Okay. So you don't know whether -- So you saw her
5 grab him and then he pushed away?

6 A. Yes, sir. I saw her grab him and she throwed a
7 couple of blows at him and his aunt came out to try to break
8 it up. I did not see Johnny throw any physical blows back at
9 Latoya.

10 Q. Okay. All right. Last time around here. Last time
11 around. Did you -- This third event, where did this occur?

12 A. This occurred at his father's house.

13 Q. His father's. Whose father's house?

14 A. Johnny Boyd's father.

15 Q. Okay. Where is that? Where is that located?

16 A. Uhm, it's located down at about exit 44.

17 Q. Another county? This is in Lexington County?

18 A. Yes, sir, it is.

19 Q. So where were the two people in this case?

20 A. Where are Latoya and Johnny?

21 Q. Yes.

22 A. Uhm, Latoya and Johnny were at his father's house.

23 Uhm, Johnny was already there. Latoya showed up.

24 Q. All right. And where did this event occur? In what
25 part of the house?

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1 A. It occurred out in the yard.

2 Q. Okay. Where in the yard?

3 A. It occurred right there around the edge of the
4 trailer.

5 Q. All right. Where were you when you saw it happen?

6 A. Uhm, I was outside on the porch.

7 Q. Okay. Was anybody else with you?

8 A. Uhm, no, sir. His father, uhm, his father was in
9 the house and his father's wife was in the house and I was
10 outside.

11 Q. And what did you see happens first?

12 A. Uhm --

13 Q. The first thing you saw?

14 A. The first thing I saw is that I seen Latoya pull up.
15 Uhm, same thing. I seen her get out of the car. Uhm, she
16 was talking to Johnny. Uhm, as she was walking up on Johnny,
17 Johnny walked back a little bit, uhm, so as she reached out
18 to try to grab Johnny, she grabbed his shirt and I seen her
19 swipe at him. She cut his shirt and she tried to cut at him
20 again and he was trying to run away. He finally broke lose
21 and he ran around the car, uhm, and after that, uhm, she
22 couldn't catch him so she got back in her car and she took
23 off and she left and Johnny came back in the house.

24 Q. Okay. And can you tell me -- Can you tell me how
25 long this took place? How long did this whole event take

1 place?

2 A. How long did it last?

3 Q. Yes.

4 A. Uhm, I would say it lasted about a minute or so. It
5 last about a minute or so.

6 Q. Okay. All right. Were you close enough to hear
7 what they were saying to one another again?

8 A. Uhm, she was telling him come here. Uhm, I'm gonna
9 get you. Uhm, what you running for? And, you know, he was
10 telling her leave. You know, he not trying to be a part of
11 that. And then after that, it was she just got in the car
12 and she -- I didn't hear anything from there.

13 MR. YOUNG: Okay. That's all the questions I have,
14 Your Honor.

15 THE COURT: Okay. Are we ready to bring the jury
16 back in?

17 MR. YOUNG: Yes, ma'am. I have a brief argument to
18 make.

19 THE COURT: Okay.

20 MR. YOUNG: Your Honor, I would note for the record
21 that we're in a situation where Rule 609 has some
22 bearing on this.

23 THE COURT: Okay.

24 MR. YOUNG: Excuse me. I should say 608.

25 Specifically subparagraph (b) which refers to specific

1 instances of conduct. The limitation in this situation
2 is that extrinsic evidence is not permitted as a basis
3 for demonstrating a witness lack of credibility or
4 credibility and it may not be proved by extrinsic
5 evidence. That's the general rule. The limitation on
6 that is if the Court gives discretion and if the Court
7 determines it's probative of truthfulness or
8 untruthfulness, you can cross examine a witness, the
9 witness themselves as to their character for
10 truthfulness or untruthfulness using that for the
11 witness itself or you can do that for another witness as
12 to which the character, you know, the character for
13 truthfulness or untruthfulness as to which character of
14 the witness that's testified.

15 Now, I'm of the opinion that this is a situation
16 where if he has an opinion about her truthfulness, he
17 can certainly offer that. But to get into the detail he
18 is here on this extrinsic evidence to prove one way or
19 the other whether she's an aggressor or not, the
20 extrinsic evidence is not admissible for that purpose
21 because if he wants to testify under 404 as to the
22 character of the victim under subparagraph (a)(2), he
23 can have his own opinion as to whether or not she's a
24 truthful or untruthful person as to being first
25 aggressor.

1 THE COURT: But I think he's offering him for
2 impeachment purposes. That's the only thing in response
3 to the question that we talked about.

4 MR. YOUNG: Well, the Court has discretion and I'm
5 not saying you don't.

6 THE COURT: Yeah. I think he's offering him for
7 impeachment purposes in response to her question that
8 she's never been the first aggressor. Ordinarily I
9 think that under 608(b) that that would not come in, but
10 and I'm thinking about this, too, as I'm talking, but I
11 think for impeachment purposes, then I'm thinking of 404
12 (a) (2) --

13 MR. YOUNG: The limitation as I read it is if this
14 is probative of truthfulness or untruthfulness
15 concerning the character for truthfulness or
16 untruthfulness of another witness, this would be, the
17 witness in this case, I think, would be Latoya Abney as
18 to which the character of the witness being cross
19 examined has testified. He hasn't already testified one
20 way or the other as to truthfulness or untruthfulness of
21 this witness. And if he's being challenged on that,
22 then potentially it might come in is the way I read it.
23 But that's how I read it.

24 THE COURT: All right. Yes, sir.

25 MR. CASTO: Just briefly. Ultimately what we are

1 contesting is the fact that her answer was, no, I have
2 never been the primary aggressor before yesterday. We
3 believe that wasn't truthful and so now I think the door
4 is open for us to ask about that because, you know, the
5 whole case really hinges on her credibility and her
6 ability to tell the truth and she's the one on the 911
7 call and speaks. Johnny didn't make any statements that
8 night so really her credibility is at issue and her
9 ability to tell the truth is never something that would
10 be collateral in this regard, Judge.

11 THE COURT: All right. Well, I think what I'm going
12 to do is allow him to testify for purposes of the
13 impeachment as to that one question that you're saying
14 have you ever seen her be the first aggressor. Now as
15 to going into the details as to the dad coming out, that
16 has -- I agree with the state on that. That has
17 absolutely nothing to do with whether or not she was the
18 first aggressor. So what other people may have done
19 will not be admissible. He can ask that question, has
20 he -- If he has been offered in response to her answer
21 that she has never been the first aggressor with him, I
22 will allow him to testify to that for impeachment
23 purposes of her. 608. But as far as him going into
24 great, great detail as to the conduct, I'm not sure the
25 rules allow for that. He can say when it was. She got

1 out of the car. And then, of course, the state can
2 cross examine him and that goes to, I believe that goes
3 to weight.

4 MR. YOUNG: Your Honor, we think, of course, that
5 opens the door for reply, too, but that's fine. I don't
6 want to get --

7 THE COURT: I know and that's my concern, too. Now
8 do we bring them in and they're going to start saying
9 when he was the aggressor, other instances.

10 MR. YOUNG: I think that's why the rule is there
11 because this leads to a never ending battle of who said
12 what last. And my concern is, Your Honor, my position
13 is he can say I know of three times she was the first
14 aggressor and say when she did this at that house and
15 did this at that house and did this at that house.

16 THE COURT: Yes. That's my ruling. I think that's
17 what I said.

18 MR. YOUNG: And it's short and sweet and not get
19 into all the I saw him do this, that and the other.
20 That's fine. That's fine. Now, if she wants -- The way
21 the state sees this, she can get back up and say that's
22 how he saw it. That's not what happened.

23 THE COURT: I think so.

24 MR. CASTO: And, Your Honor, just so I can be clear,
25 we have no objection to whittling it down to just her

1 involvement. Remember this is only being offered to
2 speak to her ability to tell the truth or not.

3 THE COURT: I thought you were offering it for
4 impeachment purposes?

5 MR. CASTO: Exactly. And impeaching her with regard
6 to whether her testimony was impeachable from yesterday.
7 We believe it is. We are only offering it for that. We
8 are not asserting our person's character at all. The
9 focus is only on her and it will be limited.

10 MR. YOUNG: You're not asserting this person's
11 character for truthfulness?

12 THE COURT: Well, the problem is, I think what
13 probably should have happened is when she was on the
14 stand and the question was asked, what should have
15 happened is you probably should have asked her, oh, is
16 that true? Oh, so you have never been the first
17 aggressor? Do you remember this incident at such and
18 such? And do you remember this incident at whoever
19 else's house? And do you remember this third incident?

20 And then if she said no, then you could put him up
21 to say yes, I remember it to impeach her. The problem
22 is you have him up as the witness under 608 and so then
23 it does put the state in a position where they have to
24 recall her and she has the opportunity to testify as to
25 what happened on these specific instances that he's

1 referring to.

2 Now, I don't know if that's territory you want to
3 venture into because we don't know what happened. Your
4 witness has already said that the first incident he did
5 not see everything that happened. So if I allow that, I
6 am going to allow them to put -- You're saying -- I
7 mean, I do agree the reason for the rule is so that you
8 don't have the back and forth because at this point he's
9 saying the dad was there, the brother was there. So are
10 they going to put up the dad to say, yeah, I came out
11 because this is what was happening on this. So then we
12 start bringing in all this extrinsic evidence, things
13 that did not happen on that day and that's the reason
14 for the rule.

15 I don't think that the question is properly asked on
16 cross or direct or whatever whenever she said it. On
17 cross it probably should have been do you remember this?
18 Do you remember? Almost similar to have you ever been
19 in trouble with the law? And if she had said no, then
20 I'm just throwing this out there, and she said no, and
21 then you have the incident report. Well, do you
22 remember an incident on such and such a date? Or do you
23 remember an incident on such and such? And then that's
24 how you're testing her for truthfulness and impeaching
25 her with that. But in this situation you would be

1 impeaching her with his testimony.

2 MR. YOUNG: Your Honor, essentially the Court is
3 coming around to what I'm trying to point out is that
4 609 is designed to prevent this extrinsic evidence from
5 coming in unless the witness has - you have a basis to
6 establish credibility as the issue. The only issue here
7 - the only issue have you ever been first aggressor does
8 not open the door to every instance of misconduct when
9 she might have been an aggressor. It does, however,
10 open the door for character for peacefulness or not.
11 She's a victim. And it certainly creates a circumstance
12 where he can say I have seen her being a first aggressor
13 on maybe three occasions. But beyond that, no.

14 THE COURT: All right. So we're know under 609 --
15 Well, is says from reading 608, it does not appear that
16 this testimony would be admissible. 608(b) specifically
17 says you have to cross examine the actual witness, what
18 we talked about earlier, regarding the truthfulness and
19 it seems that 608(b) the whole intent of the rule is to
20 avoid the back and forth, back and forth. So the next
21 issue is whether or not how it comes in under 405,
22 methods of proving character. Take a look at 405(b).

23 MR. YOUNG: Yes, ma'am. I have already looked at
24 that. I agree with you that 405(b) becomes, well, it's
25 not admissible to prove action and conformity.

1 Character is not used for that. Identity, motive,
2 existence of a common scheme or absence of mistake or
3 absence of intent. So those other crimes, wrongs or
4 behaviors which have happened in the past can be
5 admissible under limited circumstances. I believe that
6 there is, and I'm not trying to make the case for the
7 defense, but (a)(2) when the victim's character has been
8 brought into question as to peacefulness, and I think
9 that has been raised, this person can offer testimony
10 about whether he believes from her character that she
11 was first aggressor:

12 THE COURT: All right. So what I'm going to allow
13 is I will allow this witness to testify. The question
14 is have you seen her be the first aggressor before. You
15 can ask him how many times. And if he wants to, if
16 you want to ask him, I think he testified one time in
17 April. One time in June or something like that, but
18 that's what I'm going to limit him to. As to her
19 peacefulness has he known her not to be -- I mean, and
20 at the end of the day she's already testified she has a
21 previous CDV so I don't even know if that is an issue as
22 to whether or not - as to her peacefulness anyway.

23 She's already testified and she's already
24 acknowledged that she has a previous CDV. I don't know
25 if it's with him. And she's acknowledged that she had

1 something else on her record. I can't remember.

2 MR. YOUNG: Shoplifting, Your Honor. Your Honor, we
3 put stuff in that wasn't admissible just to put it on
4 the record to make sure she was telling the truth about
5 everything just to go forward and say, yeah, I have done
6 all this stuff.

7 THE COURT: I guess what I'm saying though is I know
8 she said that her reputation is that of peacefulness.

9 MR. YOUNG: She had -- She had admitted to the CDV
10 when she was 17. She admitted to doing that. That was
11 not technically admissible. But it was something we
12 just wanted to bring out to make sure that the record
13 was replete with her behavior. She's trying to be real
14 with the Court.

15 THE COURT: All right. So that's what I will allow
16 him to testify to.

17 MR. CASTO: And, Your Honor, if I may just so I'm
18 clear, I don't want to step outside the ruling. Your
19 Honor, if I may, just to make sure that I'm clear and
20 don't step outside of the Court's ruling, you're
21 essentially allowing him to talk about when those - when
22 she was the primary -- Has he seen her be the primary
23 aggressor before? Basically, yes or no.

24 THE COURT: No. You have got to be careful with
25 that because it's a difference between primary aggressor

1 and first aggressor and I think your question to her was
2 first aggressor. I can have the court reporter go back
3 and check, but you know under the domestic violence laws
4 the primary aggressor does not have to be necessarily be
5 the person that takes the first strike.

6 MR. CASTO: I'm sorry. First aggressor is what I
7 mean.

8 THE COURT: Yes.

9 MR. CASTO: Yes. That's why I'm asking. Have you
10 seen Ms. Abney be the first aggressor towards Johnny
11 before? Yes. How many times, you know? And then
12 roughly when were those times? Kind of a bare bones.
13 Is that what the Court's ruling is?

14 THE COURT: I think based on what you're trying to
15 impeach her on, yes, and that's under 405(b). It's says
16 specific instances of conduct in cases in which
17 character or a trait of character which would be first
18 aggressor of a person is an essential element of the
19 charge claimed of defense and I'm guessing his claim is
20 that she was the first aggressor. He was not. Proof
21 positive made of specific instances of that person's
22 conduct.

23 MR. CASTO: I think I understand the Court's ruling,
24 but I think 405 speaks to a situation like if we were
25 set for trial and the issue or the charge was libel or

1 slander. Well, truthfulness or untruthfulness would be
2 an element of that offense, I think. I think that's
3 what that is speaking to.

4 THE COURT: See, if you get to truthfulness and
5 untruthfulness, you go back to 609 and then specific
6 instances don't come in. 609 refers you to 405. It
7 says it may not unless it comes in under 405. Well, in
8 the decision on the notes it refers you back to 405. I
9 have - it's definitely not under 608. It definitely
10 does not come in under 608. I don't see -- Just because
11 of the way it was presented, you would almost have to
12 ask her those questions and let her say, no, it didn't
13 happen. And then under - in order for it to come in
14 under 609.

15 MR. CASTO: Okay. All right.

16 THE COURT: Let's move on. That's what we'll do.
17 Let's bring the jury back in. Sir, you understand what
18 the testimony is supposed to be just in response to
19 specifics?

20 THE WITNESS: I understand.

21 (The jury returns to the courtroom.)

22 THE COURT: Thank you, ladies and gentlemen, for
23 your patience. As I stated there are matters of law
24 that we have to take up and that one took a little bit
25 longer than I expected. All right. Yes, sir. You want.

1 to call your next witness.

2 MR. CASTO: Yes, Your Honor. We call Ricky Harris
3 to the stand.

4 THE COURT: He's already been sworn.

5 THE CLERK: I need to do it in the presence of the
6 jury.

7 Thereupon,

8 RICKY HARRIS

9 after having been first duly sworn, testified as follows,

10 THE COURT: All right. Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. CASTO:

13 Q. Ricky, I'm going to stand back here and ask you some
14 questions. Keep your voice up so I can hear you all the way
15 back here, okay?

16 A. Yes, sir.

17 Q. Ricky, how old are you?

18 A. 27.

19 Q. What do you do for work?

20 A. Uh, I work at Valley Protein. I manage the
21 warehouse and keep inventory.

22 Q. What town do you live in, Ricky?

23 A. I live in Columbia, South Carolina.

24 Q. Ricky, do you know Johnny Boyd?

25 A. Yes, sir, I do.

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1 Q. And for how long have you known Johnny Boyd for?

2 A. I have known Johnny eight years.

3 Q. Okay. And are you all friends?

4 A. Yes, sir.

5 Q. And let me ask you this: Would you ever try to lie
6 or be dishonest for Johnny Boyd for anything?

7 A. No, sir.

8 Q. All right. Do you know Latoya Abney?

9 A. Yes, sir.

10 Q. And how long have you known Latoya Abney for?

11 A. I have known Latoya for about six years.

12 Q. All right. And how did you come to know Latoya?

13 A. I have known her through Johnny.

14 Q. Okay. Throughout the time that you have known both
15 Latoya and Johnny, were you aware that they were in a
16 relationship?

17 A. Yes, sir.

18 Q. And at any point have you ever known Latoya to be
19 the first aggressor on Johnny?

20 A. Yes, sir.

21 Q. Do you know of specific examples when that's
22 happened? Do you know of examples?

23 A. Yes, sir.

24 Q. And how many examples do you know of?

25 A. Three.

1 Q. And roughly when did each of those three occur?

2 A. One occurred in 2012, June, July. The second one
3 occurred in 2013 around February, March. The third one
4 occurred in 2013 around June, July.

5 Q. Okay. And do those, all three predate this incident
6 that we are talking about at this trial?

7 A. Yes, sir.

8 MR. CASTO: No further questions.

9 CROSS EXAMINATION

10 BY MR. YOUNG:

11 Q. Now, sir, what exactly is your relationship with
12 Mr. Boyd?

13 A. We're friends.

14 Q. How did you become friends?

15 A. Uhm, me and his sister used to be best friends and,
16 uhm, I used to date his cousin and, uhm, I have just been
17 around the family and me and him became close friends.

18 Q. Close friends. How often do you see each other?

19 A. We see each other about every other day. Sometimes
20 everyday. Maybe one time out of the week. I see him at
21 least one time out of the week.

22 Q. Go over to his house or does he come over to your
23 house?

24 A. I go to his house. Sometimes he comes to my house
25 on weekends when I'm not working.

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1 Q. Eat meals at the house?

2 A. Yes, sir.

3 Q. Date people in the family?

4 A. I have dated his cousin.

5 Q. You have dated his cousin?

6 A. Yes, sir. I don't date her anymore.

7 Q. How long did that relationship last?

8 A. I dated his cousin, uhm, we dated for about five
9 years, then it turned to being off and on about two. So I
10 dated his cousin about seven years total.

11 Q. How many other friends like Johnny do you have?

12 A. Uhm, I have about four, four other friends.

13 Q. You spend more time with them than you do with
14 Johnny?

15 A. We're all about equal.

16 Q. All about equal?

17 A. Yes, sir.

18 Q. You go over to their house just as much?

19 A. Uhm, I go over to their house just as much. We kind
20 of meet up. We see each other at least one or two times out
21 of the week.

22 Q. Date people in the family just as much?

23 A. No, sir.

24 Q. So that's where that relationship really was strong
25 was with the cousin then I take it, the one you were

1 dating?

2 A. Uhm, no, sir. Me and Johnny's sister was best
3 friends before I started dating his cousin.

4 Q. So the family kind of expects a lot out of you then,
5 huh?

6 A. I don't know about that.

7 MR. YOUNG: You don't know about that. I have no
8 further questions.

9 MR. CASTO: No further questions, Judge.

10 THE COURT: You may step down. Any objection to
11 this witness being excused?

12 MR. YOUNG: No, ma'am.

13 THE COURT: All right. Call your next witness.

14 MR. CASTO: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (Side bar held off the record.)

17 THE COURT: Back on the record. All right. Yes,
18 sir. Call your next witness.

19 MR. CASTO: Your Honor, at this time the defense
20 rests.

21 THE COURT: All right. Does the state have any --

22 MR. YOUNG: We have nothing in reply.

23 THE COURT: No reply?

24 MR. YOUNG: No, ma'am.

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, that concludes the evidence that you will receive
2 in this case, however, we have to -- Let me see you all
3 one second.

4 (Side bar held off the record.)

