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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County

SC Court of Appeals

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DALTON ELLIS CLARKE,

APPELLANT

APPELLATE CASE NO 2016-000801

RECORD ON APPEAL

LARA M. CAUDY  
Appellate Defender

ALAN WILSON  
Attorney General

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

RANEE SAUNDERS  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR APPELLANT

SCARLETT W. WILSON  
Solicitor, Ninth Judicial Circuit  
101 Meeting Street  
Charleston, SC 29401

ATTORNEYS FOR RESPONDENT

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1 It's impossible. Listen to his witnesses.

2 But they see what happened out there. Matt Keppler  
3 gives Clinton Seymour first aid. He helps him. Gives him  
4 CPR. Matt is standing out there, calling 911. They saw the  
5 ramifications of Mr. Clarke's actions. And so when they go  
6 back to Percy Street, they walk right in: Oh, my God, you  
7 wouldn't believe what we just saw.

8 What is Mr. Clarke's reaction? I'm sorry if using  
9 these words make him sound like I'm in middle school. His  
10 reaction was gross. It was gross: Yeah, that was me.

11 And you heard him. There's no ambiguity to that  
12 statement. It wasn't, oh, that was me involved. It was:  
13 That guy you gave CPR to on the ground, that was me.

14 That's gross. But this was still at the point in  
15 time that this thing, where this was something to do to be  
16 proud of. One punch, a guy goes down, I'm tough; that was  
17 me.

18 Madison I think, having just seen with her own eyes  
19 what happened to that guy, reacts appropriately. And she  
20 freaks out, cusses at him and kicks him out of the house.  
21 During the whole conversation while they are arguing over  
22 that, he reaches out, tries to find safety and he reaches out  
23 to one other guy that's there, thinking that I guess a male  
24 would understand this: Come on, man, you would do the same  
25 thing. I just ran up and punched the first guy I saw.

1 That's what Matt Keppler told you.

2           Now, I'm not going to dwell on this, but Matt  
3 Keppler gave a long testimony about what he heard that night.  
4 Okay? And how this whole things works, is if somebody gets  
5 twisted around back to the semantics, then they again get to  
6 put in these little video clips that make him look like a  
7 liar. But I'm lucky, the State is lucky here when it comes  
8 to Matt Keppler, because Ms. Anderson here has written down  
9 everything that he said on the stand. And I think you  
10 remember it. But if you don't, ask her. Because those  
11 little video clips that were shown to you are a little  
12 misleading about the totality of his testimony to you,  
13 because he was pretty clear. Yes, he was careful. He was  
14 trying not to lie. He was very careful in his wording. But  
15 it was clear to him, having heard this whole conversation,  
16 that Ellis Clarke had, in fact, confessed to being the one  
17 that hit Clinton Seymour.

18           And keep in mind what these things are. These are  
19 conversations. These aren't, as the defense wants you to  
20 believe, little statements that could be misconstrued.  
21 Everybody told you this whole thing that went down in Percy  
22 Street was a 10- or 15-minute argument. Once Ellis said:  
23 Yeah, ha, that is me, I hit that guy. You know, then a  
24 ten-minute conversation about it ensued. And everyone who  
25 heard that conversation left with the unambiguous conclusion

1 that Ellis was confessing to that.

2 Confessions continued the next day. Andrew O'Hearn,  
3 again, a friend of Ellis Clarke, took the stand. And he was  
4 about as boring as could be. And all of his answers were  
5 like pulling teeth. Why? Because he doesn't want to be  
6 here. He doesn't want to be a rat who snitches friends out.  
7 But he did. He said, that night -- I will leave this up to  
8 you -- this night he's so drunk he doesn't remember anything.  
9 Pretty convenient answer, but that's what he says. But even  
10 he, even the reluctant Mr. O'Hearn, takes the stand and says,  
11 the next day Ellis called me and confessed and said, let's --  
12 called me to get all of the stories straight and confess to  
13 being the guy.

14 Binh Ton, same thing. Either the day after or very  
15 soon after, Ellis called. And it's clear that he was  
16 confessing to being the one who hit him. These are not  
17 one-off comments that Ellis Clarke made. They are  
18 confessions to the crime. And are you ready for it?  
19 Confessions to Andrew O'Hearn, Binh Ton, Sarah White, Jake  
20 Dudinyak, Rebecca Richards, Madison Martini, Matthew Keppler,  
21 and Jamie Ledwell.

22 Let's jump back. As I told you, we were at a place,  
23 I believe, firmly convinced of Mr. Clarke's guilt before we  
24 even discussed eight confessions to this crime.

25 While we are on the subject of confessions, would

1 you like to read one? Would you like to read what he wrote?  
2 Remember, the tone had changed. It was clear by the point of  
3 the text messages that all of his accolades for being,  
4 forgive my language, but for being a bad ass, being tough,  
5 weren't going to happen. His friends were mad. So his tone  
6 has changed. He is being defensive. And this is no tearful,  
7 oh, you are right, I did it. But you draw the conclusions  
8 that you want to draw from these: I can't do anything about  
9 a girl pointing Peter out and not me.

10 Let me ask you a question. You are a innocent  
11 person. You are an innocent person, and you are getting a  
12 text message from somebody saying, you need to confess to  
13 this. What does -- how does an innocent person respond to  
14 that? An innocent person responds to it: What the hell are  
15 you talking about; I didn't do this. An innocent person  
16 doesn't respond with: Well, I can't help it that they picked  
17 up the wrong guy. That's not a denial. Okay?

18 I like how Detective Burkhardt described it.. It  
19 might not be a tearful confession, but it certainly is not a  
20 denial. You are saying I did something awful and the  
21 response is, I can't help it if they picked out the wrong  
22 guy.

23 And then it gets even worse. You can read this:  
24 Well, if it's the guy I knocked out, then why didn't I get  
25 pointed out? "If it's the guy I knocked out." How many

1 people got knocked out on King Street that night?

2 We sifted through these violent few moments all  
3 week. How many people got knocked out and got knocked out  
4 dramatically on King Street that night? One, Clinton  
5 Seymour. Hardly the denials of an innocent person from the  
6 text messages. You can read them. You heard testimony from  
7 eight confessions. You get to read the ninth. I haven't  
8 been able as a prosecutor in many cases to say those things.

9 And then you get to the coverup. Binh told you that  
10 while things have changed, there was a moment I think Ellis  
11 Clarke thought about -- of course, always scheming -- thought  
12 about, I think I have a way we can all get off of this. And  
13 that way was, he could go in, say he was the guy, you got the  
14 wrong guy, let Peter out, I'm the guy, but I did it in  
15 self-defense, he thought. But the only way they would buy  
16 that is how? And this is just -- I mean, hard to wrap your  
17 head around: Hey, Binh, sorry, buddy, only one way they are  
18 going to buy my BS story, you have to let me punch you in the  
19 face.

20 And doesn't that frame your job this week in the  
21 right context? You just heard a big pitch for innocence from  
22 a person who is willing to pressure his friend into letting  
23 him punch him in the face to cover up his guilt. I think  
24 that frames your job today in a really good context in the  
25 things you heard today.

1           Again, the defense is all about semantics in this  
2 case, twisting people's words, trying to portray honest  
3 people as liars just because they described things two  
4 different ways on two different questions.

5           It's a defense of misleading conclusions, when  
6 you've heard from experts that there's no way to tell left  
7 hand and right hand, still stands up and tries to make that  
8 seem like a conclusive thing, even when the experts tell you  
9 it's not. It's a defense of a conspiracy.

10           He looks at, for lack of a better term, my witnesses  
11 and says, they're evil. He doesn't use that word. But why  
12 don't you think about the level of the moral depravity it  
13 takes to come into a courtroom and try to frame somebody. My  
14 ten witnesses he wants you to believe are evil. I don't  
15 think they are. And I think you met them and I don't think  
16 you believe they are.

17           It's a defense with some eyewitnesses. So let's  
18 discuss them. Because although he calls all of these  
19 witnesses you heard from the State evil, I'm not going to say  
20 even remotely that about the witnesses that he saw. You want  
21 to know what I think about Jackie Gladden and Gabrielle  
22 Lemieux and about Rosalie Frederick, I think they are great  
23 people. I enjoyed our interactions today. They are wrong.  
24 And you know, having heard their testimony, that they are  
25 wrong, but they are nice people. They are not in here trying

1 to lie. They just got it wrong. And when you think about  
2 everything you know up to this point, it is incredibly clear  
3 and incredibly easy to see how they got it wrong.

