

22673

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

RECEIVED

Robin B. Stilwell, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2015-001648
Circuit Court Case Nos. 2014-GS-23-4229 &
2014-GS-23-4230

The State,

Respondent,

v.

PERRY ROY EICHOR,

Appellant.

RECORD ON APPEAL

ALAN WILSON
Attorney General
DAVID SPENCER
Senior Assistant Attorney General
PO Box 11549
Columbia, South Carolina 29211
(803) 734-3727
Attorneys for Respondent

Stephen J. Henry
406 Pettigru St.
Greenville, South Carolina 29601
(864) 232-9700
(864) 232-9555 facsimile
Attorney for Appellant

Other Counsel of record:

William W. Wilkins, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Greenville, SC 29601
(864) 467-8282

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WITNESSES

Gene G Donohue



SLED

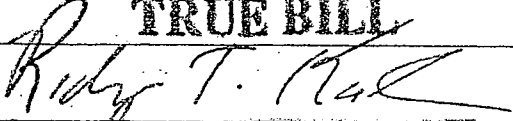
4/22/2014

ARREST WARRANT NUMBER

2014A2310100180

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LAB

004229

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2014

THE STATE

vs.

PERRY ROY EICHOR

Indictment for

0118

OBSTRUCTION OF JUSTICE

VIOLATION § COMMON LAW

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MISCONDUCT OF A PUBLIC OFFICIAL

At a Court of General Sessions, convened on
County present upon their oath:

MAY 27 2014

the Grand Jurors of Greenville

That Perry Roy Eichor did in Greenville County, on or about the 20th day of March, 2014, knowingly and willfully commit misconduct in office in the form of malfeasance and misfeasance by misusing and abusing the power of his office to deliver an implied threat to L.S., who was employed as a judge in the Municipal Court of Simpsonville, regarding the future employment status of the judge. That Perry Roy Eichor did this in an attempt to influence the employee's official action in a pending judicial matter, thereby failing to properly and faithfully discharge the duties of his office imposed by law. This is in violation of the Common Law of the State of South Carolina.

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


SOLICITOR

004230

DOCKET NO. 2014-GS-23-
LAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2014

THE STATE

vs.

PERRY ROY EICHOR

WITNESSES

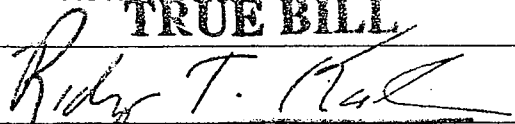
Gene G Donohue

SLED

4/22/2014

ARREST WARRANT NUMBER
2014A2310100179

ACTION OF GRAND JURY
TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

0819

MISCONDUCT OF A PUBLIC OFFICIAL

VIOLATION § COMMON LAW

WITNESSES

Gene G Donohue

SLED

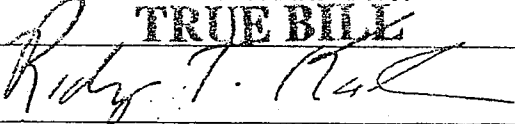
4/22/2014

ARREST WARRANT NUMBER

2014A2310100178

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LAB

004231

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2014

THE STATE

vs.

PERRY ROY EICHOR

Indictment for

2451

INTIMIDATION OF A COURT OFFICIAL

VIOLATION § 16-09-0340

1 THE COURT: All right. Ladies and gentlemen,
2 before we get started with opening statements, does
3 anybody need to take a break? No. Okay. We're
4 good.

5 Ms. Bentley.

6 MS. BENTLEY: May it please the Court?

7 THE COURT: Yes, ma'am.

8 OPENING STATEMENT

9 MS. BENTLEY: Mr. Henry.

10 Ladies and gentlemen, when most people think
11 about what it means to be an American, they think
12 about having rights and privileges that people in
13 other countries don't enjoy. They think about our
14 constitutional bill of rights, freedom of speech, the
15 right to bear arms, the right to a jury trial. But
16 the only reason that we as Americans enjoy these
17 rights is that the founders of our constitution built
18 our country with the separation of powers. There's
19 the legislative branch, the executive branch, and the
20 judicial branch. And while I'm not here to give you
21 a civics lesson today, we see that separation in our
22 daily lives.

23 You'll see legislators and the president on the
24 news debating issues, debating what the law says,
25 what the law should say, taking sides on issues. But

1 there's one group that's above the fray. You don't
2 see judges debating political issues. You don't see
3 judges giving insight to the court. You don't see
4 judges taking sides on legislative changes. People,
5 including judges themselves, take the segregation of
6 the judicial branch very seriously. And interfering
7 with courts is a crime.

8 We're here today because some people believe
9 they are above the law, that their interest is more
10 important than the overall administration of justice.
11 The State alleges that Perry Eichor is one of those
12 people. And that in March of 2014, he put his
13 interests in front of the interest of the justice
14 system in Simpsonville and violated several laws in
15 the process.

16 My name is Lisa Bentley and I'm the prosecutor
17 in this case. I will be presenting evidence that
18 proves Mr. Eichor committed the crimes of misconduct
19 in office, threatening a court official and
20 obstruction of justice. The State alleges he
21 committed these crimes when he had a private
22 conversation with Municipal Judge Leslie Sharff on
23 March 20th, 2014. The evidence will show that only
24 one conversation took place. But due to who the
25 people were and their topic of conversation, this

1 action violated three distinct laws.

2 The Judge just told you that he will not explain
3 the law to you until the very end of the trial.
4 However, as jurors, there are elements or parts of
5 the crimes that you need to listen for as the
6 testimony unfolds. So, I want to take a few minutes
7 to explain the charges to you and what the State has
8 to prove.

9 First of all, you heard that Mr. Eichor has been
10 charged with misconduct of office. Evidence will
11 show that March 2014, Perry Eichor was the mayor of
12 Simpsonville, a publically elected office. And the
13 State must prove that while he was in office and
14 acting as mayor, he abused his power in some fashion,
15 he breached a duty he owed to the public.

16 In the present case, he's charge with violating
17 a duty of accountability and duties of his mayoral
18 oath. Second, threatening of a court official. You
19 will hear that Mayor Eichor called Municipal Judge
20 Leslie Sharff into his office on March 20th, 2014.
21 And the testimony will show that in Simpsonville, it
22 is the mayor, along with council that is responsible
23 for appointing and electing municipal court judges.
24 And you will hear that at the end of the conversation
25 he had with Judge Sharff, Mayor Eichor threatened his

1 continued employment. He made an implied threat.
2 So, the State must prove that Mayor Eichor did, in
3 fact, make that threat and that Judge Sharff felt
4 threatened by it.

5 Finally, obstruction of justice. Obstruction of
6 justice is a broad concept. Essentially, any action
7 that is intended to improperly influence the
8 administration of justice could be considered
9 obstruction. In the present case, the State alleges
10 that before Mayor Eichor reached the point of
11 threatening Judge Sharff's job, he had a conversation
12 with him that he intended to influence Judge Sharff's
13 position on a pending criminal case in the municipal
14 court. And the evidence will show that Mayor Eichor
15 had an unnatural, unethical interest in this pending
16 court case.

17 Now, that you know a little bit about what Mayor
18 Eichor has been accused of, I want to tell you what
19 you can expect. From the State, you will hear from a
20 number of witnesses who encountered either Mayor
21 Eichor or Judge Sharff around March 20th. You'll
22 hear a little bit about the appointment of local
23 judges and their duties. You will hear a bit about
24 the pending court case that's at the root of
25 everything. You will hear from Judge Sharff and you

1 will hear a recorded statement Mayor Eichor made
2 without his knowledge.

3 Ladies and gentlemen, you just heard this from
4 the Judge, but there's something else to keep in
5 mind. Another right that all Americans enjoy is the
6 fact that if they're ever accused of a crime, they
7 are presumed innocent. Mayor Eichor is presumed
8 innocent. It is the State's burden of proof to
9 remove that presumption. I must prove beyond any
10 reasonable doubt that he is guilty of the crime he's
11 been accused of. And I don't take that burden
12 lightly.

13 At this time, I'm going to let the evidence and
14 the witnesses speak for themselves. I'll come back
15 before you at the end of the trial to discuss that
16 evidence, but until then, I thank you. I thank you
17 for your attention, for your patience, and for your
18 service.

19 THE COURT: Counsel.

20 OPENING STATEMENT

21 MR. HENRY: Good afternoon. I'm Steven Henry.
22 I'm Perry Eichor's lawyer. And this is a summation
23 or opening statement about what the evidence may
24 show. It's a little difficult from the defense side
25 because we don't know what the testimony will be. We

1 have an idea from some of the discovery reports. I'm
2 going to outline for you what I expect the evidence
3 will show. Most importantly from our side, what it's
4 not going to show you.

5 Now, the State outlined the charges against
6 Perry. One thing you're going to notice very early
7 in the case is it's really three charges in one.
8 It's one incident, one conversation, three charges.
9 That's something for you to think about throughout
10 this case, why are there three charges when there's
11 only one incident.

12 Secondly, as she told you from the beginning,
13 this is not about a threat. It's about an implied
14 threat. That tells you something else. It tells you
15 even from the State's best case, something was said
16 that wasn't clear, it wasn't direct, but it was
17 implied. In other words, you have to read into what
18 was said for it to have been a crime. And that's a
19 problem for them from the get-go in this case.

20 Let me tell you a little bit about the story.
21 It all happened in March 2014. I think the evidence
22 will show this, too. The crime that led to this case
23 before you was a disorderly conduct. A woman named
24 Dixie Nance was upset with the fact that the bridge
25 in her neighborhood had not been fixed and at the

1 same time was upset that the police chief in
2 Simpsonville had just gotten back pay from city
3 council. So, she got upset and she put a banner that
4 she wrote in front of that bridge, basically, saying,
5 Chief, give us your back money to fix the bridge.
6 That's what this case started from. That happened on
7 March 15th, 2014. Ms. Nance was arrested March 19th,
8 2014. And according to the allegation, which again
9 has been denied by my client by his plea of not
10 guilty, supposedly, he threatened Judge Sharff, who
11 was the city judge, still is, by telling him that the
12 case would be in city court. Remember he said,
13 according to Judge Sharff, who will probably testify
14 today, remember, you work for city council.

15 Well, the problem with that, of course, is that
16 the case really never was Judge Sharff's case. The
17 case was -- a jury trial was requested by Ms. Nance
18 within seven days of her arrest. When a jury trial
19 is requested in Simpsonville city court, it's totally
20 out of Judge Sharff's hands because he doesn't handle
21 jury trial because he's not a lawyer. The case went
22 to another city court judge. The other city court
23 judge was Rick Moore.

24 So, a week from the arrest to the jury trial
25 request, that period of time is what we're talking

1 about and Judge Sharff never had the case. His
2 involvement was zero to minimum. But he panicked,
3 sent the case to some place else and claimed that my
4 client threatened him, which he did not do.

5 So, now we're here for you to determine,
6 essentially, what was said in that conversation and
7 if that conversation happened. And finally, if that
8 conversation happened, so what? So what? There's no
9 violation of law. I'm going to come back and ask you
10 to return a verdict of not guilty on all three of
11 these cases. Thank you, very much.

12 THE COURT: Okay. You may call your first
13 witness.

14 MS. BENTLEY: The State calls Deputy Chief Steve
15 Moore.

16 THE CLERK: Sir, if you will please come
17 forward. If you will place your left hand on the
18 Bible and raise your right hand.

19 STEVE MOORE, after being duly sworn,
20 testified as follows:

21 THE CLERK: Thank you. Please be seated. State
22 your name for the record.

23 THE WITNESS: Steve Moore.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

STEVE MOORE-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q Deputy Chief Moore, where are you employed?

3 A City of Simpsonville Police Department.

4 Q What is your position there?

5 A Deputy chief police.

6 Q How long have you worked at the Simpsonville
7 Police Department?

8 A Six years.

9 Q Does that encompass your entire law enforcement
10 career?

11 A No, ma'am.

12 Q Could you give us a little bit about your
13 background?

14 A I was six years United States Air Force security
15 police, about 18 years at City of Mauldin Police
16 Department, three years Christian Missionary overseas, six
17 years City of Simpsonville.

18 Q Are you familiar with the Defendant in this
19 case, Perry Eichor?

20 A I am.

21 Q How do you know him?

22 A He's the mayor.

23 Q He was the mayor?

24 A Yes.

25 Q And is that the only way that you know him?

STEVE MOORE-DIRECT BY MS. BENTLEY

1 A Yes.

2 Q Did you meet him when you came to Simpsonville?

3 A No, ma'am.

4 Q When did you meet him?

5 A After he got elected, maybe around the same time
6 he was elected mayor.

7 Q Does the mayor have any role in the Simpsonville
8 Police Department?

9 A No, ma'am, not directly.

10 Q What do you mean by not directly?

11 A Well, as a member of council, they would have as
12 a whole some direction over the city police department.

13 Q Do they have any investigatory rule?

14 A No, ma'am.

15 Q All right. I want to take you back to
16 March 2014, do you recall receiving a call from the
17 Defendant around that time?

18 A Yes, ma'am.

19 Q And was it -- where were you when you received
20 this call?

21 A I was in my office at the police department.

22 Q Was it unusual for him to call you at your
23 office?

24 A Not really. He had called me before.

25 Q Okay. What was the typical topic of

STEVE MOORE-DIRECT BY MS. BENTLEY

1 conversation when he called you.

2 A Usually, we would talk about either budget
3 issues or policy issues, things like that.

4 Q All right. Do you recall the date or day the
5 mayor called you?

6 A I believe it was on March 20th.

7 Q Do you recall the time?

8 A No, I don't. I just know it was in the morning.

9 Q All right. What did the mayor say when he
10 called you that morning?

11 A He asked me if we had arrested Dixie Nance.

12 Q In just a sentence or two, what can you tell me
13 about the arrest of Ms. Nance?

14 A Well, on the 19th, she was arrested by
15 Investigator Manley for disorderly conduct.

16 Q Okay. And what was the reason that she was
17 arrested, if you could?

18 A She had allegedly or supposedly posted a sign on
19 a bridge in protest of current chief of police getting
20 back pay instead of fixing the bridge.

21 Q You said she was arrested on the 19th?

22 A Yes, ma'am.

23 Q And to the best of your recollection, the mayor
24 called you the following day?

25 A I'm pretty sure it was 20th, yes.

STEVE MOORE-DIRECT BY MS. BENTLEY

1 Q What was his tone like when he called?

2 A He was sort of surprised, aggravated. He asked
3 me if we had arrested Dixie Nance.

4 Q What was your response?

5 A Well, I just told you the background, but at the
6 particular time he called, I wasn't there when she was
7 arrested. I didn't know what her charges were.

8 And he said, Did you arrest Dixie Nance -- or
9 we.

10 And I said, I believe so, but the chief would
11 have more information on that or I could look it up for
12 you.

13 Q Did he ask you further questions?

14 A He said I didn't have to look it up for him.

15 Q Was there any more to the conversation?

16 A No, that was it.

17 Q How did the conversation end?

18 A Well, he hung up.

19 Q How often had Mayor Eichor called you to discuss
20 arrests in the past?

21 A He had never discussed arrests with me before in
22 the past as far as I can recall.

23 Q Had he ever called you to discuss a pending
24 investigation?

25 A Not that I recall.

STEVE MOORE-DIRECT BY MS. BENTLEY

1 Q Had he ever called you to discuss any case
2 before this?

3 A No, ma'am.

4 Q Had he ever called you to discuss anything other
5 than budgets or police management type issues before?

6 A Most of the time, it was phone calls about
7 management issues, police policy, etcetera, sometimes
8 ordinances. I talked to him more often over at City Hall
9 just in casual conversation because he was there a lot and
10 I was there a lot.

11 Q But never before about a pending case or arrest?

12 A No.

13 MS. BENTLEY: No further questions.

14 THE COURT: Yes, sir.

15 MR. HENRY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. HENRY:

18 Q Chief Moore, is the city paying two chief
19 salaries?

20 A Well, I know they're paying me.

21 Q Okay. And presumably, they're paying the other
22 chief?

23 A Yes, sir, as far as I know.

24 Q You used to be the chief for a while, didn't
25 you?

STEVE MOORE-CROSS BY MR. HENRY

1 A I did, yes.

2 Q For a short period of time?

3 A About a year and two months.

4 Q Okay. And then you were replaced by Chief
5 Grounsell?

6 A Yes, sir.

7 Q And when you were replaced by Chief Grounsell,
8 they were paying him a chief salary and you a chief salary
9 with a different title; is that right?

10 A That's correct as far as I know.

11 Q And weren't there some complaints by people
12 about paying for two chief salaries?

13 A Nobody ever complained to me, but I heard some.

14 Q You heard some. And you also heard some from
15 this Dixie Nance case, right? Because she was complaining
16 about Chief Grounsell getting back pay and not fixing the
17 bridge?

18 A I believe that was her complaint based on the
19 sign.

20 Q Did you follow that case until it was over?

21 A No, sir.

22 Q Did you pay any attention to it after that at
23 all?

24 A No, sir.

25 Q You don't know how it came out?

STEVE MOORE-CROSS BY MR. HENRY

1 A I believe it was dismissed.

2 Q Okay. You don't have any evidence, do you, that
3 Perry Eichor threatened Judge Sharff, do you?

4 A No, sir.

5 MR. HENRY: That's all I have. Thank you.

6 THE COURT: Redirect?

7 MS. BENTLEY: May Deputy Chief Moore be excused?

8 MR. HENRY: No objection.

9 THE COURT: Thank you for being here. I
10 appreciate it. Have a great day.

11 MS. BENTLEY: The State calls Marie Feld.

12 THE CLERK: Ma'am, if you will come forward,
13 please. If you will please pause at the end of the
14 bench and place your left hand on the Bible and raise
15 your right hand.

16 MARIE FELD BOONE, after being duly
17 sworn, testified as follows:

18 THE CLERK: Thank you. Please be seated. Would
19 you please state your name for the record?

20 THE WITNESS: Marie Boone.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BENTLEY:

24 Q Ms. Boone, where are you from?

25 A Simpsonville.

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q And you've lived there your whole life?

2 A No.

3 Q Tell us a little bit about your background.

4 A Professionally?

5 Q Where you've lived --

6 A Okay. I grew up in Hickory Tavern, South
7 Carolina, which is in Laurens County, lived there for
8 approximately 48 years. I'm clerk of court with the City
9 of Simpsonville and administrative judge. I've been with
10 the city 20 and a half years.

11 Q And your current occupation is clerk of court
12 and administrative judge, did you say?

13 A Correct.

14 Q All right. Prior to working for the City of
15 Simpsonville, what did you do?

16 A Primarily, I was a stay-at-home mom most of the
17 time. I had worked as a temp at Kemmit for about 18
18 months. And after I left there, I was a dispatcher with
19 Laurens County for about six months. Then the position
20 came open in Simpsonville in 1994, October of 1994. I've
21 been there ever since.

22 Q So you begin working for the City of
23 Simpsonville in 1994?

24 A Uh-huh.

25 Q What was your position then?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 A Dispatcher, police dispatcher.

2 Q When did you become clerk of court?

3 A September 1997.

4 Q What are your duties as clerk of court?

5 A To record all dispositions, receive all
6 payments, maintain all the records, subpoena defendants,
7 attorneys, witnesses, if necessary, schedule jury trials,
8 preliminary hearings.

9 Q All right. When did you first begin serving as
10 a municipal court judge?

11 A I believe in May of 2006.

12 Q All right. And tell me how you became clerk of
13 court, who hired you?

14 A I was -- I believe I was appointed initially by
15 mayor and council. Barry Hickman was the administrator at
16 that time.

17 Q But Mr. Hickman did not hire you?

18 A As clerk of court?

19 Q Yes.

20 A I would say he did, but as I said, it's also an
21 appointed position, so.

22 Q So, you're appointed by the mayor and council?

23 A Correct.

24 Q And as clerk of court, you maintain your job by
25 what process?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 A Request for reappointment.

2 Q And to whom do you make that request?

3 A To mayor and council.

4 Q All right. Now, when did you become -- you said
5 you began serving as a municipal judge in 2007?

6 A 2006.

7 Q 2006. And how did you get the position of
8 municipal court judge?

9 A I was appointed by mayor and council.

10 Q And how do you maintain that job?

11 A As far as maintaining CLE's, I have to take
12 classes each year and maintain my hours.

13 Q Let me rephrase. Who determines whether you
14 keep that job, whether you are reappointed?

15 A Mayor and council.

16 Q Mayor and council. How many municipal judges
17 work in Simpsonville?

18 A Three.

19 Q Who are they?

20 A Richard Moore, he is the chief, Leslie Sharff,
21 he is the assistant judge, and then myself.

22 Q All right. Do you all have the same duties and
23 responsibilities?

24 A No. Judge Moore presides over jury trials and
25 preliminary hearings. Judge Sharff presides over traffic

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 court. And I accept guilty pleas in my office and I would
2 sit on the bench if I'm told to, basically. As far as --
3 we all sign warrants, arrest warrants, search warrants,
4 set bonds, do releases.

5 Q You said Judge Sharff sits for traffic court?

6 A Criminal traffic court, yes, ma'am.

7 Q What about bench trials?

8 A Well, that would also be a bench trial, yes,
9 ma'am.

10 Q Do you have a boss in a traditional sense? Do
11 you report to someone?

12 A Yes.

13 Q Who is that?

14 A Judge Moore.

15 Q Okay. But does Judge Moore determine whether
16 you keep your job as municipal judge?

17 A I'm sure he would have input.

18 Q But, ultimately, who makes that decision?

19 A I would say mayor and council.

20 Q Okay. Do you have an office?

21 A Yes.

22 Q Where is your office located?

23 A City Hall.

24 Q Where is City Hall in Simpsonville?

25 A It's 118 Northeast Main Street.

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q And are you familiar with the Defendant in this
2 case?

3 A Yes.

4 Q How do you know him?

5 A He's the mayor.

6 Q He's the former mayor?

7 A Yes, former mayor.

8 Q And how long have you known him?

9 A Just as long as he's been in office, I would
10 say.

11 Q So several years?

12 A No, as long as he's been mayor. I haven't known
13 him for a long period of time. Less than five years, two
14 to three.

15 Q Okay. And where was his office located?

16 A City Hall.

17 Q Okay. Are you familiar with Leslie Sharff?

18 A Yes.

19 Q How do you know Leslie Sharff?

20 A He's one of the judges.

21 Q So, he's a coworker?

22 A Correct.

23 Q All right. Does he have an office?

24 A No.

25 Q Does he ever use any offices in City Hall?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 A Not that I'm aware of.

2 Q All right. Tell me where the mayor's office is
3 in relation to your office, please.

4 A It's by the -- basically, the other side of the
5 building. That's in the front. My office is toward the
6 back.

7 Q From your office, can you see any part of the
8 mayor's office?

9 A No.

10 Q What can you see?

11 A Basically, nothing. There's my doorway and then
12 there's the wall where the hall is. Nothing really.

13 Q Okay. And I want to take you back to
14 March 2014, do you know the time frame that I'm talking
15 about?

16 A From your discussion, yes.

17 Q Okay. And do you recall a day that Judge Sharff
18 came to your office and asked you to do something?

19 A He asked me for the phone number for the
20 magistrate's office, I believe.

21 Q Do you recall that day that I'm talking about?

22 A Vaguely.

23 Q Okay. Whose number did he ask you for?

24 A Judge Ford's office.

25 Q And who is Judge Ford?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 A He's the summary court judge, Fairview Austin
2 Summary Court in Simpsonville.

3 Q Is a summary court judge the same thing as a
4 municipal judge?

5 A No.

6 Q How do they differ?

7 A Well, their jurisdiction is countywide and they
8 also handle civil cases where we only handle criminal.

9 Q Does anyone else work in Judge Ford's office,
10 any other judges?

11 A Yes.

12 Q Would you tell me their names, please?

13 A Judge Davis.

14 Q Okay.

15 A I believe there's another judge, but I'm not
16 sure.

17 Q All right. Prior to coming to your office and
18 asking for that number, do you recall if Judge Sharff had
19 been in your office earlier that day?

20 A No, ma'am.

21 Q You don't recall or he had not been?

22 A I don't recall.

23 Q Okay. Would Judge Sharff come to your office
24 for any particular reason during court?

25 A During court?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q Well, no, after court?

2 A Perhaps. Generally, no.

3 Q Okay. Were there any duties that he could
4 complete in your office?

5 A No.

6 Q Checking on dockets, he did not do that?

7 A No. Now, he will come into the office and
8 request that we print a docket for the upcoming week. On
9 occasion, he'll ask for that.

10 Q All right. When he came to your office, you
11 said he asked for a number?

12 A Yes.

13 Q Did you give him that number?

14 A I did.

15 Q All right. And do you recall if he made a phone
16 call right then and there?

17 A I recall that he made a phone call from his cell
18 phone.

19 Q Okay. Were you able to -- or did you attempt to
20 listen in?

21 A No.

22 Q Do you have any knowledge of who he called?

23 A I believe that he called Judge Ford's office and
24 asked to speak with Judge Davis. Beyond that, I really
25 don't know.

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q Okay. Do you recall anything in particular
2 about the conversation?

3 A No, I didn't listen.

4 Q Okay. At that time, did anything he said mean
5 anything to you?

6 A No, because I didn't -- I wasn't listening.

7 Q All right. Did Judge Sharff explain to you
8 afterwards -- without telling us what he said, did he
9 explain why he made that call?

10 A No, ma'am, I don't think so.

11 Q Okay. At some point in the next few weeks, did
12 someone ask you about overhearing this call? Did someone
13 interview you?

14 A A SLED agent.

15 Q All right. And did that agent explain what he
16 was investigating or who?

17 A No.

18 Q Do you recall what the agent asked you?

19 A Not verbatim, I don't. I think he just asked if
20 I had overheard the phone call. I wrote a statement. I
21 don't have that statement with me.

22 Q But he asked you to provide a statement?

23 A Correct.

24 Q And you provided one?

25 A Yes.

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q Were you truthful in the statement?

2 A Yes.

3 Q All right. And did you ever ask him -- contact
4 him to try to amend your statement in any way?

5 A No.

6 Q All right. Who is the city clerk of court in
7 Simpsonville?

8 A Phyllis Long.

9 Q What are her duties as city clerk of court?

10 A Excuse me, it's not city clerk of court. It's
11 just city clerk.

12 Q As city clerk, what are her duties?

13 A I would assume it's to maintain all the city
14 ordinances and make sure they're up to date, along with
15 attend council meetings and maintain the minutes and so
16 forth. I'm not certain.