5 THE COURT: Back on the record. All right. So we
6 were just trying to figure out planning everything and
7 me trying to, even though I probably got an F the last
8 two mornings trying to see what all needs to be none, I
9 think we will start at 9:30 in the morning, but I'll
10 have you all come in at 10:00 so you will not have to
11 wait back there hopefully very long. You still cannot
12 discuss the case. Although you have all of the
13 evidence, you do not have the law and you not have the
14 arguments of the parties. So we still have that. The
15 arguments of the parties and the law, and then after
16 that, you all will be able to begin your deliberations.
17 So you cannot discuss this case with anyone. Not your
18 fellow jurors. Not your family members. It would also
19 be improper for you to form or make any decision in your
20 mind of any kind. I am going to release you for the
21 evening and you all are to return back at 10:00 in the
22 morning. All right. Thank you.

23 (Whereupon, the jury was excused for the evening at
24 4:00 p.m.)

25 THE COURT: All right. Do you have any motions or

1 anything that we need to put on the record? Anything
2 else you want to put on the record? Anything from the
3 state?

4 MR. YOUNG: No. Nothing from the state, Your
5 Honor.

6 THE COURT: Any motions?

7 MR. CASTO: Your Honor, yes, ma'am. We would renew
8 our directed verdict motion at this time, all prior
9 motions and objections raised or in pretrial or in this
10 trial.

11 THE COURT: All right. The motion for directed
12 verdict will be respectfully denied. I think all of the
13 objections are preserved for the record. At this time
14 let's talk about the jury charge real quick and what I,
15 since it's 4:00 I can have, mine is pretty much done
16 with the exception of maybe a couple of things in there
17 and what I usually do is have her complete it and then
18 she can e-mail it to you all tonight and take a look at
19 it. If you get here at 9:30 in the morning, we can go
20 over any changes, tweak them, and then we will be ready
21 to go forward with the jury charge.

22 So she's done the attempted murder. She's putting
23 that one in there. Anything else? Right. I guess he's
24 asking for self defense in there.

25 MR. CASTO: That's right.

1 MR. YOUNG: I think that would be raised by his
2 testimony. Does the Court consider lesser includes
3 being appropriately raised here such as voluntary
4 manslaughter, assault and battery first degree, based on
5 lesser levels of culpability or not?

6 THE COURT: Well, no one has asked me for it. I
7 anticipated someone asking for it. I haven't looked up
8 voluntary manslaughter, but assault and battery first
9 degree would be a lesser included.

10 MR. CASTO: Voluntary manslaughter wouldn't be a
11 lesser included.

12 THE COURT: Because manslaughter means somebody is
13 dead.

14 MR. YOUNG: Attempted voluntary manslaughter.

15 THE COURT: I don't know if it's attempted, but
16 assault and battery first because I anticipated it
17 coming up. I did double check and it is a lesser
18 included --

19 MR. YOUNG: It is a lesser included.

20 THE COURT: -- of the attempt. You know, when they
21 changed the statute, it kind of changed things around.
22 It was questionable.

23 MR. YOUNG: It did, Your Honor.

24 THE COURT: But it is -- I think there is a recent
25 case that came out since the changing of the statute,

1 the omnibus act. It says that assault and battery
2 first. But no one is officially asking for it so I just
3 wanted to ask. I wasn't going to put it in there.

4 MR. CASTO: Your Honor, deliberately so I want to go
5 through the good, the bad of doing that with my client
6 and I'll absolutely review what you send to me tonight.
7 Your plan is ideal.

8 THE COURT: All right. You have an objection to
9 assault and battery first?

10 MR. YOUNG: No.

11 THE COURT: What I will do is I'll put it in there

12 --

13 MR. YOUNG: I'm not sure I can object to it based
14 upon the facts.

15 THE COURT: Yes.

16 MR. YOUNG: I mean, honestly, Your Honor, I believe
17 that depending on the level of intent demonstrated here
18 you may have a significant question. However, the
19 obvious issue is was she in reasonable fear of death or
20 great bodily harm at the time of the event. I think
21 that's clearly raised. If they choose to find the level
22 of intent not to be present, that would be the next
23 matter to be considered by the court or by the jury.

24 THE COURT: Yes. I was just asking. Even though
25 Mr. Young is, I can tell as Solicitor is not to be one

1 to not to object to something that he knows is not
2 objectionable, but sometimes lawyers do object to things
3 just to even though they know it's not based on --

4 MR. YOUNG: I try not to.

5 THE COURT: All right. And Mr. Casto is doing the
6 same. So talk with him about the assault and battery
7 first and I'll stick it in there so if you see it in
8 there tonight, just make sure we have the right
9 language, and then we can have issues to deal with in
10 the morning if you're asking for it, and we'll deal with
11 it at that time.

12 I'll also send you the verdict form which will --
13 I'll have her send you two, one with the lesser
14 included, one without it. Anything else? She put a
15 self defense claim in there.

16 MR. YOUNG: Do you have my e-mail address?

17 THE COURT: I think she has it.

18 MR. YOUNG: I bet you don't.

19 THE COURT: All right. So we'll start at 9:30 in
20 the morning.

21 MR. CASTO: Perfect. Thank you, Judge.

22 (Whereupon, court adjourned for the day at 4:10
23 p.m.)
24
25

1 December 11, 2014

2 BAILIFF: All rise.

3 THE COURT: Good morning. You may be seated.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: All right. I was waiting for a hard
6 copy so I could make changes as we go, but I'll just do
7 it in my notes. I'll pull it up on the computer. Any
8 changes? Well, I didn't -- I guess I need to hear from
9 Mr. Casto regarding his position on the charge of
10 assault and battery first. I think she put ABHAN in
11 there also.

12 MR. CASTO: That's right, Your Honor. I have gone
13 over with my client the pros and cons so to speak of
14 lesser includeds. I have gone over the fact that the
15 jury could go back there and have a choice in addition
16 to whether he's guilty or not guilty of attempted
17 murder, they could potentially have the opportunity to
18 find him guilty of a lesser included offense namely, you
19 know, ABHAN on down, and he's indicated to me that he
20 just wants to give them the one choice of attempted
21 murder and I ask the Court to allocute with him and
22 place on the record his decision.

23 THE COURT: Well, I need to ask the state what's
24 their position on that, too?

25 MR. YOUNG: On ABHAN, Your Honor?

1 THE COURT: He said that he doesn't want me to
2 charge ABHAN or assault and battery first.

3 MR. YOUNG: They're both raised. The means likely
4 to be -- The means used in this particular instance was
5 a concrete block. State's evidence shows that this
6 could have resulted in an injury that could have
7 resulted in death. He said because she put her hands up
8 it couldn't. That doesn't not mean that there's not
9 evidence that it could not have been used for that
10 purpose.

11 THE COURT: You're asking for ABHAN?

12 MR. YOUNG: I am.

13 THE COURT: And assault and battery first?

14 MR. YOUNG: Yes, ma'am.

15 THE COURT: So I don't think -- It's a question of
16 whether or not you ask for it or he asks for it.
17 They're asking for it and you're objecting to that?

18 MR. CASTO: Well, I just wanted to -- We don't
19 object to that. And then also we request, we have asked
20 that the language with regard to self defense obviously
21 remain in there.

22 MR. YOUNG: I have no objection to self defense,
23 Your Honor. I think he clearly raised it by his
24 testimony.

25 THE COURT: Let me make sure on the ABHAN statute.

1 The one that they have in the desk book is the old ABHAN
2 so I just want to make sure we have the correct one.

3 MR. YOUNG: Well, I mean, Your Honor, I realize
4 that, I believe ABHAN is correctly stated in terms of
5 the means likely under the facts of this case. The
6 difference would be, of course, between ABHAN and
7 assault and battery first is the difference between
8 attempts to injure versus actual injury using the means
9 likely. I think that's the difference between the ABHAN
10 and the assault and battery first degree.

11 The offer or attempt under assault and battery first
12 distinguishes it from the actual commission of a battery
13 which arises under assault and battery of a high and
14 aggravated nature. I believe that is the difference.
15 That's correctly stated.

16 THE COURT: So you have no objection to the --

17 MR. YOUNG: No, ma'am.

18 MR. CASTO: Your Honor, if I may?

19 THE COURT: Yes, sir.

20 MR. CASTO: With regard to the charges that remain,
21 we do have some objections to the instruction on
22 attempted murder. Your Honor, specifically when we look
23 at the statute, our position is that the intent to kill
24 is an element of the offense of attempted murder. And
25 so we would ask that on page 7, I've just got a hard

1 copy, it may have kind of moved around with editing or
2 whatnot, the second sentence under attempted murder we
3 would ask that it read in order to prove this crime the
4 state must prove the defendant, with the intent to kill
5 attempted to kill another person with malice of
6 forethought either expressed or implied. Because the
7 intent to kill is an element of intent to murder by the
8 statute.

9 MR. YOUNG: I concur, Your Honor.

10 THE COURT: All right. So let me get to that here.
11 All right. So in order to prove this crime the state
12 must prove that the defendant intended?

13 MR. CASTO: The defendant, with intent to kill
14 attempted to kill.

15 THE COURT: With intent to kill.

16 MR. CASTO: And then it would jump back in,
17 attempted to kill another person with malice of
18 forethought.

19 THE COURT: Either expressed or implied.

20 MR. CASTO: Yes, ma'am.

21 THE COURT: Okay.

22 MR. CASTO: Our next issue is at the bottom of page
23 8 and the paragraph -- Well, I guess every paragraph
24 starts with malice, but it says malice may be inferred
25 from conduct showing a total disregard for human life.

1 We agree with that part, but the next sentence and
2 following on page 8. I'm sorry. Following on page 9
3 and the top of page 10, that first paragraph should be
4 taken out. And the reason is this.

5 MR. YOUNG: What part?

6 THE COURT: The definition of a deadly weapon.
7 Inferred malice may also arise when the deed is done
8 with a deadly weapon.

9 MR. CASTO: And the reason is this. That used to be
10 the case until we had opinions of State versus Belcher
11 and State versus Frazier. They hold that when there is
12 any evidence that would excuse or mitigate the deeds
13 done, that you can no longer infer intent from the use
14 of a deadly weapon. I think Belcher was decided only a
15 few years ago. It overruled so many cases before that,
16 but out of an abundance of caution I would ask that that
17 be removed.

18 THE COURT: All right. Yes, sir, Mr. Young? And
19 those are accurate statements regarding those two
20 cases.

21 MR. YOUNG: The inferred malice portion, Your Honor,
22 I believe Belcher is correctly stated by Mr. Casto. I
23 do not disagree on the law with regard to that. The
24 inference of malice with regard to that. I think it is
25 a permissible argument. It is something that can be

1 argued and effectively so in some cases. Definitions of
2 deadly weapons may have to be taken out as a result of
3 that as well.

4 THE COURT: I'm sorry. I can't hear you.

5 MR. YOUNG: I'm sorry, Your Honor. The definitions
6 of deadly weapons may need to be taken out as well. I'm
7 not certain.

8 THE COURT: You say they don't or they do?

9 MR. YOUNG: They don't. I'm sorry. I didn't
10 understand your statement.

11 THE COURT: Okay. So we know we are going to take
12 out inferred malice may also arise when the deed is done
13 with a deadly weapon.

14 MR. YOUNG: That needs to come out.

15 THE COURT: Yes. All right. So he's saying that
16 the entire page, a deadly weapon is an article -- His
17 position is all of that comes out.

18 MR. YOUNG: His position is -- Well, the definition
19 of a deadly weapon without the inference of malice may
20 result in a comment on the evidence. In other words,
21 there may be some - there may be - on appellate review
22 there may be some view point taken by the court that
23 would say that the definitional provision of deadly
24 weapon comments on the evidence in some way. You know,
25 out of an abundance of caution it probably should be

1 removed.

2 THE COURT: All right.

3 MR. YOUNG: Ma'am, there is actually in terms of the
4 ABHAN, I went back and checked my notes. I'm wrong
5 about what I said earlier. ABHAN also includes the
6 offer or attempt. So from the state's perspective and I
7 would refer specifically to Statute 16.3.600(b)(3),
8 assault and battery of a high and aggravated nature is a
9 lesser included offense of attempted murder.

10 THE COURT: Hold on one second. Let's finish with
11 page 8 and 9.

12 MR. YOUNG: I'm sorry. Yes, ma'am.

13 THE COURT: So we are taking out -- We're just going
14 to say malice may be inferred and conduct showing a
15 total disregard for human life. So we are taking out
16 the next sentence.

17 MR. YOUNG: And from the circumstances, yes, ma'am.

18 THE COURT: And then taking out all of page 9.

19 MR. CASTO: Yes, ma'am.

20 THE COURT: And then we're stopping on page 10 first
21 paragraph?

22 MR. CASTO: We take out the first paragraph on page
23 10 and we start back up with the second, Your Honor. I
24 think that's what you said.

25 THE COURT: Yes. All right.

1 MR. YOUNG: Your Honor, there's a lot of case law
2 out there that talks about malice arising from
3 demonstration of evidence. It shows that wrongful
4 intent to injure and a depraved spirit intent on
5 wrongdoing, a heart devoid of social duty totally bent
6 on mischief, those are firm positions of law.

7 THE COURT: Does that even -- Depraved?

8 MR. YOUNG: Maybe I missed it, Your Honor.

9 THE COURT: The definition of malice.

10 MR. YOUNG: Malice. There is expressed malice.
11 Then there is - that's expressed malice. I don't --
12 There needs to be some definition here of conduct
13 demonstrating malice.

14 THE COURT: Hold on one second.

15 MR. YOUNG: It says malice is hatred, ill will or
16 hostility towards another person, the intentional doing
17 of a wrongful act without just cause or excuse and with
18 the intent to inflict an injury or under circumstances
19 that the law will infer an evil intent. There is that
20 brief comment about --

21 THE COURT: Expressed.

22 MR. YOUNG: Well, that's the only comment I see
23 about circumstances or under circumstances that the law
24 will infer an evil intent. I would ask the Court to
25 consider adding additional instructions about the

1 standard definition that I have heard so many times
2 given that speaks to, and I'll hold up a portion, Your
3 Honor. I actually summarized part of it.

4 THE COURT: Hold on one second. That language --
5 Give me one second. That language that you're referring
6 to is in here somewhere.

7 MR. YOUNG: It's a definition actually. A heart
8 devoid of social duty bent on mischief. Totally bent on
9 mischief.

10 MR. CASTO: Your Honor, if I may?

11 THE COURT: Hold on one second. I'm looking in the
12 desk book because I know I have used that language
13 before.

14 MR. YOUNG: Yes, ma'am. I have a summary from
15 Ferguson's, if the Court would choose to look at that.
16 I can provide that.

17 THE COURT: If I could take a look at that.

18 MR. YOUNG: If I could be just excused for a minute.
19 I didn't refer to it. I'll be right back.

20 Your Honor, I have furnished a copy to Mr. Casto
21 of it. It's an old case but it's still good law. We
22 just looked over the language. A heart devoid of social
23 duty totally bent on mischief as a descriptive for
24 actions of malice.

25 THE COURT: All right. Yes, sir, Mr. Casto.

1 MR. CASTO: Basically I think that just to be heard
2 from the outset, with regard to this language about
3 malice, I think the charge that is there and exists on
4 the hard copy that I have is great now because we just
5 are focused on malice there. You know, with these jury
6 instructions there's a lot floating out there. There's
7 actually a couple different definitions of reasonable
8 doubt, but they're okay. They're permissible. And we
9 believe that this language is great because it only
10 focuses just on malice. I think the definition that
11 Mr. Young handed up was there was some mention of murder
12 or what have you. I think out of an abundance of
13 caution just keep that part the way that it is. I don't
14 think it's some type of erroneous instruction. I think
15 it's perfectly permissible.

16 MR. YOUNG: Your Honor, we understand that there is
17 nothing wrong with the instructions as designed here
18 with regard to malice. We are actually asking for
19 something to give some meat to the word circumstances
20 since that's the only reference in the entire
21 instruction to what you can allow to be used to permit
22 an inference. So to describe malice in some more
23 specific form to say if there is some evidence that the
24 heart is bent on social mischief, you know, the
25 circumstances we are trying to point out are not very

1 well defined by the instructions as to what they can be
2 and so in fairness to the state the state has its burden
3 of proof to carry, the jury needs something to be guided
4 by that would give it meaning as to what it's
5 considering.

6 MR. CASTO: Your Honor, we feel the instruction is
7 very clear and concise and accurately states. We would
8 ask that it remain as is with regard to this.

9 THE COURT: I'm trying to figure out what's the best
10 language to put in here. The problem with the way it's
11 written in here, it explains, it goes on and explains
12 what expressed malice is, but it doesn't go on and
13 explain inferred.

14 MR. YOUNG: Mr. Casto is right about Belcher having
15 taken that deadly weapon issue out of the inference
16 specific reference to it. It still can be argued, but
17 for purposes of instruction it's not by itself
18 permissible.

19 THE COURT: That's correct. That's correct. The
20 charge says that it refers to that case, but I just put
21 it all in there.

22 MR. YOUNG: Yes, ma'am.

23 THE COURT: But it does say that if there is a
24 defense or if there is mitigating factors, then it comes
25 out. The question is, I'm not sure if I want to get

1 into malice does not necessarily mean an actual intent
2 to take human life. It may be further implied instead
3 of positive inference or implied instead of positive
4 when an act imports danger to another individual.
5 I want to make sure I'm not commenting on the law.

6 MR. YOUNG: Yes, ma'am. And hence, that's my reason
7 for asking for that definitional point about what malice
8 is. It actually broadens the area and gives them
9 something more to consider without commenting on the
10 evidence.

11 THE COURT: I'm trying to think. It may be best to
12 say something to the extent malice may be inferred where
13 the party is devoid of social duty and totally bent on
14 mischief.

15 MR. YOUNG: I'm not asking for you to infer it to
16 use that as an inference. I'm just asking for it to be
17 malice has also been defined as.

18 THE COURT: I understand.

19 MR. YOUNG: And I really am not asking for that to
20 be the inference. I'm just looking for them so they
21 would have some consideration of what malice represents
22 in terms of the intent and in the heart of the person,
23 their mindset, the mens rea. That's all I'm looking
24 for.

25 THE COURT: So your position is malice is also being

1 defined as a heart devoid of social duty and totally
2 bent on mischief?

3 MR. YOUNG: Yes, ma'am. I'm going to actually argue
4 it.

5 THE COURT: Any position regarding that?

6 MR. CASTO: He can argue it. I just ask the charge
7 remain the same. I think that might be a way to split
8 the baby.

9 MR. YOUNG: Well, no. It doesn't split the baby at
10 all. That just gives you what you're asking for.

11 THE COURT: All right. All right. The interesting
12 thing is, and I don't know why it's not, but under the
13 other statute it uses the language regarding devoid of
14 social duty and totally bent on mischief. What I'm
15 going to do is add malice may be inferred in conduct
16 showing a total disregard for human life. Malice has
17 been defined as a heart devoid of social duty and
18 totally bent on mischief. All right. So I'll add that.
19 And I understand that the defendant objects to that
20 portion of the charge. It is used in defining malice
21 throughout the desk book, but I'm not sure why it does
22 not show up there.

23 MR. CASTO: Yes, ma'am.

24 THE COURT: So let's see where we are. All right.
25 And then we'll take out everything after that regarding

1 inferred and using a deadly weapon. Then we'll start
2 back with a specific intent to kill is not an element of
3 attempted murder.

4 MR. CASTO: And that sentence because of what we
5 just took out, Your Honor, what we changed when we first
6 discussed, that sentence should read specific intent to
7 kill is an element of attempted murder, we would just
8 take out but there must be a general intent. We would
9 just take that second sentence out because of the -
10 because of what we just did initially.

11 THE COURT: It's not an element of attempted
12 murder.

13 MR. CASTO: Well, the reason I say this is because
14 for years we only had the common law of ABHAN and
15 ultimately it wasn't codified whatsoever and based on
16 the case law it was thought that there was, a specific
17 intent to kill was believed to be an element of ABWIK
18 for a lot of years until Faust which is cited in the
19 footnote at the bottom. Well, the thing is Faust says
20 the language about the general intent, the problem is is
21 that Faust was decided before we had attempted murder
22 and so what the legislature did in 2010 was craft a
23 statute that says the person who, with intent to kill,
24 attempts to kill another person, and so forth so our
25 position is that specific intent is an element of

1 attempted murder. In addition Your Honor --

2 THE COURT: Hold on.

3 MR. YOUNG: Your Honor, I want to state for the
4 record, the state reviewed the rest of the instructions
5 and we have no objection to the remaining portion of the
6 instructions.