4           They are walking down King Street. It's a fun  
5 night. Okay? They are not looking for any trouble. And  
6 something draws their attention. And what do we know draws  
7 their attention? A loud sound of Clinton Seymour hitting  
8 that pavement. It drew everybody's attention. And people  
9 are out there, all talked about this. So they are walking.  
10 They are some distance away. They turn to that sound. And  
11 what do they see? A group of people. And who is the most  
12 lankiest, goofiest, easiest one to recognize in this group?  
13 Peter Dudinyak.

14           And so the mind -- all of us do it. The mind  
15 connects dots. So they are turned. There's a guy on the  
16 ground. And there's lanky Peter Dudinyak.

17           And then they tell you what they saw. And here's  
18 the thing. They are not lying to you. Right? But they told  
19 you, they got down and they told you what they saw. And that  
20 is not -- that is objectively not what happened to Clinton  
21 Seymour. Each and every one of you know it from all of the  
22 witnesses, but most clearly, from Dr. Tormos, that what these  
23 eyewitnesses of the defense's say they saw is simply  
24 demonstratively not what happened out there, punched to the  
25 face.

1 I asked them, are you certain about that?  
2 Jacqueline, are you as certain that you saw this punch to the  
3 face as you are certain that it was Peter? Yes, yes. She  
4 was certain about that punch to the face. Both of them were,  
5 absolutely certain, about a punch to the face.

6 You heard repeatedly from Dr. Tormos and illustrated  
7 for you in a picture, the most powerful way possible, there  
8 is not a red mark, there is not a scratch, there is not a  
9 bruise, there is not an abrasion to the front of Clinton  
10 Seymour's face or to the sides of his head, as Mr. King tried  
11 to demonstrate for you, not a single injury. They are wrong.

12 Jacqueline Gladden, though, it's so easy to  
13 understand how they are wrong, Jacqueline Gladden, I don't  
14 think she's lying, she said she saw Peter Dudinyak hit  
15 somebody in the face. She's certain of it. And she came  
16 down and said right in the forehead. Didn't she? Both of  
17 them demonstrated for you right in the forehead.

18 Bradley Baker was standing, as we know from the  
19 video, right in front of Peter Dudinyak. Where was he hit?  
20 In the nose, pretty close.

21 Daniel Hennessey was standing right in front of  
22 Peter Dudinyak. Where was he hit? Right where Jackie says,  
23 in the forehead.

24 I don't blame her. Think about the chaos that's out  
25 there. They hear the sound, turn, and then she's active,

1 she's out there, she's loud, she's demonstrative, she runs  
2 him down to some dumpster. I think she was mistaken on that.  
3 There's no dumpster out there. But she runs him down. And  
4 then all is clear and all she knows is Peter, who she knows  
5 hit somebody, and possibly did, in the forehead. And then  
6 there's somebody sadly on the ground. And they are trying to  
7 do the right thing. But they are connecting dots that we  
8 know haven't been here all week, simply are not what  
9 happened.

10           Having heard this whole story from everyone, I think  
11 that's easy for you to understand. I think it's easy for you  
12 to grasp that Jacqueline Gladden, as helpful as she may be  
13 trying to be, is mistaken and just wrong. And as you heard  
14 from her several times, she was very loud out there. So  
15 anyone else on that scene would have seen her, that's the  
16 MF'er, that's the guy. And quickly, person on the ground,  
17 person standing up, it's the wrong person. But the mind  
18 fills in those blanks.

19           The injury to Clinton Seymour was from a running  
20 punch. And we know that from the force of that blow,  
21 fractures emanating all the way around to the front of the  
22 face. Peter stops. Peter stops right by the electrical box.  
23 You can watch him. And, remember, right when they get here  
24 is right when the first punch is happening. Everybody says  
25 that. And right when he gets there, he's right in front of

1 the box. And all of a sudden, you see everybody start to go,  
2 and they go off camera. And that's when Clint is going down.

3 I'm going to take a quick moment, I'm almost  
4 finished, to discuss the law that's going to be charged to  
5 you. You are going to have some options. I don't think this  
6 is difficult. Once you reach the conclusion that it was  
7 Ellis Clarke that hit Clinton Seymour, you will have the  
8 option of finding him guilty of assault and battery of a high  
9 and aggravated nature; assault and battery in the second  
10 degree; or assault and battery in the third degree.

11 Once you determine Ellis Clarke hit Peter, the  
12 decision of which one of these three apply is not -- is the  
13 easiest decision of your whole week. Because assault and  
14 battery of a high and aggravated nature is causing -- and we  
15 are just talking about what it caused, not -- the incident is  
16 to punch. Once we get to that, we are talking about the  
17 injury that that punch caused. ABHAN is sufficient injury  
18 that created a substantial risk of death. I'm not being  
19 flippant when I say this. But we know what happened with  
20 Mr. Seymour. Creating a substantial risk of death where he  
21 died. Or ABHAN is also proven by protracted loss or  
22 impairment of an organ. And you heard from Dr. Tormos about  
23 the permanent loss of Mr. Seymour's brain function.

24 The others are there just because they give you that  
25 option, if you should decide. But what you are really

1 looking here at the injuries. A and B, assault and battery  
2 second degree, would be what's called a moderate injury. I  
3 can't imagine that anyone on this jury would conclude this  
4 was a moderate injury.

5 A and B third is just an injury.

6 So once you conclude Ellis Clarke was the individual  
7 that hit Clinton Seymour, what he is guilty of, I think, is  
8 quite clear. He's guilty of causing great bodily injury to  
9 Clinton Seymour.

10 Also briefly mention, again, something I mentioned  
11 in my opening, that the State, exercising large discretion,  
12 has pursued this as an assault scheme. This is not a murder  
13 prosecution. So whether or not Ellis Clarke intended the  
14 result, whether or not when he threw that punch, he intended  
15 death, is not an issue that you need to discuss or concern  
16 yourselves with in the jury room. This is not a murder  
17 prosecution. I think he's getting the benefit of some  
18 restraint on this decision already.

19 To that aim, we understand, the State understands  
20 that where you sit is not an easy place to sit. You are both  
21 aware that there are two families in this room. Okay? We  
22 know that. And we know that judging another human being is  
23 difficult for anyone. But what the law says, Mr. King has  
24 mentioned this as well, that what you've taken an oath to do,  
25 what you've promised to do, what you've promised to do, is

1 put aside those feelings and those emotions, follow the  
2 evidence.

3 And the State believes, as I've outlined for you  
4 today, that when you do that, free of emotion, there's a  
5 clear result. And that is that Ellis Clarke assaulted  
6 Clinton Seymour, which led to his death, causing great bodily  
7 injury.

8 Because it's time. It's time for that conclusion.  
9 It's past time. It's been two years. It's time for the  
10 Seymour family to no longer have to listen to news stories  
11 and read clips about their son, like some drunken frat guy  
12 dying being involved in a fight on King Street. We've heard  
13 everything. We know that's not true. We know he was just  
14 standing there.

15 It's time for Peter Dudinyak to be able to go  
16 through his life without the cloud of having caused someone's  
17 death over his head.

18 And, most of all, it's time for Ellis Clarke. It's  
19 time for Ellis Clarke to face the consequences of taking  
20 someone very special -- I'm sorry. There's one rational  
21 conclusion, and that is guilt, assault and battery of a high  
22 and aggravated nature.

23 I appreciate your time. Thank you.

24 THE COURT: All right. Ladies and gentlemen, all  
25 of the evidence has been presented to you in this case. The

1 parties have made their closing arguments. And now is the  
2 time of the trial where I will charge you with the law to be  
3 applied to this case.

4 The indictment in this case charges the defendant  
5 with assault and battery of a high and aggravated nature. I  
6 will remind you that the fact that the defendant was  
7 arrested, charged and indicted in this case is not evidence  
8 in this case and cannot be considered by you as evidence of  
9 guilt in this case, nor does the defendant's arrest, charge  
10 and indictment create any presumption or inference of guilt.  
11 This document is simply the formal written instrument which  
12 contains the charge made against the defendant. It is the  
13 formal document by which this case is brought into this  
14 court.

15 The defendant pleads not guilty to this indictment.  
16 That plea puts the burden on the State to prove the defendant  
17 guilty. A person charged with committing a criminal offense  
18 in South Carolina is never required to prove his innocence.  
19 I charge you that an important rule of the law is that the  
20 defendant in a criminal trial, no matter what the seriousness  
21 of the charge may be, will always be presumed to be innocent  
22 of the crime for which the indictment was issued unless guilt  
23 has been proven by evidence satisfying you of that guilt  
24 beyond a reasonable doubt.