17 Q Do you work with her?

18 A I do.

19 Q Where's her office?

20 A It's near the mayor's.

21 Q In City Hall?

22 A Yes.

23 Q The same building as your office?

24 A Yes.

25 Q Have you seen her signature before?

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 A Yes.

2 Q I'm going to show you what's been marked as
3 State's Exhibit 3. Do you recognize the signature on that
4 document?

5 A Yes, ma'am.

6 Q Do you recognize the seal on that document?

7 A Yes.

8 Q Whose signature is it?

9 A Phyllis Long.

10 Q Whose seal is it?

11 A City of Simpsonville -- notary public Phyllis
12 Long.

13 Q And do you know what that document purports to
14 be, what it says it is?

15 A Yes.

16 Q And what is it?

17 A It's the code of ordinances for the City of
18 Simpsonville, South Carolina.

19 Q Are you familiar with what that code of
20 ordinance is being a municipal court judge?

21 A Yes.

22 Q Would you look through it and see if there
23 appears to be anything missing or changed in any way?

24 A (The witness complies.) Just flipping through
25 it, it looks like code of ordinances.

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 Q Okay. Nothing is obviously wrong?

2 A No.

3 MS. BENTLEY: Your Honor, at this time, the
4 State would seek to admit State's Exhibit 3 into
5 evidence.

6 THE COURT: Objection, sir?

7 MR. HENRY: Yes, sir, relevance. It's the
8 entire book of ordinances. I can't imagine they are
9 all relevant to this action.

10 THE COURT: Which specific ordinances are you
11 interested in?

12 MS. BENTLEY: I'm interested in Section 2, Your
13 Honor -- well, pardon me, Section 2-33, 2-34, 2-131,
14 2-132, and most of Section 14.

15 THE COURT: Okay. All right.

16 Do you have any objection to the introduction of
17 those sections?

18 MR. HENRY: I haven't seen them, Judge. I'd
19 like to have a minute.

20 THE COURT: Sure.

21 MR. HENRY: You said all of Section 14?

22 MS. BENTLEY: Most of Section 14.

23 MR. HENRY: If we can list those sections and
24 only those sections, I have no objection to those
25 coming in.

MARIE FELD BOONE-DIRECT, BY MS. BENTLEY

1 THE COURT: Is that fair?

2 MS. BENTLEY: Yes, sir, Your Honor.

3 THE COURT: Okay. So, what we'll do is I'll
4 allow that in as State's Exhibit No. 1. Is that
5 correct?

6 MS. BENTLEY: It's marked State's Exhibit 3.

7 THE COURT: State's Exhibit 3. Okay. But what
8 we're going to do is take out those portions at the
9 break so that when it goes back to the jury, it will
10 only be those portions which were introduced.

11 MS. BENTLEY: Yes, sir.

12 (WHEREUPON, State's Exhibit No. 3 was admitted
13 into evidence.)

14 BY MS. BENTLEY:

15 Q Ms. Feld, you said that you did not recall the
16 subject of the conversation that Judge Sharff made?

17 A Correct.

18 Q But you did provide a written statement?

19 A Yes.

20 Q If I were to show you that statement do you
21 believe it would -- pardon me, was your memory clearer at
22 the time you made the statement?

23 A Yes.

24 Q If I were to show you that statement, do you
25 think it would refresh your recollection as to what you

MARIE FELD BOONE-DIRECT BY MS. BENTLEY

1 may or may not have heard?

2 A I think this was over a year ago.

3 Q I beg your pardon?

4 A I believe that was over a year ago. I just
5 don't remember.

6 Q I just want to show you the statement. Is this
7 the statement you gave to law enforcement? Please don't
8 read it aloud.

9 A Uh-huh.

10 Q Looking that over, does that jog your memory?

11 A May I have that back, please?

12 Q Yes, ma'am. After reviewing your statement, do
13 you recall what Judge Sharff's topic of conversation was?

14 A Yes, ma'am.

15 Q What was it?

16 A About possibly transferring a pending case to
17 Judge Ford's office.

18 Q All right. And that's essentially all that you
19 recall?

20 A Yes.

21 MS. BENTLEY: I have no further questions.

22 Please answer any questions Mr. Henry may have.

23 THE COURT: Cross-examination, sir?

24 CROSS-EXAMINATION

25

MARIE FELD BOONE-CROSS BY MR. HENRY

1 BY MR. HENRY:

2 Q Just a couple things, Ms. Feld. Do you remember
3 that Dixie Nance case?

4 A Yes, sir.

5 Q Not fondly?

6 A I remember it.

7 Q Okay. What was the case about?

8 A There was a bridge that had been closed and I
9 believe Ms. Nance lives in that neighborhood. She did put
10 a sign up directed to the chief of police.

11 Q Okay. Was it a criticism of the chief of
12 police?

13 A Yes, sir.

14 Q Was the sign basically, Chief, give your back
15 pay back so we can fix the bridge, something like that?

16 A Yes, sir.

17 Q And were you the one that signed the arrest
18 warrant for Dixie Nance?

19 A Yes, sir.

20 Q Was that a mistake on your part or not?

21 A A mistake?

22 Q Yeah.

23 A No, sir. I mean, it met the criteria for
24 probable cause.

25 Q So it was a disorderly conduct charge?

MARIE FELD BOONE-CROSS BY MR. HENRY

1 A Yes, sir.

2 Q Is that one of the lowest charges in city court?

3 A Yes, sir. It's a city ordinance, so it's not a
4 state statute, which --

5 Q Would be more serious potentially?

6 A In my opinion, yes.

7 Q Was Dixie Nance facing a fine or possibly 30
8 days, something like that?

9 A Yes, sir.

10 Q And when you got -- when you signed the warrant,
11 did Perry Eichor come to you and say Ms. Feld, you've got
12 to tear that up and get rid of it, threaten you in any
13 way?

14 A No, sir.

15 Q Do you know Perry Eichor pretty well?

16 A Yes, sir, through City Hall. Yes, sir.

17 Q Okay. All right. Now, this case, this Dixie
18 Nance case that became subject of this controversy, was it
19 kind of a hot potato?

20 A Yes, sir.

21 Q And by that, meaning nobody really wanted to
22 touch it in the city court?

23 A I don't know if no one wanted to touch it, but
24 it was a topic, a hot topic.

25 Q Is it a case you wouldn't want to try yourself?

MARIE FELD BOONE-CROSS BY MR. HENRY

1 A No, sir, but I wouldn't have the ability.

2 Q All right. As it turned out, Dixie Nance asked
3 for a jury trial, didn't she?

4 A Yes, sir.

5 Q And it was pretty quickly after she was
6 arrested?

7 A I believe so. I don't have that record with me.

8 Q Okay. Do the jury trial requests come to you?

9 A Yes, sir.

10 Q If I showed it to you, would that refresh your
11 memory?

12 A Yes, sir.

13 Q And I'm going to show you the warrant, too, that
14 we're talking about first. Is this the warrant for
15 disorderly conduct against Dixie Nance that you signed?

16 A Yes, sir.

17 Q Can you tell the date of the offense from that
18 warrant?

19 A March 13th, 2014.

20 Q Okay. Can you tell when she got served with the
21 warrant down at the bottom?

22 A March 19th, 2014.

23 Q Okay. So, she would have been arrested on the
24 March 19th date, does that sound right?

25 A Yes, sir.

MARIE FELD BOONE-CROSS BY MR. HENRY

1 Q And the date of the jury trial request that came
2 to you?

3 A March 26, 2014.

4 Q So, arrested on March 19th, jury trial request
5 on March 26th, does that sound right?

6 A Yes, sir.

7 Q So, the case would have been sitting in the
8 office for about a week?

9 A Yes, sir.

10 Q And after a jury trial was requested, did the
11 case automatically go to Rick Moore -- Richard Moore?

12 A It would have, yes, sir.

13 Q All right.

14 A It --

15 Q Go ahead. If it hadn't been sent away?

16 A Correct. We maintain the records, they're in
17 our office, then they are just put in our jury files where
18 they're reviewed by the city attorney.

19 Q Okay.

20 A Prior to a jury trial.

21 Q Okay. So, from March 19th when the arrest took
22 place until March 26th until the jury trial request, were
23 there any motion hearings or court appearances by Dixie
24 Nance or her lawyer?

25 A Not that I'm aware of, no, sir.

MARIE FELD BOONE-CROSS BY MR. HENRY

1 Q All right. And her case didn't -- she didn't
2 have to come to court and appear before a judge, Judge
3 Sharff or anyone else?

4 A Correct.

5 Q And then the jury trial was requested on the
6 26th of March, from that point forward, was it Rick Moore,
7 was he the judge in the case?

8 A Yes, sir.

9 Q Ultimately, was the case dismissed?

10 A Yes, sir.

11 Q Now, at any point in time, did Judge Sharff come
12 to you and say Perry Eichor just threatened me?

13 A No, sir.

14 Q Did the SLED agent ask you that question?

15 A No, sir.

16 Q Did he ask you anything about Perry's good
17 character?

18 A No, sir.

19 Q Are you familiar with his character?

20 A Just through conversations I've had with him and
21 my own personal opinion.

22 Q Okay. Well, do you have an idea of his
23 reputation at City Hall with respect to his character for
24 honesty?

25 MS. BENTLEY: Objection, Your Honor. I don't

MARIE FELD BOONE-CROSS BY MR. HENRY

1 know that the Defendant's character has been placed
2 into evidence yet.

3 MR. HENRY: She's about to answer no, so that
4 might help. She's shaking her head.

5 THE COURT: Well, I'm going to sustain the
6 objection.

7 MR. HENRY: All right.

8 BY MR. HENRY:

9 Q When you had the conversation with the SLED
10 agent, I think you said you didn't know exactly what it
11 was about?

12 A That's right.

13 Q He didn't sit down and explain to you we're here
14 investigating whether Perry Eichor threatened Judge
15 Sharff?

16 A No, sir.

17 Q Nothing like that?

18 A No, sir.

19 Q And when you testified about that phone --
20 giving that phone number to Judge Sharff?

21 A Yes, sir.

22 Q You don't know what day that was, do you -- I
23 mean, what date it was?

24 A No, sir. It may be in that statement.

25 Q Okay.

MARIE FELD BOONE-CROSS BY MR. HENRY

1 A But no, I don't.

2 Q Okay. Morning, afternoon?

3 A I don't know.

4 Q Was it --

5 A I would assume late morning or early afternoon,
6 but I don't know.

7 Q Would you be guessing?

8 A Yes, sir.

9 Q Okay. Is there any event on that date that you
10 could tie it to to help determine whether it was morning
11 or not?

12 A Not unless it -- if it were a court date,
13 perhaps.

14 Q Right. But you can't say that it was or wasn't?

15 A No, sir, I can't.

16 Q Okay. What was the controversy going on with
17 the city at that time? Why was this banner so
18 controversial, do you know?

19 A The police chief I believe had just been
20 reinstated.

21 Q Okay.

22 A And -- I'm not sure. I believe that perhaps he
23 was getting back pay or had already been paid back salary.

24 Q Okay.

25 A For the time when he was terminated until his

MARIE FELD BOONE-CROSS BY MR. HENRY

1 reinstatement.

2 Q And that may have been the back pay part we were
3 talking about?

4 A Yes, sir.

5 Q Was he reinstated by city council, vote by city
6 council?

7 A Yes, sir.

8 Q And was Perry Eichor on the other side of that
9 vote?

10 A I don't know.

11 Q You don't know?

12 A I don't.

13 Q Okay. All right. Thanks a lot.

14 MR. HENRY: That's all I have.

15 MS. BENTLEY: Brief redirect, Your Honor.

16 THE COURT: Yes, ma'am.

17 REDIRECT EXAMINATION

18 BY MS. BENTLEY:

19 Q Ms. Boone, when someone is arrested, what is the
20 process at that time? Do they plead guilty, not guilty,
21 what happens?

22 MR. HENRY: Objection, that's not proper
23 redirect.

24 THE COURT: Okay. I believe it was within the
25 scope of direct, so I'll respectfully overrule the

MARIE FELD BOONE-REDIRECT BY MS. BENTLEY

1 same.

2 You may answer the question.

3 THE WITNESS: Immediately upon arrest?

4 BY MS. BENTLEY:

5 Q Yes.

6 A On March 19th, what would have happened was
7 Dixie Nance was arrested. She was arraigned. There is no
8 trial immediately upon arrest. There's no plea. I mean,
9 sometimes defendants may want to tell you they're not
10 guilty, but that's not part of the process. It's just an
11 arraignment where the defendant is advised of their rights
12 and the bond is set.

13 Q Would you have arraigned her?

14 A I did.

15 Q Between March 19th and March 26th, was there a
16 status for that case?

17 A Pending.

18 Q Pending. Okay. A pending case could be heard
19 where?

20 A That particular case or any?

21 Q Any pending city ordinance violations.

22 A It would be heard in the courtroom generally.

23 Q By which judge?

24 A Sharff.

25 Q Okay.

MARIE FELD BOONE-REDIRECT BY MS. BENTLEY

1 MS. BENTLEY: No further questions.

2 THE COURT: Yes, sir.

3 REXCROSS-EXAMINATION

4 BY MR. HENRY:

5 Q But there were no hearings, motions or anything
6 involving the Dixie Nance case between the March 19th and
7 March 26th date; is that correct?

8 A Yes, sir.

9 Q Nothing was happening with that case?

10 A Correct.

11 Q And it was eventually assigned to Judge Moore?

12 A Correct.

13 Q And he took over from there as far as you know?

14 A As far as I know, yes, sir.

15 MR. HENRY: That's all I have.

16 MS. BENTLEY: Is it possible --

17 THE COURT: Establish the precedence here.

18 We're not going to go back and forth and back and
19 forth. You're each going to have two shots, that's
20 it. Okay.

21 MS. BENTLEY: Yes, sir.

22 THE COURT: All right. Okay. You may step
23 down. Thank you very much for being here. I
24 appreciate it.

25 Let's take a brief break.

MARIE FELD BOONE-RE-CROSS BY MR. HENRY

1 Let's take about a 10 or 15-minute break, ladies
2 and gentlemen. We've been at it a little bit over an
3 hour and a half. Please don't discuss the case.
4 We'll come back in when you're ready and resume
5 testimony in this case.

6 Everybody in the gallery sit down, sit back
7 down.

8 (WHEREUPON, the jury left open court at
9 approximately 3:13 p.m.)

10 THE COURT: All right, ladies and gentlemen,
11 let's talk a little bit about courtroom decorum,
12 okay. I don't tell you to stay seated just because I
13 can and because I want to lord over you, that's not
14 what I want to do. If we begin to become cavalier
15 about getting up and talking and saying things and
16 become comfortable, then what happens is when the
17 jury is filing out of the courtroom as you are
18 talking to yourselves and exiting and making
19 commentaries, then they'll potentially hear it. So,
20 it's a much, much better practice for all of us just
21 to sit tight and not say anything and let the jury go
22 and then let us leave. Sometimes what I find is when
23 we create an atmosphere indiscipline, we regret it
24 after the fact. So, going forward, let's just sit
25 tight until they're gone and we'll recess. All

MARIE FELD BOONE-RE-CROSS BY MR. HENRY

1 right. We'll be in recess. Thank you.

2 (WHEREUPON, a short break was taken.)

3 (WHEREUPON, the jury came into open court at
4 approximately 3:32 p.m.)

5 THE COURT: All right. Some of you have asked
6 about taking notes. Taking notes is fine. You are
7 allowed to take notes if you want. I will caution
8 you that if you're taking notes, sometimes while
9 you're taking notes and you're looking down at your
10 notepads, you may be missing body language and facial
11 expressions and you may miss something that someone
12 says. Just recognize that that can happen and be
13 careful. Also, know that when you go to deliberate
14 this case at the end of the case, oftentimes, people
15 will look at their notes and think their notes are to
16 be preferred over someone else's recollection.

17 Understand that when you go back into your jury room
18 and you being your deliberations, you may consider
19 someone else's recollection and you may consider your
20 own notes. But understand those notes are not to be
21 preferred over someone else's recollection of what
22 they may have heard during the course of the trial.

23 All right. Having said that, Ms. Bentley, you
24 may call your next witness.

25 MS. BENTLEY: Your Honor, the State calls John

MARIE FELD BOONE-RE-CROSS BY MR. HENRY

1 Laux.

2 THE CLERK: Sir, please come forward. Place
3 your left hand on the Bible and raise your right.

4 JOHN LAUX, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you. Please be seated. State
7 your name for the record.

8 THE WITNESS: John Laux.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. BENTLEY:

12 Q Mr. Laux, where are you employed and what is
13 your current position there?

14 A The City of Simpsonville, I'm the director of
15 public works.

16 Q How long have you been director of public works?

17 A This coming July 6th, it will be five years.

18 Q All right. And prior to working for
19 Simpsonville Public Works, where were you employed?

20 A I worked at the city of Des Plaines, Illinois.

21 Q Are you from Illinois originally?

22 A No, ma'am.

23 Q Where are you from?

24 A Born and raised in Michigan.

25 Q Okay. Prior to working in Illinois, what was

JOHN LAUX-DIRECT BY MS. BENTLEY

1 your position?

2 A I worked in the City of Kentwood, Michigan. I
3 was the director of public utilities.

4 Q So, did you move to South Carolina for the
5 director of public works job?

6 A Yes, ma'am.

7 Q What are your duties as director of public
8 works?

9 A We have a sanitation department. We have storm
10 drains, forestry. We fill pot holes. We do building
11 maintenance, roads and bridges. And anything else that
12 we're capable of doing that we're asked to do.

13 Q All right. What was the hiring process like for
14 your current position?

15 A I was interviewed by the full council, I
16 believe, I think were all there, and a former mayor.

17 Q So, the mayor and council at the time that you
18 were applying?

19 A Yes, ma'am.

20 Q Okay. And that was not the Defendant, Perry
21 Eichor, correct?

22 A That is correct.

23 Q All right. And what role currently does city
24 council play in maintaining your employment?

25 A As far as I know, I work at the pleasure of the

JOHN LAUX-DIRECT BY MS. BENTLEY

1 council.

2 Q And that includes the mayor?

3 A The way I understand it, it would be the mayor
4 if it required a tying vote.

5 Q That's the way you understand it?

6 A Yeah.

7 Q But you don't know?

8 A It's a uniform government, therefore --

9 Q City council --

10 A -- I serve at the pleasure of the council.

11 Q Okay.

12 A As far as I know.

13 Q And you like your job?

14 A Yeah, I love my job.

15 Q You want to keep your job?

16 A I'd love to keep my job.

17 Q All right. Are you familiar with Mr. Eichor?

18 A I am.

19 Q How are you familiar with him?

20 A I met him once he became the mayor and prior to
21 that, in passing.

22 Q Okay. And you just know him in a professional
23 capacity?

24 A Yes, ma'am.

25 Q As public works director, are you familiar with

JOHN LAUX-DIRECT BY MS. BENTLEY

1 the bridges of Simpsonville?

2 A I am.

3 Q How many bridges is the City of Simpsonville
4 responsible for maintaining?

5 A One that -- well, really, all of them in a
6 capacity in terms of inspecting them and then reporting
7 them to the respective agency, which would be the state in
8 our case. Then there's one bridge that we are responsible
9 for wholly.

10 Q So, how many bridges are in Simpsonville total?

11 A Let's see, there's Hill Pine, Alter, and
12 Capewood.

13 Q Three?

14 A Yes, ma'am, aside from overpasses on the
15 expressway. If we were to see something happen with
16 those, we would also take action to remedy it.

17 Q But you said there is one bridge that
18 Simpsonville City is completely responsible for?

19 A Yes, ma'am.

20 Q What does completely responsible for mean?

21 A Keep making sure it's in working order and then
22 if it needed to be repaired, we would go out and get --
23 either do the work ourselves or if it was something we
24 couldn't handle, we would get an engineer involved. We'd
25 go bid them, we'd get the money and we'd get it fixed.

JOHN LAUX-DIRECT BY MS. BENTLEY

1 Q What bridge is it that Simpsonville is
2 completely responsible for?

3 A I refer to it as Hill Pine bridge.

4 Q Where is the Hill Pine bridge?

5 A Hill Pine Street or Road.

6 Q Is it near a subdivision?

7 A It's in Poinsettia.

8 Q All right. Now, what is the current status of
9 that bridge?

10 A The bridge is at the moment closed.

11 Q Did you have a role in closing that bridge?

12 A I did.

13 Q Do you recall approximately when the bridge was
14 closed?

15 A I think it's been closed for about two years.
16 And I believe it was closed in the fall.

17 Q Okay. And why hasn't it been repaired?

18 A The money had been budgeted and -- really, quite
19 honestly, that became the end of my role.

20 Q Lack of funding, is that fair?

21 A No, that is not correct.

22 Q Okay. But the bridge has not been repaired?

23 A That is correct.

24 Q Would you as public works director have spoken
25 to the mayor about the condition of the bridge?

JOHN LAUX-DIRECT BY MS. BENTLEY

1 A I would have conversations with him if he were
2 to bring it to my attention, but no, I would work with the
3 city administrator in terms of technical data. And I
4 would advise him or her as to what we find and potentially
5 any recommendations which then, in turn, would go to the
6 full council, potentially.

7 Q You said if he brought it up, if the mayor
8 brought it up, you would speak to him about it?

9 A Yeah, if anybody asked me a question about it,
10 either the mayor or anybody.

11 Q Did the mayor ever bring up the Hill Pine bridge
12 to you?

13 A Yeah.

14 Q How often did he bring it up?

15 A I don't know, ma'am.

16 Q How many times would you say?

17 A I don't know.

18 Q All right. And in what manner did it come up?

19 A In what manner?

20 Q In what context?

21 A You know, running into me at City Hall or
22 crossing asking me what the progress is on the bridge.

23 Q Did he ever express frustrations about the
24 closure of the bridge?

25 A I don't recall.

JOHN LAUX-DIRECT BY MS. BENTLEY.

1 Q All right. Mr. Laux, you are not from South
2 Carolina, correct?

3 A No, ma'am.

4 Q Do you currently live in Simpsonville?

5 A I do not.

6 Q Do you keep up with the news of Simpsonville?

7 A I actually do not.

8 Q All right. And regardless of that, were you
9 aware about an arrest in connection with the Hill Pine
10 bridge, a woman being arrested there?

11 A Prior to?

12 Q At some point in last spring, were you made
13 aware that a woman was arrested in connection with the
14 Hill Pine bridge?

15 A No, I was not made aware by a human being. I
16 was made aware by the media, which is the television.

17 Q You were aware that a woman was arrested in
18 connection with something happening at the Hill Pine
19 bridge?

20 A That's correct.

21 Q Which is a bridge that Simpsonville is
22 responsible for?

23 A That's correct.

24 Q As part of your job, I believe you said you
25 would meet with the city administrator?

JOHN LAUX-DIRECT BY MS. BENTLEY

1 A Excuse me?

2 Q You meet with the city administrator as part of
3 your job?

4 A We do, we meet monthly formally and then we, at
5 our request, if we need his ear, we would reach out to him
6 either informally or ask for a meeting.

7 Q You said we, who is we?

8 A My counterparts, somebody in my capacity. If I
9 or another director needed to speak with him, we would
10 contact him. You know, it's not that difficult to get
11 with him. You can talk to him in his office oftentimes if
12 he's there and available, send him an email or call him.

13 Q Who is the city administrator for Simpsonville?

14 A Mr. David Dyrhaug.

15 Q And how long has he been city administrator?

16 A I don't know. I think going on two years, I'm
17 not really sure.

18 Q All right. Does he play any role in whether you
19 maintain your job as public works director?

20 A Yeah, I would think he does. Yeah, I would
21 assume so.

22 Q Why would you assume that?

23 A Because he would be an adviser to the council as
24 to their -- if they were to take action, I would assume he
25 would be some part of it.

JOHN LAUX-DIRECT BY MS. BENTLEY

1 Q But you do serve at the pleasure of the council?

2 A That's the way it's written.

3 Q Now, do you recall an impromptu meeting you had
4 with Mr. Dyrhaug in his office around March 2014?

5 A I do.

6 Q All right. Can you tell me how that meeting
7 began?

8 A I cannot.

9 Q Can you tell me where the meeting happened?

10 A In Mr. Dyrhaug's office.

11 Q Where were you in Mr. Dyrhaug's office?

12 A Sitting in a chair.

13 Q Where is Mr. Dyrhaug's office?

14 A It would be in the southeast corner of the
15 building, first floor.

16 Q What building?

17 A City Hall.

18 Q From Mr. Dyrhaug's office, what other parts of
19 City Hall can you see?

20 A You can look up the hallway from his office door
21 into the hallway.

22 Q So you can see the hallway?

23 A Uh-huh.

24 Q Can you see the mayor's office?

25 A No.

JOHN LAUX-DIRECT BY MS. BENTLEY

1 Q You said you were in a chair. Where was
2 Mr. Dyrhaug in relation to your chair?

3 A If I recall, he was sitting at the head of the
4 table and I was sitting down the long side of the table.

5 Q Was this a scheduled meeting?

6 A No, ma'am.

7 Q What kind of meeting was it?

8 A I don't recall.

9 Q And did anyone -- was anyone else initially part
10 of that meeting?

11 A No, ma'am.

12 Q Did anyone else end up in that meeting?

13 A Mayor Eichor.

14 Q Please tell me how he ended up in that meeting.

15 A He walked into the room.

16 Q Was it unusual for him to pop into offices at
17 City Hall?

18 A No.

19 Q All right. What happened when he popped into
20 the room?

21 A He started having a conversation with
22 Mr. Dyrhaug.

23 Q About what?

24 A I do not recall.

25 Q Were you actively listening to what he said?

JOHN LAUX-DIRECT BY MS. BENTLEY

1 A I was not.

2 Q Why not?

3 A Because I generally don't really pay attention
4 to things that are -- it's just my nature. I pay
5 attention to what I need to pay attention to and that's
6 about it.

7 Q What was the subject matter of the conversation?

8 MR. HENRY: Objection, Your Honor. He didn't
9 hear the conversation. Now, ask him what the subject
10 matter of it is.

11 MS. BENTLEY: He did hear the conversation and
12 recalls part of it.

13 THE COURT: Here's what I'll do. You can ask
14 him that one more time. I don't know whether it's
15 asked and answered or not, but if he was there, then
16 he can comment on it if he knows. If he was there
17 and he doesn't know, then he can say I don't know.
18 So, I'm going to allow -- I'm going to overrule the
19 objection.