7 THE COURT: All right. I just need to get -- I
8 understand exactly what your position is regarding the
9 specific intent.

10 MR. CASTO: Yes, ma'am.

11 THE COURT: Specific intent to kill you want it to
12 say is an element of attempted murder?

13 MR. CASTO: That's right. Because what we did on
14 page 7 was we included with attempt to kill, we inserted
15 that language so then it really kind of harmonizes with
16 what we are doing now.

17 THE COURT: All right. I'm going to come back to
18 that. Any other changes, Mr. Young?

19 MR. CASTO: We're almost done, Judge. Let me see.
20 I think Mr. Young alluded to it first, the language with
21 regard to assault and battery first degree only
22 described a situation where there is some type of
23 inappropriate sexual touching. We would ask, there is
24 no evidence of that in the case. We would ask that be
25 removed.

1 THE COURT: Any position regarding that?

2 MR. YOUNG: If it's removed, there's no objection.
3 That's not objectionable, Your Honor.

4 THE COURT: All right.

5 MR. CASTO: But the issue that we take is whether it
6 could be charged. It just uses the term offers or
7 attempts.

8 THE COURT: That's the statute.

9 MR. CASTO: Right. But exactly. And that's exactly
10 my point. It's kind of strange because the offense of
11 even though it's labeled as assault and battery first,
12 when you look at the specific elements of what's
13 required, there is no mention of battery in the body of
14 the statute.

15 THE COURT: Well, this is the statute that they
16 changed several years ago and I thought that there was
17 going to be some corrections to it by now, but there
18 have not been because there's been quite some confusion
19 from the bench and the bar regarding the statute.

20 MR. YOUNG: Your Honor, I disagree with Mr. Casto's
21 characterization of the crime here. It clearly says if
22 they unlawfully offer, attempt to injure another person
23 with the present ability to do so. The absence of
24 injury is notwithstanding. His own statement is that he
25 threw a block at Ms. Abney. He didn't say he struck

1 her. He said he threw a block at her. That's an offer
2 and attempt and I asked him if that would possibly,
3 could possibly kill another person. Well, no, not like
4 she described it. She held her hands up.

5 THE COURT: All right. But what is it that you're
6 asking to come out, Mr. Casto?

7 MR. CASTO: Just the charge on assault and battery
8 first and we request a charge on assault and battery
9 second as well. We believe that there is the existence
10 of evidence that a jury could appropriately consider
11 that as well with regard to the testimony with regard to
12 what happened.

13 THE COURT: So you're objecting to assault and
14 battery first altogether?

15 MR. CASTO: That's correct, Your Honor.

16 THE COURT: Okay. Because earlier I thought you
17 weren't objecting to assault and battery first. I
18 thought you weren't objecting to the lesser included
19 earlier?

20 MR. CASTO: We were, but since the state's requested
21 them and I believe the Court is going to --

22 MR. YOUNG: The state's requested what?

23 THE COURT: You have requested ABHAN and assault and
24 battery first as a lesser included. He's now requesting
25 assault and battery second based on the injury, and I

1 need to look at the statute on second, based on the
2 definition when they changed it to great bodily,
3 moderate bodily injury.

4 MR. YOUNG: Your Honor, it seems to me we probably
5 have to include the great bodily injury definition in
6 there.

7 THE COURT: Great bodily injury is part of the
8 assault and battery first so the great bodily injury
9 definition has to be included.

10 MR. YOUNG: Yes, ma'am. Yes, it does.

11 THE COURT: I'm just trying to figure out your
12 objection to -- I understand you object to -- Well, let
13 me understand. Are you objecting to assault and battery
14 first being charged as, in general, charged as a lesser
15 included?

16 MR. CASTO: With regard to that point we are, Your
17 Honor.

18 THE COURT: All right. So you are objecting to
19 assault and battery first because earlier you said that
20 you were not asking for it, but then once he asked for
21 it, you said you all were not objecting to it. So you
22 are objecting to assault and battery first being asked
23 as offered?

24 MR. CASTO: That's correct.

25 THE COURT: I guess charged as a lesser included.

1 Okay. Now, what part of the language -- I think you
2 said you had some issue with the language or you just
3 have an issue with assault and battery first being
4 charged in general?

5 MR. CASTO: The issue with assault add battery first
6 being charged in general because I believe that the
7 testimony was that there was a battery. The language in
8 assault and battery first being charged doesn't include
9 any language about battery. I don't know that it
10 applies to this factual situation, Your Honor, and
11 that's the reason for our objection.

12 THE COURT: All right. And his position is offer or
13 attempts to injure. Even though it does not talk about
14 the battery, it does say offer or attempts to injure
15 another person and his position is that the evidence
16 that has been presented and including the defendant's
17 testimony is that he threw a cinder block at her; is
18 that correct, Mr. Young?

19 MR. YOUNG: Yes, ma'am. If that's --

20 THE COURT: I understand what you're saying. It
21 doesn't say anything about battery.

22 MR. CASTO: That's right.

23 THE COURT: It just says offer or attempts to injure
24 another person and is accomplished by means likely to
25 produce death or great bodily injury and then it goes on

1 to define great bodily injury here. So I'm going to
2 leave that. I will take out the portion regarding
3 injures another witness, and say injures another person
4 and the act either -- Okay. A person who commits the
5 offense of assault and battery in the first degree if
6 the person unlawfully injures another person, and then
7 it goes on, a person may commit the offense of assault
8 and battery in the first degree if the person unlawfully
9 offers or attempts to injure another person with the
10 present ability to do so and the act is accomplished by
11 means likely to produce death or great bodily injury or
12 occur during the commission of a robbery, burglary,
13 kidnapping, or theft. I'll leave that in there. Now,
14 and the definition of great bodily injury.

15 So now the next issue is do we put in assault and
16 battery second. And that's what you're asking for?

17 MR. CASTO: Absolutely.

18 MR. YOUNG: Your Honor, I want to make sure I
19 understood. You're going to leave in the subparagraph
20 2?

21 THE COURT: Yes, sir.

22 MR. YOUNG: In under 16.3.600(c)(1)(b) I should say
23 which is the offer or attempt to injure another person
24 with the present ability to do so and the act is
25 accomplished by a means likely to produce death or great

1 bodily injury.

2 THE COURT: Yes. Or occurred during the commission
3 of a robbery, burglary, or kidnapping.

4 MR. YOUNG: Right.

5 THE COURT: And then I defined great bodily
6 injury.

7 MR. YOUNG: Yes, ma'am.

8 THE COURT: So assault and battery second, he's
9 asking for a charge on assault and battery second and as
10 a lesser included offense. And assault and battery
11 second talks of moderate bodily injury to another
12 person. Results of moderate bodily injury to another
13 person could have resulted in -- I'm guess you're not
14 asking for the part that talks about non consensual
15 touching of private parts?

16 MR. CASTO: That's correct.

17 THE COURT: All right. And then we would have to
18 define what moderate bodily injury is.

19 MR. YOUNG: I would, Your Honor, for the purposes of
20 this particular case and under the facts raised and
21 presented from the witness stand, the definition of
22 moderate bodily injury essentially includes a number of
23 specific things. It says requiring treatment to an
24 organ system of the body other than, other than, skin,
25 muscle, connective tissues, except where there's a

1 penetration of skin, muscles, connective tissue which
2 requires surgical repair of a complex nature or when the
3 treatment requires the use of regional or general
4 anesthesia. There's been absolutely no evidence of that
5 presented in this case by either party.

6 THE COURT: All right. Yes, sir.

7 MR. CASTO: But you know --

8 THE COURT: What evidence?

9 MR. CASTO: Well, the converse of that is ultimately
10 that's a jury issue for them to decide how serious her
11 injuries were and to take that away from them I believe
12 would be error in this regard.

13 MR. YOUNG: Your Honor, on the basis of what
14 evidence would be the question.

15 MR. CASTO: Again --

16 THE COURT: Hold on one second. What evidence is
17 there that treatment to an organ system of the body
18 other than skin, muscles, and connective tissues of the
19 body except when there is penetration of the skin,
20 muscles, and connective tissues that require surgical
21 repair of a complex nature or the treatment of the
22 injuries require use of regional or general anesthesia.
23 I don't think that there is any testimony of any of that
24 in the record.

25 MR. CASTO: The issue there, Your Honor, is this is,

1 the jury has a question of essentially we are looking at
2 the injuries. Well, how injured was she? And to take
3 the consideration of assault and battery second degree,
4 you know, away from them we believe would be error in
5 this case.

6 THE COURT: I understand. But I'm asking what
7 evidence or what testimony has there been that -- I
8 don't recall any testimony regarding any regional or
9 general anesthesia having to be used on her. Or any
10 penetration of the skin, muscles, connective tissues
11 that require surgical repair of a complex nature or when
12 treatment of the injuries require regional or general
13 anesthesia. There's been absolutely no testimony
14 whatsoever of that regarding treatment of Ms. Abney in
15 this case. Now, your client testified that he had
16 stitches and some type of surgical repair. I don't know
17 if he testified regarding regional or general
18 anesthesia, but I think you even pointed out when she
19 was on the stand that she went to the hospital and that
20 was pretty much it.

21 MR. YOUNG: Went and released.

22 THE COURT: So I think in terms of the law there is
23 no evidence in the record that supports a assault and
24 battery second jury charge so for that reason I'm not
25 going to -- Unless you can point something out, I am not

1 going to charge assault and battery second. All right.
2 Okay.

3 MR. CASTO: To that point, I beg the Court's
4 indulgence. Let me reread it.

5 THE COURT: Okay. Yes, you can. Let's take about
6 five minutes.

7 (Brief recess.)

8 THE COURT: Back on the record. All right. Be
9 seated. Mr. Casto, continue on to the jury charge.
10 We'll have the jury in here. We've had them waiting too
11 long. Any other changes, Mr. Casto?

12 MR. CASTO: Your Honor, you had asked for a reason
13 with regard to assault and battery second.

14 THE COURT: I asked for evidence as to anything
15 that's been placed in the record that would fall under
16 assault and battery second.

17 MR. CASTO: She, Ms. Abney indicated that her eye,
18 Your Honor, which is an organ in the body has been
19 impaired and it hasn't been right ever since and so we
20 feel that that would absolutely provide -- We're looking
21 for the existence of, not the - of any evidence in order
22 to request the charge and the eye is obviously part of
23 the visual system which overall is part of the central
24 nervous system, the brain and the spinal cord and so out
25 of an abundance of caution we would ask for that

1 instruction.

2 MR. YOUNG: Your Honor, that is an after effect for
3 which she testified she received no treatment.

4 THE COURT: All right. Let me ask you this: Under
5 the great bodily injury, what is the great bodily injury
6 under the statute that you --

7 MR. YOUNG: It's the offer or attempt, Your Honor,
8 that the state would be proceeding on. The offer
9 attempt is associated with multiple attempts to strike
10 her. The state's evidence is that she was struck. I
11 hold up pictures from the back two times.

12 THE COURT: So that's the substantial risk of death?

13 MR. YOUNG: Yes, ma'am. Yes, ma'am. Or great
14 bodily injury.

15 THE COURT: Or which causes serious permanent
16 disfigurement or protracted loss or impairment of the
17 function of a bodily member or organ.

18 MR. YOUNG: She did mention the impairment issue
19 that she's suffering from now for which she's received
20 no treatment, but she does have the impairment issue.

21 THE COURT: So you're saying the difference is that
22 this requires - that (a)(1) does not require any
23 treatment, but moderate bodily injury requires
24 treatment.

25 MR. YOUNG: Or some evidence that treatment was

1 applied in such a fashion that satisfies that
2 definition. There's just nothing there on that, Your
3 Honor. We just don't have any of that stuff. And I
4 know the Court is struggling with this because none of
5 us in this courtroom wrote that statute and it has
6 caused, and I'll say it on the record, it has caused all
7 kinds of issues like this and we're stuck with these
8 manipulations of trying to figure out what we're talking
9 about, but unfortunately that's the way it is.

10 MR. CASTO: Your Honor, we would put fourth that out
11 of an abundance of caution we would request they both be
12 charged out of fairness. They don't get to take
13 advantage of the fact that I believe the testimony was
14 that she just didn't follow up or get treatment so the
15 state doesn't get to charge only the higher offenses
16 just because she didn't get treatment. I just think out
17 of fairness they should both be considered out of an
18 abundance of caution. I think to not include assault
19 and battery second potentially would open us up to some
20 type of error is my concern.

21 THE COURT: It's highly possible it can, but the
22 statute the way it is written says means physical injury
23 requiring treatment and I have to go by what is in the
24 record and there is absolutely nothing in the record
25 that says that the injury required - that she had some

1 injury that required treatment to an organ system of the
2 body other than the skin, muscles, and connective
3 tissues of the body and requiring any surgical repair
4 and I think, I mean, I think you pointed it out
5 yesterday that she, and I guess minimizing her injuries,
6 that she did basically -- I understand exactly what you
7 are arguing. It's just that the statute does not
8 support the argument and for that reason I will not
9 charge the assault and battery second.

10 MR. CASTO: Your Honor?

11 THE COURT: Was there any testimony from EMS?
12 That's what I have been asking you to present. Was
13 there any testimony from EMS as to them having to do
14 anything to treat her?

15 MR. CASTO: I believe that there was also a cut on
16 her hand which is a member of the skin.

17 THE COURT: It says other than the skin. It says to
18 the organ, any treatment to an organ system other than
19 the skin, the muscles, and connective tissues of the
20 body. Was there any testimony regarding -- I'm trying
21 to recall if there was any testimony regarding him
22 having to treat an organ system of the body? The only
23 time the skin and the muscles apply is if there has to
24 be surgical repair of a complex nature and it requires
25 anesthesia.

1 MR. YOUNG: Your Honor, if I could, my recollection
2 is not necessarily the greatest, but there was a
3 significant amount of difficulty on my part trying to
4 obtain an opinion from this guy as to whether she was
5 seriously injured and I couldn't even get that in
6 through the EMS guy. So, Your Honor, I'm just going to
7 point out the defense would like to have it both ways
8 here. I don't have that much evidence about her
9 injuries here other than what's apparent in the pictures
10 and what is demonstrated by his client demonstrating he
11 was trying to use a block to hit her with. That's what
12 we have.

13 THE COURT: So where does the great bodily injury
14 come in?

15 MR. YOUNG: The great bodily comes in because it's
16 from the circumstances and her testimony saying that he
17 used that to knock her out. He used that block to knock
18 her out and then when she's defenseless, he's beating
19 the side of her head and the police actually saw that.
20 That is an offer or attempt.

21 THE COURT: There is substantial risk of death.

22 MR. YOUNG: Yes. Could have occurred.

23 MR. CASTO: But --

24 MR. YOUNG: Or great bodily injury.

25 THE COURT: All right. I'll charge ABHAN, assault

1 and battery first degree and we'll see. All right.

2 MR. CASTO: If I could just as far as just to place
3 this on the record just to flesh it out, I'm not
4 quibbling with you, but basically, Your Honor, the
5 testimony - I think the Court's rationale for not
6 charging it and that requires some type of repair, but
7 there's no evidence that she got it repaired, I think
8 it's improper for the state to take advantage of that
9 because, you know, I have some friends that have torn
10 their ACL, okay, in their knee or what have you and
11 basically they can't walk. Well, that needs repair and
12 their surgery date is booked, you know, far in advance.
13 Well, they haven't got it yet, but it needs repair. She
14 said --

15 MR. YOUNG: Your Honor, I'm going to object to the
16 continuous nature of argument by defense. The Court has
17 ruled.

18 THE COURT: Yes. You just need to put your
19 objection on the record.

20 MR YOUNG: Yes. He can put his objection on the
21 record and then we need to move forward. We do have a
22 jury waiting.

23 THE COURT: Yes. Just put your objection on the
24 record.

25 MR. CASTO: That's what I was doing.

1 THE COURT: I mean, I have already ruled on it.

2 MR. CASTO: Yes, ma'am. And as I was saying and
3 that's the only thing that we would offer to the Court.
4 We feel that in all fairness because it takes that
5 choice, a realistic option that we believe the jury has,
6 it takes it away from them and we would just flesh that
7 reason. We understand the Court's ruling and we
8 respectfully object.

9 THE COURT: All right. And just to note for the
10 record, in coming to the decision the Court considered
11 your argument regarding her not seeking - if she were
12 not to seek any treatment in this case, I believe the
13 testimony is she went to the hospital, EMS took her to
14 the hospital, but no treatment was required and that is
15 the reason for the - the reason for - it says requiring
16 treatment to an organ system. She was taken to the
17 hospital. She was seen at the hospital, and I think you
18 pointed out yesterday she was sent home with no follow
19 up treatment suggested or required by the medical folks
20 at the hospital or medical staff at the hospital.

21 All right. Any other objections? Self defense,
22 he's not objecting to that?

23 MR. CASTO: No, Your Honor.

24 THE COURT: Anything else we need to change in the
25 language? Anything else you have? And I'm going back

1 MR. YOUNG: I was going to, Your Honor. I didn't
2 want to leave the courtroom until the Court was ready.
3 Are we done with instructions and the verdict form?

4 THE COURT: Yes, we are.

5 MR. YOUNG: Thank you, Your Honor.

6 THE COURT: We are in recess for a brief minute
7 then. Just for a second.

8 MR. YOUNG: I'll be right back.

9 (Brief recess.)

10 THE COURT: Back on the record. Let's bring the
11 jury in.

12 (The jury returns to the courtroom.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I guess I was off again on my time. But we have
15 been out here working hard trying to get the jury charge
16 prepared for you all so that things will move right
17 along from this point on. So good morning. At this
18 time we're ready for closing arguments. You will first
19 hear from Mr. Casto on behalf of Mr. Boyd, and then you
20 will hear from Mr. Young on behalf of the state. All
21 right, Mr. Casto.

22 MR. CASTO: Thank you, Your Honor. May it please
23 the Court.

24 On the night of September 15th, 2013, the early
25 morning hours of that evening we agree that there was

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1 fight and we agree that it was horrible and it never
2 should have happened. On that point we agree. And we
3 also agree that Johnny and Latoya were both injured that
4 night. And so again we agree with that aspect as well.

5 So if we're both in agreement, the only question in
6 this case, the question in this case is, is Johnny a
7 murderer that was merely unsuccessful that night? Is he
8 a murderer that was merely unsuccessful that night? And
9 the answer as fleshed out in the facts of this case is
10 no.

11 When we look at the allegations, reasonable doubt is
12 present and you will hear that we have some choices and
13 reasonable doubt exists for each one. Reasonable doubt,
14 legal definition that we have here in South Carolina is
15 it's the type of doubt that would cause a reasonable or
16 ordinary person to do what? To pause or to hesitate
17 before they act. Cause a reasonable or ordinary person
18 to pause or to hesitate before they act. And taking a
19 step back, you know what? What could it also look like?
20 This question. This reoccurring question. Do you have
21 a doubt and do you have a reason for that doubt? Do you
22 have a doubt and do you have a reason for that doubt?

23 With the offense of attempted murder what that
24 person intended to do is everything. Intent and the
25 offenses alleged is everything. And we could get all

1 caught up in some fancy definition of intent, but really
2 when we take a step back again what we say really intent
3 is what someone tried to do on purpose. Intent means
4 just what it sounds like. What someone tried to do on
5 purpose.

6 So let's insert that when we look right over there
7 and we look at Johnny. The specific question did Johnny
8 intend or try to murder Latoya that night? And we look
9 at Johnny's intent that evening and we don't look
10 anywhere else. Not what anyone at all thought was going
11 to happen. The question where we look is his intent
12 that evening as we go through the facts of the case.

13 Stated another way the same concept and idea the
14 law commands you, the law commands you to look only at
15 Johnny to see just what his intent was that night and
16 when we consider the facts of the case, it is as
17 follows. We see numerous opportunities throughout that
18 night or opportunities or chances that Johnny had
19 available to him to murder Latoya. These opportunities
20 or chances that Johnny had to murder are ones that he
21 had, but he did not take them because Johnny is not some
22 murderer that was just merely unsuccessful that night.