25 This presumption of innocence does not end when you

1 begin your deliberations, but it accompanies the defendant  
2 throughout the trial until you reach a verdict of guilt based  
3 on evidence satisfying you of that guilt beyond a reasonable  
4 doubt. The presumption of innocence is like a robe of  
5 righteousness placed about the shoulders of the defendant,  
6 which remains with the defendant until it has been stripped  
7 from the defendant by evidence satisfying you of the  
8 defendant's guilt beyond a reasonable doubt.

9           The presumption of innocence is not a mere legal  
10 theory. It is not just a legal phrase. It is a substantial  
11 right to which every defendant is entitled unless you the  
12 jury are satisfied from the evidence of the defendant's guilt  
13 beyond a reasonable doubt.

14           Now, what is a reasonable doubt in the law? A  
15 reasonable doubt is the kind of doubt that would cause a  
16 reasonable person to hesitate to act. Proof beyond a  
17 reasonable doubt is proof that leaves you firmly convinced of  
18 the defendant's guilt. We know very few things in this world  
19 with absolute certainty. And in criminal cases, the law does  
20 not require proof that overcomes every possible doubt.

21           If based on your consideration of the evidence, you  
22 are firmly convinced that the defendant is guilty of the  
23 crime charged, you must find the defendant guilty. If, on  
24 the other hand, you think a real possibility exists that the  
25 defendant is not guilty, you must give the defendant the

1 benefit of that doubt and find the defendant not guilty.

2 I remind that you during this trial, you and I have  
3 certain duties to perform. As the trial judge, my  
4 responsibility is to preside over the trial of this case. I  
5 also have the duty to rule on the admissibility of evidence  
6 offered during this trial. You are to consider only the  
7 competent evidence before you. If any testimony was ordered  
8 stricken from the record in this case during this trial, you  
9 must disregard that testimony. You are to consider only the  
10 testimony which has been presented from the witness stand,  
11 any exhibits which have been made a part of the record in  
12 this case and any stipulations of counsel.

13 I have the additional duty to charge you the law  
14 applicable to this case. As the presiding judge, I am the  
15 sole judge of the law of this case. Your duty as jurors is  
16 to accept and apply the law as I now state it to you. If you  
17 have any idea as to what the law is or what the law ought to  
18 be and your idea is different from what I tell you the law  
19 is, you must disregard your idea of what the law is or ought  
20 to be because you were sworn to accept the law and apply the  
21 law exactly as I state it to you.

22 In every case tried in this court before a jury, the  
23 jury is the sole and exclusive judge of the facts in a case.  
24 A trial judge cannot intimate, state, comment on, or make any  
25 statement to a trial jury about the facts in a case. Since

1 you are the sole -- since you the jury are the sole judge of  
2 the facts in this case, you are not to infer from what I've  
3 said during the progress of this trial in ruling upon the  
4 admissibility of evidence or otherwise or anything that I say  
5 during the course of this instruction to you, that I have an  
6 opinion about the facts in this case. The law does not allow  
7 me to have an opinion about the facts in this case. This is  
8 a matter solely for you the jury to determine. As jurors,  
9 your duty is to determine the effect, value, weight and truth  
10 of the evidence presented during this trial.

11 Two types of evidence are generally presented during  
12 a trial, direct evidence and circumstantial evidence. Direct  
13 evidence is the testimony of a person who claims to have  
14 actual knowledge of a fact, such as an eyewitness. It is  
15 evidence that directly proves the existence of a fact and  
16 does not require deduction.

17 Circumstantial evidence is proof of a chain of facts  
18 and circumstances indicating the existence of a fact. Crimes  
19 may be proven by circumstantial evidence. The law makes no  
20 distinction between the weight or value to be given to either  
21 direct or circumstantial evidence. However, to the extent  
22 the State relies on circumstantial evidence, all of the  
23 circumstances must be consistent with each other. And when  
24 taken together, point conclusively to the guilt of the  
25 accused beyond a reasonable doubt. If the circumstances

1 merely portray the defendant's behavior as suspicious, the  
2 proof has failed.

3           The State has the burden of proving the defendant  
4 guilty beyond a reasonable doubt. This burden rests with the  
5 State regardless of whether the State relies on direct  
6 evidence, circumstantial evidence, or some combination of the  
7 two. You should weigh all of the evidence in this case.

8           After weighing all of the evidence, if you are not  
9 convinced of the guilt of the defendant beyond a reasonable  
10 doubt, you must find the defendant not guilty. However,  
11 after weighing all of the evidence, if you are convinced of  
12 the guilt of the defendant beyond a reasonable doubt, you  
13 must find the defendant guilty.

14           Necessarily, you must determine the credibility of  
15 witnesses who have testified in this case. Credibility  
16 simply means believability. Your duty as jurors is to  
17 analyze and to evaluate the evidence and determine which  
18 evidence convinces you of its truth. In determining the  
19 believability of witnesses who have testified in this case,  
20 you may believe one witness over several witnesses or several  
21 witnesses over one witness.

22           You may believe a part of the testimony of a witness  
23 and reject the remaining part of the testimony of that same  
24 witness. You may believe the testimony of a witness in its  
25 entirety or reject the testimony of a witness in its

1 entirety. You may consider whether any witness has exhibited  
2 to you any interest, bias, prejudice or other motive in this  
3 case. You may also consider the appearance and manner of a  
4 witness while on the witness stand.

5           Some of the witnesses have made prior statements  
6 that are not consistent with the witness's present testimony.  
7 You may use this evidence to decide whether to believe the  
8 witness. You may also use the evidence of the earlier  
9 contradictory statements to determine the truth of those  
10 statements. You are to decide whether to believe the earlier  
11 statements or the testimony given at trial.

12           If a witness is shown to have knowingly testified  
13 untruthfully concerning any material matter, you may consider  
14 this in determining whether to trust the witness's testimony  
15 as to other matters. You may reject all testimony of that  
16 witness or give all or part of the testimony the weight you  
17 think it deserves.

18           A witness in this case has a prior criminal record.  
19 A person who has a past criminal record is competent to  
20 testify during a trial. A past record does not affect the  
21 ability of that witness to testify. The past record may only  
22 be considered by you, if at all, in determining the witness's  
23 believability. Remember, you are the sole judge of the facts  
24 in this case and of the believability of any and all of the  
25 witnesses.

1           Now, the rules of evidence ordinarily do not permit  
2 witnesses to testify to opinions or conclusions. An  
3 exception to this rule exists for witnesses we call expert  
4 witnesses. A witness, who by education and experience, has  
5 become expert in some art, science, profession or calling,  
6 may state an opinion as to relevant and material matter in  
7 which the witness claims to be an expert and may also state  
8 the reasons for that opinion. You should consider any expert  
9 opinion received into evidence in this case, and like any  
10 other evidence, give it the weight you think it deserves.

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

20           I instruct you and emphasize that the fact that the  
21 defendant did not testify is not a factor to be considered by  
22 you in any way in your deliberation and in your consideration  
23 of the question of the guilt or the innocence of the  
24 defendant. The defendant's failure to testify must not be  
25 considered by you in any manner whatsoever.

1           A defendant has the constitutional right to remain  
2 silent. And the assertion of this right must not be  
3 considered by you in your deliberations. I repeat, under  
4 your oath, you are to draw no conclusion whatsoever from the  
5 fact that the defendant in this case did not testify. The  
6 fact that the defendant did not testify should not even be  
7 discussed in the jury room.

8           The burden of proof, as I have stated to you, is on  
9 the State. The defendant is not required to prove his  
10 innocence. The burden of proof remains on the State to prove  
11 the defendant's guilt beyond a reasonable doubt.

12           An issue in this case is the identification of the  
13 defendant as the person who committed the crime charged. The  
14 State has the burden of proving identity beyond a reasonable  
15 doubt. You must be satisfied beyond a reasonable doubt of  
16 the accuracy of the identification of the defendant before  
17 you may convict the defendant.

18           Identification testimony is an expression of belief  
19 or impression by a witness. You must determine the accuracy  
20 of the identification of the defendant. You must consider  
21 the believability of each identification witness in this same  
22 way as any other witness. You may consider whether the  
23 witness had an adequate opportunity to observe the offender  
24 at the time of the offense. This will be affected by things  
25 like how long or short a time was available, how far or close

1 the witness was, the lighting conditions, and whether the  
2 witness had the chance to see or know the person in the past.

3           Once again, I instruct you that the burden of proof  
4 on the State extends to every element of the crime charged.  
5 And this specifically excludes the burden of proving beyond a  
6 reasonable doubt the identity of the defendant as the person  
7 who committed the crime. If after examining the testimony,  
8 you have a reasonable doubt as to the accuracy of the  
9 identification, you must find the defendant not guilty.