20 MR. HENRY: Can I repeat what I believe his
21 testimony was? Do not recall the conversation.

22 THE COURT: That's what I think -- I think
23 that's what he said as well. He can restate that.

24 MR. HENRY: And I'm objecting that, this has
25 been asked and answered already.

JOHN LAUX-DIRECT BY MS. BENTLEY

1 THE COURT: Okay.

2 MS. BENTLEY: I'll rephrase it.

3 THE COURT: Yes, ma'am.

4 BY MS. BENTLEY:

5 Q Do you recall parts of the conversation?

6 A I was in the room when the conversation took
7 place. I did not --

8 Q I've asked you if you recall parts of the
9 conversation --

10 MR. HENRY: Objection, let him finish his
11 answer.

12 THE WITNESS: I do not.

13 BY MS. BENTLEY:

14 Q You recall nothing about the conversation, is
15 that your testimony?

16 A I will have to say I do not.

17 Q All right. Did you around that time speak to
18 anyone else about that interaction?

19 A Around that time, what do you mean?

20 Q Were you interviewed by a SLED agent?

21 A I was.

22 Q What was the topic of your conversation with the
23 SLED agent?

24 A The topic of the conversation was a conversation
25 that I had with a council member.

JOHN LAUX-DIRECT BY MS. BENTLEY

1 Q Okay. And what conversation -- what council
2 member was that?

3 A Ms. Sylvia Lockaby.

4 Q And what had you spoken to Sylvia Lockaby about?

5 A The arrest of the mayor.

6 MR. HENRY: Objection to hearsay now, Judge.
7 Where are we going with this?

8 MS. BENTLEY: I'm asking him what his
9 conversation was, not what she said.

10 THE COURT: I'll overrule that objection. She
11 can ask him what the nature of that conversation was,
12 what he said to her.

13 BY MS. BENTLEY:

14 Q Without telling us what Ms. Lockaby said, the
15 meeting where the mayor popped in with you and
16 Mr. Dyrhaug, did you discuss that with Sylvia Lockaby?

17 A Yes.

18 Q Yes. And that conversation that you overheard
19 with the mayor and David Dyrhaug, did you discuss that
20 with the SLED agent?

21 MR. HENRY: Objection, again, to leading.

22 THE COURT: I overrule.

23 You may continue.

24 THE WITNESS: From what I recall, ma'am, the
25 SLED agent interview was more in line with my

JOHN LAUX-DIRECT BY MS. BENTLEY

1 conversation with Ms. Lockaby.

2 BY MS. BENTLEY:

3 Q Did the SLED agent ask you to put your
4 recollections in writing?

5 A He did not.

6 Q He did not. And if I were to show you his
7 memorandum of your interview, could that help refresh your
8 recollection regarding what you overheard?

9 MR. HENRY: Objections. He's not claiming he
10 didn't remember. You don't get to refresh when he
11 says no to the question.

12 THE COURT: Okay.

13 You can show him that document and see if he
14 knows what it is, if he has any idea and he can
15 identify it.

16 BY MS. BENTLEY:

17 Q Do you know what this document is?

18 A Is this the same document you had in your office
19 last week?

20 Q Uh-huh.

21 A I do.

22 Q So, have you seen this document before?

23 A Actually, no.

24 Q Before today, you've never seen this?

25 A I saw it like this across from me as you were

JOHN LAUX-DIRECT BY MS. BENTLEY

1 sitting at the table --

2 MS. BENTLEY: Permission to treat the witness as
3 hostile, Your Honor?

4 THE COURT: Position on that, sir?

5 MR. HENRY: I object to it. Because she's not
6 getting the answers she likes doesn't make him a
7 hostile witness. And she's also asking repetitive
8 questions and not accepting the answers from the
9 witness. It's her witness.

10 THE COURT: I'm going to deny your motion to
11 treat him as a hostile witness. You called him. You
12 aren't necessarily in an adversarial position, you're
13 not necessarily getting along as well you might like
14 either. So, ask him questions and -- but I'm not
15 going to allow you to treat him as a hostile witness.

16 MS. BENTLEY: Yes, sir.

17 BY MS. BENTLEY:

18 Q Looking at the document this way, do you know
19 what it is?

20 MR. HENRY: Objection, asked and answered.

21 THE COURT: Okay. I overrule.

22 You can ask that question.

23 THE WITNESS: Ma'am, I have never read the
24 document. It has been described to me by you last
25 week. So, I understand what it is, but I have never

JOHN LAUX-DIRECT BY MS. BENTLEY

1 read it myself.

2 BY MS. BENTLEY:

3 Q I am asking you to look at it.

4 A You want me to look at it or do you want me to
5 read it?

6 Q Do not read it, just look at it.

7 A Okay.

8 Q You may read it to yourself, do not read it
9 aloud.

10 A So, you want me to read it?

11 Q I do not want you to read it aloud. You may
12 read it silently to yourself.

13 A Okay.

14 Q Okay. Have you finished reading it?

15 A Yes, ma'am.

16 Q Does that happen to refresh your recollection
17 about your conversation with Mr. Donohue?

18 A Somewhat, however, the first paragraph is not
19 accurate.

20 Q Okay. Tell me what you recall now about your
21 meeting with Mr. Donohue.

22 A With Mr. Donohue? He came into my office and he
23 interviewed me and that is about all I remember.

24 Q Thinking back on that interview, did you discuss
25 the conversation -- pardon me, the meeting where the mayor

JOHN LAUX-DIRECT BY MS. BENTLEY

1 interrupted you and Mr. Dyrhaug?

2 A Again, what I just read is not accurate.

3 Q Correct.

4 A The mayor did not interrupt us. I was not
5 dragged into a meeting as that document says.

6 Q So, you do remember part of what happened in
7 that meeting?

8 A I have not said that.

9 Q You just said that you were not drug into a
10 meeting?

11 A That's correct.

12 Q So what happened?

13 A What happened is exactly what I said earlier in
14 my testimony.

15 Q All right. And you said that you recall -- do
16 you recall better your conversation with Mr. Donohue after
17 reeding this?

18 A Actually, ma'am, I really don't.

19 Q Okay. Does it spark your recollection of what
20 you overheard with -- between the mayor and Mr. Dyrhaug?

21 MR. HENRY: Objection, Your Honor. Again, this
22 is the third attempt to rehabilitate the witness
23 who's not giving her the answer she wants. It's
24 asked and answered. She doesn't get to refresh
25 somebody's memory who says I did not have that

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1 conversation.

2 MS. BENTLEY: And then he keeps adding in --

3 MR. HENRY: He does not -- he has not changed
4 his testimony about the conversation one bit.

5 THE COURT: I'm going to let you ask it one more
6 time, but you may consider wrapping it up.

7 MS. BENTLEY: Yes, sir.

8 THE COURT: In your discretion.

9 MS. BENTLEY: Yes, sir.

10 BY MS. BENTLEY:

11 Q You said you were -- you said there's parts of
12 this memorandum that are inaccurate?

13 A That is correct.

14 Q Are they're parts of this memorandum that are
15 accurate?

16 A I really don't remember.

17 Q You don't remember?

18 A No.

19 Q All right. Was your memory clearer when you
20 spoke to Investigator Donohue?

21 A Ma'am, I don't know.

22 Q You don't know if your memory was clearer a year
23 ago?

24 A If my memory was clearer?

25 Q Than it is today?

JOHN LAUX-DIRECT BY MS. BENTLEY

1 A I would assume it probably was.

2 Q All right.

3 MS. BENTLEY: All right. I have no further
4 questions. Please answer questions Mr. Henry may
5 have.

6 THE COURT: Mr. Henry, any questions?

7 MR. HENRY: I have no questions of this witness,
8 Judge.

9 THE COURT: Thank you, sir, I appreciate you
10 being here.

11 Okay. You may call your next witness.

12 MS. BENTLEY: Your Honor, the State calls Gene
13 Donohue.

14 THE CLERK: Please place your left hand on the
15 Bible and raise your right hand.

16 GENE DONOHUE, after being duly sworn,
17 testified as follows:

18 THE CLERK: Please be seated. State your name
19 for the record.

20 THE WITNESS: Gene Donohue.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BENTLEY:

24 Q Mr. Donohue, where are you employed and in what
25 capacity?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A I'm employed as a senior special agent at the
2 South Carolina Law Enforcement, commonly referred to as
3 SLED.

4 Q How long have you worked at SLED?

5 A I've been at SLED for 16 years. Prior to that,
6 I was with the Greenville County Sheriff's Office for 14
7 years. So, 30 years all together.

8 Q What type of investigations do you handle at
9 SLED?

10 A I handle a whole gambit of criminal
11 investigations, things like public corruption, homicide,
12 white collar crimes, misconduct, any type of crime you can
13 think of.

14 Q All right. And tell me, were you assigned to
15 the investigation into the Defendant, Perry Eichor, in
16 April 2014?

17 A Yes, ma'am.

18 Q Please tell me how that investigation began?

19 A We received a complaint in our office. Judge
20 Sharff came to our office and made a complaint, an
21 allegation against Mr. Eichor. We took the complaint
22 down. We consulted with the solicitor's office --

23 MR. HENRY: Objection, Your Honor.

24 THE COURT: Okay. What basis, sir?

25 MR. HENRY: Commenting about what the

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 solicitor's did about this investigation. In fact,
2 the entire investigation is going to be hearsay.

3 THE COURT: Okay. So long as just discussing
4 the conditions and the context of the investigation
5 and it's not offered to prove the truth of the matter
6 asserted, I'll overrule. But do understand that if
7 it's offered to prove the truth of the matter
8 asserted, then it's problematic.

9 MS. BENTLEY: No, sir, Your Honor, just to
10 discuss the basic investigation.

11 THE COURT: Okay. Good enough.

12 MS. BENTLEY: What prompted it.

13 BY MS. BENTLEY:

14 Q Without going in depth, what was the allegation
15 made by Judge Sharff?

16 A That he --

17 MR. HENRY: Objection, again, hearsay. This is
18 testifying to what Judge Sharff told him, that's
19 hearsay testimony.

20 MS. BENTLEY: It just allegation -- explain why
21 and how the investigation proceeded.

22 MR. HENRY: That's not an exception to the rule.

23 THE COURT: Okay. All right. Yeah, I'll
24 sustain as to anything he said. Obviously, you'll be
25 able to put that witness on the stand and he can

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 testify himself as to what he said.

2 MS. BENTLEY: Certainly.

3 BY MS. BENTLEY:

4 Q What did you do after speaking with Judge
5 Sharff?

6 A We initiated an investigation.

7 Q And what were the first steps of that
8 investigation?

9 A To take down a statement and then to speak with
10 the prosecutor.

11 Q When you say prosecutor, what prosecutor did you
12 speak to?

13 A The solicitor.

14 Q The head solicitor?

15 A Yes.

16 Q Okay. And how did you proceed from there?

17 A We initiated the remainder of our investigation,
18 interviewed witnesses. And then once we were completed
19 with our investigation, we presented it to the solicitor.

20 Q All right. As part of that investigation, did
21 you set up a meeting with the Defendant?

22 A Yes, ma'am.

23 Q How did you set up that meeting?

24 A We called Simpsonville City Hall and talked to
25 the receptionist to find out if Mr. Eichor was in. At

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 that time, we proceeded down to his office, myself and
2 Special Agent Rick Charles.

3 Q Where is his office?

4 A It's in the City Hall. When you walk in the
5 front door, it's to the right.

6 Q What's the address?

7 A It's on North -- I think it's North Main Street
8 or Northeast Main Street. I don't know the exact address.

9 Q What county is it in?

10 A It's in Greenville County.

11 Q All right. In the City of Simpsonville?

12 A Yes, ma'am.

13 Q All right. Now, did you give a reason for
14 wanting to speak to the mayor at that time?

15 A Not a detailed reason, just told him that we
16 were going to talk about the bridge situation. Basically,
17 asked him to tell us about the bridge situation.

18 Q Now, would there have been a reason that SLED
19 would have been involved in the situation with the bridge,
20 meaning the arrest of Dixie Nance?

21 A We wouldn't have been involved with anything
22 with Dixie Nance, but since the allegation was against a
23 public official and the local police department, in
24 essence, is part of the same government entity, they're
25 not equipped to investigate their own people basically is

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 what it is. They call us when they have a conflict of
2 interest.

3 Q Did you, in fact -- were you, in fact,
4 investigating anything about what had happened at the
5 bridge, though?

6 A No.

7 Q Okay. Would there have been any reason for
8 Mayor Eichor to doubt why you were there?

9 A No.

10 Q Had you been a presence in Simpsonville prior to
11 this?

12 A For quite some time.

13 Q Okay. Now, the mayor of Simpsonville, is that a
14 publically elected office?

15 A Yes, ma'am.

16 Q Was your conversation with the mayor audio or
17 video recorded?

18 A It was audio recorded.

19 Q All right. I'm going to show you -- I'm going
20 to show you what's been marked as State's Exhibits 1 and
21 2. I want you to look these over.

22 A This is a transcript.

23 Q Do you recognize what's State's Exhibit 1?

24 A Yes, ma'am.

25 Q What is it?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A A CD labeled Eichor. It's actually a
2 recording -- a copy of a recording that we made.

3 Q How do you know that?

4 A Because it's in the case that our office
5 provides.

6 Q And did you make the initial recording and the
7 initial disk?

8 A Yes, ma'am.

9 Q Did you listen to it to make sure it was
10 accurate?

11 A Yes, ma'am.

12 Q All right. And what is State's Exhibit 2?

13 A That is a transcript of the recording.

14 Q All right. How do you know that?

15 A It's sworn to by the court reporter and it's
16 been prepared in this case.

17 Q Okay. And looking over it, does it --

18 A It's accurate as to who was said during the
19 conversation.

20 Q Is there any part of it that is not accurate?

21 A There's actually a couple of parts. There's one
22 in here where --

23 Q That's line --

24 A Line 22 on Page 20 where it says a head injury.
25 That's not accurate. That was something else said at that

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1 time. There's another in here that refers to Chief Morton
2 down in Fountain Inn, they have the wrong name.

3 Q But aside from those two mistakes, is that the
4 entirety of your conversation as it's recorded on this
5 disk?

6 A Yes, ma'am.

7 Q And nothing has been changed or added to it
8 except for those two errors?

9 A That's correct.

10 MS. BENTLEY: Your Honor, at this time, the
11 State wishes to admit Exhibits 1 and 2 into evidence
12 and publish Exhibit 1 to the jury.

13 THE COURT: Objection, sir?

14 MR. HENRY: Yes, sir, many.

15 THE COURT: Okay. The ones that have already
16 been stated pre-trial?

17 MR. HENRY: I want some additional ones. I'd
18 like for the jury to be out for this, Judge.

19 THE COURT: All right. Ladies and gentlemen, we
20 need to take up a matter of law outside of your
21 presence. It goes to the admissibility of that
22 evidence. So, if you would please retire to your
23 jury room. Don't discuss the case.

24 (WHEREUPON, the jury left open court at
25 approximately 4:00 p.m.)

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 THE COURT: All right, sir.

2 MR. HENRY: Let's start with the certification
3 by the court reporter. It's not certified. It's not
4 a transcript. It was actually, at my request, for my
5 benefit to be used if I needed it at trial, but not
6 to introduce it as an exhibit. It doesn't qualify as
7 a transcript. Agent Donohue just testified that it
8 was sworn to by the court reporter. I'd like for him
9 to produce that document to show that it has been
10 because it has not been. That's number one.

11 THE COURT: Okay.

12 MR. HENRY: So, it doesn't come in if it hasn't
13 been sworn to by a court reporter. As anyone would
14 know, a court reporter cannot swear to a document she
15 doesn't hear live testimony on. She can't take a
16 tape and swear to what she did not do and could not
17 do in this case. So, it's not a sworn transcript.

18 THE COURT: Okay.

19 MR. HENRY: The second part of this, in addition
20 to my earlier objections, which you've already ruled
21 on, is that this contains a lot, a lot of irrelevant
22 statements in it, talking about entirely different
23 issues. There are some things in here that are
24 negative by nature which have nothing at all to do
25 with the issue before the Courts. I would say 90

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1 percent of this, at least, should be redacted if you
2 decide to allow it in spite of the fact it's not
3 certified.

4 The same thing would be true of the tape. What
5 should happen in this situation when a tape is going
6 to be offered, there should be some time taken in
7 advance to determine if there's irrelevant evidence
8 on the tape instead of slap dash, send it all to the
9 jury without having someone to review it.

10 So, I'm asking that the tape be reviewed if
11 you're going to consider allowing it into evidence,
12 take out all the references to irrelevant matter.
13 Again, I want the transcript out in its totality.

14 THE COURT: Okay. I understand.

15 How long is the tape?

16 MS. BENTLEY: It is about 30 minutes, Your
17 Honor.

18 THE COURT: Thirty minutes?

19 MS. BENTLEY: I would say so.

20 THE COURT: What material -- is there material
21 in there that's not relevant to your case?

22 MS. BENTLEY: There is a tangent, for lack of a
23 better word, that the Defendant goes on in response
24 to a question. It is not directly responsive to the
25 matter of the bridge. It does last for a few

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1 minutes. And then Agent Donohue directs him back to
2 the conversation about the bridge issues.

3 It's the State's position that it's not
4 prejudicial in any way. While it may not be relevant
5 to the case at hand, it's not prejudicial, and to
6 delete such a large chunk in the middle of the
7 recording would leave the jury confused and possibly
8 think that either side is trying to hide something
9 from them. I think a curative instruction would be
10 more than enough to let them know if there's anything
11 that they deem irrelevant, they are to ignore it.

12 THE COURT: Okay. And is there -- are you
13 saying that it's just not feasible to redact portions
14 that aren't relevant?

15 MR. HENRY: It's not feasible for our office on
16 this recording -- we don't have the software to edit
17 that.

18 THE COURT: Okay. So, if you took the
19 transcript, though, you could redact portions of
20 that, could you not?

21 MS. BENTLEY: We could redact portions of the
22 transcript.

23 THE COURT: All right.

24 Now, Mr. Henry, I recognize the certification
25 issue you have, but do you take exception as to

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1 whether that is a fair and accurate transcript and/or
2 recitation of what appears on the tape

3 MR. HENRY: Fairly accurate, yes.

4 THE COURT: All right. Well, this is what I'll
5 do, do the two of you think that you can get together
6 and come up with a redacted transcript?

7 MS. BENTLEY: I doubt we can agree.

8 MR. HENRY: No.

9 One of us understands relevance and one of us
10 does not and that's the problem.

11 THE COURT: Don't put all your eggs in my
12 basket, I might screw it up, too.

13 MR. HENRY: When my client's being asked
14 questions about something unconnected to the case --
15 for example, he curses in here. I mean, this stuff
16 --

17 THE COURT: Okay. Y'all have a copy of the
18 transcript for me?

19 MS. BENTLEY: Yes, sir, Your Honor.

20 THE COURT: Okay. Give me a copy of the
21 transcript and let me look at it. Okay. Any other
22 issues with respect to the transcript and/or the
23 audio tape?

24 MR. HENRY: No, sir. Other than the ones I put
25 on the record.

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1 THE COURT: Okay. Again, with respect to the
2 admissibility, I know we've already discussed that.
3 And so inasmuch as I ruled that it was voluntary,
4 then under rule 801, it's a statement against
5 interest, I'll allow it in. You know, what I'm
6 trying to do now is ascertain whether, in fact, as a
7 cohesive whole you can redact portions of it and it
8 makes much difference at all.

9 What specific portions do you want to get in,
10 Ms. Bentley?

11 MS. BENTLEY: Your Honor, we would like in from
12 the beginning of Page 2.

13 THE COURT: Yes, ma'am.

14 MS. BENTLEY: Everything that discusses the
15 bridge, which goes through Page 7.

16 THE COURT: Yes, ma'am.

17 MS. BENTLEY: Most of page -- half of Page 7.

18 THE COURT: Yes, ma'am.

19 MS. BENTLEY: And picking back up where Agent
20 Donohue is able to get back to the bridge thing,
21 which is the top of Page 13, I believe. It's unclear
22 what -- at the top of Page 13.

23 THE COURT: I see, Line 6?

24 MS. BENTLEY: Yes, sir.

25 THE COURT: Where do you want to end on Line

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1 7 -- Page 7, I'm sorry?

2 MS. BENTLEY: I suppose we could end at Line 15?

3 THE COURT: Okay.

4 MS. BENTLEY: And then --

5 THE COURT: Probably more like 12 on Page 7
6 because they just seg-way into another topic.

7 MS. BENTLEY: Correct, where the line appears to
8 be --

9 THE COURT: Okay.

10 MS. BENTLEY: And then from Line 6 on Page 13
11 through the end of Page 19 probably ending on 25.

12 THE COURT: End of Page 19 at 25. Okay.
13 Through the end of Page 19. Okay. All right. Is
14 that it?

15 MS. BENTLEY: Yes, Your Honor.

16 THE COURT: Okay.

17 All right. Mr. Henry, other than the general
18 objections that you have with respect to the
19 relevance objection that you've made, is that
20 significantly redacted?

21 MR. HENRY: It's fewer lines, Judge, I'll say
22 that. The discussion about the bridge and fixing the
23 bridge, this is not -- is he charged with being one
24 of many people in Simpsonville who wanted the bridge
25 fixed? I must have missed that in the indictments

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1 because that's -- half of what he's talking about is
2 fix the bridge. So what?

3 THE COURT: I don't want to advance an argument
4 for the State. I really don't. But it seems to me
5 that they would -- the relevance could be his state
6 of mind with respect to the bridge issue and how that
7 could have motivated him to do the things that are
8 alleged. So that insofar as terms of relevancy is
9 concerned -- you can argue to the jury that it
10 doesn't matter, it doesn't say anything. Insofar as
11 terms of relevancy is concerned, I think that it's
12 admissible under the rules.

13 MR. HENRY: I can argue that, admit the whole
14 thing, too, can't I? I mean, that ruling doesn't
15 really help much, does it, Judge, really?

16 THE COURT: Well, I'm not here to help you,
17 Mr. Henry. I'm here to be fair to both parties.

18 MR. HENRY: Sure, sure. And this is not
19 relevant.

20 THE COURT: Okay. What I would like for you to
21 do, I'm not going to admit the entirety of the
22 transcript or the entirety of -- or not the audio at
23 all because it's impossible to redact as you
24 suggested. Okay. So, what you can do is you can
25 read it into the record, those portions that you just

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 told me. Now, you can either read it into the record
2 and publish it or you can role play. Essentially,
3 you can ask the questions and he can respond in the
4 manner in which the Defendant responded at the time,
5 okay. That redacted portion that we just discussed,
6 okay.

7 MS. BENTLEY: And then after court today, would
8 you like me to prepare a redacted exhibit for the
9 jury to take back?

10 THE COURT: That's entirely up to you. Once
11 it's published, it's into evidence. Okay.

12 MR. HENRY: Judge, are we accepting the position
13 that they cannot fix that tape?

14 THE COURT: Yeah, and the reason is this, there
15 has to be a certain economy that I have to take into
16 consideration here. They can fix it at a later date
17 and if you want them to reopen their case or tomorrow
18 introduce it, but for purposes of us proceeding right
19 now, the evidence is the evidence, the transcript is
20 the transcript, whether it comes in in the form of a
21 reading, whether it comes in in the form of an audio
22 tape, whether it comes in in the form of a written
23 transcript. So, I'm not requiring them to do that.
24 What I'm telling them is if they want to get in the
25 portion that I'm letting in over your objection, that

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1 limited portion that I'm letting in over your
2 objection, then they need to read it into the record.

3 MR. HENRY: Okay.

4 THE COURT: But that does not, that certainly
5 does not limit you from introducing anything else
6 that you may want to then introduce. That is if you
7 have a concern, then certainly try to set the
8 foundation for the tape or the transcript and use it
9 in your presentation of your case or
10 cross-examination as well.

11 MR. HENRY: So, the tape that I object to, I can
12 also offer it?

13 THE COURT: You sure can. That's your
14 discretion.

15 MR. HENRY: I appreciate that, Judge.

16 THE COURT: It happens all the time.

17 MR. HENRY: Not in this case --

18 THE COURT: All the time.

19 MR. HENRY: Not in this case, it won't.

20 THE COURT: Okay.

21 MR. HENRY: It's going to take a while to do the
22 reading because I'm going to be objecting as we go.

23 THE COURT: Okay. Good enough. Okay. All
24 right.

25 Bring the jury in.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 MR. HENRY: Still don't know which ones we're
2 reading into the record.

3 THE COURT: My understanding is beginning on
4 Line 2 through Line -- or excuse me, through Page 7,
5 Line 12. And then picking up on page -- what did you
6 say?

7 MS. BENTLEY: Thirteen --

8 THE COURT: Thirteen, Line 6, am I right about
9 that?

10 MS. BENTLEY: Yes.

11 THE COURT: Thirteen, Line 6, through --

12 MS. BENTLEY: The end of Page 19.

13 THE COURT: The end of Page 19.

14 MR. HENRY: Could you read that first part
15 again?

16 THE COURT: Yes, sir. Two through Line 12 on
17 Page 7. Okay.

18 Okay. We ready for the jury?

19 Okay. Bring them in.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:15 p.m.)

22 MR. HENRY: Your Honor, are my other objections
23 preserved as far as what we just argued?

24 THE COURT: Yes, sir.

25 Okay. You may proceed, ma'am.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q All right. Agent Donohue, you were talking
3 about your conversation with Mayor Eichor. What date did
4 that conversation take place?

5 A I don't recall the exact date.

6 Q It's on the front of that transcript there.

7 A Oh, excuse me, April 4th.

8 Q Of what year?

9 A 2014.

10 Q And do you recall when it was you spoke to him,
11 what time of day?

12 A I think it was midday.

13 Q Okay. And he was in his office?

14 A Yes, ma'am.

15 Q Did he have any hesitation about speaking to
16 you?

17 A No, he didn't.

18 Q Did he welcome you in his office?

19 A Yes..

20 Q What did you tell him again the reason was that
21 you were there?

22 A I told him -- basically, we came in, said we
23 need to talk about the bridge situation that's going on
24 down here.

25 Q Did he immediately know what you were talking

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 about?

2 A He did.

3 Q Did he appear to have knowledge about the case?

4 A He did.

5 Q We've looked over this transcript, State's
6 Exhibit 2, you have it in front of you --

7 A Yes, ma'am.

8 Q -- is that a fair and accurate documentation of
9 the conversation you had with Mayor Eichor?

10 A It is.

11 Q And was there another agent present?

12 A There was.

13 Q Who was that?

14 A Rick Charles.

15 Q And in a minute I'm going to have you recite
16 this transcript, but did the mayor admit to speaking to
17 people about this bridge deal?