23 What do I mean? Specifically what do I mean when
24 we apply that analysis to the facts of this case?
25 Johnny comes over to Latoya's house with her. There is

1 no testimony of Johnny being violent on the way over
2 there or when Patrick drops both him and Latoya off.
3 There is no testimony whatsoever of him having any
4 weapons or anything dangerous on him at that time. No
5 testimony whatsoever and so he doesn't have some type of
6 plan or scheme that he's thought up.

7 And do you know why I bring that up? It seems
8 obvious. The Judge is going to instruct you on malice.
9 And examples of malice include lying in wait, planning,
10 preparing, and we don't have any. We don't have any of
11 that here in this case.

12 Johnny and Latoya go inside the house and then we
13 have this verbal argument. It is, you know, accusations
14 with regard to Latoya that she has been sleeping around
15 or cheating on Johnny and to be fair it does become
16 heated and unfortunately all of the fighting, everything
17 that goes, that springs from that argument, everything
18 that follows, the myriad of things that follow after
19 that flows from that argument. Flows from that.
20 Something that never should have happened, and we agree
21 with that. It was childish and foolish, but Johnny is
22 no murderer that was merely unsuccessful.

23 And when they go inside, we don't see any of that
24 malice, that plan, that scheme to kill or lying in wait.
25 He's got her right where he wants her, anything with

1 regard to that evening. And remember how the fight
2 starts and this pushing motion. We asked Latoya did I
3 get it right when I do that? She says yes. And there
4 is nothing in Johnny's hands at all at that point and
5 it's in that second in our story and what happened in
6 the world of this one trial Latoya grabs her box cutter
7 and she based on what she told us from the witness stand
8 is the first person to grab a deadly weapon that night.
9 Not Johnny.

10 Is Johnny a murderer that is unsuccessful? No, he
11 is not. Does that give you doubt about what Johnny's
12 intent was that night? And is it a doubt for which you
13 can give a reason? Well, that's reasonable doubt. We
14 get into those injuries and you will have all of this
15 back there. I'm not going to wave them around.

16 Johnny stood on these stairs and he told you how he
17 ended up that night and this photo is not a murderer who
18 was merely unsuccessful that night. Johnny stood there
19 and, you know, we got Johnny to walk us through. You
20 know, Johnny, where did the blade, where did it strike
21 you? Where did you get cut? Now, Johnny is soft
22 spoken. He basically points to his face. Is that scar,
23 Johnny, is that from all this? It is. Did you get
24 stitches, Johnny? I did. The top of my head. I got
25 them on my neck. This cut was so bad on his face that

1 as the EMS paramedic testified that you could see inside
2 his mouth. His neck was so bad we've heard, and not to
3 be graphic, but we have heard countless, you know, I
4 guess, observations with regard to how much that was
5 bleeding. Some described it as squirting and that was
6 the most severe injury. And we also have the account
7 that the EMS provider could look inside and see the wind
8 pipe. He could see muscles and see other arteries,
9 things of that nature. That's how serious that was.

10 We have his chest and we also have this huge gash on
11 his abdomen. Was there a risk that he could have bled
12 out if he didn't get treatment? Absolutely. And that's
13 exactly what the EMS provider that dealt solely with him
14 that was there the whole time and only those two. He
15 didn't work on Latoya. We're not down playing anything
16 that happened, but when we look at him, that's what he
17 was there and that's what he testifies to and that's
18 what he saw and it was in front of him and it was in
19 front of him for so long he said about 30 minutes.

20 How long were you with him? Well, I was there on
21 scene until the last touch I had was I was loading him
22 into the helicopter. That's what he saw. And that's
23 what happened. This is worth a thousand words, but we
24 brought it to life when Johnny speaks with us.

25 And in the same breathe I want to be honest with you

1 we know that Latoya was injured as well. The state's
2 going to, you know, show this during their closing
3 almost as much as they have showed these pictures
4 throughout the entire case. We agree. But the question
5 before us is how significant is Johnny's just from
6 looking and hearing the testimony, we hear exactly how
7 significant his injuries were. Revisit that
8 momentarily.

9 The things that Johnny does after he's slashed and
10 cut to shreds by the box cutter, all of it flows, all of
11 it flows from that blade just grinding across his skin
12 over and over. All of it flows from that. Where do we
13 get the insertion of the blade in our formula? From
14 this (indicating.) I'm not saying it's okay. It's not,
15 right? But the next step, seriously, is to cut someone
16 up with a box cutter?

17 What is justice? What is fairness? And we would
18 ask you to consider that because we try to get it right
19 every single day within the four walls of this
20 courthouse. Is Johnny a murderer that was merely
21 unsuccessful that night? And the answer is no.

22 Latoya tells us at that moment that he doesn't have
23 anything in his hands. He doesn't run into the kitchen
24 and get himself a knife or a sharp object. That's what
25 she tells us about what happened. Johnny doesn't take

1 that opportunity as well. We see that his intent falls
2 short of him being a murderer that is just not
3 successful. The fighting continues and it goes down the
4 hall and it's evidenced by the blood on the floor. That
5 much we agree with. The couple is still tussling and
6 the interesting thing about tussling is it's a word that
7 both Johnny and Latoya use on the stand to describe what
8 happened. Tussling. Struggling. Tussling. They both
9 use that.

10 We go to that moment where Latoya says her arms are
11 up. Johnny is holding them up probably to keep from
12 getting cut again. The damage has been done. And she
13 says that he says he feels like he's going to pass out.
14 What does he do next? He falls to the floor. She is
15 able to walk away and in that instance the fighting has
16 stopped. The fighting has stopped. Johnny falls to the
17 floor and there is a break in the action. And what if
18 Johnny had died in that moment? Who would be around to
19 tell his story? He didn't die.

20 Is it justice that he's on trial because he didn't
21 die? Who would be -- We might well be sitting on
22 different sides of the courtroom. In that instance the
23 fighting stops and Latoya walks away from Johnny. She
24 walks out of the room. She walks out of the house and
25 during this time again there is no fighting. Johnny

1 eventually comes to and he wakes up and he gets to his
2 feet and he walks out of the room and he goes outside.

3 And what does he do? Before he leaves and he goes
4 out the door, does he then go grab a weapon, anything
5 sharp, any other object, anything like that? No. No.
6 That's another missed opportunity there that speaks
7 volumes about his intent that night. He is not a
8 murderer that is merely unsuccessful.

9 The blood on the stairs is evidence of how long he
10 stayed there and also this is where he encounters
11 Patrick and that's where he finds Johnny sitting there
12 as well holding his child for a few minutes we believe
13 the testimony was. This type of time out as it were to
14 use that term, this type of pause or break where Johnny
15 is just sitting there speaks volumes and expounds and
16 expands upon the intent that he did not have the intent
17 to murder Latoya that night. He is not a murderer that
18 is merely unsuccessful.

19 Do you have a doubt about what his intent was? Do
20 you have a reason for that doubt? He has already missed
21 several opportunities at this point. Johnny tells us he
22 sees Latoya again at some point walking around the back
23 of the home towards the shed. What's Johnny say about
24 that? Fearing what she might have inside, he tries to
25 prevent her from going in the shed and he sits up there

1 and he says I admit I threw some things. Not everything
2 that they say was thrown, but I did and I was
3 unsuccessful at keeping her from going into the shed.

4 What's Johnny know about what's going on at this
5 stage and the timeline in the life of our story? Well,
6 he knows this. He's already bleeding profusely. He's
7 already been slashed up at this part in our story. Is
8 it fair, is it reasonable for him to consider her going
9 out to the shed to get something else? Remember, if we
10 didn't have that fact, it would be kind of strange. But
11 not only do we have that fact, she's proved her point
12 all over Johnny's face and body. He's trying to prevent
13 that from happening again.

14 He throws a piece of concrete at her to keep her
15 from going inside. He acknowledges that and he knows
16 all kinds of things are stored in the shed. Latoya even
17 testified there is just a myriad of just miscellaneous
18 things inside. And as Johnny told you about his side of
19 things there is more fighting that goes on in the shed.
20 He even says there is more hits by him going on in the
21 shed. But as Johnny and Latoya both tell us, Johnny
22 doesn't pick up those numerous objects or anything
23 involved in the shed. Neither does she. And this last
24 scene, this last part moments before law enforcement
25 show up is yet another opportunity for Johnny to grab

1 one of the objects in the shed to try to murder Latoya.

2 He is not a murderer that was merely unsuccessful
3 that night. He is somebody just trying to put one foot
4 in front of the other and keep from getting killed
5 himself and he almost was killed.

6 Reasonable doubt about his intent to murder Latoya
7 that night. Do you have a doubt about his intent to
8 murder Latoya that night and do you have a reason for
9 that doubt? Let's consider the statements Johnny versus
10 Latoya and what was said in the testimony. Johnny's
11 statements include something to the effect I think I'm
12 going to pass out. Who does he say that to? Latoya.
13 And that's what she told us where that occurred in that
14 bedroom. And what else does Johnny say to the - well,
15 to Patrick? He needs to go to the hospital. What else
16 did he say to Patrick? He thinks he's going to die.

17 And the next question is, do you have a doubt about
18 Latoya's ability to give us the full and complete story
19 about what happened that night and do you have a reason
20 for that doubt? What does she say? Some of this was on
21 the stand and I believe that you caught it. Latoya is
22 asked on direct by the state that she was sitting at the
23 computer stand and she said doing some stuff. She
24 doesn't tell us what she was doing until later when we
25 flesh that out. And what is she doing? She's rolling

1 up marijuana, okay? We didn't know that fact until we
2 asked about it. Why not? Because it makes Latoya look
3 bad. That's why she didn't volunteer that. Do you have
4 a doubt about her ability to tell a full picture of what
5 happened? Do you have a reason for that doubt?

6 When asked about having a box cutter in her purse,
7 she didn't seem to want to discuss that. You can, you
8 know, look at her response to me. Her body language.
9 This is all fair game when you consider a witness'
10 credibility and specifically her credibility to give us
11 a fair and complete picture of everything that happened
12 that night.

13 The reason she didn't want to talk about that is
14 because it makes her look bad and at no time does she
15 give us anything that seems to indicate that she is just
16 out there cutting boxes with that. That was her
17 statement. Do you have a doubt about whether she's used
18 the box cutter towards Johnny before? When we asked her
19 that, she said she's used the box cutter on him again so
20 now he's on ultra high notice. It's happened before and
21 it happened this time and this time it was very, very
22 severe. Did she volunteer that information? That right
23 there? Did she come right out and say that on direct?
24 No. That was in response to when we asked the tough
25 questions, when we asked her. She has.

1 This incident that we're here to speak to at trial
2 is not the first time this has happened with her? Why
3 didn't she want to talk about that? Because it makes
4 her look bad. She also says Johnny was drunk that
5 evening. What did that paramedic that I've already
6 mentioned, what did he say? Well, I was with him from
7 the time I arrived on scene until the time I put him in
8 the helicopter. What did he say? He's working on -- He
9 says he's working on Johnny's lungs. There's blood in
10 his airway. He's with him for 30 minutes and that is
11 his sole job is to sit there and to take care just of
12 Johnny. He didn't do anything else but treat Johnny.
13 He's there. Did you smell alcohol? No. No, I didn't.
14 All I smelled was blood.

15 You see why Latoya volunteered that? So it would
16 make herself look better in this story. If you're going
17 to be dishonest about the small stuff, you're going to
18 be dishonest about the big stuff. I asked her about
19 being the first aggressor towards Johnny prior to this
20 incident. She says no. Then there is another witness
21 that we brought to court that has seen her be the first
22 aggressor in three separate times. Every single one
23 predated this incident. Does she tell us about that on
24 direct? You know, if I just sat there and didn't ask
25 any questions, would we have a full picture of what's

1 going on? And the answer is no. No, we wouldn't. And
2 the reason she didn't say that is because it makes her
3 look bad.

4 The pattern continues on that 911 tape. When asked
5 if she has any weapons, her response isn't a yes or no.
6 It's it was self defense. It was self defense. It was
7 self defense. And when she calls, Johnny has already
8 been cut. The damage to him is blatantly obvious on
9 that white shirt that he's wearing. She's got some
10 explaining to do. The damage has been done and she
11 knows that. She didn't come out and answer because it
12 makes her look bad.

13 Yes, we hear that tape and yes, you will hear that
14 tape back there, but there is only one person narrating
15 what is actually happening and that's Latoya. Do you
16 have a doubt about whether she can tell a full and
17 complete picture about everything that happened that
18 night? Do you have a reason for that doubt? Remember,
19 she's the one that can tell her story that night. Her
20 side. Not Johnny. There's the paramedic who said that
21 worked on her, Mr. Seibert, what did he say about her?
22 He said that she was alert, conscious, and she was
23 oriented. She was able to have a conversation with
24 both, as they testified, the paramedic and law
25 enforcement. Could Johnny tell his story that night?

1 No. Johnny is described as incoherent and he's acting
2 irrationally. He's described as losing consciousness.
3 In fact, he does and is falling down. Could he tell his
4 story that night? No. The only story, the first shot
5 across the bow as far as what happened comes from
6 Latoya.

7 If the state's case is so strong, why do we hear
8 about this flower pot? Did you think about that? Why
9 do we hear so much about this flower pot? Remember the
10 state got up here, stood there, Latoya sitting up there.
11 There's a bunch of questions about it and we never
12 actually get to see it taken out of the bag. Was it
13 heavy? Yes, it was heavy. It was, you know, it was
14 big. It had blood on it and it was moved. Well, let me
15 stop there. It had blood on it just like everything
16 else. Just like everything else. Johnny even said, he
17 didn't have to testify. That picture speaks for itself.
18 Chest, hands, arms, lots of objects had blood on them.
19 That doesn't mean that Johnny threw it, that particular
20 thing. And, in fact, you know what? You know why I
21 bring this up is not to provide a moment of humor or
22 levity to some very serious situation. The state
23 quizzed Johnny all about it, accusing him of using this
24 flower pot. When it came time to ask Latoya about it,
25 he used that on you? And she tells us that she doesn't

1 remember that being used in the incident.

2 If the state's case is so strong, why did he spend
3 so much time on that, when she even said -- And she
4 testified before Johnny. You see? If the state's case
5 -- It shows that they are not happy with the facts of
6 their case. If the state's case is so strong, why do we
7 hear so much about all these pictures? The pictures
8 that are taken, they aren't going to change themselves.
9 Remember how we used the picture? We showed it once and
10 they're in evidence. You have them back there. Well,
11 for every witness that took the stand, these pictures,
12 these pictures, these pictures, these pictures. And
13 what is that? That's an attempt by the state to wash
14 the same facts. The same exact ones over you and over
15 you and over you and over you again to see if you will
16 bite on that. They're not happy with the facts of their
17 case and so that's why they're washing this over you
18 again and again.

19 To be totally honest and just so you can hear me say
20 it, well, there was a fight that night. Just hearing me
21 say it, both people were injured. Both people. Things
22 inside the home? Things inside the home were torn up
23 and we have pictures of that. But we agree with that,
24 so that's not our question. Does this act arise to the
25 level of murder? Is Johnny an unsuccessful murderer?

1 No, he is not. Look directly at the injuries
2 themselves. Johnny lost that night.

3 The other issue is the state is jumping on Johnny's
4 memory of how much he had to drink that night. And, you
5 know, well, Johnny, you remember that, don't you? You
6 remember how much you had, but everything else, you
7 know, from after you going outside and going in the
8 shed, you don't remember that? Remember what the
9 testimony was. Was Johnny cut at the party? No, he was
10 not. You see, it's only after he goes to Latoya's house
11 and he's horribly injured by her that he doesn't
12 remember certain things.

13 Remember that whole scene in the bedroom? Is it a
14 big deal as to whether they're in the bedroom or not?
15 No. His blood is on the floor. He's telling you the
16 truth. He doesn't remember. You know what he does in
17 there and the state's own star witness said, what's he
18 doing in there? He passes out. He's telling you the
19 truth. He agrees with ownership of punching her, but it
20 does not rise to the level of the offense he's charged
21 with.

22 The things outside that, you know, the state is
23 going to say that there's selective memory going on,
24 well, he passed out there several times as well and both
25 law enforcement and the paramedics said that and

1 especially him falling down. It shows the state is just
2 not happy with the facts of their own case. Their case
3 really is could of, would of, should of. They're going
4 to come up here and tell you that Johnny is a murderer,
5 he just wasn't successful that night, and that's not the
6 case. And look at these injuries and look at these
7 injuries and look at these injuries.

8 And here's the crux. Here's the heart of the issue.
9 The burden of proof is on the state and only the state.
10 You cannot, you cannot fill in the gaps that they didn't
11 prove to meet the elements of the offenses charged. You
12 cannot take a leap of faith. We only have these
13 pictures. There was no testimony by who treated her at
14 the hospital. There is no testimony of broken bones, of
15 fractures, of horrible cuts to her, results of x-rays.
16 She talks about her vision. Admittedly we all heard
17 that in a moment of total honesty, but she never sought
18 treatment for it. She never did. And this happened in
19 September of last year. The word concussion in this
20 case was never mentioned.

21 Remember, the burden of proof is only on one party
22 and it's them and because they haven't brought to court
23 any evidence of what in the world happened and the
24 extent, all they can say is, yeah, it looked bad.
25 Here's pictures of it. That's as far as we get. To

1 jump any further, to jump any further the law does not
2 allow you to do so. And the law, in fact, to say it
3 stronger the law commands you that you are not allowed
4 to fill in the gaps of what the state has not shown you
5 and brought to court. That's on them.

6 Johnny is not a murderer that's unsuccessful that
7 night. You can see his intent and the opportunities
8 that he did not take. There is no testimony as to how
9 serious these injuries are whatsoever. The state has
10 not met their burden.

11 So do you have a doubt about the elements of the
12 offense that's charged? Do you have a reason for that
13 doubt? Do you have a doubt about what Johnny's intent
14 was that night? Do you have a reason for that doubt?
15 And do you have a reason, or do you have a reason that
16 you can give for that? Do you have a doubt about
17 Latoya's ability to present a full picture of what all
18 happened that night and do you have a reason for that
19 doubt?

20 Lastly, as I said at the beginning of the trial, I
21 stood right here and said this and I'll say it briefly
22 again and then I'll sit down and I'll shut up. It's not
23 some random act that you are each called and selected
24 and chosen with purpose. And the purpose is this: It's
25 to provide Johnny a fair trial. That's what we try to

1 do everyday in here and not to get sidetracked on
2 emotion or sympathy and jump to conclusions that the law
3 doesn't permit us to jump to. That's why you sit up
4 there and that's why you didn't remain out there. It's
5 difficult, but you must look only at the evidence that
6 was presented in this case to see if it fits, the law in
7 this case, and you cannot look anywhere else.

8 Lastly, the Judge is going to say if you think he's
9 not guilty, say so. If you think he's guilty, say so.
10 Well, the final to flesh that out a little bit, hundreds
11 of years ago we had stories of knights and heroes,
12 monsters and people that would go and fight wild beasts
13 and things that people didn't know about. And the
14 legend of King Arthur and Camelot. And one thought, one
15 thought that came out of all of that is this concept of
16 King Arthur and his Knights of the Round Table. And
17 really what it was was the idea that you sit around a
18 round table and each person that sat around it had the
19 same amount of power including the king. Each person's
20 say was equal to everyone else's.

21 If you have that doubt and you have a reason for
22 that doubt, don't let anyone else steal it from you.
23 Remember what reasonable doubt looks like. And you're
24 not going to hear it again until the Judge gives you
25 this instruction. Reasonable doubt, and it's in there,

1 is the type of doubt that would cause a reasonable
2 person to pause or to hesitate before you act. If you
3 feel the slightest pause or hesitation before you act
4 whatsoever, that's what reasonable doubt looks like.
5 Don't take it from me. Take it from the Court.
6 Reasonable doubt exists in this case, and in this
7 particular trial we would ask you to find that Johnny is
8 not guilty. And thank you all very much for listening
9 to me.

10 THE COURT: Thank you, Mr. Casto. At this time the
11 state will have its closing statement. Yes, sir.

12 MR. YOUNG: Thank you, Your Honor. I appreciate the
13 Court. And I do not know since the amount of time has
14 expired, the jury may at this point feel that they need
15 a break. I don't know if they do or not. I'm happy to
16 proceed at this time.