10           In order to establish criminal liability, criminal  
11 intent is required. For example, mental state required to be  
12 proven by the State for a particular crime might be purpose,  
13 intent, knowledge, recklessness or criminal negligence.  
14 Criminal intent must be proven by the State beyond a  
15 reasonable doubt. Criminal intent is always a matter that  
16 must be determined by the jury from the circumstances  
17 surrounding the situation.

18           Intent cannot be proven to a mathematical certainty.  
19 Medical science cannot dissect a person's brain and determine  
20 what the person had in mind. So the law says that criminal  
21 intent may be inferred from the circumstances shown to have  
22 existed. This is how you make a determination of whether or  
23 not the element requiring intent was present. Intent does  
24 not have to be proven by direct and positive evidence. But  
25 intent may be established by inference, in the same way as

1 any other fact, by taking into consideration the acts of the  
2 parties and all of the facts and circumstances of the case.

3 Criminal intent is a mental state, a conscious  
4 wrongdoing. You must determine what the defendant intended  
5 to do based on the circumstances shown to have existed.

6 Criminal intent can arise from an action or a  
7 failure to act. It may arise from negligence, recklessness  
8 or indifference to duty, or to consequences that is  
9 considered by the law to be the equivalent of criminal  
10 intent.

11 As I previously instructed you, the defendant is  
12 charged with assault and battery of a high and aggravated  
13 nature. To convict the defendant of this crime, the State  
14 must prove beyond a reasonable doubt that the defendant  
15 unlawfully injured another person, and either great bodily  
16 injury to that person resulted or the act was accomplished by  
17 means likely to produce death or great bodily injury.

18 "Great bodily injury" means bodily injury which  
19 causes a substantial risk of death, but which causes serious  
20 permanent disfigurement or protracted loss or impairment of a  
21 function of a bodily member or organ.

22 If you find the State has failed to prove the  
23 defendant guilty of assault and battery of a high and  
24 aggravated nature, you must then decide whether the State has  
25 proved the defendant guilty of assault and battery in the

1 second degree.

2 Included within the offense of assault and battery  
3 of a high and aggravated nature is the lesser offense of  
4 assault and battery in the second degree. In this case, the  
5 crime of assault and battery in the second degree has the  
6 same elements as assault and battery of a high and aggravated  
7 nature, except that the contemplated injury is moderate  
8 bodily injury of another person, rather than great bodily  
9 injury.

10 To convict the defendant of assault and battery in  
11 the second degree, the State must prove beyond a reasonable  
12 doubt that the defendant unlawfully injured another person or  
13 offers or attempts to injure other person with the present  
14 ability to do so, and either moderate bodily injury to  
15 another person results or moderate bodily injury to another  
16 person could have resulted.

17 "Moderate bodily injury" means physical injury that  
18 involves prolonged loss of consciousness or that causes  
19 temporary or moderate disfigurement or temporary loss of the  
20 function of a bodily member or organ, or injury that requires  
21 medical treatment when the treatment requires the use of  
22 regional or general anesthesia, or injury that results in a  
23 fracture or dislocation.

24 Moderate bodily injury does not include one time  
25 treatment and subsequent observation of scratches, cuts,

1 abrasions, bruises, burns, splinters, or any other minor  
2 injuries that do not ordinarily require extensive medical  
3 care.

4           If you find that the State has failed to prove the  
5 defendant guilty of assault and battery in the second degree,  
6 you must then decide whether the State has proved the  
7 defendant guilty of assault and battery in the third degree.  
8 Included within the offense of assault and battery of a high  
9 and aggravated nature and assault and battery in the second  
10 degree is the lesser offense of assault and battery in the  
11 third degree.

12           In this case, the crime of assault and battery in  
13 the third degree has the same elements as assault and battery  
14 in the second degree, except that it contemplates injury  
15 only, and not great or moderate bodily injury. To convict  
16 the defendant of assault and battery in the third degree, the  
17 State must prove beyond a reasonable doubt that the defendant  
18 unlawfully injured another person or offers or attempts to  
19 injury another person with the present ability to do so.

20           Now, there are four possible verdicts that you can  
21 reach in this case. No significance whatsoever is to be  
22 given to the order which I state these verdicts to you. I  
23 simply must state one first, one second, one third and one  
24 fourth.

25           The possible verdicts in this case are, the first

1 one: We, the jury, find the defendant guilty of assault and  
2 battery of a high and aggravated nature.

3 Second possible verdict, is: We, the jury, find the  
4 defendant guilty of assault and battery in the second degree.

5 The third possible verdict is: We, the jury, find  
6 the defendant guilty of assault and battery in the third  
7 degree.

8 Fourth possible verdict is: We, the jury, find the  
9 defendant not guilty.

10 Ladies and gentlemen, your verdict must be a  
11 unanimous one. Dr. Glover, as foreperson, when the jury  
12 agrees on a verdict, you will check the appropriate verdict  
13 on the verdict form, sign your name, and knock on the door  
14 and advise the bailiff that you've reached a verdict. And we  
15 will bring you back in at that time.

16 Now, you have been allowed to take notes during the  
17 trial of this case. And you may use your notes during your  
18 deliberations. However, please remember that some people are  
19 better note takers than others. Juror notes should not be  
20 given any greater weight than the recollection of other  
21 jurors who did not take notes. The recollections of  
22 individual jurors should be considered as reliable as notes  
23 taken by any other jurors.

24 Now, we also have lunch coming for you. If it's not  
25 here, I don't know if it's here yet or not, it will be here

1     shortly. Now, when lunch arrives, you can do one of two  
2     things. You can either continue to deliberate while you eat  
3     your lunch or you can stop your deliberations, eat your lunch  
4     and then resume your deliberations. The only requirement is  
5     that everybody must do the same thing. You can't have some  
6     jurors continue to deliberate while others stop and eat their  
7     lunch. So whatever you want to do is fine as long as  
8     everybody does the same thing.

9             I'm going to send you back to the jury room. You  
10     can take your notes with you. But please do not begin  
11     deliberations at this time. I've got to check with the  
12     attorneys to see if they have any additional charges or  
13     challenges to the instructions I've given you. If they do,  
14     and I deem the additional charges or corrections appropriate,  
15     I will bring you back into the courtroom and make those  
16     corrections.

17             If there are none, then we will send the exhibits  
18     back to the jury room with the directions by the bailiff that  
19     you can begin your deliberations and you can start at that  
20     time. So, please, do not begin your deliberations until the  
21     bailiff instructs you to do so.

22             All right. Thank you very much. Everyone remain  
23     seated while the jury is excused.

24             (Whereupon, the jury leaves open court at 11:53  
25     a.m.)

1 THE COURT: All right. Any challenges or exceptions  
2 to the jury charge by the State?

3 MR. SIMPSON: No, Your Honor.

4 THE COURT: Any by the Defense?

5 MR. KING: Just renew my objection to the defense of  
6 others and right to act.

7 THE COURT: Your objection is noted; however, I'm  
8 going to stick with these charges. I deny the additional  
9 charge.

10 All right. Let's make sure we've got all of the  
11 exhibits together. We can send them back to the jury. Also,  
12 I will need Mr. Etchison, the alternate juror, if you would  
13 bring him out, please.

14 (Whereupon, the alternate juror, Mr. Etchison,  
15 enters the room.)

16 THE COURT: Mr. Etchison, this is the part of the  
17 trial I always hate. As the alternate, since we still have  
18 our 12 panel jury, the law does not allow you to participate  
19 in the deliberations. I hate that because we make you sit  
20 through the whole trial but then we don't let you deliberate  
21 and participate in the verdict. But I do want to thank you  
22 for your service.

23 ALTERNATE JUROR: That's fine.

24 THE COURT: You are at liberty -- we have lunch  
25 coming. If you want to stay and eat lunch, that's fine. If

1 you want to be excused, you can do that. Do you have  
2 anything in the jury room?

3 ALTERNATE JUROR: I have my bag.

4 THE COURT: We can send somebody to get his bag for  
5 him. And, like I said, if you want to stay and see what  
6 happens, you can do that. If you want to leave, you can do  
7 that as well. But I want to thank you for your service and  
8 that will end your services also for this week. There are no  
9 more trials to be tried this week. But thank you very much  
10 for being here.

11 ALTERNATE JUROR: Thank you.

12 THE COURT: Anything further from the State?

13 MR. SIMPSON: No, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. KING: No, Your Honor.

16 THE COURT: Let's make sure we've got all the  
17 exhibits together. I will give you the verdict form. And  
18 when they get everything together, you can take the exhibits,  
19 the verdict form back to the jury, and tell them they can  
20 begin their deliberations. All right. You can tell them  
21 they can begin their deliberations.

22 (Whereupon, the jury begins their deliberation at  
23 11:58 a.m.)