18 A Yes, ma'am, he did.

19 Q And I'm going to have you begin at the very
20 beginning on Page 2 and read out the questions that you
21 asked and his responses, please.

22 A Okay. The initial question was, Tell us about
23 the bridge deal down here.

24 Mr. Eichor answered, The sign?

25 I said, The sign.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 Okay. Strange enough, it's right behind my --
2 it's right by my house, okay.

3 And I said, Okay.

4 And he said, There's Hill Pine, there's somebody
5 else's house and there's my house.

6 Okay.

7 And then the creek's right in the back of my
8 yard, which has nothing to do with anything except the
9 fact that it's just that I have -- that part was
10 inaudible. Well, I was driving -- anyway last June, we
11 had this -- inaudible -- with rain, okay. It came down
12 there and I went down and the fire department and the
13 police department were down there. And I said, Well, the
14 bridge is about -- inaudible. And I think they tried to
15 fix some of the asphalt off that had washed, okay, because
16 it just cost a bundle. And then they came down again and
17 looked at it.

18 And John said, Well, it's okay, it will be -- it
19 will be a while.

20 So, then they went back down -- they went down
21 and put asphalt down. Okay.

22 And John said, Shit, I think that's what he
23 said, it's really deteriorated. We're going to close it.

24 So, we put a sign -- we put a sign up and it was
25 closed. The weight limit was 5000 pounds. Well, then all

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1 of a sudden, I think I find out he says it's unsafe,
2 period. Okay. So, they close the thing, put signs up on
3 top. Then I drove by one Saturday or Sunday, I forget
4 which, and all the barriers had been moved to the side,
5 put up on the side. Well, that's weird. I didn't think
6 anything about it. I thought maybe the public works had
7 done it or something or they had done something. And I
8 came in on Monday, talked to John.

9 He said, Well, no, we just put -- we just went
10 out there and put concrete barriers down there on top.

11 And I went, Well, okay.

12 I didn't think to ask him if they moved them.
13 Well, apparently, they hadn't, somebody else moved them.
14 But nevertheless, that all leads up to this. Then they
15 put the concrete barriers and they put all the street
16 signs. And I mean, the question, Was The bridge closed?

17 THE COURT: What I want you to do is you ask the
18 question because it will be much more clear for the
19 jury than you speaking if there's some distinction
20 between the questions and answers.

21 MS. BENTLEY: Yes, sir.

22 (WHEREUPON, the remainder of State's Exhibit No.
23 2 was read into the record by Ms. Bentley and
24 the witness.)

25

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q The bridge closed and all that?

3 A The bridge closed with the other signs. . . Damn, I
4 hate getting old. Where -- then where you have a board
5 across and two boards down the side that you use for
6 carpentry when you're working.

7 Q Yeah, a sawhorse?

8 A Sawhorse.

9 Q Okay.

10 A They had a sawhorse up there and some orange
11 barrels and stuff. So anyway, I'm driving by Monday,
12 okay, or maybe it was -- I guess it was on -- it could
13 have been on Sunday, okay, the next week and I looked over
14 there and there's a sign stretched out that says, Chief
15 Grounsell, give back your -- something like Chief
16 Grounsell, give back your pay and fix our bridge, okay. I
17 didn't think anything about it because, I mean, if the
18 road is this wide right here, the sign took up about this
19 much of it.

20 Q Okay.

21 A And you could still see bridge closed and you
22 could still see all this other stuff around it, so I
23 didn't think much about it. Then I found out that they
24 had arrested this lady who lives down the street for
25 putting it up. And apparently -- and she called me and

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 told me. And I said, Well, okay.

2 She said, And I told them I did it. She said, I
3 will not lie if they asked me if I did it.

4 And so, that's all what I know about -- that's
5 all I know about it.

6 Q Is there some kind of ordinance or something
7 that they used or, I mean, what did they base that on?

8 A I asked at city council meeting why would you
9 arrest for that? Normally, just take the damn banner
10 down.

11 Q Right.

12 A I mean, if they said, you know, fuck the mayor,
13 okay, fix our bridge. I would have said just tell them to
14 take the banner down, okay. They took this damn banner
15 down and took it to forensics to get them to process it
16 for prints. I know what they were thinking, they were
17 probably hoping, okay, that my prints would be on it. But
18 I just didn't know anything about it. And somebody, Bill
19 Cromer, you know Bill Cromer?

20 Q Yeah, I know Bill.

21 A He comes to the front door and says --

22 MR. HENRY: Objection, hearsay.

23 THE COURT: Okay. All right. I'll overrule. I
24 don't think it's offered to prove the fact of the
25 matter asserted.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 You may proceed.

2 THE WITNESS: He comes to the front door and he
3 said, We ain't getting involved in that.

4 And so at council meeting, I said, Grounsell, I
5 said, you know, what's the deal with this, you know?
6 What are you doing?

7 Well, we're going to charge her with a felony
8 because there's a state law that says you cannot
9 deface or obscure a sign, you know, a road hazard
10 sign.

11 Q Yeah.

12 A Well, I looked at that and myself, I don't think
13 it was defacing or anything else. You know, hell, 90
14 percent of us saw the sign, still you could see it. This
15 was down below. And so I thought what the hell. So,
16 apparently, a couple of council members got mad at me for
17 asking.

18 But he said, Well, we just charged her with a
19 misdemeanor.

20 And I happen to know, okay, and everybody's
21 getting informed and she's got an attorney in Spartanburg
22 and they're going to fight this damn thing all the way to
23 Supreme Court. I mean, that's just -- I thought it was
24 another Gene. I know you all have to be neutral.

25 Q Yes.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A But that's stupid. I mean, you just don't -- I
2 mean, that's looking for an excuse. And we had a sign
3 ordinance at the time. Jason here will explain the whole
4 thing. But we find them all the time and take them down
5 and they won't charge you.

6 Q You mean like signs people put on the side of
7 the road and stuff like that?

8 A Yeah, stuff like that. And we've had stuff --
9 banners put up and stuff. People put yard sale signs on
10 stop signs, okay.

11 Q Yeah.

12 A So that's defacing a warning sign, but, you
13 know, it's --

14 Q Yeah.

15 A Like you don't arrest somebody for spitting on
16 the sidewalk, okay. I'm talking about that shit, okay.
17 That's just my opinion on the thing.

18 Q Okay.

19 A And that's all I know about it. I have no idea
20 where it's going down or anything else, but it seems to me
21 like I've heard the term malicious prosecution from that
22 and all sorts of stuff. I don't know -- and this all
23 happened right before we had that high speed chase.

24 Q Then picking up on Page 13. Let me get back to
25 that bridge thing.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A Okay.

2 Q So, we can get that out of the way. So, from
3 what you're saying, you disagreed with the way they
4 handled it strongly, I would guess to say?

5 A Yeah, I mean, come on. I mean, just because it
6 has your name on it doesn't mean -- I don't think -- if it
7 hadn't had his name on it, I don't think they would have
8 taken him down to process for prints or anything like
9 that. I wouldn't have.

10 Q Have you talked to anybody about it besides
11 council meetings or anything that you remember?

12 A The gal they arrested.

13 Q What's her name, do you know?

14 A Dixie Nance. And I think it's in the 500 block
15 of North Almond.

16 Q Okay.

17 A And probably, I'm not sure, I may have talked to
18 Matthew Gooch or somebody like that.

19 Q Did they actually lock her up and bring her in
20 and process her through or just --

21 A No, they called her on a Tuesday, maybe, okay.
22 I can't remember the exact time they called her on Tuesday
23 or whatever. They just called her one day and said, you
24 know, you need to come down here.

25 She said, well, I've got three kids and I just

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 can't get off.

2 And they said, Well, come tomorrow then.

3 Well, they came down, apparently, they booked
4 her and went through the whole process.

5 Q Did they do a PR bond or whatever?

6 A They did a PR bond on her, yeah, they were smart
7 there. They didn't give her a ticket because it had been
8 over one day.

9 Q Yeah.

10 A So, they did a PR bond on her.

11 Q Yeah, I'm still trying to figure that rule out.
12 I don't know. You've got to do what the court says, I
13 guess.

14 A Yeah.

15 Q So, it was an ordinance. The city is handling
16 it? It's not a magistrate's court deal, right?

17 A They're going to bump it to magistrate court
18 because the city judge says that, you know, whatever he
19 does, it will be the wrong thing.

20 Q Who is that, the city judge?

21 A Inaudible. We'll go back here and find out in
22 just a second. I just can't think of his name right off
23 the top of my head. Marie will be able to tell you that,
24 our -- inaudible.

25 Q Have you sat down and talked with him about it?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A No, I mean, if I talk to him, I talk to the city
2 administer. Our ordinance says that we're not supposed to
3 have contact with employees, okay?

4 Q Okay.

5 A The mayor or -- inaudible -- not have contact
6 with the employees except the city administrator. And
7 that's what got Grounsell in trouble on that Friday the
8 first time. He was going directly to council members
9 about stuff and bypassing the city administrator in direct
10 violation of the ordinance. So I've contacting -- I've
11 been going through David.

12 Q What's David's last time again?

13 A Dyrhaug, D-Y-R-H-A-U-G. And I had a meeting
14 with Grounsell and Dyrhaug the other day about --

15 Q Is he still the acting city administrator?

16 A He's the acting. I've never been without
17 Freedom of Information Acts in what we're doing on that.
18 I got -- there's been some concerns that they just been
19 letting people go in the police department and go through
20 records and try to find stuff.

21 Q Trust me, we had an entire training session on
22 Freedom of Information Act at our last in-service.

23 A Yeah, well, if we want to write something up, my
24 attitude's always been it's different. The Freedom of
25 Information Act is great, okay. There's certain things

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 there when it comes to police work, there's some more
2 training that goes into it. There has to be. But you
3 don't just -- you don't let just someone go in and go
4 through your records. So, I suggested that Grounsell and
5 Dyrhaug, at that time, contact Jennie Moran. You know
6 Jennie?

7 Q Oh, yeah, I had to go see Jennie last week,
8 matter of fact.

9 A Yeah, and I said, you know, see how they handled
10 it because she worked for me for years and they handled
11 the city and county both.

12 Q Poor Jennie. I went in her office, I was doing
13 a background on a guy and I had to get some information.
14 They're going to be in trouble if she ever leaves her
15 desk. Must have had four feet of paper stacked on it and
16 I don't think anybody in their right mind could find what
17 was in there.

18 A But she knows where everything's at.

19 Q Oh, yeah, she does.

20 A But see, SLED investigates her all the time,
21 audits her all the time. Milton -- inaudible. I don't
22 know if you know -- do you know Milton?

23 Q Yes.

24 A Okay. Well, he --

25 Q No, Jennie's on top of things. She knows what's

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 where and what's what.

2 A And I would suggest -- I mean, they never came
3 to me about any audits on her, okay, unless it was a minor
4 thing, just piddly. So, I suggested that -- and I also
5 told him that I was concerned about access to dispatch
6 because I tell you this, one of the reasons we terminated
7 him at the time was he was allowing channel seven access
8 to dispatch. Well, dispatchers have to be certified and
9 you don't allow access to that screen down there because
10 of NCIC.

11 Q Exactly. I mean, we don't even own that.

12 A No.

13 Q Department of Justice owns it.

14 A Well, I know, yeah. He said she gave -- channel
15 seven said they could have access to dispatch. This guy
16 just doesn't know what he knows. No experience is really
17 what it boils down to. You don't come in immediately and
18 just do everything --

19 Q Oh, yeah. Oh, yeah.

20 A I mean, that's the advantage. I've been here 10
21 years.

22 Q I want to make an impact.

23 A When I said seven and 10, I've been here 10
24 years.

25 Q I have, too. Yeah, I have, too.

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1 A Came in kept my mouth shut and asked the
2 sergeant, What the hell to do? Yeah.

3 Q I used at that -- inaudible -- give me crap --
4 inaudible -- this guy may have a clue what he's doing.

5 A That's all I know so far, guys.

6 Q Okay.

7 A I wasn't the one pushing, complaining, on the
8 bridge.

9 Q Yeah, they just said that -- I don't know where
10 it came from, but they asked us to come down here.

11 A I didn't ask it.

12 Q No, because we get -- it comes from Columbia and
13 goes to us, then we get told to come down here and talk
14 about it.

15 A But this one they can't pin on me for bitching
16 about it.

17 Q Let's go find out who the judge is and then
18 we'll go from there and find out what the status of this
19 thing is. We can do that. Marie's the clerk?

20 A Yeah. I mean, she's in court. She's the clerk
21 up there, yeah.

22 Q Is the court in here?

23 A No, we keep --

24 Q Oh, okay.

25 A Les Sharff.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 Q Les Sharff?

2 A L-E-S and then S-H-A-R-F-F, or he can tell you
3 where it's being referred to.

4 Q Yeah, that's what I'm going to find out the
5 status of it is real quick and then we can get out of
6 here. Do you want to walk back there and see?

7 A Sure.

8 Q Okay. Show us where she's at.

9 (WHEREUPON, the reading of transcript into the
10 record was concluded.)

11 BY MS. BENTLEY:

12 Q So, you were playing the role of Mayor Eichor in
13 that exchange?

14 A Yes, ma'am.

15 Q And that is what he told you in response to
16 questioning about the situation of the Simpsonville
17 bridge?

18 A That's correct.

19 Q So, going through that, who all did he
20 specifically name that he had spoken to about that case?

21 A He spoke with --

22 MR. HENRY: Object to the form of the question.
23 There's a distinction between talking about the
24 bridge and about the case. I think that distinction
25 has been missed consistently.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 THE COURT: All right. I sustain.

2 Recharacterize or rephrase your question,
3 please.

4 MS. BENTLEY: Yes, sir.

5 BY MS. BENTLEY:

6 Q Can you tell me who Mayor Eichor said that he
7 spoke to about the Dixie Nance arrest, sign, ordinance
8 thing?

9 MR. HENRY: Objection.

10 THE COURT: Yes, sir.

11 MR. HENRY: I don't think it's proper to ask --
12 if she's asking Agent Donohue what he recalls that's
13 something in addition to this transcript, that's
14 fine. But not just to have him go back and reread
15 the transcript because that's now in evidence and
16 that's the best evidence in response to that
17 question.

18 THE COURT: Are you asking him to refer to the
19 transcript you just read into the record?

20 MS. BENTLEY: Yes.

21 THE COURT: All right. Overruled. You may
22 proceed.

23 THE WITNESS: There were several people he spoke
24 with. John --

25

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q Now, was that about the bridge or was that about
3 the arrest?

4 A Oh, that was about the bridge, excuse me. About
5 the arrest, spoke with Dixie Nance herself. Spoke with
6 city councilman, Matthew Gooch, spoke to Bill Cromer, who
7 works for the police -- for the county.

8 Q Did he tell you about calling Deputy Chief Moore
9 on the case?

10 A No.

11 Q Did he tell you about speaking to John Laux or
12 David Dyrhaug about that case?

13 A No.

14 Q Did he admit to speaking Judge Sharff?

15 A No.

16 Q Tell me -- when the Mayor said Les Sharff, had
17 he looked up who the judge was?

18 A No.

19 Q Did he make any comments about where or when the
20 case would be heard?

21 A He -- yes, he did. He said that there was going
22 to be -- they're going to bump it up to magistrate court
23 because the city judge says that whatever he does will be
24 the wrong thing.

25 Q Why did you follow up on that statement?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A Because I wanted to find out if it had, in fact,
2 been referred to magistrate's court.

3 Q Okay. And did he acknowledge that having a
4 conversation with the judge about the case would be
5 improper?

6 A He did.

7 Q Did he say what kind of trouble he could get in
8 for --

9 A Well, he said it was a violation of the
10 ordinance for him to do such.

11 Q Did he reference other people having that kind
12 of action?

13 A He referenced the police chief at the time, who
14 was police chief. Had a former police chief and a police
15 chief and said that's what he got in trouble for on Friday
16 for going directly to council members.

17 Q And what was the remedy for the chief's
18 violation of that conduct?

19 A I don't know in this particular situation. I
20 know at one time he had been terminated by the city.

21 Q Okay. Regardless of the rule or he's not
22 allowed to speak the city employees, it sound like, does
23 the mayor of Simpsonville have specific duties?

24 A He does.

25 Q Is there a duty that all public officials in

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 South Carolina have?

2 A Yes, ma'am.

3 Q What duty is that?

4 A That duty of accountability.

5 Q Can you explain what the duty of accountability
6 is?

7 A It's they conduct their affairs openly, honestly
8 so the public can scrutinize their activities.

9 Q Okay. I'm showing you what's been partially
10 admitted as State's Exhibit 3. Could you please read out
11 what Section 2-33 is and what it says?

12 A Section 2-33, Oath of Mayor and Council Members.
13 The mayor and council members before entering upon the
14 duties of their respective office will take the following
15 oath: I do solemnly swear or affirm that I am duly
16 qualified in accordance with the constitution of this
17 state, to exercise the duties of the office to which I
18 have been elected, and that I will to the best of my
19 ability discharge the duties thereof and preserve and
20 protect and defend the Constitution of the state and
21 United States.

22 As mayor or council member of the City of
23 Simpsonville, I will equally, fairly and impartially, to
24 the best of my ability and skill exercise the trust
25 reposed in me and will use my best endeavor to preserve

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1 the peace and carry into effect according to the law the
2 purpose for which I have been elected. So help me God.

3 Q And could you turn to the second tab, which
4 would be Section 2-131.

5 A Section 2-131 --

6 MR. HENRY: Judge, aren't these in evidence
7 already?

8 MS. BENTLEY: I'm asking they be published to
9 the jury.

10 THE COURT: Yeah, he can do that.

11 THE WITNESS: Offices established. The council
12 may create and establish city offices, departments,
13 and sections as they may deem proper for the orderly
14 and efficient government of the city.

15 BY MS. BENTLEY:

16 Q And the next one, Terms of Office?

17 A Section 2-132, Term of Office: All appointed
18 officers and employees shall serve at the pleasure of the
19 appointing authority.

20 Q And then for the last tab, could you just read
21 Section 14-4(a)?

22 A Municipal Judge, Section 14-4, Subsection A,
23 Appointment. The city council shall appoint the municipal
24 judge. The appointment shall be for one year. The term
25 is to begin on January 1st and expire on December 31st.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 Q Thank you. Did the judge -- or pardon me, did
2 the mayor talk to you any further about the judge that was
3 handling the case? Did he know who it was?

4 A He did after the conversation -- when we
5 first -- initially, he couldn't recall. As we were
6 getting up to walk back to Ms. Feld Boone's office, he
7 recalled that it was Les Sharff.

8 Q And he did not look that up, he remembered it
9 spontaneously on his own?

10 A Yes, ma'am.

11 Q When talking to him, did you determine any
12 reason he might have for being so involved in the --

13 MR. HENRY: Objection to leading.

14 THE COURT: Okay. Please rephrase the question.

15 BY MS. BENTLEY:

16 Q Where did the mayor --

17 MR. HENRY: Your Honor, if I could, do you mind
18 ruling on my objection?

19 THE COURT: Oh, yeah. I don't think there was a
20 leading question, but she indicated that she was
21 going to rephrase it, therefore I allow her to
22 rephrase it.

23 MS. BENTLEY: I think you asked to rephrase it.

24 THE COURT: Yes, sir.

25

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q Where did the mayor tell you that Dixie Nance
3 lived?

4 A In the same neighborhood he did.

5 Q Did they live on the same street?

6 A I believe so.

7 Q All right. Who else did you speak to during the
8 course of your investigation?

9 A I spoke to Judge Davis, Judge Ford, Judge
10 Sharff, Mayor Eichor, Marie Feld, another girl in her
11 office, I can't recall her name right off. I'm trying to
12 think of all these names. Judge Cagle. The receptionist
13 at City Hall.

14 Q Did you speak with John Laux, who was just in
15 here?

16 A I spoke to John Laux and David Dyrhaug.

17 Q Tell me about your conversation with John Laux.
18 Where did that take place?

19 A At the Simpsonville public works department.

20 Q Do you recall approximately when that
21 conversation took place?

22 A Time of day --

23 Q Uh-huh.

24 A -- when it was? It was probably mid-morning.

25 Q All right. And do you recall when it took place

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 as far as in relation to the month or anything like that
2 last year?

3 A I believe it was -- if you have my memo, I'll be
4 able to tell you exactly.

5 Q So, you don't recall right now?

6 A I want to say it was in June, but I'm not
7 absolutely positive.

8 Q So, if I show you this, would that refresh your
9 recollection?

10 A It would.

11 Q It was June 11th last year?

12 A All right.

13 Q And tell me about Mr. Laux's demeanor when you
14 met with him?

15 A Pretty consistent with the way he acted today.
16 He was very standoffish.

17 Q And did he tell you that the mayor had come into
18 a conversation or meeting dealing with David Dyrhaug?

19 MR. HENRY: Objection, leading. She's
20 impeaching her own witness through this witness.

21 THE COURT: I sustain.

22 MS. BENTLEY: Okay.

23 BY MS. BENTLEY:

24 Q Was Mr. Laux's memory better when you spoke with
25 him last year?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A It was.

2 MR. HENRY: Objection.

3 THE COURT: She can ask that question. The next
4 question may be objectionable, but that question I'll
5 let her ask. I believe he answered, yes, it was
6 better last year -- well, what was the question, was
7 his memory better last year?

8 MS. BENTLEY: Yes.

9 THE COURT: His recollection of the events?

10 MS. BENTLEY: His recollection of the events?

11 THE COURT: Yeah, I'm not going to let you ask
12 that question. You may be able to rephrase it, but
13 yeah, I sustain that objection.

14 MS. BENTLEY: Okay.

15 BY MS. BENTLEY:

16 Q Did you ask Mr. Laux to put his recollection,
17 whatever it was, in writing?

18 A I did.

19 Q Did he do so?

20 A No.

21 Q Did he give you a reason for that?

22 A Mr. Laux did not want to get involved.

23 Q Okay. Did Mr. Laux tell you specific things the
24 mayor said in his meeting with Mr. Dyrhaug?

25 A He did.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 Q And were they recorded in that memorandum that I
2 showed you earlier?

3 A Yes, ma'am.

4 Q Did he -- was he allowed to review that
5 memorandum before you submitted it?

6 A No, ma'am.

7 Q Did you repeat back to him the things that you
8 told him as you took notes?

9 A No, that memorandum was made from my notes that
10 I had during that conversation.

11 Q What did Mr. Laux tell you the mayor said?

12 MR. HENRY: Objection.

13 MS. BENTLEY: And Your Honor, I would look at
14 Rule 613(b), extrinsic evidence -- for when a
15 witness' statement can be proven by extrinsic
16 evidence.

17 MR. HENRY: The witness has testified, Judge.
18 The witness -- I remind the Court, the witness was
19 their witness.

20 MS. BENTLEY: And I would submit that State v.
21 Blalock, that when a witness fails to fully recall
22 his prior statement, extrinsic evidence is allowed.

23 MR. HENRY: That is not the facts.

24 THE COURT: Yeah. I'm going to respectfully
25 sustain the objection. In this instance, it's a

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 memorandum that was produced by another witness.
2 Therefore, I think it -- I know that there are --
3 there are ways in which under Rule 613 prior
4 statements can be introduced, however, this violates
5 the -- I don't know if there's any exception under
6 the hearsay rule. He's not a party to the case and
7 this doesn't take the form of a statement. It takes
8 the form of a memorandum that he prepared.

9 MS. BENTLEY: His statements that he made to
10 Agent Donohue, Your Honor?

11 THE COURT: Yes, ma'am. I'm sorry. I'm going
12 to sustain the objection.

13 MS. BENTLEY: All right.

14 BY MS. BENTLEY:

15 Q In addition to John Laux, who else did you speak
16 to in City Hall?

17 A David Dyrhaug, Marie, the other clerk in her
18 office, the receptionist, the mayor. I believe that's it.

19 Q Did you speak to any city council members?

20 A No.

21 Q Why not?

22 A I specifically refrained from talking to council
23 members because of the political climate in Simpsonville.

24 Q All right. Did you explain to people that you
25 spoke to what you were investigating?

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 A To the extent that I felt it was necessary.

2 Q Could you be a little bit more specific on that?

3 A The people that I spoke to in City Hall, say
4 Marie and her assistant, there was only a limited amount
5 of information I was trying to learn at that time.

6 Q Okay.

7 A So I didn't --

8 Q What were you trying to learn at that time?

9 A I was trying to learn about whether a
10 conversation actually took place, to confirm or deny
11 whether the conversation took place.

12 Q Between?

13 A The mayor and the judge.

14 Q Okay.

15 A And if the judge had also taken other steps,
16 calling the magistrate's office, that kind of thing.

17 Q All right. And what reasons would you have
18 given -- why would you have not explained to them fully
19 what you were investigating?

20 A Because I was trying to do the investigation in
21 a manner so I would not be able -- would not let out the
22 entire episode of what I was looking into.

23 Q All right. Aside from Mr. Laux, did anyone else
24 refuse to put their statement in writing?

25 A No.

GENE DONOHUE-DIRECT BY MS. BENTLEY

1 Q Okay. Did you tell anyone what to put in their
2 statement?

3 A No.

4 Q Did you force anyone to give you a statement?

5 A No.

6 Q After the arrest of the mayor, did anyone call
7 you and ask to change their statement?

8 A They didn't.

9 Q Okay. Outside of witness testimony, were you
10 able to corroborate anything from Les Sharff's complaint?

11 A I was able to corroborate that he made a phone
12 call to the judge's office.

13 Q What date was that phone call made?

14 A I believe it was made on the 20th.

15 Q Do you recall a time?

16 A Seems like it was around 11:00 o'clock in the
17 morning, 10:00, 11 o'clock in the morning.

18 Q Okay. And did anyone ask you what you were
19 investigating?

20 A No.

21 Q Okay.

22 MS. BENTLEY: I have no further questions.

23 Please answer any questions Mr. Henry may have.

24 THE COURT: Cross-examination, Mr. Henry.

25

CROSS-EXAMINATION

GENE DONOHUE-CROSS BY MR. HENRY

1 BY MR. HENRY:

2 Q Your interview and the tape recording and the
3 transcript with respect to Perry Eichor, that was all done
4 secretly?