17 THE COURT: We're going to keep going. They were
18 back in the jury room for some time.

19 MR. YOUNG: That's fine. Thank you, Your Honor.

20 Ladies and gentlemen, while I get settled here, I'm
21 going to just start talking about generics.

22 First off, thank you for the attention you've paid.
23 It's been quite clear, I think, to everyone in the
24 courtroom that you have fulfilled your obligation quite
25 well and paid close attention to every bit of the

1 testimony from both sides. Nothing much more can be
2 asked of a jury than to just do that part especially up
3 to this point because in a few moments you're going to
4 have to go back there and deliberate and do that thing
5 called return a verdict and that's the most important
6 part of the case to both sides. So your attention up to
7 this point and what you have done is greatly appreciated
8 I'm sure by both sides and the Court.

9 While I move this thing over here, bear with me.
10 But the second thing I want to ask or to mention is that
11 doing the work we do in the courtroom, taking so much
12 time, sometimes peoples' recall of what happened
13 earlier, sometimes it slips a little bit. Sometimes it
14 doesn't. So the closer you pay attention, the better it
15 is and so I don't think your recall is going to be that
16 bad. But something I want to emphasize about everything
17 that I say and everything that Mr. Casto says, we are
18 not a source of evidence. I mentioned that to you in my
19 opening statement. We don't present evidence from our
20 mouths. We argue from our mouths as lawyers. The
21 evidence comes from the answers on that witness stand
22 and whatever physical evidence is brought in here,
23 pictures and stuff. That's the evidence. So to the
24 extent I say something that doesn't match what you
25 recall, disregard it. My hope here is to simply recall

1 for what I can use as my memory what I seem to recall
2 the evidence to be to emphasize the state's case to you.

3 Mr. Casto's opportunities here have been expressed
4 and he has said everything he wanted to say about the
5 defense case. The state's turn comes now.

6 The evidence in this case is primarily from one
7 witness, one witness, the witness of Latoya Abney. The
8 witness of Latoya Abney. What she says. I'm going to
9 disagree with Mr. Casto's characterization of her
10 holding back and not telling you stuff. She actually
11 mentioned to you that she used that knife before on
12 Johnny. She actual mentioned in detail all her
13 convictions. She told you all of that. A lot of that
14 stuff by law didn't have to be brought in. She told you
15 every bit of it.

16 And he wanted to characterize her sitting at that
17 table just for a moment, I want to start with this
18 because I want you to think about the credibility issue
19 because I'm going to mention about his credibility in a
20 minute, Mr. Boyd's credibility. She said she sat there
21 and was rolling a blunt. And I don't know who it -- We
22 asked about that, but she was on direct examination when
23 she said she was doing a blunt. She brought it out
24 immediately. She didn't hold it back. Didn't hold back
25 at all. So as we go forward with this, I want you to

1 keep that in mind as to credibility of witnesses.

2 And I'll go back to Mr. Boyd in a minute. I'm doing
3 this briefly so I can give you some generic ideas. This
4 man is not charged with murder. Murder is the killing
5 of a person with malice of forethought either expressed
6 or implied. And I'm not the source of law here, folks.
7 That's pretty much what the Judge is going to tell you.
8 The Judge is the only source of law in this courtroom.
9 I'm not. And I'm not going to make bones about it. But
10 that's what pretty much the definition is. So when you
11 hear that, for the moment, folks, just keep in mind he
12 ain't charged with that. That's not what we're here to
13 decide. We're here to decide this, 16.329. That's the
14 statute. Attempted murder.

15 A person with intent to kill basically who attempts
16 to kill another person has a specific intent to kill a
17 person, attempts to kill another person with malice of
18 forethought either expressed or implied. This is an
19 attempt to kill case. It's where someone has something
20 what we call an overt act. Does something more than
21 just stand back and say I'm thinking about it. So you
22 have kind of got to decide whether -- And maybe he's
23 right about one thing -- he was successful or not, but
24 the question was not whether he was successful or not.
25 The question is did he have the intent to be successful.

1 And at this point we strongly disagree.

2 Malice is something that we talk about in the law
3 because it is associated with what's in a person's heart
4 and mind. It's the wrongful intent to do something, to
5 injure. It comes from a depraved spirit intent on
6 wrongdoing. You find it in a heart devoid of social
7 duty. You find it with someone who is totally bent on
8 mischief. That's malice (indicating.) And that's Ms.
9 Abney (indicating.)

10 When you say a forethought, that's timing. That's a
11 timing issue. When was the attempt conceived to kill.
12 You look for this. Where was it? When was it? It's
13 associated with something called willful deliberation
14 and planning. It's a conscience consideration of the
15 matter preceding the act. It happens before. There is
16 no specific time required. You can be as angry as you
17 can be, but as long as you've got time enough to think
18 about it and have some reflection, what follows if it's
19 murder is murder.

20 It wasn't murder in this case. The question is did
21 he have it in his mind and in his heart? Is that what
22 was going on in his head? Is that what he was trying to
23 do?

24 Now, you can find it in lots of different things.
25 You can find this intent in lots of different things.

1 In the evidence. You can talk about the evidence back
2 in that jury room and you should. That's what you're
3 supposed to do. But I'm going to point out some things
4 that are evidence in this case that came from this
5 witness stand that are present in this courtroom. The
6 only reason we offered this urn, this flower pot is for
7 one reason. That son of a gun is heavy. Where was it
8 located? Front porch. Where was he sitting? He says
9 he was sitting on the front porch. Where was it found?
10 By that car. And the pictures are there. I'm just
11 going to point this out to you. You know, the pictures
12 are there and I'm going to stand up here and leave all
13 these pictures here. The picture of that flower pot is
14 there by that car parked by the side of the house, the
15 same place it was when the event occurred. And there's
16 pictures of the car that night and there's blood around
17 that car and there's dents on that car.

18 Who put them there? Johnny Boyd. One of the
19 officers said that kind of matches the patterns of the
20 indentation on the side of the car. And where was it
21 found? By the car. Now, that's one thing to think
22 about because he was at the front of the house sitting
23 on the porch and he took it back there to the car. Was
24 he taking it back there to show her a flower pot and
25 plant some flowers? I want you to place that thought

1 into context when I play the tape in a minute. Because
2 Mr. Casto mentioned something important in his argument.
3 Pauses. Pauses. A lot of them when she was on the
4 ground.

5 I ask you and I submit to you, ladies and gentlemen,
6 that there are times when you listen to that tape that
7 you're going to hear breathing (indicating.) There are
8 times when you're going to have to ask yourself the
9 question where is she? There are times on that tape
10 where you start looking and asking yourselves questions
11 about what happened.

12 That picture right there, State's Exhibit number
13 B20, I am going to wave this one. You see the left side
14 of her body there? Do you see the area on her body
15 where her black clothing is now coated in something
16 else? She testified that was dirt from the ground.
17 That's evidence. That's evidence that says she was on
18 the ground. That's evidence that says she was on the
19 ground. Why was she on the ground?

20 Mind you, Johnny Boyd didn't say he threw anything
21 of this size. Mind you, Johnny Boyd didn't admit that
22 he hit her with this. Mind you, he said he didn't do
23 that. There's blood on that. He picked that up. He
24 picked that up. Where did he get that from? Had to
25 make another trip to get that because that was up by the

1 basketball goal in the front of the house. He says
2 that's where it came from.

3 Where did that come from, the thing on her arm?
4 There's a picture over here and you can look at it
5 yourself and see. I'll bring it over here. There's a
6 picture of a bicycle wheel right next to that block
7 right there. That bicycle wheel pattern is very, very
8 similar to this right here. She said she was hit with a
9 bicycle. Is that evidence? Yeah. It's in evidence.
10 It's for you to consider. I submit to you that supports
11 what she says. I submit to you that this supports that
12 she was hit on her head and knocked on the ground and
13 the dirt on her is from being knocked on the ground and
14 for a period of time knocked unconscious. I submit to
15 you that despite what Johnny Boyd says, a piece of
16 concrete like this applied in a fashion like this over
17 the head of someone could kill you or anyone else.

18 Oh, it wouldn't kill you Mr. Boyd says if you held
19 your hands up like that. Well, that's not the question.
20 She's defending herself. The question is what's in his
21 heart and mind? What's his conscious decision? What's
22 he thinking? Is that the process of willful planning
23 and deliberation? Did he go to and from to get items
24 for the purpose of killing her?

25 Now, folks, I'm not going to cut this any other way

1 and I'll tell you the truth about it. Had this whole
2 thing stopped at the point where she ran outside to call
3 the law, we might be talking charges on her. But that's
4 not what happened. Those aren't the facts. That's not
5 the law. We're here about the law. We're here about
6 justice. We're here about what happened that night.

7 They want to draw some equivalence between what
8 happened inside that house and what happened outside the
9 house. Was he cut? Yeah. He was cut badly. Think
10 about that for a moment. Law enforcement arrives and
11 he's in the process of delivering a hay maker to the
12 side of her head, okay? She's hidden in the shed trying
13 to stay away from him. He goes in there and he admits
14 he did this. That part we got clear. You can hear it
15 on the tape. How many times do you hear her hit? And
16 he says on the tape, he says, he says that he knows that
17 the law is coming. That's what he said on the stand.
18 He knew the law was coming. Did he stop hitting her?
19 Was he in the process of stopping or was he continuing
20 on? Well, I think you heard directly from the stand the
21 officers arrived here right at that location and he was
22 still whomping on her. Is that a man who sounds like
23 he's so injured that he can't deliver what he was doing?
24 He was doing it. There ain't no question.

25 He picked up that great big old 40 to 50 pound

1 flower pot. It's not evidence in terms of its physical
2 self, but the picture is. He picked that thing up to
3 come around there to kill her. What was happening? I
4 don't know exactly. I don't know. I don't know. He
5 got her on the ground good though. He came back to
6 finish her and she was gone. Maybe she was in the shed.
7 And he was having this on and off process. Do you
8 remember the officer saying when he got there he said he
9 would run around like a crazy man and very excited and
10 then collapse? That's because he's pumping out. Blood
11 bleeding out. He would lose enough oxygen in his system
12 and boom, down he'd go and then spring right back up.
13 Get it back for a while. And as soon as he moved around
14 some more it would squirt. So with a blood pressure
15 going up and down like that, is what the man was saying
16 was happening, it was going up and down, yeah, he was
17 losing consciousness here and there..

18 When did he first lose consciousness? Well, where
19 is the biggest pile of blood in the house? It's in that
20 bedroom. Gosh, sir, you just -- When I asked him about
21 that on the stand and I submit to you this is the
22 problem, it's a real problem for Mr. Boyd. Mr. Boyd has
23 a selective memory. The reason I asked the question
24 about the cup and what was in the cup, he was very
25 specific about that. Okay, so he did have a blood loss

1 problem and maybe his recall would be problematic later.
2 Maybe it would be. Okay. I can accept when you're out
3 of consciousness for a few minutes, you wouldn't be
4 there for a second or two. That's right. I agree with
5 that. But his complete total recall of that moment in
6 time. I asked him at one time about that bedroom and I
7 kind of bore in on it. I said, well, you're the only
8 one bleeding, right? Yep. That's where you were? Yep.
9 So don't you think you probably fell down in there? I
10 guess so.

11 Was your baby important to you? Yep. Real
12 important, right? Where did you pick your baby up? My
13 baby was in the living room. Okay. Well, but you don't
14 remember anything that happened in that bedroom? Nope.
15 Well, do you recall anything about Latoya having the
16 baby in her arms in the bedroom? She didn't have the
17 baby in her arms in the bedroom. Uh-oh. Slipped up.
18 Selective recall.

19 The story he gives is that he's sitting on the
20 porch. Patrick comes up, takes the baby and he sees her
21 going to the back of the yard or sees her from the side
22 going from side of the house going back to the shed and
23 he's worried that she's going to get another weapon and
24 come after him. So what does he do? Instead of making
25 the 911 call for himself and making the phone call on

1 the phone he's got in his pocket, he goes after her.
2 That's his version. He goes in there to make sure she
3 can't hurt him. So in order to make sure you don't get
4 yourself hurt some more, you go to the person that's
5 been hurting you? I ask you, does that make any sense
6 to you? Is that what you would do?

7 When the people arrived to treat him, he's in the
8 middle of the road. Why didn't he leave then? He was
9 in the middle of the road. EMS treated him in the
10 middle of the road. In fact, they had him in a peach
11 field. Do you remember that testimony about him being
12 in the peach field? He can walk. He can talk. He's
13 got a phone. Patrick, call 911. Oh, my God.

14 Now, maybe he wasn't thinking right or maybe he was
15 just too mad, angry and too upset about what had
16 happened to him. And yes, it did happen to him. No
17 question. He got cut. There's no arguing about that.
18 But what is he doing? What is he doing? He goes over
19 to that car because he needs to deal with her. He's got
20 to deal with her. She's done something bad to him.
21 This is not right. You cut me. I've got to get even.

22 Well, instead of the law dealing with what had
23 happened, he did. He deals with it. A concrete block
24 out in front of the house on top of holding down a
25 basketball goal. Goes and gets it. Picks it up with

1 his hands and he hits her in the head and she goes down.

2 I submit to you, ladies and gentlemen, what Latoya
3 Abney says is that she thought she hurt him real bad.
4 She had and she's trying to call. She's trying to call
5 to get help. Ma'am, I had to defend myself. I had to
6 defend myself. Do you need an ambulance? Finally she
7 says yes. About three times. She says yes. And
8 remember the testimony of Ms. Brenda Teague. Ms. Teague
9 was the 911 dispatcher. She started off, I think she
10 called from a cell phone. I said, well, ma'am, if the
11 call came from a cell phone, do you get the number of
12 the house off the cell phone? She says sometimes. Most
13 times not. Well, you do get it, though, if you call
14 from a land line, right? Yeah. It will be entered.
15 You listen to that tape. At no time does she say the
16 telephone. She tells them and gives them the address.
17 She doesn't give the address. Ms. Teague knows that
18 address because it came off that land line. Just like
19 she said she took the house phone. She had it with her.

20 She had that house phone when she was chased around
21 that car, hit in the head, fell on the ground, laying on
22 her side with all that stuff on her and you can see it,
23 and he at some time or another goes and gets that pot,
24 that big old flower pot right there, that one, 40 to 50
25 pounds worth of concrete. If that didn't do the job,

1 that would. Who knows. Passed out? Probably did.

2 Does he come up to her with the baby? He said he
3 didn't have the baby with him. Listen on that tape.
4 You can hear the baby on that type. I submit to you you
5 will hear the baby on the tape and his voice, too. Does
6 he say get your ass up? She's still on the ground.
7 That confirms she was on the ground. That's what she
8 says and he says. She hears it. I don't know if you
9 will be able to hear it or not. Maybe you can. Someone
10 approaching a phone from a distance is the last part as
11 he's coming up. I don't know. Maybe not. But the baby
12 is right there.

13 And later she gets up and she goes into that shed
14 and she turns off that light and she holds that door and
15 she says, please, God, please. You ask yourself after
16 you listen to that tape whether you believe or not the
17 person on the other end of that line is afraid. You ask
18 yourself whether she's in fear of what's going to happen
19 to her. You ask yourself if that's her saying he's
20 going to kill me.

21 Now, you can ask yourself that because that's from
22 the evidence. But it's more important as to what this
23 represents and that represents (indicating.) That big
24 urn and this piece of concrete block and the pauses and
25 where he had to go to get them. She was afraid for a

1 reason. She was afraid. She was afraid for a reason.
2 She says she didn't get hit with that. No. He didn't
3 hit her with that, but she thought he was going to kill
4 her. That's exactly what she thought.

5 Credibility is the last piece and I've kind of
6 covered most of this, but I want to touch on some more
7 thing with you and then I'll shut up and play the tape.
8 Who to believe about that part. That's what you've got
9 to do back there. You can believe part or all of the
10 testimony of one person or not. You can pick and choose
11 between what you hear and what you believe. Why?
12 Because you folks are the only persons in this courtroom
13 who get to make the decision about who to believe. I
14 don't. The Judge does not. The defense does not.
15 Nothing I say is evidence. You have to decide what the
16 evidence is and what to believe from the evidence. Who
17 to believe.

18 Folks, I'm going to characterize this and I think
19 it's fair based on what's been presented to the Court.
20 Some of what the defense is doing is trying to draw this
21 equivalence between the conduct between what she did and
22 what he did. Just look at it equivocally. You know,
23 it's pretty much the same thing. Just let her off. Or
24 let him off because of what she did. Well, that's not
25 what you are here to do. That's kind of like the Wizard

1 of Oz. It's kind of like when Toto runs up there and
2 they first get into the -- It's a great, great show.
3 They have this big curtain and I'm the great and
4 powerful Oz, and he keeps doing that. All the smoke
5 comes out and Toto runs over there and pulls back the
6 curtain and here is the Wizard and he's just a man using
7 a machine to kind of fool everybody. Pay no attention
8 to that man behind the curtain. That's what he says.
9 Pay no attention to that man behind the curtain, the guy
10 who's really doing what he's doing. Don't pay attention
11 to what you see. Don't pay any attention to what's
12 really going on. Just equivocate. Just make it
13 equivalent. She's just as guilty. She's just as bad.
14 This lady is real. She didn't hide anything. She
15 said she was smoking dope. She's got a record and she
16 knows it. Have I made a big deal out of his record?
17 No. It's not something for you to consider about
18 credibility though. You heard hers for credibility,
19 too. She's not afraid to tell you. But you know what?
20 That tape don't lie. That's the real deal because
21 there's two people on that and both of them have been in
22 front of you and that's what happened on that tape and
23 they want you to focus on everything that happens inside
24 the house. Oh, my gosh. It is bad. Pay no attention
25 to what happened outside. Don't pay attention to the

1 tape. I didn't hear one word about the tape in his
2 argument. Did you notice that?

3 The flower pot. I mentioned it to you. You come
4 and you go. You pause. You have to take time. You
5 come and go and get something that can kill somebody.
6 This can kill you. A 40 to 50 pound flower pot I submit
7 to you would kill you, too.

8 Inside the house she says I think I cut him. I
9 probably cut him in the living room by the computer
10 desk. He got after me and I jumped up and ran and ran
11 around inside the house. His hat is on the floor. He
12 don't know nothing about -- I'm sorry. I'm tearing up
13 the King's English. I can grammatically speak things
14 better, but I'm sorry, it just seems right to me. He
15 knows nothing about how his hat got on the floor really
16 and he knows nothing about that chair that's broken
17 sitting right there and lying right on the floor the one
18 with the missing leg, piece, component. The one that
19 was used to hit her in the back. Is there a picture of
20 her back that's got other damage to it? Yeah. Yeah.

21 Knows nothing about that fruit jar lying in the
22 middle of the floor of the living room. I said is that
23 a mason jar there? I don't know. She says it is.
24 That's a mason jar. He threw it at me. She says that
25 she did the cutting if there was some in defense of

1 trying to keep him away from her. She probably went
2 overboard and how much she knew about what she did and
3 how much she cut him may be in question at one point in
4 time or another, but she was cutting him. But when he
5 came after her, she started running and she ran around
6 and around and grabbed up the baby and went into the
7 bedroom and then he pins her up against the wall and
8 she's still got that knife in her hand, in her right
9 hand. She's left handed. Keep that in mind. She's got
10 that knife in her hand and he's coming at her with his
11 chest and at some point he starts to say I think I'm
12 going to faint. I think I'm going to lose - I - I -
13 boom, down he goes. Shoves him off. She says I'm
14 calling the law. I'm calling the law. That's what she
15 does in her mind because that's what she does:

16 She calls who first? She tries to call the police
17 once and then she turns around and calls Patrick.
18 Patrick come up here. I need help with the baby.
19 Thinking about the baby. Baby still in the house. On
20 the phone, fatigued, bam, bam, and that's where the tape
21 picks up. That's where the tape picks up.

22 Convenient lapses in the memory. Convenient lapses
23 in the memory of Johnny Boyd. The parts he should have
24 remembered, I just don't remember. Maybe he didn't
25 remember picking up that big flower pot. Maybe he

1 passed out right next to it after he transported it all
2 around the front of the house. Maybe he did. I don't
3 know. He didn't pass out when he picked up that big old
4 block though. The one in this bag. Because he knocked
5 her on the ground. He knocked her on the ground and
6 knocked her out. I submit to you he probably went and
7 got that flower pot right after that and he was coming
8 back to finish the job.