24 (Court's Exh. 3, Jury Note, "Need help," was  
25 marked for identification.)

1           (Court's Exh. 4, Jury Note, "Can we have white  
2 board map of King and Morris," was marked for  
3 identification.)

4           (Whereupon, State's Exhibits 6, 7 and 8, which were  
5 inadvertently left behind, are delivered to the jury room.)

6           THE COURT: All right. I've got a note from the  
7 jury. And they have also advised the clerk on another  
8 matter. Number one, note says: Are the transcripts  
9 available from trial, first three witnesses, Baker,  
10 Hennessey, Binh Ton?

11           All I'm going to do to just inform them that there  
12 are no transcripts; however, they can listen to the audio  
13 playback of any witness they want to listen to.

14           Clerk of Court also advises me that the computer is  
15 not playing the disk. That the encryption on there, it  
16 doesn't work. So we can do one of two things; because they  
17 want to stop it, start it, go forward; is either going to be  
18 to bring them back in the courtroom, do it in open court  
19 where they tell you to stop, start, go forward, but they are  
20 not going to be able to deliberate with anybody in here, or  
21 we can send the clerk in there with the solicitor's computer  
22 to start and stop in there. Unless y'all got another  
23 suggestion.

24           MR. SIMPSON: I think the latter is fine, if it was  
25 just operated by a clerk. So, you know, obviously, they

1 can't dig through anything other than --

2 THE COURT: What he said, when they advised him, he  
3 said basically one of the jurors said, I want to be able to  
4 stop it and start it. And then another juror said, well, I  
5 want to watch it all the way through. So according to the  
6 clerk, we can't just give them your computer because there's  
7 some things on there they can't get into. So we would need  
8 somebody in there to kind of manage it, from what I  
9 understand.

10 MR. SIMPSON: I'm 100 percent comfortable with the  
11 clerk being that person.

12 THE COURT: What's the Defense's position?

13 MR. KING: Same thing. So I guess they are not  
14 allowed alone to dig around it, if we wanted to. As long as  
15 you are supervising, that's fine.

16 THE COURT: Is that a solution?

17 THE CLERK: Absolutely.

18 THE COURT: Okay. Let's do this then. Let me bring  
19 them back in. I'm going to tell them we don't have any  
20 transcripts, but they can listen to the audio transcript of  
21 anyone they want to, whoever they want to, if they decide  
22 they want to. Write the witness or witness's name on a piece  
23 of paper. I notice three of them on here, but we can bring  
24 them back in and play the audio recording.

25 And as far as reviewing the disk, we will send the

1 clerk in there with the computer and we will play it. He can  
2 start it, stop it, as appropriate.

3 Anything from the State before we bring the jury in?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. KING: No.

7 THE COURT: Court's Exhibit 3, this is the note  
8 where they said need help. I'm assuming that is for the  
9 computer.

10 THE CLERK: Correct.

11 THE COURT: Then we have Court's Exhibit 4, can we  
12 have whiteboard map of King and Morris.

13 MR. SIMPSON: We had erroneously forgot to send that  
14 back, but I brought that back.

15 (Court's Exh. 5, Jury Note, was marked for  
16 identification.)

17 MR. SIMPSON: Your Honor, my co-counsel brought up a  
18 good point. It would probably be helpful for -- Sam, if you  
19 are going to be the person, that you grab that disk and let  
20 us sort of walk you through to where the right place is. I  
21 think Mr. King, obviously, can assist me with that. It's our  
22 surveillance footage, and can get right where you need to  
23 be.

24 (whereupon, the jury returns to open court at 01:25  
25 p.m.)

1           THE COURT: Ladies and gentlemen, welcome back. I  
2 have got three requests from you. Number -- first request is  
3 "Need help". I understand that is one of the disks will not  
4 play on the computer; is that correct?

5           THE FOREPERSON: That's correct, sir.

6           THE COURT: What we've agreed to do is, we are going  
7 to send Mr. Causey from the clerk's office. He's going to be  
8 in there with the computer that it does work on. And he is  
9 going to play it for you, stop it, start it, follow at your  
10 directions, let you watch it as you want to and as you deem  
11 appropriate. And he's going to have a computer in there that  
12 he can manipulate so that you can watch it however you want  
13 to. Okay?

14           Your next request: Can we have the whiteboard map  
15 of King and Morris? I understand that that was left out by  
16 error, but y'all have that now. Correct?

17           THE FOREPERSON: Yes, sir.

18           THE COURT: And then your third request, or whatever  
19 order they came in: Are transcripts available from trial?  
20 Baker, Hennessey and Binh Ton.

21           THE COURT: We do not have written transcripts;  
22 however, if there is a witness whose testimony you want to  
23 listen to, again, we can bring you back into the courtroom  
24 and play their audio testimony for you. What I'm going to do  
25 is let you go back to the jury room, resume your

1 deliberations. If there is a witness whose testimony you  
2 want to listen to, when you want to listen to it, write that  
3 witness's name on a sheet of paper, say, we want to listen to  
4 the audio playback of the testimony. We will bring you back  
5 into the courtroom and we will play it back. Is that  
6 agreeable?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: Okay. I'm going to send you back in the  
9 jury room. And I notice you've got -- with these three  
10 witnesses, rather than play them now, we are going to send  
11 you back. And you can deliberate however and whatever order  
12 you want to. If you want to get together and listen to a  
13 witness's testimony, write it down, bring it back out. If  
14 you want to review these disks and then listen to the  
15 testimony, or if you decide you don't want to listen to any  
16 testimony or don't want to review the disk, you can  
17 deliberate however you want to. Okay?

18 But before we go ahead and play back any audio  
19 testimony, I will wait for the Court to get another request  
20 from you. Okay?

21 All right. Thank you very much. We will send you  
22 back to the jury room and you can resume your deliberations.  
23 Thank you.

24 (Whereupon, the jury leaves open court at 1:28 p.m.)

25 THE COURT: Anything from the State before we recess

1 again?

2 MR. SIMPSON: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. KING: No, sir.

5 THE COURT: Kind of stay close, because I don't know  
6 if they want to listen to testimony or not. They may want  
7 to, so might be coming back here. This may satisfy  
8 everything they want. I don't know. Just have to wait and  
9 see.

10 THE COURT: Got a note from the jury. It says: Can  
11 we hear audio of Dan Hennessey's testimony.

12 (Court's Exh. 6, Jury Note requesting playback of  
13 Daniel Hennessey's testimony, was marked for identification.)

14 THE COURT: Anything from the State before we bring  
15 them in and hear the testimony?

16 MR. SIMPSON: No, Your Honor.

17 MR. KING: No, Your Honor.

18 THE COURT: All right. Bring them in. Generally,  
19 we will just start playing it now. If they stand up and say,  
20 that's enough, I will go ahead and stop there. But until  
21 they give me some direction as to how much or whatever, I'm  
22 just going to play it. As I said, they just want to hear  
23 that witness's testimony, so I'm just going to play it until  
24 I get some further direction.

25 (Whereupon, the jury returns to open court at 2:00

1 p.m.)

2 THE COURT: Thank you. Ladies and gentlemen,  
3 welcome back. I understand you want to hear Mr. Hennessey's  
4 testimony; is that correct?

5 THE FOREPERSON: That's correct, sir.

6 THE COURT: All right. We've got that queued up and  
7 we will play that for you now. Thank you.

8 (Whereupon, the court reporter plays back the audio  
9 of Daniel Hennessey's testimony.)

10 (Whereupon, the jury leaves open court at 2:50 p.m.)

11 THE COURT: Anything from the State?

12 MR. SIMPSON: No, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. KING: No, Your Honor.

15 THE COURT: All right. We will be in recess.

16 (Whereupon, recess transpired.)

17 THE COURT: I understand the jury has reached a  
18 verdict. Is there anything from the State before we bring  
19 the jury in?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. KING: Your Honor, my client's family is not  
23 quite here yet. The investigator is wrapping them up. I  
24 apologize, but if we could just give me a minute or two, they  
25 are coming in now.

1           THE COURT: Everybody is here. All right. Anything  
2 from the Defense before we bring the jury in.?

3           MR. KING: No.

4           THE COURT: Ladies and gentlemen, I understand the  
5 jury has reached a verdict. We are going to bring the jury  
6 in. We will be publishing the verdict. I want to caution  
7 everybody again, regardless of what the verdict is, I don't  
8 want any display of emotion or any display from the gallery  
9 at all. It's not an easy part being on the jury. And so if  
10 you do not think that you can control your emotions  
11 regardless of the verdict, I need you to excuse yourself at  
12 this point in time, because we are not going to have any  
13 outbursts regardless of what that verdict is. Okay?