5 A Yes, sir.

6 Q It was basically an undercover kind of operation
7 where you didn't tell the witness that he was being
8 recorded?

9 A Typically, when we go out to interview somebody,
10 if we're going to record them, we don't tell the person
11 we're recording them.

12 Q I didn't ask you that. I didn't ask you what
13 you did typically, did I?

14 A That's what -- he did not know we were recording
15 him.

16 Q So, when I asked you did you record it and not
17 let him know about it, your answer was --

18 A That's correct.

19 Q -- we typically do that?

20 A That's correct.

21 Q Which is not an answer to my question, is it?

22 A I just rephrased it and said yes, that's what we
23 did.

24 Q All right. And police can lie to witnesses,
25 too?

GENE DONOHUE-CROSS BY MR. HENRY

1 A That's correct. The Supreme Court said we could
2 do that.

3 Q Right. So, you do that as part of your job?

4 A No, I typically don't.

5 Q Well, when you recorded the statement of Les
6 Sharff, the city judge --

7 A Yes, sir.

8 Q -- you told him you recorded him?

9 A I did.

10 Q But you didn't tell Perry Eichor you recorded
11 him?

12 A It was two different sets of circumstances.

13 Q Okay. Well, you can answer any way you want,
14 but the answer would be no, you didn't tell Perry Eichor,
15 but you did tell Les Sharff?

16 A That's correct. The interviews occurred at two
17 different locations.

18 Q Sure, they did. And they had two different
19 purposes, didn't they?

20 A They were just -- they were just getting down
21 the facts.

22 Q Well, if you were just going to try to get the
23 facts from Perry Eichor, why didn't you just, say where
24 were you on March 20th?

25 A Because we made the decision to record his

GENE DONOHUE-CROSS BY MR. HENRY

1 conversation.

2 Q Okay. You don't know where he was on March
3 20th?

4 A I don't know where who was?

5 Q Perry Eichor.

6 A The day in question, yes, I do know where he
7 was.

8 Q Okay. So, tell me where you were standing when
9 you saw him?

10 A No, I know through witness interviews where he
11 was.

12 Q Okay. You don't know where he was except from
13 what someone told you?

14 A That's correct.

15 Q You don't know what, if anything, he said to Les
16 Sharff --

17 A No.

18 Q -- except what Les Sharff told you?

19 A You're correct.

20 Q So, Agent Donohue, this case really comes down
21 to what Les Sharff says Perry Eichor told him on
22 March 20th?

23 A Correct.

24 Q In fact, when you first signed the arrest
25 warrants in this case, you put down a totally different

GENE DONOHUE-CROSS BY MR. HENRY

1 date when it happened, didn't you?

2 A I don't believe so.

3 Q Okay. Let's take a look. Are those the three
4 warrants you signed against Perry Eichor?

5 A They are.

6 Q What's the date of the offense on the warrants?

7 A 4/22.

8 Q Okay. Well, you were only off by a month,
9 right? You want to rephrase your answer? Did you put the
10 wrong date of the offense on the warrants or not?

11 A No, sir.

12 Q Okay. So, the date of the offense, looks like,
13 4/22/14, right?

14 A That's correct.

15 Q Did the offense happen on 3/20/14?

16 A I believe so.

17 Q Those are the same dates as far as you --

18 A No, sir, but I did not sign that warrant.

19 Q Well, you signed the affidavit.

20 A I signed the affidavit, not the warrant -- not
21 the date on the warrant.

22 Q Okay.

23 A It's a typographical error.

24 Q Okay. Well, when you signed the affidavit --

25 A It's a simple typographical error. It's a

GENE DONOHUE-CROSS BY MR. HENRY

1 typographical error.

2 Q You don't mind me asking these questions, do
3 you?

4 A That's fine.

5 Q Give me a chance to finish my question --

6 A Okay.

7 Q -- before you jump in, okay? So, when you sign
8 the top part of this, it's an affidavit, it's sworn, it's
9 under oath, right?

10 A The affidavit itself is under oath, yes, sir.

11 Q That's right. And the date of the offense is
12 part of the affidavit?

13 A That is correct.

14 Q And so, you signed the affidavit saying the
15 offense happened April 22nd, 2014, correct?

16 A That's correct.

17 Q The offense did not happen April 22nd, 2014,
18 correct?

19 A That's correct.

20 Q It happened a month earlier?

21 A That's correct.

22 Q Now, did you do that because of a typographical
23 error or because you didn't know when it happened?

24 A No, it was a typographical error.

25 Q Now, when you did this recording of Perry

GENE DONOHUE-CROSS BY MR. HENRY

1 Eichor, again, you didn't ask him what he was doing on
2 March 20th, correct?

3 A Yes, sir.

4 Q And we now know, apparently, from your
5 investigation that the phone call made by Judge Sharff
6 happened on that day at 11:00?

7 A Yes, sir.

8 Q But you didn't check with Perry Eichor to see
9 where he was that morning?

10 A No, sir.

11 Q For example, he could have been at his dentist's
12 office, you wouldn't know that?

13 A That's correct.

14 Q He was totally unaware -- Perry Eichor was
15 totally unaware that he was being tape recorded?

16 A That's correct.

17 Q And during that entire conversation, he never
18 said I threatened Judge Sharff?

19 A No, sir.

20 Q Now, the witness that you couldn't remember from
21 the clerk's office, was her last name Hendrickson?

22 A It is. It is, yeah.

23 Q Okay. She's not on the witness list, right?

24 A I don't have a witness list.

25 Q Oh, you don't know about that, okay. But you

GENE DONOHUE-CROSS BY MR. HENRY

1 interviewed her?

2 A I did.

3 Q Now, let's talk a little bit about the rest of
4 your investigation. When you investigate a case like
5 this, you check prior records, don't you?

6 A I check --

7 Q Of suspects?

8 A Are you asking me or telling me?

9 Q I'm asking you. You check prior records of
10 suspects?

11 A I generally do.

12 Q Not in this case?

13 A Not in this case.

14 Q Did you check it in this case?

15 A Did I check, no, I didn't.

16 Q Okay. Because you already knew --

17 MS. BENTLEY: Objection, Your Honor, relevance.

18 THE COURT: Okay. All right. I'll overrule the
19 objection.

20 You can ask the question.

21 BY MR. HENRY:

22 Q Did you not check Perry Eichor's prior record
23 because you knew he had none?

24 A I didn't know that he didn't have one. I
25 checked his -- well, let me rephrase that. I did check

GENE DONOHUE-CROSS BY MR. HENRY

1 his NCIC.

2 Q Okay.

3 A All I saw was a driving record, that's it.

4 Q Okay. All right. Did you check his military
5 record?

6 A No.

7 Q Know anything about his military record?

8 A A little bit from conversations we had.

9 Q What did you find out?

10 A Conversations with him, so I don't know if
11 they're accurate or not.

12 Q So, you think he lied about his military record?

13 A I don't know. There's no way for me check
14 whether it was accurate or not.

15 Q Well, there really was a way, wasn't there?

16 A No, there is no way.

17 Q You can't check that out?

18 A Not unless he would sign a waiver.

19 Q Did you ask him to?

20 A No. It wasn't relevant to this case.

21 Q Okay. So, the good character of my client is
22 not relevant to this case?

23 A I was not looking at his character. I was
24 looking at whether or not a crime occurred or not.

25 Q Right. But to answer my question, you're saying

GENE DONOHUE-CROSS BY MR. HENRY

1 that my client's good character is not relevant to this
2 case?

3 A It has a relevancy to it, yes.

4 Q So it does now?

5 A No, everybody's character is relevant when
6 you're doing an investigation.

7 Q And this case comes down to what Les Sharff said
8 and what Perry Eichor said, right?

9 A That's correct.

10 Q Okay. Not to what Agent Donohue says?

11 A That's correct.

12 Q Les Sharff made a written statement in this
13 case, too; is that right?

14 A Yes, sir.

15 Q Were you there for that statement?

16 A I was.

17 Q Did he write it himself?

18 A He did.

19 Q At your request?

20 A Yes, sir.

21 Q Did you tell him just write a little bit about
22 the story or did you tell him to tell the whole thing?

23 A I just told him to write down what had occurred.

24 Q Did you give him enough paper to finish it?

25 A I did.

GENE DONOHUE-CROSS BY MR. HENRY

1 Q Extra sheet if he wanted it.

2 A I have plenty if they need it.

3 Q Did you know that at the time that you
4 interviewed my client on the transcript that the case
5 wasn't even Les Sharff's case?

6 A I did not know -- from my recollection, the case
7 was assigned to the City of Simpsonville.

8 Q So, your investigation did not include checking
9 out the status of the Dixie Nance case and whether it was
10 a jury trial --

11 A I believe if you'll refer to that, yes, I did.

12 Q Okay. So, as of the date that you interviewed
13 my client, which was June 4th, 2014, isn't it a fact that
14 the case -- that the jury request had already been made?

15 A Yes, because he's the one that told me that she
16 had an attorney.

17 Q Okay. And you could have found that out from
18 Marie Feld --

19 A And Marie told me the same thing.

20 Q Okay. So, you agree that the jury trial request
21 had been made as of March 26th, that she testified?

22 A That's correct.

23 Q So, your interview with Perry was June 4th and
24 so Rick Moore had the case at that point?

25 A No. At that point, Rick Moore did not have the

GENE DONOHUE-CROSS BY MR. HENRY

1 case yet.

2 Q Okay. So, if a jury trial is requested, we know
3 that Les Sharff didn't have the case --

4 A It had already been put on the docket at
5 magistrate's court and then removed from that docket, I
6 found out, and sent back to the city.

7 Q Okay. Was it sent back to the city because Rick
8 Moore asked for it to come back?

9 A I --

10 Q Don't know?

11 A I don't know.

12 Q Did your investigation disclose that Rick Moore
13 handles jury trials and Les Sharff does not?

14 A Yes, sir.

15 Q Any evidence at all that Perry Eichor threatened
16 Rick Moore?

17 A No.

18 Q And was David Holmes the prosecutor of this
19 case? City attorney?

20 A I have no idea.

21 Q You don't know. Do you know whether he's the
22 city attorney?

23 A He's the city attorney. That doesn't mean that
24 he prosecutes cases for the city.

25 Q Okay. All right. So, no evidence that he

GENE DONOHUE-CROSS BY MR. HENRY

1 threatened Rick Moore. Any evidence that he threatened
2 Marie Feld and asked her to tear up the warrants?

3 A No.

4 Q Nothing in your interview where he said he
5 threatened the judge or anybody else?

6 A No.

7 MR. HENRY: That's all I have.

8 THE COURT: Redirect?

9 MS. BENTLEY: Yes, sir, briefly.

10 THE COURT: Yes, ma'am.

11 REDIRECT EXAMINATION

12 BY MS. BENTLEY:

13 Q What was the status of the case on March 20th,
14 2014, when the conversation was --

15 A It was still within the purview of Simpsonville
16 had not been requested for a jury trial, which prior to
17 this, it would have been Judge Sharff.

18 MS. BENTLEY: No further questions.

19 THE COURT: Recross?

20 MR. HENRY: I do if I can?

21 THE COURT: Yeah, limited to the scope of
22 redirect, yes, sir.

23 MR. HENRY: Yes, sir.

24 RECROSS-EXAMINATION

25 BY MR. HENRY:

GENE DONOHUE-RE CROSS BY MR. HENRY

1 Q Judge Sharff as far as you know made no rulings
2 or had no hearings on this case?

3 A No, sir.

4 MR. HENRY: Thank you.

5 THE COURT: Okay. All right.

6 Thank you, sir. I appreciate it. You may step
7 down.

8 Okay. You may call your next witness, ma'am.

9 MS. BENTLEY: Your Honor, the State calls Leslie
10 Sharff. May I approach Your Honor?

11 THE COURT: Sure, yeah.

12 (WHEREUPON, an off-the-record bench conference
13 was held in the presence of the jury but out of
14 the hearing of the jury.)

15 MS. BENTLEY: Your Honor, the State calls Nancy
16 Sharff.

17 THE COURT: Ladies and gentlemen, just so you
18 know, we were discussing the schedule. Mr. Sharff
19 was going to take a substantial amount of time. I
20 don't want to keep y'all here into the wee hours of
21 the night, so we decided we'll take a shorter witness
22 and come back tomorrow and hear a longer witness. I
23 don't have any secrets from you.

24 THE CLERK: Ms. Sharff, please place your left
25 hand on the Bible and raise your right hand.

GENE DONOHUE-RE-CROSS BY MR. HENRY

1 NANCY SHARFF, after being duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record.

5 THE WITNESS: Nancy Sharff.

6 DIRECT EXAMINATION

7 BY MS. BENTLEY:

8 Q What is your name?

9 A Nancy Sharff.

10 Q Ms. Sharff, where are you from originally?

11 A I am from Columbia, South America.

12 Q Where do you live now?

13 A 5 Morningrose Lane, Simpsonville, South
14 Carolina.

15 Q How long have you lived in Simpsonville?

16 A At that address?

17 Q Well, just in Simpsonville, South Carolina?

18 A Fourteen years.

19 Q Okay. What brought you to South Carolina?

20 A To study English.

21 Q Okay. How do you know the victim in this case,
22 Leslie Sharff?

23 A I met him through a friend.

24 Q Okay.

25 A He was a police officer.

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 MR. HENRY: Judge, I don't object to leading
2 with this witness.

3 THE COURT: Thank you, sir.

4 MS. BENTLEY: Thank you.

5 BY MS. BENTLEY:

6 Q Are you married to Mr. Sharff?

7 A Yes.

8 Q How long have you been married?

9 A For 10 years.

10 Q For 10 years. And what is your current
11 occupation, Ms. Sharff?

12 A Well, I have three part-time jobs. I'm working
13 at T.J. Maxx, I'm working at a very small private company,
14 and also I teach Spanish, private class, through the
15 children.

16 Q So, you have three part-time jobs?

17 A Yes.

18 Q Now, with all of these jobs combined, could you
19 support your family with only your work?

20 A No.

21 Q Do your jobs come with any type of benefits?

22 A No. Well, I have benefits only through my
23 husband's job.

24 Q And can you get benefits for yourself through
25 your jobs?

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 A No.

2 Q Okay. I want to talk to you a little bit about
3 your husband's job. You said he was a police officer when
4 you first met?

5 A Yes.

6 Q Okay. Do you recall when he became a judge?

7 A Yes.

8 Q And how did he feel about becoming a judge?

9 A How do I feel?

10 Q How did he feel?

11 A Very happy.

12 Q Okay.

13 A He was working hard in order to get a better
14 position, so he start -- he study when he was 55 years
15 old, go to the school, go back, so.

16 Q He went back to college later in life?

17 A Yes.

18 Q Okay. And was he happy being a judge?

19 A Yes. Yes, very, very much.

20 Q Did he enjoy the work?

21 A Yes, very much.

22 Q Did he ever complain to you about political
23 pressure?

24 A No, not at all.

25 Q Did he ever complain about the mayor or city

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 council notwithstanding this event?

2 A No.

3 Q And I want to take you back to March 2014. Was
4 there a time when your husband's behavior changed?

5 A Yes.

6 Q Do you remember about when that was?

7 A Well, around March.

8 Q Okay.

9 A 2014.

10 Q And what happened that -- what change in his
11 behavior did you notice?

12 A He seems distracted. He lost his appetite. We
13 used to do something. He just wouldn't do anything, has
14 no energy. He seems worried about something.

15 Q Did he immediately discuss with you what had
16 happened?

17 A No.

18 Q Now, you can't tell us what he said, but at some
19 point did he tell you what was upsetting him?

20 A Yeah, he did. It was after maybe two weeks.

21 Q Okay. So, it took him a little while to talk?

22 A A while, yeah.

23 Q Okay. How did you respond to what he told you?
24 Again, you can't tell us what he said, but how did you
25 respond?

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 A Well, I know he's my husband. I just told him I
2 was surprised, but at the same time -- but I told him then
3 he has to do what he has to do. Don't worry about me.
4 Don't worry about anything. Just we start praying for,
5 you know.

6 Q Okay. Did he consult with other family members
7 about his situation?

8 A I guess he did, his family, and I did it with my
9 family.

10 Q Okay.

11 A We just told them we need -- we need for them to
12 pray for us because he was worried about his job.

13 Q Okay. And if he had lost his job, would it have
14 impacted your family in a bad way?

15 A Yes.

16 Q What -- did you make plans in the event that he
17 did lose his job?

18 A Say that again, please.

19 Q Did you make plans or discuss what would happen
20 if he lost his job?

21 A Well, no, we didn't. Well, he -- he is 67 years
22 old. He's just -- I mean, it's really hard. I'm 55
23 already. So, it's just -- work all our lives. But we
24 just need to find a way. We just living every day, take
25 it every day at the time and, you know.

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 Q Did you encourage your husband to report what
2 had happened to him?

3 A Well, no. I know he is confident and wise. He
4 was doing a lot all his life for his country. He was a
5 veteran, so he was trained. And then he was a police
6 officer, if I don't mind, for 35 years in different
7 states. And then he was sworn to be a judge. So, he has
8 enough training and he knows how to handle it, so I just
9 can't tell him what to do more than -- he has to do what
10 he has to do. I feel fear in his heart and don't worry
11 about.

12 Q Did he struggle with what happened and what he
13 needed to do?

14 A Well, when he told me everything, he told me he
15 already took care of that. He got advice from other
16 people that they know.

17 Q Did that change his behavior back?

18 A No, not really.

19 Q Okay. How did this affect you?

20 A Well, it's been hard thinking the mayor put us
21 in that situation for being worried about every day for my
22 husband loses his job.

23 MR. HENRY: Object to that, Your Honor. Move to
24 strike.

25 THE COURT: Hearsay?

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 MR. HENRY: Yes, sir.

2 THE COURT: Okay. I'll sustain on those
3 grounds.

4 BY MS. BENTLEY:

5 Q Ms. Sharff, has your husband returned back to
6 normal today?

7 A No.

8 Q How does this still affect him?

9 A Because since that happened, that situation, and
10 now we just don't know. We just take it -- take it easy
11 every day and try to live our life. But we are always
12 thinking about and we always worry about.

13 Q Has coming forward been an easy thing for your
14 husband? Did reporting this relieve his stress?

15 A Not always. It's just like up and down. It's
16 just -- I just worry about his health because one year
17 before 2013, he got another stint in his heart. So, when
18 he's just stressed. I just always telling him don't
19 worry, but his heart not to be.

20 Q And what about this trial process, has this been
21 easy on him?

22 MR. HENRY: I would object to relevance, Judge.

23 THE COURT: Okay. All right. I'll overrule
24 your objection.

25

NANCY SHARFF-DIRECT BY MS. BENTLEY

1 BY MS. BENTLEY:

2 Q Has coming forward and going through this
3 process been easy on him?

4 A I think he -- no, not really. It's just
5 stressful. We are just citizens here and we don't have
6 nobody around. I have no family. It's just really -- it
7 is hard. It's just -- it's only God and God constant, it
8 is.

9 MS. BENTLEY: I have no further questions.
10 Please answer any questions Mr. Henry may have.

11 MR. HENRY: I have none, Judge.

12 THE COURT: All right. Thank you, ma'am. I
13 appreciate you being here. You may step down.

14 MS. BENTLEY: May Ms. Sharff be excused from her
15 subpoena?

16 THE COURT: Yes, ma'am. Is that all the
17 evidence you intend to present this afternoon,
18 Ms. Bentley?

19 MS. BENTLEY: It is, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 we're going adjourn for the day. If you'll be back
22 here tomorrow morning at nine o'clock. Please be on
23 time, not out of consideration for me or to the
24 parties, but out of consideration for your fellow
25 jurors because we won't be able to start until all 14

1 of you are here. I would like to start as promptly
2 as possible. If we can start precisely at 9:00, I
3 will. So, please be back -- please, again, don't
4 discuss the case. You will be invited to discuss the
5 case by someone, I'm guessing. And please tonight,
6 don't watch the news, don't go onto the internet and
7 don't go seeking any information that may be
8 published regarding this case. Again, if you do
9 that, it would taint your deliberations. And the
10 only thing that is appropriate for you to consider is
11 the evidence that is presented at the trial of this
12 case.

13 Okay. So, y'all have a great evening and I'll
14 see you again tomorrow morning.

15 (WHEREUPON, the jury left open court at
16 approximately 5:11 p.m.)

17 THE COURT: All right. Counsel, anything
18 additional to put on the record this afternoon?

19 MS. BENTLEY: Your Honor, we would like to have
20 a chance to see if we can get this audio redacted and
21 get it --

22 THE COURT: Mr. Henry?

23 MR. HENRY: I would object to that. I think you
24 made the compromise to put the transcript in.

25 THE COURT: Well, we'll see. I mean, I don't

1 know if you can or can't. At this point, I'm not
2 necessarily making any representations. I think
3 the -- right this second, I think the redacted
4 transcript -- that is, if you go in and pull out all
5 of the extraneous matter, the irrelevant matter, I
6 think that's what I would prefer.

7 All right. Anything else?

8 MR. HENRY: Not from the Defense.

9 MS. BENTLEY: No, sir.

10 THE COURT: Okay. Good enough. Well, I'll see
11 y'all back here tomorrow. I will let you know that
12 I'll be here at 8:30, so if you have any issues,
13 y'all come let me know and we'll try to take care of
14 those before the jury gets here.

15 MR. HENRY: Yeah, thanks, Judge.

16 (WHEREUPON, court was adjourned for the day to
17 be reconvened on Tuesday, June 9, 2015.)

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1 THE COURT: Yes, sir.

2 MR. HENRY: I think they're offering this
3 redacted transcript?

4 THE COURT: Yes, sir.

5 MR. HENRY: And it included -- I think it's
6 still here, the unsigned certificate by the -- did
7 you take it out?

8 MS. BENTLEY: Uh-huh.

9 THE COURT: Okay.

10 MR. HENRY: You didn't tell me that.

11 THE COURT: So we're good with that?

12 MR. HENRY: We're good, yeah.

13 THE COURT: All right. I know there's an
14 overriding objection that you lodge for the record
15 with respect to the admission of the statement and/or
16 transcript.

17 MR. HENRY: Am I covered on that?

18 THE COURT: Yes, sir. And I'll tell you,
19 Mr. Henry, I think so, but the Court of Appeals and
20 Supreme Court have their own opinions about whether
21 people are protected or not. Between you and I, I
22 think you've clearly stated your objection.

23 MR. HENRY: Has it been offered? I'll object
24 again.

25 THE COURT: That's my next question. Are you

1 offering it now?

2 MS. BENTLEY: Yes, Your Honor. It's been
3 redacted and Mr. Henry has had a chance to review the
4 redacted copy.

5 THE COURT: Okay. Are we talking about the
6 transcript or the audio?

7 MS. BENTLEY: The transcript, Your Honor.

8 THE COURT: Yes, sir?

9 MR. HENRY: Same objections that I made earlier,
10 Judge. I can restate them if you'd like. The other
11 objection to this is that you did allow the State to
12 publish it.

13 THE COURT: Yes, sir.

14 MR. HENRY: And I understood that was a
15 compromised ruling because of the other issues that
16 were raised. So, my additional objection to what I
17 said before is they're getting two bites at the
18 apple. They're going to have it read to the jury and
19 also be able to see it at the same time, which I
20 don't think was your initial ruling.

21 THE COURT: All right. I'm going to allow the
22 redacted copy of the transcript on the basis that I
23 had previously articulated. With respect to the
24 written transcript as opposed to the published
25 transcript inasmuch as it's in evidence already, I

1 think it's a distinction without a difference. So, I
2 will allow that redacted transcript as State's
3 Exhibit number?

4 MS. BENTLEY: I believe it's No. 2.

5 (WHEREUPON, State's Exhibit No. 2 was admitted
6 into evidence.)

7 THE COURT: Okay. Are we ready for the jury
8 now?

9 MS. BENTLEY: Yes, sir.

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

11 (WHEREUPON, the jury came into open court at
12 approximately 9:11 a.m.)

13 THE COURT: All right. Good morning, ladies and
14 gentlemen. Hope you had a great evening. Thank you
15 for being on time this morning. I do appreciate it.
16 So, let's get right back at it.

17 Ms. Bentley, you may call your next witness.

18 MS. BENTLEY: Yes, Your Honor, the State calls
19 Leslie Sharff.

20 THE CLERK: Sir, please place your left hand on
21 the Bible, raise your right hand.

22 LESLIE SHARFF, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. Please be seated.

25 Please state your name for the record.

1 THE WITNESS: Leslie Sharff.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. BENTLEY:

5 Q Mr. Sharff, where are you from?

6 A Originally, I'm from Arizona.

7 Q When did you move to South Carolina?

8 A In 1999.

9 Q What brought you here?

10 A Job.

11 Q What was that job?

12 A Police officer.

13 Q And how long have you been in -- or how long did
14 you spend in law enforcement?

15 A Approximately 32 years.

16 Q Tell me a little bit about your police
17 background?

18 A Well, I started in Peno County Sheriff's Office
19 in 1975, worked my way up to control commander. I worked
20 homicide, worked narcotics, property crime.

21 Q Prior to law enforcement, what was your career?

22 A Worked in the copper mines.

23 Q Okay. And did you have any background prior to
24 that?

25 A Military.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q Where did you serve in the military?

2 A I was stationed with -- I was in the army,
3 stationed in Vietnam in 1968. Came back to Ford Hood,
4 Texas.

5 Q And you moved to South Carolina in 1999?

6 A Yes, ma'am.

7 Q Where did you move?

8 A I moved to -- actually, I moved to Williamston
9 at first.

10 Q Okay.

11 A And then moved to Simpsonville.

12 Q When did you move to Simpsonville?

13 A It was still in 1999 when I moved to
14 Simpsonville.

15 Q Are you married?

16 A Yes, sir -- yes, ma'am, sorry.

17 Q That's okay. How long have you been married?

18 A Fourteen years.

19 Q To whom are you married?

20 A Nancy Sharff.

21 Q She testified yesterday?

22 A Yes, ma'am.

23 Q Do you have children?

24 A I have three.

25 Q All right. And what is your current occupation?

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 A Municipal court judge.

2 Q When did you begin serving as municipal court
3 judge.

4 A Actually, I took the bench first time in
5 September of 2006.

6 Q What was the process of becoming a municipal
7 court judge? What was that like?

8 A I was appointed by the city council. Once I was
9 appointed by the city council, then the state requires
10 that you go to -- be certified as a judge through the
11 state. I went to school for two weeks to become a judge.
12 Passed the test that was required and the certificate was
13 sent to me that stated that I was now a certified judge in
14 the State of South Carolina.