9 Instead she gets up and goes to the shed. She winds
10 up in the shed. She turns the lights out. Patrick
11 comes around at one point with the baby and says what's
12 going on? A few minutes later guess who turns up? The
13 nightmare. The one she's been trying to get away from
14 since she left the house, since she was chased around
15 inside the house because he collapsed in the house and
16 she went down a couple doors down, a couple houses down
17 to try to make a phone call to try to get the neighbors
18 for help not because of herself, but because Johnny was
19 cut real bad and she wanted to get an ambulance. She
20 was going to say I was defending myself. That's what
21 she's going to say. That's not what's before you.
22 What's before you is what happened after that. After
23 that. Because after that this is what happened.

24 (Playing CD of 911 call.)
25

1 MR. YOUNG: On the tape she says she got hit in the
2 head with a concrete block. On the tape you hear
3 Patrick in the background come to the door of the shed.
4 Very shortly after that guess who appears? Mr. Johnny
5 Boyd. I submit to you the credibility question has been
6 settled by that tape as to who is telling what version.
7 If Johnny set up on that set of steps for very long,
8 Mr. Boyd sat there whatever time it took for him to
9 catch his breath, regain consciousness, whatever, so he
10 could go get the next concrete block. But when he found
11 out she was in that shed, he came back. He showed up at
12 the side of the car with the baby in his arms.

13 Patrick didn't appear on the scene until the very
14 end despite what he says. It's not true. The evidence
15 doesn't support that conclusion. You decide how many
16 times he got licks in on her before the law enforcement
17 arrived there. And he said on this stand right here he
18 knew they were coming. He needed 911 help. He needed
19 to go to the doctor. He was so badly cut he just
20 couldn't handle it so he was just having a horrible
21 time. He walked to the peach field. He was found in
22 the middle of the road. He was up and down even after
23 law enforcement got there. That man had plenty of
24 strength in him.

25 Deputy Price said he had his arm all the way back up

1 and hit her side of the head and he saw that. So you
2 can translate that, if you would like to, as you
3 consider the facts as you hear them on that tape and how
4 many times she was hit then and ask yourself what was in
5 his heart and mind. He used a block. He tried to carry
6 a big flower pot. She got up off the ground though.
7 She got back into that shed and she was hiding and he
8 still came after her. He didn't get the job done.

9 So was he an unsuccessful murderer? Yes, he was.
10 Did he intend to kill her? Yes, he did. Law
11 enforcement got there just in time. She was begging
12 them, please, please. Batesburg/Leesville police
13 department was two tenths of a mile away. She knew
14 that. Please, just get them here. She had every reason
15 to think she was going to get killed. She was right.

16 Ladies and gentlemen, as I began this case I asked
17 for some consideration. Hearing all of the evidence,
18 and you have heard it all, you have heard our arguments,
19 you have heard everything that we have to offer from the
20 standpoint of the facts in this case. You have the
21 evidence before you now. You will go back to that room.
22 You will sit down there. You will talk about this. You
23 will do what your job is. And you are the only ones
24 that can do it. You're it.

25 It's Christmas almost. Maybe it's the wrong time of

1 the year to feel like you ought to be doing this. You
2 probably feel that way, but it doesn't matter. It's got
3 to be done. It's got to be done. You have got to
4 decide what happened. You have got to make the
5 decision. You have got to decide what is the truth?
6 What are the facts? Do the facts fit the law as given
7 to you by the Judge? And when you come out of there,
8 you're going to have to have in your hand a form called
9 a verdict form. Comes from the Latin word verdicto.
10 Let your verdict be the truth.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, it is close to lunch time. I'll let you all
13 decide. I have a jury charge here. It will probably
14 take about 20 minutes or maybe 20, 25 minutes. I can go
15 ahead and send you all to lunch and we can come back and
16 do the jury charge or I can give you the jury charge and
17 have you go back and have you go straight to
18 deliberations which ever works best for you. And I'm
19 asking that depending on how hungry you are. Do you
20 want to go ahead and get the jury charge and then take a
21 break?

22 FORELADY: Eat first.

23 THE COURT: You want to eat first?

24 FORELADY: Yes, ma'am.

25 THE COURT: All right. I am going to have you all

1 back at 2:00. We'll have you all back at 2:00.
2 Remember you have all the evidence, but you cannot
3 discuss the case until you receive the charge on the law
4 and the instructions by the Court to begin your
5 deliberations. Do not discuss this case with each other
6 and do not form an opinion at this point in time or make
7 any decision in your mind regarding this case. Have a
8 good lunch and we'll see you back at 2:00.

9 (The jury was excused for luncheon recess.)

10 THE COURT: There was during Mr. Young's closing
11 somebody made some comment in the audience. If you
12 cannot sit in the audience without making any comments,
13 I'm going to ask you to step out. If you do make
14 comments regarding anything, I will warn you of the
15 contempt powers of the Court which include up to
16 detention in jail. No comments are to be made. No
17 outbursts are to be made in this courtroom. Thank you.
18 All right. So we'll see you all regarding the trial
19 back at 2:00 and then I think I need to handle
20 Mr. Chandler's motion. Mr. Watson, give me one second.
21 I'll handle Mr. Chandler's motion and get Mr. Watson.
22 I'll charge this, for scheduling purposes I'll charge
23 the jury. If you can let Solicitor Myers, I think they
24 have some stuff scheduled for 2:00. Once I send the
25 jury back, then I'll handle those.

1 MR. YOUNG: Yes, ma'am.

2 THE COURT: All right. And that's what we'll do.

3 All right. I have one quick question for you all before
4 we break on the charge, on the jury charges. When it
5 talks about mutual combat, it talks about the killing.
6 There is no killing in this case. Do you want -- I was
7 trying to think of the language that we need to
8 substitute that for it. It talks under self defense
9 mutual combat, it says if the defendant voluntarily
10 participated in mutual combat that the purpose is other
11 than protection, the killing of the victim is not in
12 self defense. Then it goes to say, however, before the
13 killing is committed. Any suggestions there to the
14 language? Page 13 of 20. Page 13.

15 MR. YOUNG: Your Honor, I think that's in your
16 version reprinted. I'm trying to find it.

17 THE COURT: Oh, yeah, we did reprint it.

18 MR. YOUNG: I have got it. It's on page 15 on the
19 previous version.

20 THE COURT: It refers to - it's the self defense
21 charge. It refers to killing. I was trying to find --
22 Okay. The language --

23 MR. YOUNG: I think you can substitute --

24 THE COURT: I thought about assault.

25 MR. YOUNG: -- assault upon or assault upon the

1 victim.

2 THE COURT: Any position regarding just using the
3 words assault?

4 MR. YOUNG: I'm thinking that might be generically
5 enough.

6 THE COURT: Yes, I think so because if we said
7 attempt to kill, that's almost a comment on the law.

8 MR. YOUNG: I think that's appropriate, Your
9 Honor.

10 THE COURT: All right. So assault works for you
11 also, Mr. Casto?

12 MR. CASTO: I believe that's fine.

13 THE COURT: Okay. And there was some more changes.
14 I'll try to see if I can get a final version to you all.
15 And then as to the verdict form, we just put all three
16 instructions on there and I will just instruct the
17 jurors as I always do that we have to put one before the
18 other one.

19 MR. YOUNG: Right.

20 THE COURT: If you find that the defendant is guilty
21 of any of these, you can only find him guilty of one of
22 the charges.

23 MR. YOUNG: Correct.

24 THE COURT: That works for you?

25 MR YOUNG: Yes, ma'am.

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1 THE COURT: So we took all of the instructions off
2 of the verdict form and I'll reprint it.

3 MR. CASTO: Thank you.

4 THE COURT: We'll see you all at 2:00.

5 MR. YOUNG: Thank you.

6 (Whereupon, there was a luncheon recess.)

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1 THE COURT: Back on the record. All right. Let's
2 bring the jury on out.

3 (The jury returns to the courtroom.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, I hope you had a good lunch. At this time we will
6 continue with the jury charge in this case. All right.

7 I would remind you that during this trial that you
8 and I have certain duties to perform. As a trial judge
9 it is my responsibility to preside over the trial of
10 this case. And I also have the duty to rule on the
11 admissibility of the evidence offered during this trial.
12 You're to consider only the competent evidence before
13 you. If there was any testimony stricken from the
14 record in this case during this trial, you must
15 disregard that testimony. You're to consider only the
16 testimony which has been presented from the witness
17 stand, any exhibits which may have been a part of the
18 record in this case, and any stipulations of counsel.

19 I have the additional duty to charge you the law
20 applicable to this case. As the presiding Judge I am
21 the sole Judge of the law of this case and it is your
22 duty as jurors to accept and apply the law as I now
23 state it to you. If you already have any idea as to
24 what the law is or what the law ought to be and it does
25 not agree with what I now tell you the law is, you must

1 abandon this idea because you are sworn to accept the
2 law and apply the law exactly as I state it to you.

3 In every case tried in this court before a jury the
4 jury becomes the sole and exclusive judges of the facts
5 in the case. The trial judge cannot state, comment on
6 or make any statement to a trial jury about the facts in
7 the case. Since you the jury are the sole judges of the
8 facts in this case, you are not to infer from what I
9 said during the progress of this trial in ruling upon
10 the admissibility of evidence or otherwise or anything
11 that I say now during the course of this instruction
12 that I have an opinion about the facts in this case.
13 The law does not allow me to have an opinion about the
14 facts in this case. This is a matter solely for you the
15 jury to determine. As jurors it is your duty to
16 determine the effect, value, weight, and truth of the
17 evidence presented during the trial.

18 In trials you hear two types of evidence, direct and
19 circumstantial evidence. Direct evidence is the
20 testimony of a person who claims to have actual
21 knowledge of a fact such as a eyewitness. It is
22 evidence which immediately establishes the main fact to
23 be proven. Circumstantial evidence is proof of a chain
24 of 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 inference
3 and not on personal knowledge or observation. The law
4 makes absolutely no distinction between the weight or
5 value to be given to either direct or circumstantial
6 evidence, nor is a greater degree of certainty required
7 of circumstantial evidence than direct evidence.

8 You should weigh all of the evidence in the case.
9 After weighing all of the evidence, if you are not
10 convinced of the guilt of the defendant beyond a
11 reasonable doubt, you must find the defendant not
12 guilty.

13 Necessarily you must determine the credibility of
14 witnesses who have testified in this case. Credibility
15 simply means believability. It becomes your duty as
16 jurors to analyze and to evaluate the evidence and
17 determine which evidence convinces you of its truth. In
18 determining the believability of witnesses who have
19 testified in this case, you may believe one witness over
20 several witnesses or several witnesses over one witness.
21 You may believe a part of the testimony of a witness and
22 reject the remaining part of the testimony of that same
23 witness. You may believe the testimony of a witness in
24 its entirety or reject the testimony of a witness in its
25 entirety. You may consider whether any witness has

1 exhibited to you any interest, bias, prejudice, or other
2 motive in this case. You may also consider the
3 appearance and manner a witness has while upon the
4 witness stand.

5 There has been evidence presented that witnesses may
6 acquire statements which are not consistent with the
7 witness' present testimony. You may use this evidence
8 to decide whether to believe the witness. You may also
9 use evidence of the earlier contradictory statements to
10 determine the truth of those statements. It is up to
11 you to decide whether to believe the earlier statements
12 or the testimony given at trial. If a witness has shown
13 to have knowingly testified untruthfully concerning any
14 material matter, you may consider this in determining
15 whether to trust a witness' testimony as to other
16 matters. You may reject all of the testimony of that
17 witness or give all or part of the testimony the weight
18 you think it deserves.

19 A person who has a past criminal record is competent
20 to testify during a trial. A past criminal record does
21 not affect the ability of that witness to testify. The
22 past record may only be considered by you if at all in
23 determining the witness' believability. Remember, you
24 are the sole judges of the facts in this case and of the
25 believability of any and all of the witnesses in this

1 case.

2 You have heard evidence that the defendant was
3 convicted of a crime other than the one for which the
4 defendant is now on trial. This evidence may be
5 considered by you if you conclude it is true only in
6 deciding whether the defendant's testimony is believable
7 and for no other purpose than that. You must not
8 consider the defendant's prior record as any evidence of
9 the defendant's guilt of the charge we are trying today.

10 As I stated to you earlier in this trial, the
11 indictment charges the defendant with attempted murder.
12 I remind you of the fact that because the defendant was
13 arrested and charged and indicted in this case is not
14 evidence in this case and cannot be considered by you as
15 evidence of guilt in this case nor does it create any
16 presumption or inference of guilt. This document is
17 simply the formal written instrument which contains the
18 charge made against the defendant. It is the formal
19 document on which this case is brought into court.

20 The defendant in this case has pled not guilty to
21 this indictment and that plea puts the burden on the
22 state to prove the defendant guilty. A person charged
23 with committing a criminal offense in South Carolina is
24 never required to prove himself innocent. I charge you
25 that it is an important a rule of law that the defendant

1 in a criminal trial no matter what the seriousness of
2 the charge may be will always be presumed to be innocent
3 of the crime for which the indictment was issued unless
4 guilt has been proven by evidence satisfying you of that
5 guilt beyond a reason doubt. This presumption of
6 innocence does not end when you begin your
7 deliberations, but it accompanies the defendant
8 throughout the trial until you reach a verdict of guilt
9 based on evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the
13 defendant which remains with the defendant until it has
14 been stripped from the defendant by evidence satisfying
15 you of the defendant's guilt beyond a reasonable doubt.

16 The presumption of innocence is not mere legal
17 theory. It is not just a legal phrase. It is a
18 substantial right to which every defendant is entitled
19 to unless you, the jury, are satisfied from the evidence
20 of the defendant's guilt beyond a reasonable doubt.

21 What is reasonable doubt in the law? A reasonable
22 doubt is the kind of doubt that would cause a reasonable
23 person to hesitate to act. The state has the burden of
24 proving the defendant guilty beyond a reasonable doubt.
25 Some of you may have served as jurors in civil cases

1 where you were told that it's only necessary to prove
2 that a fact is more likely true than not true such as by
3 the greater weight or preponderance of the evidence.

4 In criminal cases the state's proof must be more
5 powerful than that. It must be beyond a reasonable
6 doubt. Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.
8 There are very few things in this world that we know of
9 absolute certainty and in criminal cases the law does
10 not require proof that overcomes every possible doubt.

11 If based on your consideration of the evidence you
12 are firmly convinced that the defendant is guilty of the
13 crime charged, you must find the defendant guilty. If
14 on the other hand you think there is a real possibility
15 that the defendant is not guilty, you must give the
16 defendant the benefit of the doubt and find him not
17 guilty.

18 The defendant in this case is charged with attempted
19 murder. In order to prove this crime the state must
20 prove the defendant with intent to kill attempted to
21 kill another person with malice of forethought either
22 expressed or implied.

23 Malice is hatred, ill will or hostility towards
24 another person. It is the intentional doing of a
25 wrongful act without just cause or excuse and with an

1 intent to inflict an injury or under circumstances that
2 the law would infer an evil intent. Malice of
3 forethought does not require that malice exists for any
4 particular time before the act is committed, but malice
5 must exist in the mind of the defendant just before and
6 at the time the act is committed. Therefore, there must
7 be a combination of the previous evil intent and the
8 act.

9 Malice of forethought may be expressed or inferred.
10 These terms expressed and inferred do not mean different
11 kinds of malice, but merely the manner in which malice
12 may be shown to exist. That is either by direct
13 evidence or by inference from the facts and
14 circumstances which are proved.

15 Express malice is shown when a person speaks words
16 which express hatred or ill will for another or when a
17 person prepares beforehand to do the act which was later
18 accomplished. For example, lying in wait for a person
19 or any other acts of preparation going to show that the
20 deed was within the defendant's mind would be expressed
21 malice.

22 Malice may be inferred from conduct showing a total
23 disregard for human life. Malice has been defined as a
24 heart devoid of social duty and totally bent on
25 mischief. If facts are proved beyond a reasonable doubt

1 sufficient to raise an inference of malice to your
2 satisfaction, this inference would be simply an
3 evidentiary fact to be considered by you, the jury,
4 along with the other evidence in the case and you may
5 give it the weight you decide it should receive.

6 A specific intent to kill is an element of attempted
7 murder. Intent means intending the result which
8 actually occurs, not accidentally or involuntary.
9 Intent may be shown by acts and conduct of the defendant
10 and other circumstances from which you may naturally and
11 reasonably infer intent.

12 Evidence of the character of the act, the character
13 of the instrument used, the manner in which it was used,
14 the purpose to be accomplished, and the resulting wounds
15 or injuries may be considered in determining the intent
16 with which the act was committed. Intent may also be
17 inferred when it is demonstrated that the defendant
18 voluntarily and willfully commits an act the natural
19 tendency of which is to destroy another's life.

20 Ladies and gentlemen of the jury, as I stated, the
21 defendant is charged with attempted murder. The Court
22 is going to charge you as to the lesser included offense
23 of assault and battery of a high and aggravated nature,
24 Section 16.3.600(b).

25 A person commits the offense of assault and battery

1 of a high and aggravated nature if the person unlawfully
2 injuries another person and great bodily injury to
3 another person results or the act is accomplished by
4 means likely to produce death or great bodily injury.

5 Great bodily injury means bodily injury which
6 causes a substantial risk of death or which causes
7 serious permanent disfigurement or protracted loss or
8 impairment of the function of a bodily member or organ.

9 Assault and battery first degree. Section
10 16.3.600(c), a person commits the offense of assault and
11 battery in the first degree if the person unlawfully
12 offers or attempts to injure another person with the
13 present ability to do so and the act is either
14 accomplished by means likely to produce death or great
15 bodily injury or occurred during the commission of a
16 robbery, burglary, kidnapping, or theft.

17 Great bodily injury means bodily injury which causes
18 a substantial risk of death or which causes serious
19 permanent disfigurement or protracted loss or impairment
20 of a function of a bodily member or organ.

21 In order to establish criminal liability criminal
22 intent is required. For example, the mental state
23 required to be proven by the state for a particular
24 crime might be purpose, intent, knowledge, recklessness,
25 or criminal negligence. Criminal intent must be proven

1 by the state beyond a reasonable doubt. Criminal intent
2 is always a matter that must be determined by the jury
3 from the circumstances surrounding the situation. There
4 is no way to prove intent to a mathematical certainty.
5 There is no way medical science can dissect a person's
6 brain and determine what the person had in mind so the
7 law says that criminal intent may be inferred from the
8 circumstances shown to have existed. This is how you
9 make a determination of whether or not the element
10 requiring intent was present.

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

24 Ladies and Gentlemen of the jury, the defendant in
25 this case has raised the defense of self defense. Self

1 defense is a complete defense, and if it is established,
2 you must find the defendant not guilty. The state has
3 the burden of disproving self defense by proof beyond a
4 reasonable doubt. If you have a reasonable doubt as to
5 the defendant's guilt after considering all the evidence
6 including the evidence of self defense, then you must
7 find the defendant not guilty. On the other hand, if
8 you have no reasonable doubt of the defendant's guilt
9 after considering all of the evidence including the
10 evidence of self defense, then you must find the
11 defendant guilty.

12 The following elements are required to establish
13 self defense. The first element is without fault.
14 First, the defendant must be without fault in bringing
15 on the difficulty. If the defendant's conduct was the
16 type which was reasonably calculated to and did provoke
17 a deadly assault, the defendant would be at fault in
18 bringing on the difficulty and would not be entitled to
19 an acquittal based on self defense.

20 Contemptuous language. Self defense is not
21 available to a person who uses language which is so
22 contemptuous that a reasonable person would expect it to
23 bring on a physical encounter and which did actually
24 contribute to the physical encounter.

25 Mutual combat. If the defendant voluntarily

1 participated in mutual combat for purposes other than
2 protection, the assault of the victim would not be self
3 defense. This is true even if in joint combat the
4 defendant feared death or serious bodily injury.
5 However, if before the assault is committed the
6 defendant withdraws and tries in good faith to avoid
7 further conflict and either by word or act makes that
8 fact known to the victim, he would be without fault in
9 bringing on the difficulty. For mutual combat there
10 must be mutual intent and willingness to fight. This
11 intent may be shown by the acts and conduct of the
12 parties and the circumstances surrounding the combat.
13 In addition it must be shown that both parties were
14 armed with a deadly weapon.