14           All right. Let's bring the jury in.

15           (Whereupon, the jury returns to open court at 04:24  
16 p.m.)

17           THE COURT: I understand the jury has reached a  
18 verdict; is that correct?

19           THE FOREPERSON: It is correct.

20           THE COURT: Have you completed the verdict form and  
21 signed it?

22           THE FOREPERSON: Yes, I have.

23           THE COURT: If you would please hand it to the  
24 bailiff. I ask the clerk if he would please publish the  
25 verdict.

1 THE CLERK: The State of South Carolina and the  
2 County of Charleston, the Court of General Sessions for the  
3 Ninth Judicial Circuit, Indictment 2015-GS-10-03596, State of  
4 South Carolina vs. Dalton Ellis Clarke. We, the jury, find  
5 the defendant guilty of assault and battery of a high and  
6 aggravated nature, signed as foreperson, April 7th, 2016.

7 Mr. Foreperson, ladies and gentlemen of the jury, if  
8 this is your verdict, please indicate so by raising your  
9 right hand.

10 Please let the record reflect that all jurors have  
11 raised their right hand.

12 THE COURT: All right. Any polling of the jury?

13 MR. KING: Yes, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we are  
15 going to poll the jury. And what that means is, I will call  
16 out each of your juror numbers. When I call your number, if  
17 you would please stand, and I'm going to ask you two  
18 questions. Number one, I'm going to ask you, is this your  
19 verdict? And number two, I'm going to ask you if this is  
20 still your verdict.

21 All right. So please listen carefully. And as I  
22 call your juror number, please stand.

23 Juror No. 101, is this your verdict?

24 JUROR NO. 101: Yes, sir.

25 THE COURT: Is it still your verdict?

1 THE COURT: All right. Any reason why we can't go  
2 ahead and impose sentencing at this time?

3 MR. SIMPSON: Not from the State, Your Honor.

4 THE COURT: Have you got a sentencing sheet?

5 MR. SIMPSON: May I approach, Your Honor?

6 THE COURT: Yes, sir. Thank you.

7 All right. Mr. King, anything in mitigation? I  
8 will hear from you, your client, or anyone that wants to  
9 speak on his behalf?

10 MR. KING: Yes, Your Honor. I believe some family  
11 members would like to speak.

12 THE COURT: They need to come to the podium, give  
13 the court reporter their name.

14 Your name?

15 MS. HALLMAN: Kelly Hallman.

16 THE COURT: I need you to speak up. Kelly what?

17 MS. HALLMAN: Hallman.

18 THE COURT: Could you spell your last name,  
19 please.

20 MS. HALLMAN: H-a-l-l-m-a-n.

21 THE COURT: Ms. Hallman, what would you like to say?

22 MS. HALLMAN: I would just like to get the version  
23 of Ellis that we know that we've spent our lives together  
24 with. And I think the best way to do that is just to share  
25 something with you that happened recently. Ellis has a very

1 good friend who is with a single mom. She lost her job.  
2 They had to get -- her and her son had to get a job working  
3 together because they only had one car. Her car had broken  
4 down and they weren't able to fix it. They were being barely  
5 able to keep a roof over their head.

6 My mom was fortune enough that her sister got a new  
7 car and gave her her old car. And at that time, Ellis came  
8 to my mom and said, you know, you had such an act of kindness  
9 done for you, would you like to pay it forward and give my  
10 friend, Austin's mom, your car so that she can start her  
11 career over? And my mom thought about it for a few days and  
12 she thought, I do want to do that. So she gave the car to  
13 Austin's mother. She started a new career. And their life  
14 is going much better. And it was because of that generosity  
15 that Ellis showed to his friend. That's the Ellis we know,  
16 and not solely the picture that was painted here this week.  
17 And I just wanted to share that with you as you consider your  
18 sentencing.

19 THE COURT: Thank you, ma'am. All right. Anyone  
20 else?

21 Yes, sir. Your name?

22 MR. BLANTON: Jesse B-l-a-n-t-o-n.

23 THE COURT: All right. Mr. Blanton, what would you  
24 like to say.

25 MR. BLANTON: I'm Ellis's father. And I just want

1 to say on behalf of his family that we are sorry for the loss  
2 of the Seymour family. It's a tragic, tragic thing. But we  
3 are here for support for Ellis and have been all week.

4 Since the beginning, he has completely stood by his  
5 innocence of this case. And we stand behind him. We believe  
6 that he is, you know -- we believe in the judicial system and  
7 the steps it has to take and findings, but we stand by our  
8 son.

9 He has no prior convictions of any violence. I  
10 don't believe he went out that night looking to be violent  
11 towards anyone. Like I said, his family and I, we believe in  
12 his innocence. You know, I would like you to take that into  
13 consideration. Thank you.

14 THE COURT: Thank you.

15 Yes, ma'am, your name.

16 MS. CLARKE: Jennifer Clarke. I'm Ellis's mother.

17 THE COURT: What would you like to say?

18 MS. CLARKE: My child is not the bad person that has  
19 been painted in this picture. He might have made a bad  
20 decision that night when he went out with those guys.

21 And I'm really sorry about your son.

22 He's not a bad person. And he has shown grace  
23 throughout this whole process. I'm really proud of him.  
24 And, I'm sorry. He's a good person. He's not bad. And this  
25 is the tragic accident that just happened. And we are all

1 affected by it, not just the Seymours. I mean, there's not a  
2 day that goes by, not one second, every second, every minute,  
3 every hour of every day, we think about Mr. Seymour's son.  
4 And this has changed our lives forever. And he's not a bad  
5 kid.

6 That's all I have to say, I guess.

7 THE COURT: Thank you, ma'am.

8 MR. KING: I believe that's it, Your Honor.

9 THE COURT: All right. Mr. King, anything you or  
10 your client wants to say in mitigation?

11 MR. KING: I always advise my clients at this stage  
12 to remain silent pending the appeal. That's my advice to  
13 him. What I can tell you, Judge, and I told my co-counsel,  
14 Pete, that this isn't, you know, maybe the typical situation,  
15 because he's been a model client. Always polite, respectful.  
16 We've been dealing through these difficult issues. The  
17 person I see is not the person -- or not what was presented  
18 in this trial either.

19 I think alcohol is involved. This was 2 a.m. I  
20 don't believe that he intended anyone to get hurt that bad.  
21 And I just ask you to consider that, the difference, I guess,  
22 on a scale of how serious this would be. You know, he didn't  
23 beat someone with a weapon. You know, this was a fist. It  
24 was a punch. And who knows if it had landed to the right or  
25 to the left or just slightly different, could have been a

1 completely different situation. I ask you to just take that  
2 into consideration in sentencing.

3 THE COURT: Thank you. All right.

4 Mr. Simpson, the victim's family, anybody wish to  
5 say anything?

6 MR. SIMPSON: Would you like to hear from the family  
7 first, Your Honor?

8 THE COURT: Yes. Let me hear from them first and  
9 then I will hear from the State.

10 Say your name.

11 MR. SEYMOUR: My name is Donald Seymour.

12 THE COURT: All right. Mr. Seymour.

13 MR. SEYMOUR. And I speak on behalf of my family,  
14 including my wife Mary, who is in the courtroom, and our  
15 daughter Carly, who is here from Texas, who will now live the  
16 next six decades without her only sibling, her big brother.  
17 They may also wish to speak today. I'm not sure.

18 And I speak on behalf of friends, many of whom would  
19 have like to have been here today, many of whom are here  
20 today. Friends who should never be asked in their mid-20s to  
21 eulogize a valued friend or go accompany his casket at  
22 Magnolia Cemetery.

23 One friend said that if you met Clint once, you  
24 would remember him the rest of his life. One of his  
25 supervisors said, this is a young man who could turn a bad

1 day into a good one just by smiling, smiling at you. Friends  
2 really miss that.

3 And I speak on behalf of the community outside  
4 Pittsburgh where Clint was raised, because Clint was raised  
5 not just by his parents, but by that community and its public  
6 schools. His high school baseball stadium has been named  
7 Clint Seymour Field. It's been described by a teacher and  
8 coach as the epitome of life of baseball. And I speak on  
9 behalf of the community of Charleston, Clint's home for the  
10 last two months of his life, where he tragically has become  
11 an exemplar of the vulnerability of any member of our  
12 community to the type of atrocious crime that took his life.  
13 No matter how vigilant we are, no member of our community can  
14 be safe from the type of random, cowardly, lethal moment that  
15 took his life.