15 Q Your wife told us yesterday that you went back
16 to school; is that correct?

17 A Yes, ma'am.

18 Q Tell me about that.

19 A I went to school previously, had about two years
20 of junior college, community college, but raising a
21 family, it became difficult. Came back, I think I was
22 between 54 and 56 years of age and I decided that I wanted
23 to have an education, went back and got my degree.

24 Q All right. And did that play a part in you
25 being able to become a municipal court judge?

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 A I think yes and no.

2 Q Okay. Tell me about the process of being
3 appointed by the city council in Simpsonville. Who makes
4 up the city council?

5 A The mayor and six council members.

6 Q Was Mayor Eichor the mayor when you were first
7 appointed?

8 A No, ma'am, he was not.

9 Q Tell me about your duties as municipal court
10 judge.

11 A As municipal court judge, I had the
12 responsibility of doing arraignments on who are arrested
13 on any crime. I also set bonds, do bond hearings in the
14 evenings and on the weekends and holidays. Tuesday,
15 Wednesday and Thursday, we have court and I hold court.
16 It is either misdemeanor traffic and/or misdemeanor
17 criminal charges.

18 Q Do you handle jury trials?

19 A No, ma'am, I do not.

20 Q Do you handle bench trials?

21 A Yes, ma'am.

22 Q Okay. And had you not been offered the position
23 of municipal court judge, what would you be doing now?

24 A Probably still be a police officer.

25 Q Okay. Do you report to anyone as a municipal

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 court judge? What's the hierarchy?

2 A I was always under the impression, and I believe
3 it's still that way, that I answer to the mayor and the
4 city council.

5 Q We've heard that there is a chief municipal
6 judge. Who is that?

7 A Rick Moore. He is the -- he's the chief
8 municipal judge.

9 Q And what does that mean?

10 A Basically, if I have a problem or if I have
11 concerns about a court case or something that I'm not sure
12 of, I will go to Judge Moore and I'll ask Judge Moore any
13 questions, legal questions determining cases that I may
14 hear in the courtroom.

15 Q Okay. Does Judge Moore have the authority to
16 hire or fire you?

17 A No, ma'am, he does not.

18 Q All right. Aside from determining your
19 employment or continued employment, what role do the mayor
20 or council have in municipal court in Simpsonville?

21 A Basically, as far as hiring every year -- well,
22 it had been every year. I had to submit a letter
23 requesting reappointment. And like any other one -- any
24 other job, it takes majority of the council to approve me.
25 So far, in the last nine years, I've had all seven of the

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 council members unanimously approve me to be the judge.

2 Q All right. Aside from employment matters, what
3 role do the mayor or council have in the municipal court?

4 A None.

5 Q Are they ever advised of pending matters?

6 A No.

7 Q Do you ever run decisions by them?

8 A No.

9 Q Why not?

10 A Mostly, I don't feel that, because of their
11 backgrounds, they have any legal backgrounds. They're not
12 sure of the laws. They don't study the laws like an
13 attorney or judge would. Also, if there's any problems in
14 the court that may arise, I do advise the city
15 magistrate -- excuse me, city administrator so that if
16 there is any problems that arise, he can advise the city
17 council.

18 Q So, you would not advise the city council
19 personally?

20 A No, ma'am.

21 Q All right. Did you ever seek the advice of
22 Mayor Eichor in any of your court cases?

23 A No, ma'am.

24 Q Never?

25 A Never.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q Did you ever speak to the mayor or council about
2 other court matters, such as personnel or facilities?

3 A No, ma'am.

4 Q Who would you take those questions to?

5 A Well, first, I probably would go to Judge Moore
6 and ask Judge Moore about the situation. I would ask his
7 opinion. And then if we needed to, I'm sure that we would
8 go seek the advice of the city attorney and probably
9 advise the city administrator.

10 Q But you would not take that to the mayor or the
11 city council?

12 A No, ma'am, I would not.

13 Q You've been on the bench for approximately nine
14 years?

15 A Yes, ma'am.

16 Q Has anyone ever tried to influence any of your
17 decisions?

18 A No, ma'am, they have not.

19 Q I want to take you back to March of 2014. Tell
20 me what you were doing on March 20th, 2014?

21 A That would have been on a Thursday, I believe,
22 the last day that we hold court during the week. We held
23 court that day. It wasn't a long docket. In other words,
24 the docket is how many cases we have for the day. We
25 didn't have a lot of cases, so when court was finished, I

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 went back to City Hall.

2 Q What did you do at City Hall?

3 A I go back to City Hall, basically, just to find
4 out what the next week's court dockets are going to be,
5 how many cases we're going to have for each day.

6 Q Where do you do that?

7 A Court clerk's office.

8 Q And who is the court clerk?

9 A Marie Feld.

10 Q All right. And she's also a municipal judge?

11 A Yes, ma'am.

12 Q What are her duties?

13 A Basically, her -- she can do -- sign warrants,
14 arrest warrants and search warrants. She does do
15 arraignments during the day if I'm not available and at
16 night or on the weekend if I'm on vacation. She also is
17 responsible for day-to-day activities that requires
18 filling paperwork, filing charges, filing dockets for jury
19 trials coming up, sending paperwork to general sessions.

20 Q All right. And how many people work in Marie's
21 office?

22 A Just two people.

23 Q Who are they?

24 A Marie Feld, of course, is the clerk of court and
25 administrative judge and then Karen Hendrickson.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q And what does she do?

2 A I believe she's the assistant clerk.

3 Q And what part of City Hall can you see from
4 their office?

5 A None.

6 Q All right. Were they both present when you went
7 to check the docket that morning?

8 A Yes, I believe so.

9 Q Tell me what happened when you finished your
10 business in Marie's office.

11 A I walked back out of the office. And I usually
12 say hello to people in the office, speak with them for a
13 little while. I believe I was getting ready to leave and
14 Mayor Eichor came out and asked me if he could speak with
15 me.

16 Q All right. And how do you know Mayor Eichor?

17 A I see him on occasions in the office. I spoke
18 with him in his office on several occasions.

19 Q Did you know him prior to his election as mayor?

20 A No, I did not.

21 Q Okay. And was it unusual for you to speak to
22 Mayor Eichor when you were in City Hall?

23 A No.

24 Q What would you speak about?

25 A Basically, we had a mutual background. He's

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 been in law enforcement, I've been in law enforcement. He
2 was prior military, I was prior military. Those are
3 things that we had in common and we spoke about those
4 things.

5 Q What was your relationship with him like before
6 this event?

7 A I thought it was great.

8 Q You had no prior issues with him?

9 A No, ma'am, I did not.

10 Q How would you characterize the nature of your
11 prior conversations with him?

12 A Casual.

13 Q All right. What happened on March 20th?

14 A I went into his office and spoke with him. He
15 had asked me if I had heard about the incident involving
16 the bridge and a banner that was hung on the bridge.

17 Q And I'm going to stop you right there. Tell me
18 about the mayor's office. Where is it located?

19 A When you walk into City Hall, it's on the
20 right-hand side.

21 Q And what can you see or who can see the mayor's
22 office?

23 A Any of the girls that work out front.

24 Q Okay.

25 A And then if the doors are closed, of course, you

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 can't see inside.

2 Q All right. And on March 20th, was the door
3 opened or closed?

4 A I believe it was closed, but I can't be certain.

5 Q All right. How were you seated in the office?

6 A The mayor was behind his desk and I was just
7 seated in one of the chairs in front of his desk.

8 Q All right. You said that he was speaking to you
9 about an arrest at the bridge?

10 A He had asked me if I had any knowledge of an
11 incident that happened with a banner being hung at the
12 bridge.

13 Q What bridge was he talking about? Did you know
14 at the time?

15 A No.

16 Q All right.

17 A And I'm still not sure where that bridge is
18 located.

19 Q Okay. So, you're not familiar with that bridge
20 yourself?

21 A No.

22 Q Well, tell me how that conversation proceeded.

23 A Well, he told me about an incident that happened
24 with the bridge. And our conversation carried on and he
25 asked me how much I knew about it. I told him I didn't

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 know much about it, which I didn't at the time.

2 Q Okay. What did he tell you about the situation?

3 A Well, if I can back up just a little bit. We
4 spoke and he asked me what I would do in that situation.
5 And I was honest with him, I told him if I was a police
6 officer, I have would have gotten the banner, would have
7 found out who it was and I would have went to their house.
8 I would have told them, you know, what the situation was,
9 what the laws were and what could have happened. And to
10 me, at that time, I would have just let it go at that
11 point.

12 Q And did Mayor Eichor share his opinion on what
13 had happened?

14 A Yes, he did.

15 Q And what was his opinion?

16 A His opinion was that the case -- I believe he
17 mentioned the woman's name, Dixie Nance. And he advised
18 that this was going to be triable in my court.

19 Q Backing up before that, did he give any opinions
20 on her arrest?

21 A I don't recall.

22 Q All right, sir. Please proceed.

23 A But anyway, Mayor Eichor, then, what he did was
24 he advised me that it would be triable in my municipal
25 court, okay, and remember that you work for the city

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 council.

2 Q And was any part of what he said untrue?

3 A No.

4 Q How did you perceive what he said?

5 A I perceived it as -- in my heart and in my mind,
6 I perceived it as being a threat to my job security.

7 Q Why?

8 A Because of the fact that I worked for the city
9 council. Four votes on the city council against me would
10 terminate my position as the judge for the City of
11 Simpsonville, or my employment.

12 Q But that is a true fact on any case, correct?

13 A Yes, ma'am.

14 Q So, why was this a threat to you?

15 A I took it as a threat because of the fact that
16 this was the first time that anything had ever come up
17 about a case being in my court by any city council member
18 or by anybody. And here I am, I'm in my 60's. We just
19 bought a home. And now, I'm concerned whether or not I'm
20 going to have a position if this thing goes to court in my
21 court and depending on the way I rule, whether or not I'll
22 still be employed.

23 Q Had anyone ever reminded you of the fact that
24 you work for city council before?

25 A No.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q In nine years?

2 A In nine years, no.

3 Q Tell me a little bit about Mayor Eichor. Was he
4 a full time mayor? How often was he at City Hall?

5 A To be honest with you, I can't tell you how many
6 times he's at City Hall. Several times that I was in the
7 office, I know he was there. So, I could only say two or
8 three times a week I would think he was in the office.

9 Q That you knew about?

10 A That I knew about, yes, ma'am.

11 Q Did you regularly attend city council meetings?

12 A I used to.

13 Q But you do not anymore?

14 A No.

15 Q Was the mayor always at city council meetings?

16 A Yes, ma'am.

17 Q Did he always take place in votes that you
18 observed?

19 A Yes, ma'am.

20 Q Who ran the city council meetings?

21 A Well, actually, the -- the mayor actually starts
22 the city council off. And I would think being mayor and
23 the people, three on each side of him, he's basically head
24 of city council.

25 Q While you were a city employee and while Mayor

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Eichor was in office, was anyone -- how many people were
2 terminated during that time?

3 MR. HENRY: Objection, relevance.

4 THE COURT: All right. I'll overrule. You may
5 ask him.

6 THE WITNESS: I believe the only two that were
7 actually terminated was the now chief, Chief
8 Grounsell, and the ex-city administrator.

9 BY MS. BENTLEY:

10 Q So two?

11 A Two.

12 Q Prior to the mayor reminding you that this case
13 would be in your court, how would you characterize the
14 conversation?

15 A I think I could characterize it as just a casual
16 conversation at first.

17 Q At first. When did that change?

18 A Basically, when he started talking about the
19 trial, whether it was going to be in my court or could be
20 in my court. When he made the statement to me that I have
21 to remember that I work for the city council. And then
22 the comment was that no matter how this comes out, it will
23 go all the way to the Supreme Court.

24 Q Prior to him reaching the point of threatening
25 you, would you have --

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 MR. HENRY: Objection to the characterization.

2 That's for the jury, Your Honor.

3 THE COURT: I understand. I understand.

4 And I charge the jury that just as I told you,
5 opening statements, closing statements are not to be
6 evidence, the same is true of lawyers questions.

7 Whether it's the State's attorney or whether it's the
8 defense attorney, the questions are not evidence.

9 The responses to the questions are evidence.

10 You may proceed.

11 BY MS. BENTLEY:

12 Q Prior to that point that we're discussing today
13 and the conversation, would you have reported your
14 interaction with the mayor to anyone?

15 A I'm sorry, I'm not quite sure what you mean on
16 that.

17 Q Up until the point that the mayor advised you
18 that you would be hearing this case?

19 A Right.

20 Q That portion of the conversation prior to that,
21 would that have been something you would have reported?

22 A No.

23 Q At that time, were you aware he had spoken to
24 other people about the case?

25 A No.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q Would that change your decision on it?

2 A No. I would still do what I did.

3 Q And what is that?

4 A After I -- after the mayor made the comments
5 that he did, I got up and I left his office and I went
6 straight to the clerk of court's office and I asked for
7 phone number for Judge Ford's office, who is the county
8 magistrate and summary court judge.

9 Q And why did you want the number to Judge Ford's
10 office?

11 A I didn't have it in my cell phone or I wasn't
12 carrying it. And the reason I was -- once those comments
13 were made, I had made the decision that the only way to
14 have a fair trial on this would be to ask to have a change
15 of venue, which would move it out of our court into
16 another court where there would be no look of any
17 impropriety one way or the other. Because the fact if I
18 was going to hear the case, it wouldn't have been a jury
19 trial. If I would have found in favor of the city, it
20 would have looked like I was favoritism to the city. And
21 if it would have been in favor of the Defendant, then it
22 would have looked like, you know, that maybe the city was
23 pressuring me or the county was pressuring me or whatever,
24 the citizens, I mean.

25 Q Did you feel pressure after what the mayor told

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 you?

2 A Yes, ma'am I did.

3 Q What kind of pressure did you feel?

4 A Like I said, you know, I felt that if I
5 didn't -- if I didn't find the way that the mayor thought
6 I should, then what was going to happen was that -- I was
7 fearful of losing my job.

8 Q Tell me what happened when you went back to the
9 clerk's office to get the phone number?

10 A I spoke with Marie Feld, got the phone number
11 from the clerk. And I used my cell phone to call Judge
12 Ford's office. Judge Ford, that Thursday, was holding
13 criminal domestic violence court in downtown Greenville.
14 So, I asked if I could speak with Judge Davis, Sara Davis.

15 Q All right. Did you speak to Judge Davis?

16 A Yes, ma'am, I did.

17 Q What did you tell Judge Davis?

18 A I explained the situation. Basically, that
19 because the police department was involved and it was
20 involving also the mayor, friends, I decided that it would
21 be best if we could have a change of venue where it would
22 take it out of the city's hands into a neutral courtroom.

23 Q Did you tell her that you felt pressured to rule
24 one way or the other?

25 A No, I did not at that time.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 Q Did you discuss with her what was said?

2 A No, I did not.

3 Q So, tell me about her -- let me see, did she
4 agree to take the case?

5 A Yes, ma'am, she did. She just asked that I
6 send -- all the paperwork sent over to her office.

7 Q All right. What did you do after you finished
8 speaking with Judge Davis?

9 A I don't remember if I walked back in and told
10 the mayor that I was going to have the case sent to a
11 different venue so that it would be okay, would take us
12 out of it. I don't remember if I spoke with him in
13 reference to that or not to be honest with you.

14 Q All right. Did you have any concern that
15 removing the case from your court would anger the mayor?

16 A No.

17 Q Why not?

18 A I figured the best way to get rid of the
19 situation where there wouldn't be a problem in our court
20 or with the city was to go ahead and do that.

21 Q Now, you did not hear anything, any arguments or
22 anything related to the Dixie Nance case; is that correct?

23 A No, ma'am, I did not.

24 Q Prior to any defendant requesting a jury trial,
25 what is the status of the case?

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 A It's still open, pending.

2 Q And who would hear any type of nonjury case?

3 A I would.

4 Q Okay. Did you immediately report this perceived
5 threat to anyone?

6 A No, I did not.

7 Q Why not?

8 A To be honest with you, I didn't -- I didn't
9 know, to be honest, if anybody would believe that he said,
10 what he told me. I mulled it around for days and days and
11 days. I thought about it one time of just letting it go,
12 but it just keep eating at me and eating at me.

13 Q When you say kept eating at you, how did this
14 affect you?

15 A It affected my eating habits. It affected my
16 sleeping habits. It affected my home life. I think it
17 was beginning to affect my court.

18 Q All right. Without telling us what you said or
19 what the responses were, did you consult with other people
20 prior to coming forward?

21 A Yes.

22 Q Who did you consult with?

23 A I spoke with my wife. I spoke with my children.
24 I even called my brothers and sisters.

25 Q Okay.

LESLIE SHARFF-DIRECT BY MS. BENTLEY

1 A And I asked them, I said, This is what was said,
2 how would you perceive it to be?

3 Q And ultimately, why did you decide to make a
4 report to SLED?

5 A Because I felt that, you know, this was not
6 going to go away, that I was threatened with my position.
7 And so, I decided to go to SLED and see what, if anything,
8 there were any criminal charges or if it was just
9 something that I perceived.

10 Q Okay.

11 MS. BENTLEY: I have no further questions.

12 Please answer any questions that Mr. Henry may have.

13 THE COURT: Yes, sir.

14 MR. HENRY: Thank you.

15 CROSS-EXAMINATION

16 BY MR. HENRY:

17 Q Judge Sharff, good morning.

18 A Morning, sir.

19 Q I think we've met one other time?

20 A Yes, sir, he did.

21 Q You probably have gotten a couple of jury trial
22 requests from me or requests from some of the cases I've
23 done over there, does that sound fair?

24 A I'm sure we have.

25 Q It's good to see you. In this case, except for

LESLIE SHARFF-CROSS BY MR. HENRY

1 you sending the case temporarily to Judge Ford/Judge
2 Davis's office, the case took its regular course, didn't
3 it?

4 A As far as I know, yes, sir.

5 Q I mean, Dixie Nance was arrested and that was
6 based on a warrant that you did not sign, but Marie Feld
7 signed?

8 A Yes, sir.

9 Q Apparently, she was released on bond and you
10 weren't involved with that?

11 A No, sir, I was not.

12 Q And fairly shortly, maybe a week after her
13 arrest, she asked for a jury trial, does that sound about
14 right?

15 A I was not aware of it, but now I am.

16 Q So, now that you know that, that's about right;
17 isn't it?

18 A If you say so.

19 Q I don't want to put words in your mouth. If
20 you're not sure, just say you don't know.

21 A I'm not sure, sir.

22 Q So, you really didn't track the case yourself?

23 A No, sir, I did not.

24 Q And you took no actions in the case?

25 A No, sir, I did not.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q And if you had simply waited to see if a jury
2 trial had been requested, you would have been out of it
3 anyway?

4 A Yes, sir, I would.

5 Q And do you know how the case came out?

6 A No, sir, I do not.

7 Q As a matter of fact, there really was no
8 obstruction of her case in any way, was there?

9 A In inference to what, sir?

10 Q Anything. I mean, her case took the usual
11 course. She got arrested, she got charged and the case
12 went its normal course to a jury trial request and then it
13 was ended?

14 A As far as that goes, yes, sir.

15 Q Okay. All right. Now, with respect to any
16 action you took in the Dixie Nance case, since there was
17 none, you were not influenced by that, were you?

18 A I'm not sure what you --

19 Q Well, let me ask it this way. It turned out to
20 be Judge Moore's case?

21 A Yes, sir.

22 Q And the case for Dixie Nance sat in the pending
23 file from the time of her arrest until the jury trial was
24 requested, whatever time that was?

25 A Yes, sir, it would.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q You never looked at the case?

2 A No, sir, I did not.

3 Q You never met with Dixie Nance?

4 A No, sir, I did not.

5 Q Never talked to her lawyer?

6 A No, sir, I did not.

7 Q Never heard a motion?

8 A No, sir, I did not.

9 Q So, there was no action that you took to have
10 been influenced in the Dixie Nance case, was there?

11 A The only action I took was to ask for a change
12 of venue.

13 Q Okay. All right. What did Perry Eichor
14 specifically tell you to do about the Dixie Nance case?

15 A Nothing.

16 Q There was nothing for you to do to the Dixie
17 Nance case, was there?

18 A No, sir, but at the time that was before we
19 found out or before a jury trial request was made.

20 Q Okay. So, what this was was you believed, as
21 you said earlier, in your heart and your mind that he was
22 trying to send you a message to do something in her case?

23 A No, sir. He said -- the way that I perceived it
24 was that it was going to be triable in my court, his
25 comment was.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q Okay.

2 A And when he did that, sir, then he made the
3 comment that I have to remember that I work for the city
4 council. And I thought that was an odd statement to make.

5 Q Okay.

6 A If it would have been a bench trial, then I
7 would have heard the case, yes, sir.

8 Q Didn't he, in fact, say the Dixie Nance case
9 would be triable in the municipal court, not in your
10 court?

11 A No, sir, he said in my court.

12 Q All right. Let me hand you a statement that I
13 want you to take a look at. First of all, I want to ask
14 you if that's the statement that you wrote when you made
15 your complaint to SLED?

16 A Yes, sir, it is.

17 Q All right. Well, take a look at that statement
18 and find the part that says --

19 A I should know it would be tried in municipal
20 court.

21 Q Okay. Let me just finish my question.

22 A All right, sir. I'm sorry.

23 Q That's all right. I'm assuming that most of the
24 time you're on the other wise, you're up on the bench, so
25 you're not used to this role here.

LESLIE SHARFF-CROSS BY MR. HENRY

1 A Yes, sir.

2 Q The testimony you gave me just a second ago was
3 that Perry Eichor -- and we know who we're talking about
4 when we say Perry, right --

5 A Yes, sir.

6 Q -- the mayor?

7 A Yes, sir.

8 Q That he told you that the Dixie Nance case would
9 be tried in your particular court, but that's not what you
10 wrote in your statement, is it?

11 A No, sir, it's not.

12 Q In your statement, you said the Dixie Nance case
13 would be tried in the municipal court?

14 A Yes, sir.

15 Q Is that corrected now?

16 A Yes, sir, it is.

17 Q All right. Him saying the case would be tried
18 in the municipal court was not significant, was it?

19 A Well, in my mind, it was because for me, I try
20 all cases unless they're jury.

21 Q Okay. All right. And at that point, you didn't
22 know it was going to be jury or not?

23 A At that time, I did not, sir, no.

24 Q So, he didn't ask you to do anything and he told
25 you it would be tried in the city court at that point,

LESLIE SHARFF-CROSS BY MR. HENRY

1 correct?

2 A Yes, sir.

3 Q All right. Now, before that time, didn't you
4 freely discuss the Dixie Nance case with him?

5 A No, sir, I did not.

6 Q Okay. So, when you talked to him about the
7 Dixie Nance case, it was only him talking?

8 A Like I told you, I -- we had discussed it in his
9 office that day and he asked me what I would do and I told
10 him what I would do.

11 Q Wasn't that discussing the case?

12 A I guess you could perceive it to be that way,
13 yes, sir.

14 Q Okay. Well, did you tell him here's what I
15 would do?

16 A Yes, sir, I did.

17 Q Isn't that discussing the case?

18 A As a police officer.

19 Q So, you separated the police officer from the
20 judge?

21 A Yes, sir, I did.

22 Q Were you a police officer at the time or a
23 judge?

24 A No, sir, I was not.

25 Q Okay. So, you really discussed the Dixie Nance

LESLIE SHARFF-CROSS BY MR. HENRY

1 case with Perry and you told him what you would do in that
2 case, didn't you?

3 A If I was a police officer.

4 Q Okay. Is that what it says in your statement,
5 if I was a police officer?

6 A I don't recall.

7 Q Well, let me show it to you and see what it
8 says.

9 A I have my copy.

10 Q Oh, good. You can look at that. That's fine,
11 that will save time. Just read the part that says as a
12 police officer from your statement?

13 A I didn't write it down as if I was a police
14 officer.

15 Q Okay. So, from looking at the statement and
16 since you were a judge, the statement appears that you're
17 discussing the Dixie Nance case freely with Perry Eichor?

18 A It would appear that way, yes, sir.

19 Q Now, that's improper, isn't it?

20 A Yes, sir.

21 Q So you violated the rules there, didn't you?

22 A Evidently, yes, sir.

23 Q And that would have been before a statement was
24 made about the case being tried in city court or before
25 the statement was made, as you said, that remember you

LESLIE SHARFF-CROSS BY MR. HENRY

1 work for city council?

2 A I believe so.

3 Q Okay. All right. So, shouldn't that go both
4 ways, Judge Sharff? Shouldn't it be one violation for one
5 person the same for another?

6 A Yes, sir, it should.

7 Q Okay. All right. And at no time in this
8 conversation with Perry Eichor about the Dixie Nance case
9 did you say, wait a minute, Perry, this case might be in
10 front of me, we can't talk it?

11 A No, sir, I did not.

12 Q That would have been the right thing to do,
13 wouldn't it?

14 A Yes, sir, it would.

15 Q Do you regret that now, that you did that?

16 A Yes, sir, I do.

17 Q In fact, your opinion in the case was there
18 would be no prosecution, the case would be thrown out?

19 A No, sir, it was not.

20 Q So, you said you would take the sign down?

21 A Yes, sir, I did.

22 Q Find out who did it?

23 A Yes, sir.

24 Q Tell them the law, what could happen to them?

25 A Yes, sir.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q And that would be the end of it?

2 A Yes, sir.

3 Q No prosecution, no trial?

4 A But that was my interpretation when I was
5 explaining if I was the police officer, even though I
6 didn't write that in this statement.

7 Q I got you. All right.

8 A All right, sir.

9 Q But you certainly gave Perry Eichor the
10 impression that as a police officer or as judge,
11 depending, that the case didn't have much merit to it?

12 A Well, as a police officer, I would have.

13 Q Okay.

14 A As the judge, I would have looked at it
15 differently.

16 Q But having given him that opinion about the
17 case, there would be no reason for him to threaten you,
18 you would have been the best judge for the case?

19 A That's his opinion, yes, sir.

20 Q You didn't see it that way?

21 A No, sir.

22 Q All right. And again, Dixie never appeared
23 before you and she wasn't officially on any roster for a
24 motion hearing, nothing like that?

25 A No, sir, she was not.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q All right. Would you agree that the mayor could
2 not have fired you?