15 Imminent danger. The second element of self defense
16 is that the defendant was actually in imminent danger of
17 death or serious bodily injury or that the defendant
18 actually believed he was in imminent danger of death or
19 serious bodily injury. If the defendant was actually in
20 imminent danger, it must be shown that the circumstances
21 would have warranted a person of ordinary firmness
22 encouraged to strike the fatal blow to prevent death or
23 serious bodily injury. If the defendant believed he was
24 in imminent danger of death or serious bodily injury, it
25 must be shown that a reasonably prudent person afforded

1 their firmness and courage would have had the same
2 belief.

3 In deciding whether the defendant actually was or
4 believed he was in imminent danger of death or of
5 serious bodily injury you should consider all the facts
6 and circumstances surrounding the crime including the
7 physical condition and characteristics of the defendant
8 and the victim. The defendant does not have to show
9 that he was actually in danger. It is enough that the
10 defendant believed he was in imminent danger and a
11 reasonably prudent person of ordinary firmness and
12 courage would have had the same belief.

13 The defendant has the right to act on appearances
14 even though the defendant's belief may have been
15 mistaken. It is for you to decide whether the
16 defendant's fear of imminent danger of death or serious
17 bodily injury was reasonable and would have been felt by
18 an ordinary person in the same situation.

19 Words accompanied by hostile acts. Words
20 accompanied by hostile acts may, depending on the
21 circumstances, establish self defense.

22 Prior difficulties. Evidence of prior difficulties
23 between the defendant and the victim may be considered
24 in deciding whether a threat existed, whether the
25 defendant had reason to believe a threat existed, and

1 how serious that threat was.

2 Size and age. The relative sizes and ages and
3 weights of the defendant and the victim may be
4 considered in deciding the apparent or actual need for
5 force in self defense and the amount of force needed.
6 The reputation of the victim as a violent person may be
7 considered in deciding whether there was a need for
8 force, whether the defendant had reason to believe that
9 there was a need for force, and whether deadly force was
10 reasonably necessary. Prior instances of violence by
11 the victim may be considered in deciding whether the
12 defendant actually believed he was in imminent danger of
13 death or of serious bodily injury or was in actual
14 imminent danger. Threats made by the victim may be
15 considered in determining whether the defendant actually
16 was or believed he was in imminent danger.

17 The intoxication of the victim may be considered in
18 deciding whether the defendant's fear of death or bodily
19 harm was reasonable.

20 The final element of self defense is that the
21 defendant had no other probable way to avoid the danger
22 of death or serious bodily injury than to act as the
23 defendant did in this particular instance.

24 The final element is the duty to retreat. We'll
25 start with premises. If the defendant was on his own

1 premises, the defendant had no duty to retreat before
2 acting in self defense.

3 Increased risk of harm. The defendant had no duty
4 to retreat if by doing so the danger of being killed or
5 suffering serious bodily injury would increase.

6 Imminent danger. The second element of self
7 defense is that the defendant was actually in imminent
8 danger of death or serious bodily injury or that the
9 defendant actually believed he was in imminent danger of
10 death or serious bodily injury. If the defendant was
11 actually in imminent danger, it must be shown that the
12 circumstances would have warranted a person of ordinary
13 firmness and courage to strike a fatal blow to prevent
14 death or serious bodily injury. If the defendant
15 believed he was in imminent danger of death or serious
16 bodily injury, it must be shown that a reasonably
17 prudent person of ordinary firmness and courage would
18 have had the same belief.

19 In deciding whether the defendant actually was or
20 believed he was in imminent danger of death or serious
21 bodily injury you should consider all the facts and
22 circumstances surrounding the crime including the
23 physical condition and characteristics of the defendant
24 and the victim. The defendant does not have to show
25 that he was actually in danger. It is enough that the

1 defendant believed he was in imminent danger and a
2 reasonably prudent person of ordinary firmness and
3 courage would have had the same belief. The defendant
4 has the right to act on appearss even though the
5 defendant's belief may have been mistaken. It is for
6 you to decide whether the defendant's fear of immediate
7 danger or death or serious bodily injury was reasonable
8 and would have been felt by an ordinary person in the
9 same situation.

10 The state and the defendant are entitled to the
11 individual opinions of each juror on the issues of fact
12 in this case. It is the duty of each of you to consider
13 and weigh all the evidence in the case and from such
14 evidence to determine, if you can, the question of guilt
15 or innocence of the defendant. There is nothing
16 peculiarly different in the way a jury should consider
17 the evidence in a criminal case from that in which all
18 reasonable persons treat any question depending upon
19 evidence presented to them. You're expected to use your
20 good sense, consider the evidence in the case for only
21 those purposes for which it has been admitted and give
22 it a reasonable and fair construction in the light of
23 your common knowledge of the natural tendencies and
24 inclinations of human beings.

25 If the accused be proved guilty beyond a reasonable

1 doubt, say so. If not so proved guilty, say so. Your
2 verdict in this case will be one of two forms. If from
3 the evidence and the law you find that the defendant is
4 not guilty, you must circle not guilty on the verdict
5 form that I will give you and, Madam Forelady, you will
6 sign the verdict form. If on the other hand you find
7 that the defendant is guilty based on the evidence and
8 the law which you have heard, you will circle guilty on
9 verdict form and the Forelady will sign her name. Your
10 verdict must be unanimous. It must be guilty or not
11 guilty. The law requires that a jury verdict be
12 unanimous which means that all the jurors must agree.
13 The only two forms on the verdict are guilty or not
14 guilty.

15 Madam Forelady, once the jury reaches a verdict of
16 not guilty or guilty, circle the verdict on the face of
17 the verdict form and sign under the verdict to signify
18 that what you have circled is the verdict of all the
19 jurors. Then you will notify the bailiffs by knocking
20 on the door indicating to them that you have reached a
21 verdict.

22 I have the verdict form here in my hand and it
23 states State of South Carolina in the Court of General
24 Sessions of the Eleventh Judicial Circuit, County of
25 Saluda, indictment number 2013-GS-41-357, State of South

1 Carolina, Plaintiff, versus Johnny Jerome Boyd,
2 Defendant and it says verdict form. As I stated to you
3 all when I was doing the jury verdict that I have
4 included the lesser included charges of assault and
5 battery of a high and aggravated nature and assault and
6 battery in the first degree on the verdict form.

7 You will have three different -- You have number 1,
8 number 2, and number 3. It says number 1, as to the
9 indictment alleging attempted murder we the jury
10 unanimously find the defendant guilty or not guilty.
11 Number 2, it says as to the lesser included charge of
12 assault and battery of a high and aggravated nature we
13 the jury unanimously find the defendant guilty or not
14 guilty. As to the lesser included charge of assault and
15 battery in the first degree we the jury unanimously find
16 the defendant guilty or not guilty.

17 Ladies and gentlemen of the jury, I'll tell you I
18 put one before the other. Please do not infer that I
19 have a position regarding this case because I do not. I
20 will tell you that there are the three different
21 charges. You have to - you cannot find the defendant,
22 if you were to find the defendant guilty, you cannot
23 find the defendant guilty on more than one of those
24 charges.

25 I am going to ask that you -- I'll send you all back

1 into the jury room, but you cannot begin your
2 deliberations until you receive all of the evidence, all
3 of the documents that were entered into evidence will be
4 brought back to you. There is also the 911 tape. If
5 you have to listen to it, we'll have to bring you back
6 out into courtroom and play it out here. All the
7 exhibits will come back. The verdict form will come
8 back, and at that time you may begin your deliberations
9 once you get the instruction from the bailiff. All
10 right? We'll send you back into the jury room.

11 (The jury was sent to the jury room.)

12 THE COURT: All right. Any objections or exceptions
13 to the jury charge?

14 MR. YOUNG: None from the state.

15 THE COURT: All right. Yes, sir, any objections or
16 exceptions? I know you have objections from earlier.

17 MR. CASTO: That's fine. All we would like to do is
18 renew those objections, particularly the one of assault
19 and battery second based on the fact that it's a lesser
20 included under Belcher. We're just placing that on the
21 record at this time.

22 THE COURT: That objection was overruled earlier,
23 but it was preserved for the record. All right. You
24 all want to take a look at the verdict form, the
25 exhibits.

1 MR. YOUNG: I think the exhibits are set forth up
2 here.

3 THE COURT: We are ready to excuse the alternate?

4 MR. YOUNG: Yes.

5 THE COURT: Any further duty needed from the
6 alternate? Can I excuse him of his duties?

7 MR. CASTO: Yes, ma'am.

8 MR. YOUNG: Certainly.

9 THE COURT: You can bring the alternate in.

10 (The alternate enters the courtroom.)

11 THE COURT: All right. Mr. Rawl, you were selected
12 as our alternate in this case. If something were to
13 happen with the other twelve jurors, as you can see they
14 are all still here so therefore I am able to release you
15 of your duties from jury duty this week. You are more
16 than welcome to hang around and see what your fellow
17 jurors are going to do or if you wish to leave, you can
18 leave at this time. I do want to thank you for your
19 service here this week. Although you were not able to
20 go back into deliberations, having you here was
21 necessary and we do thank you for your service.

22 (Whereupon, the alternate was released.)

23 MR. YOUNG: I would note for the record only two
24 exhibits that were admitted under the C category was, I
25 believe, 6 and 7. I have turned over all the other C

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1 exhibits. Those I'll just review for the record very
2 quickly to make sure the record is correct. C1, 2, 3,
3 4, 5, 8, 9 and 10 were not admitted.

4 THE COURT: 6 and 7 is what I have.

5 MR. YOUNG: That's correct. I'm making sure the
6 record is correct on what we have and what goes back to
7 the jury.

8 THE COURT: Okay. Give Mr. Casto a second. Is that
9 everything?

10 MR. CASTO: I believe so. Yes, ma'am.

11 THE COURT: All right. We can send it all back and
12 go ahead and instruct them to begin deliberations.

13 MR. YOUNG: You need these?

14 THE COURT: All right. The jury can start
15 deliberating and we'll move onto the next case.

16 (The jury commenced its deliberations at 2:50 p.m.)

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2 THE COURT: The jury sent back a question so if I
3 can please see Mr. Young and Mr. Casto real quick and
4 probably sometime we will be likely to finish. Let me
5 see you all for one second and get this taken care of so
6 they can continue to deliberate. I'll bring them out
7 and like I said, there is a charge regarding -- We are
8 only sending the portion that they asked for; is that
9 correct? Is that the agreement?

10 MR. YOUNG: Yes, ma'am. Judge, as I understand it,
11 and I believe Mr. Casto is reading it right now, my
12 understanding is that the Court has reduced the
13 instructions it has previously given verbally to writing
14 for attempted murder, assault and battery of a high and
15 aggravated nature, and assault and battery in the first
16 degree. I'm just placing on the record what I have
17 reviewed and have no objection to, and I don't believe
18 Mr. Casto does either.

19 THE COURT: If you just want to have him have a
20 seat. I have to bring them out and give them -- This
21 will take about five minutes, then I'll come back to you
22 guys.

23 MR. CASTO: Your Honor, what we would request is if
24 the Court sends, and I spoke with a colleague of mine,
25 there may exist a case out there if the Court is

1 inclined to send part of the charge back, we just ask
2 that the entire charge be sent back. The state was okay
3 with the charge. I don't really see that as being an
4 issue.

5 THE COURT: You have a problem with sending the
6 entire charge back? I have got it.

7 MR. YOUNG: Yes, Your Honor, I do, because
8 at this point the jury has not asked for that and we are
9 at a point where the jury needs to hear what they've
10 asked for and not answer a question they didn't ask. I
11 think that might lead to confusion as to why they're
12 being given the whole charge.

13 THE COURT: You said there's a case that said you
14 have to send it all back. What's that case?

15 MR. YOUNG: Your Honor, I have been corrected on
16 this. I understand that the case law actually says if
17 you don't get the whole charge, then that's a basis for
18 reversal.

19 THE COURT: Okay. I do it based on agreement. If
20 you all don't agree, then I'll just bring them back out
21 and read it to them again. So do you agree with sending
22 the entire charge back or I bring them back out and read
23 what they asked for?

24 MR. YOUNG: It would be more expeditious just to do
25 what they asked for.

1 THE COURT: So bring them back out and read it?

2 MR. YOUNG: And give them the instruction and
3 definition and elements of proof for assault and battery
4 of a high and aggravated nature, attempted murder, and
5 assault and battery first.

6 MR. CASTO: Our position, Your Honor, would be that
7 if the Court wants to send the whole charge back, that's
8 all right as far as being expeditious.

9 THE COURT: Well, he doesn't want to.

10 MR. YOUNG: I don't want to confuse the jury.

11 THE COURT: Some of my colleagues have gotten in the
12 practice of sending the charge back regardless if you
13 all have agreed to it or not. My practice is that I
14 would only send it back if both sides agree and he's not
15 agreeing to sending the entire charge back. We'll bring
16 them out and I'll read this to them. We'll bring them
17 out right now, Mr. Young, and I'll read this to them and
18 then we'll send them back. I usually can't get both
19 sides to agree. And then we'll get back to the other
20 matter. Can we mark this as Court's exhibit number 1.

21 (Whereupon, Court's Exhibit #1 marked for
22 Identification.)

23 (The jury returns to the courtroom.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, Madam Forelady, ladies and gentlemen, I have

1 marked Court's exhibit number 1, and it is a question
2 from you saying can we get a definition of 1, 2, 3. I
3 guess you're asking on the verdict form.

4 FORELADY: Yes, ma'am.

5 THE COURT: And you say attempted murder, assault
6 and battery of a high and aggravated nature, and assault
7 and battery in the first degree. All right. I will
8 read to you again what I previously read.

9 Attempted murder. The defendant is charged with
10 attempted murder. In order to prove this crime, the
11 state must prove the defendant -- I'll start over. The
12 defendant is charged with attempted murder. In order to
13 prove this crime the state must prove the defendant with
14 intent to kill attempted to kill another person with
15 malice and forethought either expressed or implied.

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 an injury or under circumstances that
20 the law would infer an evil intent. Malice of
21 forethought does not require that malice exists for any
22 particular time before the act is committed, but malice
23 must exist in the mind of the defendant just before and
24 at the time the act is committed. Therefore there must
25 be a combination of the previous evil intent and the

1 act. Malice of forethought may be expressed or
2 inferred. These terms expressed or inferred do not mean
3 different kinds of malice, but merely the manner in
4 which malice may be shown to exist. That is either by
5 direct evidence or by inference from the facts and
6 circumstances which are proven. Expressed malice is
7 shown when a person speaks words which express hatred or
8 ill will toward another or when the person prepares
9 beforehand to do the act which was later accomplished.

10 For example, a person lying in wait for a person or
11 any other acts of preparation going to show that the
12 deed was within the defendant's mind would be expressed
13 malice. Malice may be inferred from conduct showing a
14 total disregard for human life. Malice has been defined
15 as a heart devoid of social duty and totally bent on
16 mischief. If facts are proved beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction, this inference would be simply an
19 evidentiary fact to be considered by you, the jury,
20 along with the other evidence in the case and you may
21 give it the weight you decide it should receive. A
22 specific intent to kill is an element of attempted
23 murder. Intent means intending the result which
24 actually occurs not accidentally or involuntarily.
25 Intent may be shown by acts and conduct of the defendant

1 and other circumstances for which you may naturally and
2 reasonably infer intent. Evidence of the character of
3 the act, the character of the instrument used, the
4 manner in which it was used, the purpose to be
5 accomplished, and the resulting wounds or injuries
6 may be considered in determining the intent with which
7 the act was committed. Intent may also be inferred when
8 it is demonstrated that the defendant voluntarily and
9 willfully commits an act the natural tendency of which
10 is to destroy another's life.

11 All right. Next you asked for assault and battery
12 of a high and aggravated nature. Section 16.3.600(b) of
13 the South Carolina Code of Laws Annotated. A person
14 commits the offense of assault and battery of a high and
15 aggravated nature if the person unlawfully injures
16 another person and great bodily injury to another person
17 results or the act is accomplished by means likely to
18 produce death or great bodily injury. Great bodily
19 injury means bodily injury which causes a substantial
20 risk of death or which causes serious permanent
21 disfigurement or protracted loss or impairment of the
22 function of a body member or organ.

23 Assault and battery first degree. 16.3.600(c). A
24 person commits the offense of assault and battery in the
25 first degree if the person unlawfully offers or attempts

1 to injure another person with the present ability to do
2 so and the act either is accomplished by means likely to
3 produce death or great bodily injury or occurred within
4 the commission of a robbery, burglary, kidnapping, or
5 death. Great bodily injury means bodily injury which
6 causes a substantial risk of death or which causes
7 serious permanent disfigurement or protracted loss or
8 impairment of the function of a bodily member or organ.

9 All right. Is that what you need?

10 FORELADY: Yes, ma'am.

11 THE COURT: Do you need me to read any other portion
12 or read this again?

13 FORELADY: No, ma'am.

14 THE COURT: Thank you. You may continue your
15 deliberations.

16 (The jury retired to the jury room to continue
17 deliberations.)

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1 THE COURT: I believe we have a verdict. I saw --
2 Oh, there he is. All right. We have a verdict. All
3 right. We're ready to bring the jury back in. Before I
4 bring them back in, for those of you who are in the
5 audience and everyone in the courtroom I will ask once
6 again that you refrain from making any outbursts or any
7 comment. If you do not think you are able to control
8 your ability to have an outburst or make a comment, then
9 I would strongly suggest that you probably need to sit
10 outside the courtroom. All right. You can bring them
11 in.

12 (The jury returns to the courtroom.)

13 THE COURT: All right. Madam Forelady, it's my
14 understanding the jury has reached a verdict?

15 FORELADY: Yes, ma'am.

16 THE COURT: All right. Could you hand that to the
17 bailiff.

18 (The Forelady hands the verdict to the bailiff. The
19 bailiff hands the verdict to the Judge. The Judge hands
20 the verdict to the Clerk.)

21 THE COURT: I'm going to ask the Clerk to publish
22 the verdict.

23 THE CLERK: State of South Carolina versus Johnny
24 Jerome Boyd. Indictment number 2013-GS-41-357. As to
25 the lesser included charge of assault and battery of a

1 high and aggravated nature we the jury unanimously find
2 the defendant guilty. Karen T. Ouzts, Forelady.

3 THE COURT: And on the verdict form it indicates
4 they just circled not guilty as to the attempted murder
5 and as to the assault and battery first. As instructed
6 they only, if they were to find him guilty, they
7 understood they could only find him guilty on one
8 offense. Anything else from the jury?

9 MR. CASTO: Begging the Court's indulgence.

10 MR. YOUNG: Madam Clerk, would you assist me in one
11 regard?

12 THE COURT: All right. Anything from the jury
13 before I release them from the state?

14 MR. YOUNG: Nothing from the state, Your Honor.

15 THE COURT: Anything else from the jury before I
16 release them from the defense? Do you want me to poll
17 the jury?

18 MR. CASTO: Yes, Your Honor. Thank you.

19 THE COURT: All right. Madam Clerk, will you poll
20 the jurors.

21 THE CLERK: I'm going to call your name individually
22 and ask you if this is your verdict.

23 Jodi L. Skipper, is your verdict guilty of assault
24 and battery of a high and aggravated nature and still
25 your verdict?

1 JODI SKIPPER: Yes.

2 THE CLERK: Sharon Brazel, is your verdict guilty of
3 assault and battery of a high and aggravated nature and
4 still your verdict?

5 SHARON BRAZEL: Yes.

6 THE CLERK: Tyler Bouknight, was your verdict guilty
7 of assault and battery of a high and aggravated nature
8 and still your verdict?

9 TYLER BOUKNIGHT: Yes.

10 THE CLERK: Curtis L. Cameron, was your verdict
11 guilty of assault and battery of a high and aggravated
12 nature and still your verdict?

13 CURTIS L. CAMERON: Yes, ma'am.

14 THE CLERK: Melissa H. Vance, was your verdict
15 guilty of assault and battery of a high and aggravated
16 nature and still your verdict?

17 MELISSA VANCE: Yes, ma'am.

18 THE CLERK: Sean P. Maloney, was your verdict guilty
19 of assault and battery of a high and aggravated nature
20 and still your verdict?

21 SEAN MALONEY: Yes, ma'am.

22 THE CLERK: Dawn R. Edwards, was your verdict guilty
23 of assault and battery of a high and aggravated nature
24 and still your verdict?