16 And, finally, Clint can speak for himself here today  
17 by his cell phone. After I inherited his cell phone and my  
18 daughter Carly tried her best to teach me how to use it, I  
19 discovered that he made notes to himself of things that were  
20 important to him and retained them on his notes application  
21 on his cell phone. One of his notes, I was going to show it  
22 on the screen, but I won't take the time, one of the notes  
23 dated February 22, 2013, says: My dad is the best guy that  
24 ever lived.

25 I could speak for hours, as I'm sure you can

1 imagine, about the death of our loss. But I would not be  
2 saying anything more eloquently simple than what my son says  
3 to us today. Think of what it means for a father to lose for  
4 no reason a son who thought he was the best guy that ever  
5 lived.

6 And, of course, if you substitute mom for dad, it's  
7 one for one. Clint tells us today that his parents are  
8 trying to live without a child who thought they were the best  
9 people in the world. Well, we all recognize that this Court  
10 cannot impose sentence of more than 20 years because that is  
11 the maximum that the legislature has established for this  
12 crime. We also recognize that the State's legislative intent  
13 is that the maximum of 20 years should be imposed for the  
14 most serious of ABHAN crimes. And I suggest to you  
15 respectfully that this case is, in fact, the epitome of an  
16 ABHAN crime. First, we have most serious injury imaginable.  
17 I'm not going to go into the details. We've endured enough  
18 of that. Everyone understands the seriousness of the nature  
19 of the injury that was caused by Mr. Clarke.

20 Second, we have a lack of any permissible excuse or  
21 justification for his conduct. Without knowledge of what was  
22 or was not happening at that street corner, he turned to the  
23 instinct of running up and hitting the first guy he saw,  
24 someone he had never seen before and someone whose face he  
25 still hasn't seen. And he just didn't hit him. Rather than

1 talking to Clint or even tackling him or shoving him, if  
2 there was any reason to inflict any violence on Clint, he  
3 savagely delivered a stealth punch to the most vulnerable  
4 target on his anatomy.

5 Third, and worthy of emphasis, but I won't say much  
6 about it because I don't know everything that Mr. Simpson  
7 knows about it, but I understand that there is an abundance  
8 of evidence regarding Mr. Clarke's history with respect to  
9 similar violent conduct. I need not tell this Court the  
10 impact that that should have, we would hope, on behalf of his  
11 family and on behalf of the community that we represent  
12 today, with regard to the safety of this community and the  
13 need to enforce what the legislature has deemed to be  
14 appropriate sentence for the most serious of ABHAN crimes.

15 I ask myself, if this is not the case in which the  
16 statutory maximum would be imposed, when would it ever been  
17 imposed?

18 You know, another of Clint's quotes by which he  
19 lived his life was on that cell phone was borrowed by golfer  
20 Bubba Watson: If I have a swing, I have a chance. And every  
21 phase of his life was enriched by the belief that, no matter  
22 how long the odds, as long as he had a swing, he had a  
23 chance.

24 I want to remember staring helplessly at my son in  
25 the intensive care unit and being horrified to learn from the

1 doctor that he had no chance. A competitor all of his life,  
2 and he had no chance. By using a stealth punch to the most  
3 vulnerable part of Clint's body, the killer denied my son any  
4 chance for another breath. And a heroic medical team at  
5 M.U.S.C. was deprived of any chance to restore Clint's life  
6 due to the multiple injuries caused by the force and torque  
7 of that one deadly blow.

8           And the defendant didn't stop there. This week on  
9 Tuesday in this courtroom, we heard sworn testimony reporting  
10 a request to punch his friend Binh Ton in the face so that he  
11 could in some manner turn that into a self-defense rather  
12 than owning up to the crime that we now know he committed.

13           What dramatic evidence of how this defendant's  
14 instinctive reaction seems to always punch somebody in the  
15 head, has become an integral part of his persona. Someone  
16 who would dream up such a charade built on false testimony  
17 needs to be removed from society as long as possible.

18           Your Honor, with all due respect, and on behalf of  
19 all of the defendant's victims, his family, his friends, his  
20 community in Pittsburgh, his adopted community in Charleston,  
21 I submit to you that the time has come to afford all of us  
22 Clint's last chance here today by sentencing the defendant to  
23 what the legislature and the public would expect for this,  
24 the pinnacle of ABHAN crimes, the 20-year maximum.

25           He would still have decades remaining to breathe the

1 fresh air of freedom that he senselessly denied our son at  
2 the age of 27.

3 My wife Mary, my daughter Carly, join me in thanking  
4 this Court for the opportunity to be heard. And they may or  
5 may not wish to speak on their own behalf. Thank you so  
6 much.

7 THE COURT: All right. Thank you.

8 MR. SIMPSON: Your Honor, Carly Seymour.

9 THE COURT: All right. If you would please come  
10 forward. Ma'am, your name?

11 MS. SEYMOUR: Carly Seymour.

12 THE COURT: Ms. Seymour, what would you like to say?

13 MS. SEYMOUR: April 25th, 2014, is a date that was  
14 brought up dozens of times over the past few days. It's a  
15 day that I will never forget. Not only was April 25th, 2014,  
16 the last day I spoke to my brother, my only sibling, it was  
17 also my 25th birthday. I can't tell you what I received that  
18 year for my birthday because I honestly don't remember. The  
19 only memory that day that will stay with me my entire life,  
20 that will haunt me on every one of my birthdays to come, is  
21 what I lost.

22 Shortly after Clint died, a close friend told me how  
23 sorry she was. She told me I was robbed. She said that I  
24 was robbed of 60 years that Clint and I should have been in  
25 each other lives, well, into our 80s. She was right about

1 one thing. Someone was robbed, but it wasn't me. I still  
2 had the chance to have a career, to start a family, to  
3 travel, to make memories. Clint does not. Clint is the one  
4 that was robbed that day, robbed of at least 60 years. Thank  
5 you.

6 MR. SIMPSON: Your Honor, Mary Seymour.

7 MS. SEYMOUR: Your Honor, I'm Clint's mom.

8 THE COURT: Please give the court reporter your  
9 name.

10 MS. SEYMOUR: Mary Seymour.

11 THE COURT: Ms. Seymour, what would you like to say?

12 MS. SEYMOUR: I don't have much to say other than I  
13 miss him every single moment of every day. The sun doesn't  
14 shine like it used to. The world doesn't look like it used  
15 to. And life will never be the same.

16 Clint was more than a son. He was my friend. We  
17 played games together. He was trying to teach me to golf.  
18 We used to sit and drink bourbon together. And I still have  
19 the last bottle. And I go in there and I look at it and I  
20 look at his fingerprints and I just -- and I know that there  
21 is grace in forgiveness, but I'll never find it. I will miss  
22 him. And I'll love him every day until my last breath.  
23 Thank you.

24 THE COURT: Thank you. All right. Anyone else?

25 All right. Mr. Simpson, the State's position?

1           MR. SIMPSON: Thank you, Your Honor. Obviously, I  
2 believe that the person making the decision you are about to  
3 make, obviously, must first contemplate the loss that was  
4 suffered as a result of a criminal act. And I couldn't  
5 possibly articulate those better than you just heard.

6           It was mentioned by Mr. Seymour that, of course, as  
7 in any case, we underwent an investigation into the  
8 defendant's background and did reveal, as we roughly briefed  
9 for you pretrial, several pretrial incidents of violence.

10           First, he was adjudicated as a juvenile for the  
11 identical charge here of ABHAN. I'm sure you know ABHAN was  
12 defined differently then. It covered, I think, some conduct  
13 that isn't quite as egregious as we are talking about here  
14 today. But, nevertheless, it was a juvenile adjudication  
15 2006 at the age of 16.

16           I normally wouldn't mention a juvenile charge unless  
17 that sort of pattern and conduct seemed to continue. I want  
18 to recount a couple of other incidents that aren't the  
19 subject of convictions, because they aren't the subject of  
20 conviction, I will honestly do my best to tell you where we  
21 got the information and provide the information that might  
22 lean toward Mr. Clarke as well, everything that we heard  
23 about.

24           When Mr. Clarke was 22, in 2012, there were police  
25 reports taken regarding an incident at a house party in

1 Charleston on Bogart Street. We, the State, spoke to a Nick  
2 Nolan Wood, who was alleged to at that party be the victim of  
3 a punch to the face. According to Mr. Wood's version of  
4 events, I will offer to the Court that this is -- was a  
5 situation where there were several different versions of the  
6 events. But according to his version of events, after some  
7 of his friends had gotten in to a bit of a tussle, some of  
8 Mr. Clarke's friends, they were attempting to leave, because  
9 they were clearly outnumbered. And were coming backing out  
10 of the driveway to exit when a person he did not know wearing  
11 a Gamecock shirt punched him in the face. He suffered a  
12 broken nose, orbital bone fractures, and had required  
13 stitches to his eye. These weren't just minor injuries.