3 A Not by himself, no.

4 Q Right. And when you say mayor and council,
5 that's seven people?

6 A Seven people.

7 Q And it would take a vote of four to three to get
8 rid of you, basically?

9 A Yes, sir.

10 Q Had you just been reappointed in December before
11 this incident happened in March?

12 A January, I believe. I think it was the year
13 before.

14 Q Okay.

15 A Somewhere along the line, the city come back and
16 said judges have to be appointed for two years.

17 Q Right.

18 A Can't be appointed for one and up to that time,
19 I don't remember if it was the year prior. I believe we
20 had signed two-year agreements.

21 Q Did you actually sign a contract or just
22 appointed by council?

23 A Just appointed by council.

24 Q When does your term end?

25 A This January.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q So, it sounds like you had a two-year term then?

2 A I believe so. It was this year, yes, sir.

3 Q So, your two-year term had just pretty much
4 started in January before this incident in March?

5 A I believe so, yes, sir.

6 Q All right. And when you got reappointed the
7 most recent time, was Perry Eichor on the council?

8 A I don't remember.

9 Q All right.

10 A We don't receive anything. All we receive is
11 the fact that we've been reappointed.

12 Q Okay. Well, earlier you said you got appointed
13 unanimously every time?

14 A Prior to, yes, sir. And as far as I know, I've
15 always had no problem.

16 Q Okay. And a couple of those votes had to
17 include the mayor, right?

18 A I'm sure they were, yes, sir, at the very
19 beginning.

20 Q So, as far as you know, each time you came up to
21 be reappointed, Perry Eichor voted in your favor?

22 A If it was a unanimous vote, yes, sir.

23 Q Hard to argue against that?

24 A Seven to seven.

25 Q Yes, sir. Now, you're not claiming that he

LESLIE SHARFF-CROSS BY MR. HENRY

1 actually threatened you, you're saying he did it by
2 implication; is that correct?

3 A Yes, sir. The way I perceived it to be.

4 Q All right. And the key phrase appears to be and
5 remember you work for city council?

6 A Yes, sir.

7 Q All right. The Dixie Nance case had to do with
8 a banner that criticized the police chief; is that a fair
9 statement?

10 A I would say so, yes.

11 Q And he's somebody you know pretty well?

12 A I know of him.

13 Q I mean, you're not like golfing buddies or
14 anything like that, are you?

15 A No, sir, we're not.

16 Q But you used to work together at Mauldin?

17 A No, I don't believe so.

18 Q Were you a police officer, both police officers?

19 A Yes. But I don't recall him in Mauldin.

20 Q Okay. All right. When you listen to that
21 phrase, "And you work for city council", is there, in your
22 view, only one possible interpretation of what that was?

23 A For me, yes, sir, at that time.

24 Q All right. How about another possibility, do
25 your job?

LESLIE SHARFF-CROSS BY MR. HENRY

1 A I have done my job for nine years.

2 Q But couldn't that phrase have meant do your job?

3 A Not in my mind, no, sir.

4 Q Okay. How about do justice in the case?

5 A I always have.

6 Q Okay. But couldn't that phrase have meant that
7 as well?

8 A In my mind, it did not.

9 Q Be fair to both sides is one interpretation?

10 A It's fair to be what you say, your
11 interpretation was to do my job, to do justice. In my
12 mind, it was a threat.

13 Q Okay. But you can see that other people might
14 have different interpretations of the same wording?

15 A Yes, sir, I can see that.

16 Q And your concern for getting rid of the case or
17 having it moved to the magistrate's court is you didn't
18 want to be seen as being partial to either side?

19 A Yes, sir.

20 Q I think you said that in your statement very
21 clearly?

22 A Yes, sir.

23 Q You mentioned the timing of that particular day
24 as being a, I think you said, not a long docket?

25 A I don't believe it was a long docket.

LESLIE SHARFF-CROSS BY MR. HENRY

1 Q What time do you normally start those days?

2 A Between 9:00 and 9:30 in the morning.

3 Q Any way to know when you finished it?

4 A It would have been before 11:00.

5 Q Okay. All right.

6 A And probably closer to 10:30 or quarter to

7 11:00.

8 Q 10:30?

9 A Somewhere around there.

10 Q Would you have then immediately walked over to
11 City Hall?

12 A Probably would have taken care of whatever
13 paperwork I needed to take care of and then I would have
14 driven to City Hall.

15 Q You think you made that call you talked about to
16 Judge Ford's office around 11:00 as has been testified to
17 earlier?

18 A Yeah, about 11:00, right at 11:00.

19 Q And you didn't tell the judge anything about the
20 details of this alleged threat?

21 A No.

22 Q Now, was Karen Hendrickson there when you made
23 this call?

24 A I believe she was.

25 Q Okay. How do you know Karen?

LESLIE SHARFF-CROSS BY MR. HENRY

1 A She works for the city. She was a police
2 officer prior.

3 Q Okay.

4 A And then she become assistant clerk of court. I
5 think that's her title.

6 Q What do you think of her work as far as you
7 know?

8 A As far as I know, she does a fine job.

9 Q Do you know her at all other than at work?

10 A No.

11 Q Does she work with you on getting dockets and
12 things like Marie Feld does or sometimes --

13 A If Marie's not available, she'll print out a
14 docket for me.

15 Q Now, you mentioned earlier that you and Perry
16 Eichor had a couple things in common, one being prior
17 police work and the other being military service?

18 A Yes, sir.

19 Q Is that one of the casual conversations you
20 might have had with him about both those things?

21 A Yes, sir.

22 Q Did he tell you some information about his past
23 police work?

24 A I'm sure he did, but I don't recall.

25 Q Okay. How about the military service, did he

LESLIE SHARFF-CROSS BY MR. HENRY

1 talk about that?

2 A Yes, sir, I think he was an officer in the Air
3 Force.

4 Q Okay.

5 A As a matter of fact, in one of our casual
6 conversations, VFW had -- the Veterans of Foreign Wars had
7 a golf tournament one time and I found some golf balls and
8 tees in a little pill container.

9 Q Right.

10 A And it said take one of these balls once a day
11 for 18 holes, you know, feel good or something like that.
12 And I thought, you know, since it had an Air Force logo
13 and everything on it and I knew the mayor was Air Force, I
14 thought it would be kind of neat if he had something like
15 that, so I brought him one.

16 Q Did he keep it in his office?

17 A I think he did, yes, on his desk.

18 Q All right. You mentioned the VFW, was there
19 some kind of issue at one point about the smoking band
20 that affected VFW that you remember?

21 A City Hall, yes. There was a city ordinance
22 brought up by one of the council members that was passed
23 about private clubs, any clubs, eateries, standing outside
24 buildings, standing in crowds.

25 Q Right.

LESLIE SHARFF-CROSS BY MR. HENRY

1 A And, of course, the VFW, these people had always
2 smoked there, you know. I think that's -- drink beer and
3 smoke cigarettes is what veterans do, I think.

4 Q And did you -- did -- you were one of the
5 leaders of that group, weren't you, at one point?

6 A I was senior vice-commander.

7 Q All right. Did that ordinance seem kind of
8 broad as far as it covering VFW to and some of the
9 members?

10 MS. BENTLEY: Objection, relevance of VFW
11 smoking ordinance.

12 THE COURT: I'll give you some latitude on that.
13 I think it's close, but I'll give you some latitude.

14 MR. HENRY: Thanks, Judge.

15 THE COURT: Sure.

16 BY MR. HENRY:

17 Q Was there some objection from VFW to the
18 ordinance that was passed down through you?

19 A The members and the executive council of VFW
20 because we are a private club.

21 Q Right.

22 A We felt it -- you know, that if you wanted to
23 smoke inside, it wouldn't affect anybody except for the
24 people who were inside smoking.

25 Q Did you discuss that with Perry?

LESLIE SHARFF-REDIRECT BY MS. BENTLEY

1 A No.

2 Q Okay. And did you feel -- after your
3 conversation with the mayor, did you feel pressure --

4 MR. HENRY: Objection, asked and answered.

5 THE COURT: Okay. Again, I'll extend her some
6 latitude.

7 You may have proceed. Overruled.

8 BY MS. BENTLEY:

9 Q After your conversation with the mayor, did you
10 feel pressure considering the case was pending before you
11 to make a certain decision?

12 A Yes.

13 MS. BENTLEY: No further questions.

14 THE COURT: Any recross examination, sir?

15 MR. HENRY: No, sir.

16 THE COURT: Okay. Thank you, sir. I appreciate
17 your being here. You may stap down.

18 Okay. You may call your next witness.

19 MS. BENTLEY: The State calls Judge Sara Davis.

20 THE CLERK: Ma'am, if you'd please place your
21 left hand on the Bible, and raise your right hand.

22 SARA DAVIS, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. Would you be seated,
25 please. Would you please state your name for the

LESLIE SHARFF-REDIRECT BY MS. BENTLEY

1 record?

2 THE WITNESS: Sara Godfrey Davis.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. BENTLEY:

6 Q Judge Davis, what is your current occupation?

7 A I'm a magistrate for Greenville County.

8 Q And where is your office?

9 A In Simpsonville.

10 Q With whom do you work?

11 A I work with Judge Ford.

12 Q Are you from Simpsonville originally?

13 A No, I'm not.

14 Q Where are you from originally?

15 A Originally, if you mean birthplace, that would
16 be Charleston. But before that, really, I was in Florida.

17 Q How long have you lived in Simpsonville?

18 A Thirty-nine years.

19 Q And tell me about your path to becoming a
20 magistrate court judge?

21 A Well, as far as that's concerned, I became
22 through -- at that time, it was by Senator David Thomas.
23 He was the one that talked to me about the position and
24 asked me if I would be interested in taking a part in the
25 magistrate's court. And I said yes, that I would.

SARA DAVIS-DIRECT BY MS. BENTLEY

1 Q Prior to becoming a magistrate, were you
2 involved in the legal system?

3 A Not really, except from a standpoint of doing
4 research for some of my husband's projects at that time.
5 But I had been a school teacher.

6 Q When did you become a magistrate?

7 A In 1992.

8 Q And how did you get that job, were you elected,
9 appointed?

10 A I was appointed by the governor.

11 Q And were you or are you active in Simpsonville
12 politics?

13 A No, I'm not.

14 Q The appointment of the governor, does the City
15 of Simpsonville play any part in your employment?

16 A Absolutely nothing.

17 Q Is there a difference between a municipal court
18 judge and a magistrate court judge?

19 A From the standpoint that we are -- do have
20 jurisdiction throughout the county in both criminal and
21 civil matters.

22 Q And is the hiring process different as well?

23 A Yes, I believe it certainly is.

24 Q What is the difference?

25 A Well, the difference is that we are appointed,

SARA DAVIS-DIRECT BY MS. BENTLEY

1 of course, by the governor rather than having to look to
2 the county's governing body as the where they would be in
3 charge of our employment.

4 Q All right. And as a magistrate judge in
5 Simpsonville, do you work with the municipal judges of
6 Simpsonville?

7 A Not really.

8 Q Okay. Nevertheless, are you familiar with
9 Leslie Sharff?

10 A Yes, I am.

11 Q How are you familiar with him?

12 A Through his being a judge in the municipal court
13 in Simpsonville.

14 Q How long have you known him?

15 A Several years.

16 Q And are you familiar with the Defendant in this
17 case?

18 A Yes, I am.

19 Q How are you familiar with him?

20 A Originally, when he was in charge of the jail in
21 Greenville County.

22 Q Okay. And so how long have you known him or
23 worked with him?

24 A Well, I wouldn't say that I was working with him
25 on a daily basis at all.

SARA DAVIS-DIRECT BY MS. BENTLEY

1 Q All right. Was he the jail administrator in
2 1992 when you were first appointed?

3 A As far as I know, yes, he was.

4 Q Okay. So, would it be fair to say that you have
5 known of him since that time?

6 A Yes.

7 Q All right. I want to take you back to spring
8 2014. Do you recall a request or telephone call from
9 Judge Sharff around that time?

10 A Yes, I do.

11 Q And what was the purpose of Judge Sharff's call,
12 what --

13 MR. HENRY: Objection, hearsay. She's inviting
14 hearsay with the purpose question.

15 THE COURT: Okay. I will just caution you not
16 to elicit hearsay, but I'll allow you to ask that
17 question.

18 BY MS. BENTLEY:

19 Q Did Judge Sharff ask something of you?

20 A Yes, he did.

21 Q Was it related to a pending court case?

22 A Yes, it was.

23 Q Where was the court case pending initially?

24 A It was pending in his court.

25 Q Okay. And did he request to transfer the case?

SARA DAVIS-DIRECT BY MS. BENTLEY

1 A Yes. He asked would I do that for him.

2 Q Okay. And do you recall when this call took
3 place?

4 A Not really.

5 Q Okay.

6 A Not really, I don't.

7 Q All right. What do you recall of Judge Sharff's
8 demeanor during this phone call?

9 A Very apprehensive.

10 Q Was that typical from your conversations with
11 him?

12 A No, it was not.

13 Q Had you -- without telling us why, had you
14 previously had conversations with Judge Sharff about
15 transferring cases?

16 A Not necessarily with Judge Sharff, no, not at
17 that time.

18 Q Okay. Would it be a common practice for a
19 municipal case to get transferred to magistrate's court?

20 A No.

21 Q But it's not unlawful?

22 A No.

23 Q Okay. You said he sounded apprehensive?

24 A Yes.

25 Q Had you spoken to him on prior cases?

SARA DAVIS-DIRECT BY MS. BENTLEY

1 A Yes, yes, we had.

2 Q All right. Was that the tone he had when you
3 spoke to him previously?

4 A Normally, no, that would not have been the tone.

5 Q Okay. I want to bring you to a matter that we
6 have been circling around, the sign on the bridge in
7 Simpsonville. Were you familiar with that case at the
8 time?

9 A I knew just a little bit about it. I heard some
10 talking in the office that this was something going on at
11 a bridge in Simpsonville.

12 Q Okay. Where would that case have been assigned
13 initially?

14 A It would have gone to Simpsonville.

15 Q Why is that?

16 A Because it happened within the city limits of
17 Simpsonville.

18 Q Ultimately, do you know where that case ended
19 up?

20 A I know that we accepted the case, but I'm not
21 absolutely sure whether the request for the jury trial
22 came in before we got the paperwork because I normally
23 wouldn't know that the paperwork has gotten there. It
24 would have gone to one of our clerks first. But later on,
25 I was aware that there had been -- that we would not have

SARA DAVIS-DIRECT BY MS. BENTLEY

1 to do that, that there was going to be a jury trial in
2 that case.

3 Q Were you the person that agreed to accept that
4 case into the magistrate's court?

5 A Yes, I was.

6 Q Why did you do that?

7 A Because I could tell that it was something that
8 was troubling, that it was going to be a problem in the
9 court if it were to -- if he were to try to have that case
10 in his court, that it was not going to be worth it for him
11 to even try. That we would take the pressure off by
12 allowing it to come out to where we didn't know anything
13 really about what was going on politically within the City
14 of Simpsonville. And therefore, unless someone said that
15 we somehow would be biased about a case, if somebody said
16 that they thought that I would be, then I would step
17 aside, of course. But at that particular point in time,
18 there was no reason for that to be thought about as far as
19 I could see.

20 Q Because the politics in Simpsonville have
21 nothing to do with the magistrate court?

22 A No.

23 Q Okay. Did Judge Sharff volunteer extra
24 information to you during this phone call?

25 A Absolutely not.

SARA DAVIS-DIRECT BY MS. BENTLEY

1 Q All right. And as a magistrate, when would you
2 discuss a pending case with someone in a political office?

3 A Never.

4 Q And why is that?

5 A Because we are not allowed to do that through
6 the Canons of Ethics. We are not allowed to discuss one
7 side or the other side of the case unless both parties are
8 present when the discussion is taking place.

9 Q In your, goodness, 20 --

10 A Twenty-three.

11 Q -- 23 years as a magistrate judge, has anyone
12 tried to influence you on a case before?

13 A I don't believe so.

14 Q All right. And if they were, what is the proper
15 procedure?

16 MR. HENRY: I'll object, Your Honor. This has
17 gone too far afield. It's purely hypothetical and
18 it's asking for opinions about something she's not in
19 a position to comment on in this case.

20 MS. BENTLEY: About proper procedure?

21 THE COURT: Okay. I'll overrule.

22 You may ask the question.

23 BY MS. BENTLEY:

24 Q If someone were to influence you, what would be
25 the proper procedure?

SARA DAVIS-DIRECT BY MS. BENTLEY

1 A I would first go to the chief magistrate.

2 Q And then would you -- would notifying law
3 enforcement be an appropriate action?

4 A Oh, absolutely.

5 Q All right.

6 MS. BENTLEY: I have no further questions.

7 Please answer any questions that Mr. Henry may have.

8 THE COURT: Yes, sir, Mr. Henry.

9 MR. HENRY: Thank you.

10 CROSS-EXAMINATION

11 BY MR. HENRY:

12 Q Hi, Judge Davis.

13 A Hi, how are you?

14 Q Fine. I'm sure I tried to influence you a
15 couple of times as an attorney, haven't I?

16 A You tried.

17 Q Okay. You don't know much about this bridge
18 case, do you?

19 A No, sir, I don't.

20 Q You don't know the facts?

21 A No, sir.

22 Q You know there was a banner or sign involved?

23 A Yes, I knew that, but I didn't even know what it
24 said.

25 Q Okay. I was going to ask you that next. All

SARA DAVIS-CROSS BY MR. HENRY

1 right. So, you got a call from Judge Sharff and as a
2 courtesy agreed to take it into your court, basically?

3 A Absolutely.

4 Q And you don't know if -- the case didn't stay
5 there, it got moved back, didn't it?

6 A Right.

7 Q For a jury trial in a jury trial request in city
8 court.

9 A Right.

10 Q Is that basically what you know about this?

11 A Pretty much.

12 Q Okay. All right. One thing you did mention is
13 if a judge discusses a case with a political official, for
14 example, that would violate the Canons of Ethics, wouldn't
15 it?

16 A Yes, it would.

17 Q And that would be something that the judge might
18 report on him or herself, too, wouldn't it?

19 A Right.

20 MR. HENRY: Thank you.

21 THE COURT: Any redirect, Ms. Bentley?

22 MS. BENTLEY: No, Your Honor.

23 THE COURT: All right. Thank you. I appreciate
24 your being here.

25 THE WITNESS: Thank you.

SARA DAVIS-CROSS BY MR. HENRY

1 THE COURT: All right.

2 Let's take a brief break for about 10 minutes.
3 Please don't discuss the case. You can retire to
4 your jury room.

5 MS. BENTLEY: Your Honor, may Judge Davis be
6 excused from her subpoena?

7 THE COURT: Yes, absolutely.

8 (WHEREUPON, the jury left open court at
9 approximately 10:10 a.m.)

10 THE COURT: Okay. We'll be in recess for the
11 next 10 minutes until the jury is ready to come back
12 in.

13 (WHEREUPON, a short break was taken.)

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

15 (WHEREUPON, the jury came into open court at
16 approximately 10:20 a.m.)

17 THE COURT: All right. Ms. Bentley, you may
18 call your next witness.

19 MS. BENTLEY: The State calls Holly Smith.

20 THE CLERK: Ms. Smith, if you will please pause
21 at the end of the bench, place your left hand on the
22 Bible, raise your right hand.

23 HOLLIE SMITH, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you. Please be seated. Would

SARA DAVIS-CROSS BY MR. HENRY

1 you please state your name for the record.

2 THE WITNESS: Holly Smith.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. BENTLEY:

6 Q Ms. Smith, where are you employed?

7 A City of Simpsonville.

8 Q What is your position there?

9 A Human resources assistant.

10 Q And as a human resources assistant -- pardon me,
11 how long have you been human resources assistant?

12 A Since May of 2013.

13 Q Okay. And what are your duties as human
14 resource assistant?

15 A Well, I help out the human resource director,
16 Phyllis Long. I also answer the phones. Pretty much do
17 anything I'm asked.

18 Q And who was in charge of hiring you?

19 A Phyllis Long.

20 Q Did the city council or mayor play any role in
21 that?

22 A No.

23 Q And before starting with the City of
24 Simpsonville in 2013, what was your background?

25 A I've been in hotel management, that's what I

HOLLIE SMITH-DIRECT BY MS. BENTLEY

1 graduated in. I stayed at home for -- since 1995 with my
2 children. And prior -- I mean, after that, I worked at
3 City of Mauldin part time while my children were in
4 school.

5 Q Do you have an office at the City of
6 Simpsonville?

7 A It's not an office, it's a desk in the middle of
8 the lobby.

9 Q Okay. The lobby of what building?

10 A City Hall.

11 Q And in relation to your desk, where is the
12 mayor's office?

13 A His office is to the left about 15 feet.

14 Q Does anything obscure your view to the mayor's
15 office?

16 A A wall.

17 Q Is that in the office or between your desk and
18 the office?

19 A Between my desk and his office.

20 Q There's not a direct line of sight between your
21 office --

22 A I can't see him where I'm sitting. I can see
23 the chairs in front of his desk.

24 Q You can see the door to this office?

25 A I can see the door.

HOLLIE SMITH-DIRECT BY MS. BENTLEY

1 Q Are you familiar with the Defendant in this
2 case, Perry Eichor?

3 A Yes.

4 Q How?

5 A From working at City Hall.

6 Q And what was his position there?

7 A Mayor.

8 Q And when was he elected mayor, do you recall?

9 A I do not know.

10 Q Okay. And how often was he at City Hall?

11 A About once a day.

12 Q Okay. So, on a pretty daily basis, he was
13 there. And are you familiar with Leslie Sharff?

14 A Yes.

15 Q How are you familiar with Leslie Sharff?

16 A From working at City Hall.

17 Q How often was Mr. Sharff at City Hall?

18 A Several times a week.

19 Q Okay. And from your desk, did you observe
20 Mr. Sharff speak with the mayor on occasion?

21 A I did.

22 Q All right. I want to take you back to
23 March 2014 towards the end of the month. Do you recall
24 the time I'm speaking about?

25 A I do just because of talking to you and talking

HOLLIE SMITH-DIRECT BY MS. BENTLEY

1 to Gene.

2 Q Okay. You said Gene?

3 A Donohue.

4 Q The SLED agent?

5 A Correct.

6 Q And what did Gene Donohue speak to you about?

7 A I thought I was in trouble when he called me,
8 but he asked me several questions about Perry Eichor, if I
9 saw Judge Sharff --

10 Q I'm going to stop you right there.

11 A Okay.

12 Q Did he ask you about a meeting that you may or
13 may not have observed?

14 A Yes.

15 Q And did you, in fact, see or observe a
16 closed-door meeting involving Mayor Eichor and Judge
17 Sharff?

18 A Yes.

19 Q Approximately when did this happen?

20 A Sometimes early 2014.

21 Q Okay. You say early 2014, do you recall when
22 you spoke to Mr. Donohue?

23 A Just from reading back my statement, beginning
24 or middle of March.

25 Q Is when the meeting happened or is when you

HOLLIE SMITH-DIRECT BY MS. BENTLEY

1 spoke to --

2 A When I spoke to Gene Donohue, I believe.

3 Q Is it possible that's not correct?

4 A That is possible.

5 Q If I were to show you your statement and a date
6 of it, would that refresh your recollection?

7 A Probably.

8 Q I'll direct you to look at the bottom where the
9 date is?

10 A April 4th -- or April 11th.

11 Q So, that's when you spoke to Gene Donohue?

12 A I believe so.

13 Q Okay. And that meeting that you observed, was
14 it prior to speaking to Gene Donohue, between the mayor
15 and Judge Sharff?

16 A Yes.

17 Q Do you recall in relation to when you spoke to
18 Gene Donohue approximately when you observed that
19 conversation?

20 A It just seemed like several weeks before. I
21 can't recall the exact date.

22 Q Okay. But it was a few weeks before?

23 A Yes.

24 Q And was the door opened or closed when they were
25 speaking?

HOLLIE SMITH-DIRECT BY MS. BENTLEY

1 A Closed, I believe.

2 Q All right. And were you able to see inside the
3 mayor's office?

4 A No.

5 Q Were you able to hear anything that happened
6 inside the mayor's office?

7 A No.

8 MS. BENTLEY: I have no further questions.

9 Please answer any questions Mr. Henry may have.

10 THE COURT: Yes, sir, Mr. Henry.

11 MR. HENRY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HENRY:

14 Q Hi, Ms. Smith.

15 A Hi.

16 Q So, you couldn't see a closed-door conversation,
17 obviously?

18 A No.

19 Q You couldn't hear what was being said?

20 A No.

21 Q You don't know when it happened?

22 A Not exactly.

23 MR. HENRY: Thank you. That's all I have.

24 THE COURT: Any redirect?

25 MS. BENTLEY: No, Your Honor.

PERRY EICHOR-EXAMINATION BY THE COURT

1 the Defense?

2 MS. BENTLEY: Nothing from the State, Your
3 Honor.

4 MR. HENRY: Nothing, Your Honor.

5 THE COURT: So, let's just take about five
6 minutes and then if counsel will come back to my
7 office, we'll talk through the charge.

8 MR. HENRY: Yes, sir.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: All right. Are we ready for the
11 jury?

12 MS. BENTLEY: Yes, sir, Your Honor.

13 MR. HENRY: Yes, sir.

14 THE COURT: Let's bring them in, please.

15 (WHEREUPON, the jury came into open court at
16 approximately 1:05 p.m.)

17 THE COURT: All right. Welcome back, ladies and
18 gentlemen. I hope you had a good lunch. Good to see
19 you back. I appreciate you being on time once again.
20 We are going to move to closing arguments and charge
21 on the law.

22 If you remember, I told you previously that the
23 attorneys closing arguments are not evidence in this
24 case. You have already received all of the evidence
25 that you will have in this case and the parties will

1 have the opportunity to comment on the same and
2 persuade you to their positions. The State will have
3 the opportunity to argue first and then the Defense
4 will close. So, we'll begin right after Mr. Henry
5 exercises his privilege to close his case.

6 MR. HENRY: The Defense rest, Judge.

7 THE COURT: Yes, sir. Thank you very much. I'm
8 sorry I forgot.

9 MR. HENRY: I didn't want to jump in on you.

10 THE COURT: Okay. Having said that, I'll turn
11 it over to you, Ms. Bentley.

12 MS. BENTLEY: May it please the Court.

13 Mr. Henry.

14 THE COURT: Yes, ma'am.

15 CLOSING STATEMENT

16 MS. BENTLEY: Ladies and gentlemen, the evidence
17 clearly shows that Perry Eichor had unnatural,
18 unethical and illegal interest in the case against
19 Dixie Nance. He was determined to ensure that
20 Ms. Nance was not punished for her actions at the
21 Hill Pine bridge. He thought the charges were
22 stupid, as he told SLED, and never should have been
23 charged.