25 DAWN EDWARDS: Yes, ma'am.

1 THE CLERK: Gwendolyn Hall, was your verdict guilty
2 of assault and battery of a high and aggravated nature
3 and still your verdict?

4 GWENDOLYN HALL: Yes.

5 THE CLERK: Karen T. Ouzts, was your verdict guilty
6 of assault and battery of a high and aggravated nature
7 and still your verdict?

8 KAREN OUZTS: Yes, ma'am.

9 THE CLERK: Susan B. Allen, was your verdict guilty
10 of assault and battery of a high and aggravated nature
11 and still your verdict?

12 SUSAN ALLEN: Yes.

13 THE CLERK: Jerry W. Simmons, was your verdict
14 guilty of assault and battery of a high and aggravated
15 nature and still your verdict?

16 JERRY SIMMONS: Yes, ma'am.

17 THE CLERK: Brenda L. Stevens, was your verdict
18 guilty of assault and battery of a high and aggravated
19 nature and still your verdict?

20 BRENDA STEVENS: Yes, ma'am.

21 THE COURT: All right. Let the record reflect that
22 all the jurors have been polled and have responded that
23 the verdict indicated on the verdict form is their
24 verdict. All right. Ladies and gentlemen of the jury,
25 I want to thank you on behalf of the court staff,

1 everyone here in the courtroom, the Solicitor,
2 Mr. Young, also the Solicitor's Office, the Public
3 Defender's Office, Mr. Casto, who was handling this
4 case, we would like to thank you all for your service
5 here this week. As you can see there are matters that
6 come up that cannot be resolved without the assistance
7 of twelve citizens like you and so we do want to thank
8 you for agreeing to exercise your civic duty this week
9 and assisting us here this week at Saluda County
10 Courthouse. The Clerk may have some closing remarks for
11 you, work excuses, if anyone needs a work excuse. As I
12 stated earlier on Monday, you will not have to serve
13 again at least for one year unless you choose to serve
14 in the next three years you will not have to serve for
15 three years in this court. It does not protect you from
16 Federal Court or Magistrate's Court or City Court, but
17 in this court up here you will not have to serve on a
18 jury for three years unless you choose to do so. I hope
19 that you have a happy holiday and enjoy the rest of your
20 week. Thank you.

21 MR. CASTO: Your Honor, if I could approach before
22 they are dismissed?

23 THE COURT: Yes, sir. Take them back into the jury
24 room.

25 (The jury sent to the jury room. The following

1 proceedings held on the record.)

2 THE COURT: Let's put it on the record. All right.

3 Yes, sir.

4 MR. CASTO: Thank you, Your Honor, and may it please
5 the Court. We would object to the verdict. We cite
6 that it's an irregular verdict. Essentially just to
7 read into the record what the verdict form looks like is
8 not guilty with regard to the attempted murder charge,
9 is guilty as to the assault and battery of a high and
10 aggravated offense, and it's not guilty as to the lesser
11 included offense of assault and battery first.

12 We object. It's an irregular verdict and how could
13 they find him guilty of the lesser offense of assault
14 and battery first and guilty of something greater? Your
15 Honor, we would object to that and move for a mistrial
16 at this time. It's my understanding not guilty is
17 circled as to attempted murder and not guilty is circled
18 as to assault and battery in the first degree, but
19 guilty is circled on the sentencing sheet with regard to
20 assault and battery of a high and aggravated nature and
21 we respectfully move for a mistrial at this time.

22 THE COURT: All right. Yes, sir?

23 MR. YOUNG: It's preposterous. The verdict is
24 appropriate, Your Honor. The defense had a complete
25 opportunity to object to this beforehand. The jury was

1 instructed appropriately that they could find him guilty
2 of only one charge. They followed your instructions
3 precisely. They did exactly what the jury was told to
4 do and Mr. Casto now objects after the fact after he had
5 a chance to review the form and finds fault with the
6 very form that he agreed to. That is preposterous.

7 MR. CASTO: Your Honor, just to be clear, we don't
8 find fault with the form. It's just that what was
9 filled out and circled on the form.

10 THE COURT: All right. Give me one second. I'm
11 thinking. And your position is that if he's guilty of
12 ABHAN, then he has to be guilty of assault and battery
13 first degree? And I believe it was your instruction.
14 My law clerk had the jury form done with the previous
15 one. I'll mark that one as a Court's exhibit, and it
16 was your preference that I instruct the jurors that they
17 could only find him guilty on one charge and that was
18 the agreement of the parties, I believe, as to the
19 instruction that was to be given to the jury and,
20 therefore, we took the other verdict form and I'll mark
21 this as Court's Exhibit number 2.

22 MR. YOUNG: Your Honor, not to interject at an
23 inappropriate time. Any error that may have been
24 committed was corrected by the polling of the jury even
25 then. They have reaffirmed their finding.

1 THE COURT: Okay. I'm going to mark this as Court's
2 Exhibit number 2. This is the original form that was
3 corrected and I believe the record will show and reflect
4 at the request of Mr. Casto that I delete the
5 instructions and instruct the jurors that they could
6 only find him guilty on one charge. This is a verdict
7 form so we can mark that as an exhibit or just stick it
8 in the file.

9 (Whereupon, Court's Exhibit #2 marked for
10 Identification.)

11 MR. YOUNG: Your Honor, I have passed up a
12 sentencing sheet.

13 THE COURT: All right. Hold on one second. Hold on
14 one second. All right. The motion for a mistrial will
15 be denied as I stated for the reasons I just stated. I
16 think also after polling the jurors it was clear she
17 polled them specifically as to the charge of assault and
18 battery of a high and aggravated nature and they all
19 indicated that they found him guilty on the charge of
20 assault and battery of a high and aggravated nature and
21 so, therefore, the motion for a mistrial will be
22 respectfully denied. All right. You may release the
23 jurors unless there is anything else.

24 MR. CASTO: No, Your Honor.

25 THE COURT: All right. Yes, sir.

1 (The jury was excused.)

2 MR. CASTO: Your Honor, do you want to hear final
3 trial motions first or did you want to do the sentencing
4 first?

5 MR. YOUNG: Go ahead and do the motions, Your
6 Honor.

7 THE COURT: I would be glad to hear your motions.

8 MR. CASTO: Thank you, Your Honor. At this time we
9 would respectfully do some housekeeping issue. We would
10 ask that the jury charges and the original request
11 charge, I believe most of all that has been read into
12 the record. It's clear what they think with regard to
13 that, but we would ask that those just be a part of the
14 record or a Court's exhibit.

15 Your Honor, we would renew all of our motions,
16 objections raised at pretrial, during the trial to
17 include our directed verdict motion at this time.

18 THE COURT: All right. Any response from the state?

19 MR. YOUNG: I believe they should be respectfully
20 denied, Your Honor.

21 THE COURT: All right. All of your motions - your
22 directed verdict motion and your objections are so noted
23 for the record. The motion for directed verdict,
24 however, is denied at this time.

25 MR. CASTO: The one remaining motion, Your Honor, is

1 at this time we would move for a new trial.

2 Specifically, Your Honor, with the evidence that's been
3 presented a jury could not have found my client Johnny
4 Boyd guilty beyond a reasonable doubt in this case.

5 THE COURT: All right. I believe based on the
6 evidence that has been presented to the Court and to the
7 jury, that the jury has considered the facts in the case
8 and they considered the law as noted by the Court's
9 Exhibit number 1. They asked that we reinstruct them as
10 to the different statutes of the law and that was done.
11 The charge was done and they were recharged on assault
12 and battery -- I'm sorry. Attempted murder, assault and
13 battery of a high an aggravated nature, and assault and
14 battery first degree. For that reason the motion for
15 new trial will be denied. All right. Yes, sir,
16 Mr. Casto, anything else?

17 MR. CASTO: No, ma'am.

18 THE COURT: All right. Yes, sir, Mr. Young.

19 MR. YOUNG: Your Honor, with regard to Mr. Johnny
20 Boyd, Mr. Boyd would you step forward to the podium up
21 here?

22 (Johnny Jerome Boyd complies.)

23 MR. YOUNG: Your Honor, Mr. Johnny Boyd has a
24 criminal record that begins in 1998 with possession of
25 schedule two substance that being cocaine. He was

1 convicted in April of '98 and got a probationary
2 sentence. He was also convicted in '96 just prior to
3 that with unlawful carrying of a weapon and got a 30 day
4 sentence on that. There are a series of offenses which,
5 Your Honor, unfortunately the way the current system
6 works, they print out a series of charges and then you
7 will see convictions sometime later. These will
8 probably be a little disjunctive. In October of 2004
9 possession of crack. The same time possession of a
10 schedule one to five second offense or greater. He
11 received one year on the possession to run concurrent
12 with the four years he received on the possession of
13 crack. Possession of the scheduled substance. He pled
14 guilty to and received four years concurrent at the same
15 time on common law or strong armed robbery. This was a
16 reduced charge arising from a armed robbery charge.

17 THE COURT: What year was that?

18 MR. YOUNG: October of 2004.

19 THE COURT: All right.

20 MR. YOUNG: In essence, Your Honor, he received a
21 summation of a concurrent four year sentence. Your
22 Honor, he has had some minor offenses since that time.
23 They are basically all seat belt and things of that
24 nature. There is a hit and run with property damage, I
25 believe, somewhere in here or leaving the scene. The

1 most recent was a DUI .16 or higher. He was convicted
2 of that in Magistrate Court in 2013. I'm certain at the
3 right time the victim would like to be heard, but I'm
4 not certain. I don't know if she actually wants to say
5 anything more or not. Do you want to say anything more
6 or not? She has no wish to speak any further.

7 THE COURT: All right. All right. Yes, sir.

8 MR. CASTO: Thank you very much, Judge. May it
9 please the Court. Let me just first say this: I know
10 that Johnny is disappointed with the verdict, but in the
11 same breath I did want to say this, that the jury has
12 spoken and we respect that. I met with Johnny and just
13 as with all clients what I try to do is just sort of
14 flesh out his story and who he is and I think I have a
15 good picture.

16 Your Honor, Johnny is 38 years of age. He doesn't
17 have a ton of education and he stopped school in the
18 eleventh grade but, Judge, where he has worked or a lot
19 of the places out here thankful they are of the things
20 that he could do and things that he did well at for a
21 while. He worked out there at Amick Farms, one of the
22 big employers out here and in the Michelin plant. Your
23 Honor, he's also done retail grocery store work, that
24 kind of thing.

25 Your Honor, he lives very simply and lives here.

1 Well, he lives in this area with his mother down in
2 Monetta and he has three children. The oldest is 18.
3 There is a 15 year old, and the youngest is two years of
4 age.

5 Your Honor, he is somebody looking at his rap sheet
6 that hasn't been in any substantial trouble in ten
7 years. He hopes to eventually go back to work. He's
8 had some problems with his hands and so what happened
9 because the work that he's done with his schooling level
10 and everything like that is something that is always
11 hands on, is something where it's labor intensive and so
12 when his hands, he's had to struggle with that. He
13 actually couldn't work. He wants to support his family
14 and he can stay with his mother until he's on his feet.

15 Your Honor, through Johnny I have had the privilege
16 to meet his mother, his aunt. I met his father. And,
17 Your Honor, these folks are behind him. I can't tell
18 you how much they have supported Johnny in speaking with
19 him, in just being with him and in the time leading up
20 to the trial. I did want to say that they have been
21 nothing but extremely supportive. And as I said in the
22 last plea a lot of times we're standing up here and the
23 person I represent has kind of burned those bridges with
24 their family.

25 Your Honor, a word or two about this relationship.

1 Johnny, you know, this relationship is over. And that's
2 in both party's minds and it's not a situation where
3 there's been any kind of a rekindle thing or anything
4 like that at all and they have kept their distance and
5 one of the things is that they have dealt with each
6 other at arms length with regard to the child that they
7 have in common and aside from what this trial is about
8 and nothing since and I think that speaks volumes.

9 Your Honor, we would ask the court to draft a
10 sentence of mercy, that this wouldn't be the defining
11 hour of his life. He's done 60 days in jail for this.
12 We know that the Court knows that this is a sentence
13 where he has to do 85 percent of what he gets and, Your
14 Honor, that or most all the time, and I have been very
15 candid with him about that and I ask the Court to factor
16 that in when thinking about drafting a sentence for
17 Johnny. He's always been where I needed him to be.

18 Judge, we would ask for the minimum sentence and
19 very respectfully, Judge, that's all that we have at
20 this time.

21 THE COURT: All right. In considering a sentence in
22 this case I must take into consideration, I'm going to
23 take into consideration the audio tape that was played
24 in this case. It speaks volumes. I'm not sure if
25 Mr. Boyd was aware that she was on the phone. I'm not

398

1 sure how he wasn't aware that she was on the phone or he
2 just didn't care that she was on the phone, but the
3 Court takes into consideration the assault rules,
4 assault in the presence of a child. On the audio tape
5 the baby is crying. Also taking into consideration the
6 lapse in time when Mr. Boyd had an opportunity to leave
7 and call 911 and he continuously followed the victim
8 around and he continuously assaulted her time and time
9 again up until the officers came on the scene and he
10 continued to assault. I'm guessing there was sirens in
11 the background from the audio tape. That did not stop
12 him. He continued to assault until they arrived on the
13 scene and had to, I don't want to say take him down, but
14 on one occasion take him down to stop the assault. For
15 those reasons, sir, I'm going to sentence you to the
16 State Department of Corrections for 16 years and he will
17 be given credit for the 60 days that he has served. He
18 is not to have any contact with the victim in this case.
19 Anything regarding family court can be handled through -
20 about the child can be handled through the family court.
21 All right. Thank you, Mr. Young and Mr. Casto.

22 MR. CASTO: Thank you, Your Honor.

23 MR. YOUNG: Thank you. Appreciate it, Your Honor.

24 (End of proceedings.)

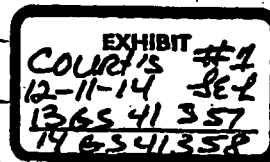
25

Can we get
the definitions
of 1, 2, 3

Attempted Murder

Assault and Battery of a
High and Aggravated nature

Assault and Battery in the 1st
Degree



WITNESSES

SCSO

RAFFIELD

ARREST WARRANT NUMBER

2013A4110200108

ACTION OF GRAND JURY

TO BE FILED

For person of Grand Jury

Date: NOV 19 2013

VERDICT

As to the Lesser included
charge of Assault and Battery
of a High and Aggravated Nature,

the Jury unanimously find the

For person of Petit Jury Defendant Guilty

Date: 12-11 -14

Karen 2013

DOCKET NO. 2013-GS-41- 357

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013

THE STATE

vs.

JOHNNY JEROME BOYD

CDR#3410

Indictment for

ATTEMPTED MURDER

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Doris B. [Signature]

Clerk of Court
Saluda, S. C.

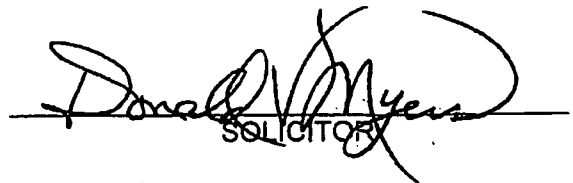
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on November 19, 2013, the Grand Jurors of Saluda County present upon their oath:

That JOHNNY JEROME BOYD, did in Saluda County on or about September 15, 2013, with malice aforethought, attempt to murder the victim, Latoya Abney, in that the defendant, , assaulted the victim about the head and body with a concrete block, concrete flower pot, and personal weapons "closed fists", with the intent to kill the victim, Latoya Abney, in violation of and with penalties provided for in §16-3-29, South Carolina Code of Laws, 1976, as amended.

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


SOLICITOR

ARREST WARRANT

2013A4110200108

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

THE STATE

2013095775

against

Johnny Jerome Boyd

Address: 0 Wood

Monetta, SC 29105-9106

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 9 Weight: 145DL State: SC DL #: 0004410707DOB: 6 Agency ORI #: SC0410000Prosecuting Agency: Saluda County SheriffProsecuting Officer: M Raffield - 1089Offense: Murder / Attempted MurderOffense Code: 3410Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Johnny Jerome Boyd
9/16/2013

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

100 East Church Street, Suite 6

Saluda, SC 29138

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Personally appeared before me the affiant M Raffield whobeing duly sworn deposes and says that defendant Johnny Jerome Boyddid within this county and state on or about 9/15/2013

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Saluda)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Attempted MurderI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT:

NCIC

Signature of Affiant

SByrd for M Raffield

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Affiant's Address 100 Law Enforcement DrSaluda, SC 29138-Affiant's Telephone (864)445-2112

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/15/2013defendant Johnny Jerome Boyd

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Saluda

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted MurderHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 9/15/2013Joyce Buffington Shults
Judge Code: 5801

(L.S.)

Judge's Address 108 South Rudolph StreetSaluda, SC 29138-Judge's Telephone (864)445-4500 x 2236Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

RECEIVED

SEP 15 2013

SALUDA COUNTY
SHERIFF'S OFFICEFILED
Clerk of Court
Saluda Co. SC
SEP 17 2013

TEST: TRUE COPY

Clerk of Court
Saluda Co.

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SALUDA

Personally appeared before me, Deputy M. J. Raffield, being duly sworn, deposes and states that the defendant, Johnny Jerome Boyd, (DOB 07/30/1976), did commit the following offense to wit:

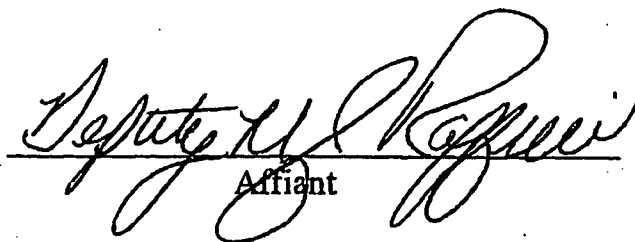
Attempted Murder

16-3-29

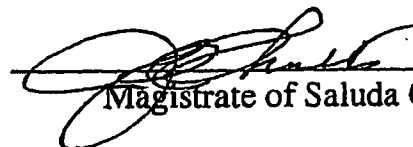
The defendant did on September 15, 2013 knowingly, willfully, and unlawfully commit the above offense of attempted murder. The defendant did assault and battery the victim, Latoya Abney, about the head and body with a concrete block, concrete flower pot, and personal weapons, "closed fists". The defendant did cause the victim to suffer a head injury along with injuries about the body. This incident took place at within the County of Saluda, State of South Carolina; and is in violation of 16-3-29 of the 1976 South Carolina Code of Laws as amended.

SC DL# 0004410707

CASE # 201309-5775


Affiant

Sworn before me this 15 day of September, 2013


Magistrate of Saluda County

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Saluda

VS.

Johnny Jerome Boyd

AKA:

Race:

Sex: M

Age: 37

DOB:

SS#:

Address:

City, State, Zip: Monetta, SC 29105-9106

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATUREin violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of

16 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$

; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 60 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

INDICTMENT/CASE#: 2013GS4100357

A/W#: 2013A4110200108

Date of Offense: 9/15/2013

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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and/or to pay a fine of \$

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\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

NO CONTACT w/ victim☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2161Sentence Date: 12-11-14

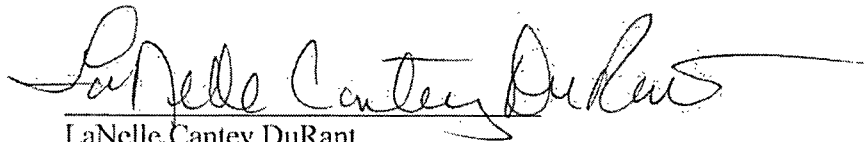
ATTEST: TRUE COPY

Clerk of Court
Saluda, S. C.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 16th, 2016



LaNelle Cantey DuRant
Appellate Defender

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

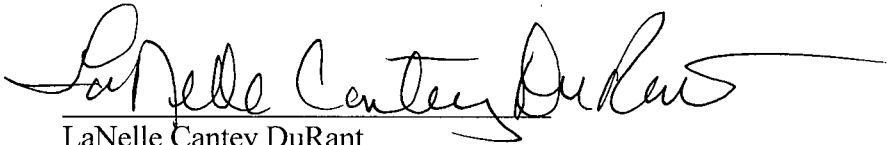
ATTORNEY FOR APPELLANT

RECEIVED
FEB 18 2016
SC Court of Appeals

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ATTORNEY FOR APPELLANT