14 The person at that party that were there knew the  
15 defendant and identified -- given his description of the  
16 clothing he was wearing, et cetera, identified the defendant  
17 as the person that threw that punch. Mr. Woods said he  
18 didn't see it coming when it happened.

19 So it wasn't the best of IDs. He didn't ID him, but  
20 someone was able to, using his description, identify him. In  
21 the reports, the defendant was interviewed. I believe he did  
22 admit to hitting someone in that interview, but his version  
23 of events was that it was more of a self-defense situation  
24 for him. But, nevertheless, we have an incident involving  
25 violence.

1           In 2012, we spoke to a Thomas Barry. He was the  
2 owner and manager of The Shelter. Shelter is a bar in Mount  
3 Pleasant. He described for us another event involving the  
4 defendant and a man named Dom M. Huber. Dom M. Huber was one  
5 of the defendant's very good friends at that time. And it is  
6 alleged that at that location and that bar, the defendant hit  
7 his friend, after having a verbal altercation, in the face  
8 with a pint glass. And it was the breaking of that glass  
9 that caused a laceration to Mr. Huber's face that resulted in  
10 an incredible amount of bleeding. I think once the defendant  
11 and others saw the result of that, they realized how serious  
12 it was, and they rushed him to the hospital.

13           It's my understanding that they were friends. And  
14 so after this event, they worked out that the defendant would  
15 pay his medical bills and all would be resolved. And there  
16 was no need to involve law enforcement law enforcement. So  
17 that was not the subject of a conviction. But Mr. Barry, the  
18 person we talked to, said he was there that night. He  
19 watched the events. He knew the parties, watched the event  
20 on video surveillance from his manager's office, and that is  
21 his version of events that had occurred.

22           In speaking with that, with Mr. King, Mr. King let  
23 me know there is a bartender working that night that  
24 describes his friend, Mr. Huber, as maybe egging on that as  
25 well. So there are different versions of that.

1           But, again, another second or third incident of  
2 violence from the defendant. We were led by some people who  
3 knew the defendant to Juanita Greenberg's, a restaurant and  
4 bar in Mount Pleasant. He went there to ask about any sort  
5 of prior incidents. The people there, particularly a manager  
6 we spoke to, said, you know, I can't give you any details of  
7 any specifics incidents, but I will confirm for you that the  
8 defendant, Mr. Clarke, is banned from Juanita Greenberg's or  
9 was, you know, prior to these events, banned from that  
10 establishment due to incidents of fighting. In fairness of  
11 the to the defendant, I will add this particular person said  
12 Mr. Clarke is a very nice person until he starts drinking. I  
13 was told that was what he told us. And that's the things we  
14 have heard here.

15           A week before, several of the same witnesses we  
16 heard in this case, a week before this incident, described  
17 something that happened at the Music Farm. They were all  
18 going, a bunch of friends meeting up to see a concert.  
19 Mr. Clarke was supposed to go with him. But he was thrown  
20 out of the Music Farm, again, for an incident of fighting.

21           Jake Dudinyak, you heard from, was the closest with  
22 him at the time this happened. And, again, there's some  
23 ambiguity there over who started things and how all that  
24 happened. Even Jake says that maybe it was the other two  
25 guys that started talking trash, for lack of a better phrase,

1 might have gotten a little aggressive. But, nevertheless, it  
2 was Mr. Clarke who was thrown out for throwing the punch.  
3 And this a week before this happened.

4 I don't have to go on and on, but there's a pattern  
5 here that I think Your Honor can see. And it's disturbing.  
6 And I think one that's worthy of consideration in making a  
7 decision you are about to make.

8 In all of those incidents, you know, you can make  
9 the point that it's the other people that started it, there  
10 might be some, like we saw in this trial, ambiguity as to who  
11 made the first word or did the first punch. But, Your Honor,  
12 I'm a 40-year-old man, I've been on this earth for 40 years  
13 and I've managed to go through it without getting in a fight.  
14 And most of the people I know manage to have.

15 Crazy things can happen that draw someone into  
16 violence. But when you have patterns like this over and over  
17 again, the problem is the person. And I think what happened  
18 to Clinton Seymour is the inconceivable result of that  
19 pattern I just outlined for you.

20 I have no doubt that the manager at Juanita's said,  
21 and you heard from Mr. Clarke's family, that there are  
22 aspects of him that are wonderful. But that trigger towards  
23 violence is disturbing. And if this family is going through  
24 what they are going through, none of us can even imagine is  
25 the natural progression of what we're seeing.

1           For those reasons, I think you should consider, Your  
2 Honor, the loss that resulted from this crime, the history  
3 I've just outlined for you. And I just mentioned briefly  
4 too, I'm aware of cases under very similar circumstances  
5 where the State has pursued murder charges, and I want to  
6 just remind the Court that already as we sit here with a  
7 conviction for ABHAN, Mr. Clarke is already getting the  
8 benefit of some degree of restraint from the State and the  
9 prosecution. And I ask you to consider that.

10           THE COURT: Is there any prior criminal record of  
11 the defendant?

12           MR. SIMPSON: Criminal --

13           THE COURT: Convictions other than the juvenile  
14 records you referenced?

15           MR. SIMPSON: Your Honor, I believe there's -- I  
16 believe there's a drunk and disorderly conduct conviction.  
17 Nothing that would be really germane, other than the juvenile  
18 convictions, germane to your decision today as far as  
19 convictions are concerned.

20           THE COURT: All right.

21           Mr. Clarke, sentence of the Court is that you be  
22 confined to the State Department of Corrections for 15 years.  
23 You will be given credit for any time served thus far.

24           Anything further from the state?

25           MR. SIMPSON: No, Your Honor.

BCS/0238678/20140504828  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER  
1406547

ARREST WARRANT NUMBER  
2014A1010900284

DATE OF ARREST  
05/14/2014

ACTION OF GRAND JURY

TRUE BILL

*[Signature]* July 07 2015  
Foreperson of Grand Jury Date:

VERDICT

*Guilty*

*[Signature]* 4/7/2016  
Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-10-03596

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
JULY TERM 2015

THE STATE

VS.

DALTON ELLIS CLARKE  
W/M DOB:

Indictment for

ASSAULT & BATTERY OF A HIGH AND  
AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)  
CDR Code: 3411

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

## INDICTMENT

At a Court of General Sessions, convened on July 6, 2015, the Grand Jurors of Charleston County present upon their oath:

**ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE**

That in Charleston County, South Carolina on or about April 26, 2014, the Defendant, Dalton Ellis Clarke, did commit an unlawful act of injury upon the victim, Clinton Seymour (deceased), and as a result, the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B)(1) of the South Carolina Code of Laws (1976) as amended.

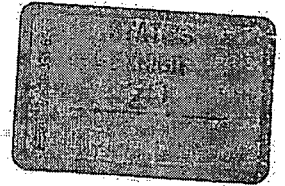
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
BENJAMIN CHAD SIMPSON  
ASSISTANT SOLICITOR

 Messages (2) Group MMS Contacts

To: Kelly, Rosie &amp; 2 more...

Ellis Clarke



I know everyone thinks what happened last night is my fault .. And I'm so so sorry that peter is in jail and that he got blamed for this and that we were both just trying to help our friend out! I'm going to do everything in my power to make this wright.. But y'all do not need to flip this on me we were both in there just trying to defend a friend we need to work together to benefit this situation not apart !!! I hope the kid is alright and gets better really fast! I hope we can get peter out as soon as possible.. But I promise that peter was just trying to help Ben and me or



Text Message

Send

 Messages (2) Group MMS Contacts

To: Kelly, Rosie & 2 more...

this on me we were both in there just trying to defend a friend we need to work together to benefit this situation not apart !!! I hope the kid is alright and gets better really fast! I hope we can get peter out as soon as possible.. But I promise that peter was just trying to help Ben and me or peter would ever want to hurt someone like that!! The girl was pointing at peter and would not let him go I was right beside him and when the cops came she was just yelling about peter not me so y'all need to not jump to conclusions and we need to work together to help peter!!



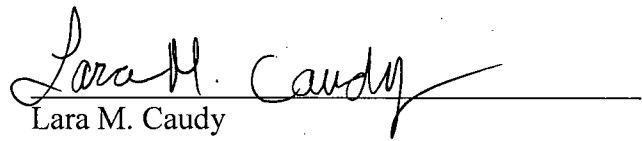
Text Message

Send

## 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."

Respectfully Submitted,

  
Lara M. Caudy  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 6th day of January, 2017.

**RECEIVED**

JAN 06 2017

**SC Court of Appeals**