24 Mr. Henry's statement to you at the beginning of
25 this trial was so what if the conversation happened?

1 So what, who cares? Ladies and gentlemen, everybody
2 should care. Everybody should care when someone in a
3 position of political trust tries to use their
4 influence in an illegal manner. You know that the
5 Defendant was way too involved in this case. By his
6 own admission when he spoke to Gene Donohue, he
7 talked to a number of people about it. And this
8 transcript is in evidence, you can go back and you
9 can reread it.

10 You know that he spoke to Dixie Nance. He
11 called out the name, we don't know for a fact that he
12 spoke to them, he spoke to somebody in forensics
13 about fingerprinting the banner. He had either
14 Ms. Nance's attorney or some other legal contact, as
15 he said, was keeping him informed. He knew they were
16 going to take this case all the way to the Supreme
17 Court if they had to. You know that he brought up at
18 city council that he questioned Chief Grounsell about
19 it. By his own admission, had a private conversation
20 with Councilman Matthew Gooch about it.

21 And then you heard from the testimony that he
22 also called Deputy Chief Moore the morning after the
23 arrest and he brought it up in a meeting where John
24 Laux and David Dyrhaug were meeting. And ladies and
25 gentlemen, he clearly called the judge that he

1 believed would be hearing this case in a bench trial
2 into his office on March 20th and tried to influence
3 his opinion on it. Beyond any reasonable doubt on
4 March 20th, Perry Eichor called Leslie Sharff into
5 his office and discussed the case of Dixie Nance.
6 And it culminated into a threat against Mr. Sharff's
7 employment.

8 You can't take my word for this. The State has
9 the burden of proof in this and every criminal case.
10 We had to prove through evidence and testimony beyond
11 a reasonable doubt that Mayor Eichor committed the
12 three crimes that he was accused of. And at the end
13 of the day, the only people in the mayor's office
14 were Leslie Sharff and Perry Eichor. Beyond any
15 doubt, they are the only two people that know what
16 happened and what was said. But when looking for a
17 reasonable doubt, you look at all the facts and
18 circumstances of the case. You look at the totality
19 of the circumstances. And it's clear based upon the
20 testimony presented beyond a reasonable doubt that
21 Mayor Eichor had the conversation and made the threat
22 against Judge Sharff's job.

23 I want to go back to the week of Ms. Nance's
24 arrest and look through and review the testimony that
25 was presented in this case. First, you heard from

1 Steve Moore. He's deputy chief of Simpsonville
2 police. He told you just a little bit about the
3 arrest of Dixie Nance. The sign was placed on the
4 bridge. It obscured some safety blockages. And she
5 was not arrested until March 19th.

6 The morning of March 20th, the very next day, he
7 was in his office and he gets a call from Perry
8 Eichor. He wants to know about the arrest. He wants
9 to know everything that Chief Moore knows about it.
10 In all of his time as mayor, he has never questioned
11 Chief Moore about any other arrests, about any other
12 pending investigation, about any other police
13 business. But on March 20th, he did and he had no
14 business doing so.

15 You sort of heard from John Laux, the public
16 works administrator. He clearly did not want to
17 testify. And John told you that he was in a meeting
18 with the county administrator when the mayor walked
19 in. He told you that wasn't unusual, but he refused
20 to remember any other details about what was said.
21 And why was that? Well, Mr. Laux told you, he loves
22 his job. He wants to keep it. And he, like Judge
23 Sharff, serves at the pleasure of the mayor and
24 council. And if the mayor returns to office, he
25 doesn't want to be on the chopping block. That is a

1 reasonable inference from the way he acted on that
2 witness stand.

3 You heard from Ms. Sharff, Judge Sharff's wife.
4 She told you that when they met, he was a police
5 officer. He went back to school at the age of 55 to
6 get ahead. And he was so happy when his 32 years of
7 police service paid off and he was appointed
8 municipal court judge. He never felt the political
9 pressure. He was happy until March 20th, when his
10 behavior changed. He couldn't eat, he couldn't
11 sleep. He struggled with what to do. That is
12 evidence that he truly felt that what happened was a
13 threat against his job. Ms. Sharff has three
14 part-time jobs, but they don't cover the bills, they
15 don't come with insurance. It was a true concern for
16 them, what would happen if he lost his job. And she
17 told you that even today that feeling, that stress
18 has not abated. Because the threat isn't over. He
19 knows that he's come forward and spoken out against
20 his former employer.

21 This morning, you heard from Judge Sharff
22 himself. He was open and honest and forthright. He
23 told you that March 20th started off like any other
24 day. He held court in the morning, he went into City
25 Hall, he checked the docket in Marie Feld's office,

1 and he was saying his goodbyes when the mayor called
2 him into his office. This was not cause for concern.
3 He would have casual conversations with the mayor.
4 They had a similar background, former police, former
5 military. They were on great terms. He told you
6 that he brought the mayor golf balls with the Air
7 Force logo on them. They were on good terms. And
8 that's another fact to consider. Judge Sharff has no
9 reason to make this up. He has absolutely no reason
10 to put himself in front of this political fire storm.
11 He had no issues with the mayor until this date. He
12 had none.

13 But then he's sitting in the office, the door is
14 closed and the mayor brings up the arrest of Hill
15 Pine bridge. Judge Sharff told you he was aware that
16 something happened at the bridge, but he didn't know
17 anything about the case. And there's nothing in
18 testimony that lets you know or that tells you Judge
19 Sharff had any idea that Ms. Nance had even been
20 arrested. He didn't know that this case was pending.

21 You heard from Marie Feld, she took out -- she
22 signed the warrant. She held the arraignment. It's
23 March 20th. Maybe 12 hours had passed since the
24 arrest, we're not exactly sure. Judge Sharff knows
25 nothing about it when the mayor calls him in and

1 starts discussing the case.

2 Now, it turns out as he completely, openly and
3 honestly told you, that communication would have been
4 unethical because the case was pending. He didn't
5 know at the time, but they did discuss the case and
6 he gave his opinion on what he would do as a police
7 officer.

8 Now, the person that did know that the case was
9 pending was Perry Eichor. And he, therefore, would
10 have known that it would be unethical for the judge
11 to talk to him about that case. He had all the
12 information, not Judge Sharff.

13 Ladies and gentlemen, Mayor Eichor did know
14 Judge Sharff's initial position on the case, thinking
15 like a police officer. He didn't think that he would
16 make the charge. But Mayor Eichor also knew they're
17 talking behind closed doors in his office. He
18 doesn't know what decision Judge Sharff would make
19 once he's on the bench in a bench trial. They don't
20 know what evidence will come out. Judge Sharff is
21 not tied to anything that he says behind closed
22 doors. And that's why Mayor Eichor takes the next
23 step and reminds Judge Sharff that he will be trying
24 the case in municipal court. Judge Sharff's court is
25 municipal court. And he, Judge Sharff, works for

1 city council. A clear threat against his job.

2 Now, on March 20th, there was no jury trial
3 request. That didn't come for a week later until
4 after it had been transferred to magistrate's court
5 where the judges are impervious to any sort of threat
6 because they're appointed by the governor. It's not
7 until after that change has been made that the case
8 ends up back in municipal court. Nothing would have
9 happened to that case on March 20th but for Mayor
10 Eichor's meddling in it and obstructing the
11 administration of justice. The fact that Judge
12 Sharff works for city council is not untrue, but it's
13 a fact that in nine years he had never been reminded
14 of it, he never felt pressured about it before.

15 You heard from a few other witnesses. You heard
16 from Marie Feld. She's the clerk of court and a
17 municipal judge that kind of signs and does
18 administrative things. She confirmed that Judge
19 Sharff did come in her office and did ask for the
20 number to the magistrate's court. She sort of
21 confirms the timeline that Judge Sharff gave you.

22 You heard from Judge Sara Davis this morning.
23 She's been a magistrate since 1992. She said that
24 she spoke to Judge Sharff. She's spoken to him
25 before, but his tone was different on that day he

1 called to transfer this case. He was apprehensive.
2 And though it was not the common practice to transfer
3 cases back and forth, she could tell from his tone
4 that it needed to be transferred. So, she agreed to
5 take it on. She explained the difference between
6 magistrate and municipal judges, that by him
7 transferring it to her, he wasn't putting her under
8 the bus, he wasn't putting her in a bad spot. She's
9 impervious to whatever political stuff is going on
10 elsewhere. She's appointed by the governor.

11 You finally heard from Holly Smith. Her desk is
12 right outside the mayor's office, within 15 feet, she
13 said. She can clearly see his door. And she
14 confirmed that around March 20th, about two weeks
15 before she gave her statement to Gene Donohue, there
16 was a closed-door meeting between Mayor Eichor and
17 Judge Sharff. Now, that's important because
18 Mr. Eichor is tied to what he told Gene Donohue. He
19 never spoke to the judge. He's tied to that. But
20 Holly Smith, who, luckily, does not work at the
21 pleasure of mayor and council told you otherwise.

22 I had to prove all of the elements of all of the
23 charges beyond a reasonable doubt. Threatening or
24 intimidating a court official. It is beyond a
25 reasonable doubt that Judge Leslie Sharff is a court

1 official. He's a municipal court judge. As to the
2 threat or intimidation, a threat does not have to be
3 of physical harm. A threat is a declaration of
4 punishment. It could be physical harm, it could be
5 harm to property, or it could be harm, as in this
6 case, to your future employment, to your financial
7 status, to your ability to feed your family. That is
8 a threat.

9 This case will be tried in municipal court. You
10 work for city council. As Judge Sharff told you, the
11 facts and circumstances surrounding his meeting with
12 Perry Eichor, there was no other way to take this
13 than as a threat. A threat that when the time came
14 for mayor and council to review whether Judge Sharff
15 kept on being a municipal court judge, Mayor Eichor
16 would vote against him and use whatever influence he
17 might have had to get others to vote against him. A
18 threat that he would be voted out. A threat that is
19 very real in Simpsonville where two other city
20 employees were voted out during Mayor Eichor's
21 tenure.

22 Again, what Mayor Eichor said was not untrue in
23 a technical sense. As of March 20th, the case
24 against Ms. Dixie Nance would have been his to hear.
25 A jury trial had not been requested. And as to the

1 fact that he worked for city council, the only way he
2 could mean that is in regards to employment. City
3 council has no business in the municipal court.
4 Cases are not run by city council. They're not
5 apprized of arrests. The only role city council has
6 in municipal court is that they hire and can vote out
7 the judges. And that's part of these ordinances
8 right here that you can read for yourself. The only
9 way that Judge Sharff works for city council is they
10 determine whether or not he keeps his job. And the
11 only way to interpret that language is as a threat.
12 In nine years, as I said, nobody has ever reminded
13 him of that fact. No case that he's seen has anyone
14 ever pulled him aside and reminded him of that.
15 Beyond a reasonable doubt, that was a threat, that
16 that mayor would vote him out if he didn't get his
17 way in the Dixie Nance case.

18 He's been charged with misconduct of office.
19 The State had to prove that he, being a public
20 official, mayor is an elected official, he breached a
21 duty he owed to the public. Perry Eichor was not Joe
22 citizen on the street. He was Mayor Perry Eichor in
23 Mayor Perry Eichor's office in City Hall calling in
24 the judge as he left doing official court duties. He
25 called him into his office. He was a person with

1 influence and power and he abused it. You will hear
2 that as an elected official, he has a duty of
3 accountability to the public. And he violated that
4 duty. All elected officials must be impervious to
5 corrective influences and they must transact their
6 business frankly and openly in the light of public
7 scrutiny to the public may know and be able to judge
8 them and their work fairly. The public has a right
9 to know -- had a right to know everything he said to
10 Judge Sharff. The public had a right to know
11 everything he did, meddling and getting involved in
12 the Dixie Nance case, but, certainly, in his
13 communication with the judge, but that was behind
14 closed doors.

15 Additionally, as a mayor, he took an oath that
16 you can read again yourself. But he took an oath as
17 mayor to uphold the constitution and to make the
18 decisions that mayor and city council make, including
19 hiring and firing ethically. And I would submit to
20 you beyond a reasonable doubt that threatening
21 someone's job if they didn't do what he wanted on a
22 case is misconduct. It's a breach of that duty.

23 Finally, he's been charged with obstruction of
24 justice. And any act that is intended to influence
25 the administration of justice is obstruction. The

1 mayor clearly called Judge Sharff into his office
2 with the intent to influence his decision. He spoke
3 to all of these people because his intent was to make
4 sure that Ms. Nance was not punished for what she did
5 because it was stupid. He even tells Gene Donohue,
6 Gene, I mean, I know you're supposed to be neutral,
7 but this is stupid. His intent was by whatever means
8 to make sure that Ms. Nance was not harmed, not
9 punished. To persuade Judge Sharff to rule in favor
10 of Ms. Nance.

11 Mr. Henry has pointed out the case ultimately
12 ended up back in municipal court. And that's true,
13 but it didn't remain in municipal court. On
14 March 20th, due to the threat he felt and the
15 pressure he felt to make the right decision by the
16 mayor, Judge Sharff had it transferred. For a time,
17 it went to magistrate's court. For a time, it was
18 disrupted. And for a time, justice was obstructed.

19 Ladies and gentlemen, the State has proven every
20 element of every crime charged beyond a reasonable
21 doubt. I ask that you deliberate. I ask you to look
22 back through the evidence presented. I ask you to
23 think back on the testimony of witnesses and any bias
24 and motivation they might have to lie. And then I
25 ask you to return a verdict that speaks the truth in

1 this case, a verdict of guilty for misconduct in
2 office, a verdict of guilty for intimidation of a
3 court official, and a verdict of guilty for
4 obstruction of justice.

5 MR. HENRY: Judge?

6 THE COURT: Yes, sir.

7 CLOSING STATEMENT

8 MR. HENRY: Thank you.

9 Counsel.

10 Closing arguments are kind of tricky because the
11 tendency is, you just witnessed it, to exaggerate the
12 facts to support your position. I'm not going to go
13 over all the arguments that were made that were not
14 correct. I'm leaving that to your good judgment
15 based on the evidence that you've heard. Much of
16 this has been exaggerated. Let me just point out a
17 couple of things.

18 First of all, she argued that Perry had
19 unnatural interest in this case. I disagree. His
20 neighbor was charged with yes, a stupid crime. She's
21 also a constituent. And mayors and members of
22 council get called all the time by constituents and
23 say look, I've gotten this -- I've been screwed by
24 the police, my zoning hasn't been passed. This is
25 one of those kinds of cases. And so, it is not

1 unnatural at all. Plus, she was a neighbor. Plus,
2 this is a bridge in his own section of town. All of
3 those are very natural considerations.

4 Unethical conduct. There's no unethical
5 conduct, otherwise this case would be in front of the
6 ethics commission. But they were stupid charges.
7 And as proof of how stupid the charges were, they
8 were dismissed in the end, so he was right. Also, he
9 has another constitutional duty. And his
10 constitutional duty is when he sees an injustice to
11 go try to fix it. That's part of what -- we all have
12 that obligation. As mayor, he has that, too.
13 There's no violation for him to talk to all of the
14 people on that lists. He can talk to any one of
15 them. If you in the indictments, you will see that
16 the only charge against him was whether he threatened
17 Judge Sharff. The misdirection argument is look, he
18 had an interest in this case. He talked to all these
19 people. None of those conversations was illegal,
20 otherwise they would be in the indictment. So, he
21 saw an injustice. He asked questions about it.
22 They're trying to misdirect you, don't let them do
23 it. Plus, where are all those witnesses to come in
24 and say that he threatened Judge Sharff? Not a one.

25 I want to point out that, obviously, he did not

1 take the witness stand in this case. You probably
2 wanted to hear from him, but he did deny the offense
3 by his not guilty plea and that's the part I want you
4 to take into consideration. Don't hold it against
5 him. The Judge is going to tell you what the law is
6 on that and you'll hear that clearly. But a not
7 guilty plea is the same as saying I didn't do it and
8 that's what you need to take back with you.

9 Also, the decision to not put up any evidence
10 was mine in large part because I felt the flaws that
11 are demonstrated in the State's case became clear
12 through cross-examination. I hope you feel the same
13 way.

14 Another point, I'm expecting the Judge to give
15 you a charge at the end of the case that Perry's good
16 character alone is enough to justify a not guilty
17 verdict. So keep that in mind. Good character in
18 this case, no prior record, long service in the
19 military and also being a prior police officer, not
20 to mention at one point being mayor of Simpsonville.

21 One strategy here in this case is what I call
22 the spaghetti strategy. You take three identical
23 charges based on the facts, throw them against the
24 wall and hope that one sticks. That's what's being
25 done here. Look at the words when you get back there

1 on the indictments. Obstruction of justice, an
2 implicit threat regarding future employment status.
3 Misconduct of public official, an implied threat
4 concerning future employment status. And
5 intimidation of a court official, implicitly threaten
6 future employment status of a judge. These are all
7 the same. It's all about the alleged threat.

8 I don't want you to fall for the spaghetti
9 approach because in Perry's situation, it's all or
10 nothing. Okay. If you think in your own minds that
11 going back -- when you go back there and say well,
12 maybe we'll find him guilty of one and not the
13 others, that's not it wouldn't be so bad. It would
14 be. That's not true, it would be bad. A lot is at
15 stake here for him and he wants a clean slate when
16 this is over. Don't compromise because he's entitled
17 to a not guilty verdict on all three of these
18 charges.

19 I don't know why Chief Moore testified and I
20 don't know why Holly Smith testified in this case.
21 She was talking about an entirely different date. If
22 you remember the testimony -- I have to go back and
23 remember all this. The judge couldn't remember
24 whether the door was opened or closed when this
25 meeting occurred. She was sure the door was closed.

1 Maybe that was a second meeting. She didn't know the
2 date. I just couldn't figure out why they testified.

3 Marie Feld was important for us more so than for
4 the State because she pointed out to you that this
5 was really not Judge Sharff's case. There were no
6 motions pending, no court appearance, no action.
7 They never brought in a docket to show you that the
8 case was ever on the docket. And no rulings were
9 made. There was no real threat to any ruling in this
10 case because Judge Sharff did not have this case. It
11 was sitting in a pile. And until the jury trial
12 request was made, the only thing that happened was he
13 panicked and sent it to magistrate's courts, at which
14 point, it was brought back in front of the jury trial
15 judge.

16 Interestingly enough, when the argument was made
17 by the State, they talked about John Laux. Now, John
18 Laux seemed to me to be kind of a character. But
19 what he also was was a witness for the State. He did
20 not comply. And the reason he didn't comply is not
21 the reason they gave you. The reason he didn't
22 comply was he had been lied to. If you remember, he
23 said specifically the report that was made about what
24 I said was not accurate by SLED. And here's a point
25 to consider. The State was trying to present this

1 three-person conversation between Perry Eichor, John
2 Laux and the city administrator. That was Mr. David
3 Dyrhaug. If John Laux justified that nothing
4 happened, was not telling the truth, why didn't the
5 State bring in Mr. Dyrhaug to clear it up? He was
6 there, too. So, why didn't they bring him in?
7 That's because what John Laux was saying that no
8 threat was made was correct.

9 Hard to spend much time on Agent Donohue in this
10 case. He doesn't know when it happened, put the
11 wrong information in the warrant, the wrong crime
12 date. He has absolutely no first-hand information.
13 One point to make is that he didn't treat my client
14 fairly in this process. He was upfront with Judge
15 Sharff, sat down with him with a tape recorder and
16 said here's what we're going to talk about. With
17 Perry, he didn't say where were you on March 20th,
18 what happened with Judge Sharff? He did a secret
19 recording and still there is no admission of any
20 responsibility on my client's part. You can't get
21 stronger than that.

22 The responsibility in this case has been turned
23 on its head. The conversation, if it happened at
24 all, between Judge Sharff and Perry Eichor was a
25 violation by the Judge, not by Perry. Perry can talk

1 to whoever he wants to. A judge cannot. A judge
2 cannot. And their own witness told you that -- well,
3 two of them, actually, Sara Davis and Judge Sharff
4 himself. According to Sara Davis, for a judge to
5 discuss a pending criminal case, if it was, indeed,
6 pending, with a political person or anyone else
7 violates the Canons of Ethics. He was out of the
8 case anyway for talking about the case itself in
9 violation of the Canons of Ethics. Apparently, he
10 just didn't care about that part. And he did discuss
11 the case.

12 He didn't want to say he discussed the case, you
13 remember? In fact, he denied it. He said I did not
14 discuss this case. I did not give an opinion. And
15 on cross-examination, his own words came back to
16 haunt him. He had to admit that he discussed the
17 case, gave an opinion. And then he claimed well, I
18 wasn't a judge then, I was an ex-police officer. I
19 had a different hat on, so it didn't count. But what
20 he did was a violation of the Canons by saying well,
21 I would have gotten the sign down. I would have
22 talked to the people -- I would have found who did
23 it, talked to the people and that would have been the
24 end of it. So, the case would have been dismissed.
25 So he was telling his opinion in the case. He

1 finally admitted that what he did was wrong. But the
2 State glosses over that and wants to focus on Perry
3 Eichor only. And I think you know by now why they're
4 doing that, why he was targeted. Judge Sharff
5 panicked when he did what he did. He sent the case
6 off to the magistrate's court. And based on his
7 violation of the ethics canons, he probably should
8 have. He just did not admit that was the reason. He
9 made up a new one and that was that my client
10 threatened him.

11 He stretched the truth a number of times, some
12 major, some minor. He wanted to say that Perry told
13 him that the case was triable in his particular
14 court. As I pointed out on cross, it was not that in
15 the statement, it was triable in city court, which
16 everyone knew. This was not a threat. This was a
17 discussion. If Perry Eichor said what Judge Sharff
18 claims, you remember you work for city council, it
19 does not have to mean you're going to be fired. It
20 couldn't mean you're being fired because Perry Eichor
21 could not fire Judge Sharff. In fact, he voted for
22 him in January to be renewed. Sharff -- Judge Sharff
23 has never been denied renewal. It's been unanimous
24 every time. There was no chance, no chance in this
25 world that Judge Sharff would no be renewed again.

1 The key to this case comes from Judge Sharff's
2 own mouth. I was asking him specifically the words
3 you work for city council, could they have other
4 meanings? In his own head, in his own heart, he
5 didn't think so, but he also said other people could
6 have a different perception. I gave some
7 suggestions, you probably heard those. This is what
8 those words could have meant. If the words could
9 have meant something else that is nonthreatening, you
10 must find him not guilty.

11 Sometimes the State in these kinds of cases,
12 these political cases focus so hard that they miss
13 the big picture. Clearly, they want to get the
14 mayor, but the ethical violation in this case, the
15 legal violation in this case was by the judge. And
16 they just tried to hide it so you wouldn't look at
17 it. It had to be brought out. It had to be dragged
18 out as part of this case. And it was in his own
19 statement.

20 Do not reward the State for this targeted
21 prosecution. Again, you see what's happening here.
22 You can read between the lines. Find Perry not
23 guilty of all counts and send him to where he
24 belongs. Thank you.

25 THE COURT: All right. Ladies and gentlemen,

1 it's time for me to give you the charge on the law.
2 Is there anyone -- it's going to take me about 20
3 minutes. Is there anyone among you who wants to take
4 a break before we get started? Anyone?

5 (There was no response.)

6 Okay. All right, ladies and gentlemen, when we
7 began this case, I told you that you had a certain
8 role to perform and that I have a certain role to
9 perform. I advise you that my role to perform is as
10 the judge of the law in this case, which means that
11 it is my responsibility to charge you as to the
12 relevant and applicable law.

13 Now, you took an oath to follow the law as I
14 give it to you in this case. So if you come into
15 this courtroom with any opinion, any prior knowledge,
16 or prior disposition about what the law is or what
17 the law should be, I charge you now to disregard
18 that, disabuse yourself of any opinion that you may
19 bring into the courtroom. You must accept the law
20 under your oath as I give it to you.

21 Now, understand, your role is as the judge of
22 the facts. You will determine what the facts are in
23 this case based on the evidence that has been
24 presented. If at any point during this trial you
25 have heard me say anything that gives you the

1 impression that I have an opinion about what the
2 facts are or about what your determination should be,
3 again, please disregard that, disabuse yourself of
4 that notion. I have no preference one way or the
5 other and I have no opinion about what the facts are
6 or about what your ultimate determination should be.

7 Now, ladies and gentlemen, in this case, as you
8 know, you are considering three indictments that have
9 been brought by the State. Intimidation of a court
10 official, misconduct of a public official and
11 obstruction of justice. Now, these are three
12 separate and distinct charges. There are three
13 separate and distinct indictments. And you will have
14 three separate and distinct jury verdicts to
15 consider. Understand that each of those
16 indictments -- each of those charges must be
17 considered independent of one another. The State has
18 the burden of proving each and every element of each
19 offense beyond a reasonable doubt. So, when you look
20 at those charges, you will determine whether the
21 State has met its burden of proof with respect to
22 each charge.

23 Now, when I say that, what I mean is that just
24 because you find the Defendant either not guilty or
25 guilty on a charge does not mean that you must find

1 him not guilty or guilty on the additional charges.
2 You consider each indictment independent of one
3 another.

4 Now, ladies and gentlemen, when we started this
5 entire case with the qualification of the jury and
6 the selection of the jury, I told you that in the
7 United States of America, in the State of South
8 Carolina and in the County of Greenville, a criminal
9 defendant is presumed innocent until proven guilty
10 beyond a reasonable doubt by the State. The State
11 has the burden of proving each and every element of
12 all the offenses beyond a reasonable doubt. As we
13 sit here right now, the Defendant retains that
14 presumption of innocence and he will retain that
15 presumption of innocence until you determine whether
16 the State has met its burden of proof.

17 Now, ladies and gentlemen, we talked about proof
18 beyond a reasonable doubt. And proof beyond a
19 reasonable doubt is proof which leaves you firmly
20 convinced of the Defendant's guilt. Now, understand
21 there are few things that you could know with
22 absolute certainty in this world and the law does not
23 require that proof is provided beyond any possible
24 doubt. But understand that after your review of the
25 evidence in this case, if you are firmly convinced of

1 the Defendant's guilt, then you must under your oath
2 find him guilty. However, if after your view of the
3 evidence you believe that there is a real possibility
4 that he is not guilty, then you must under your oath
5 find him not guilty.

6 Now, ladies and gentlemen, you know in this case
7 and you have seen that the Defendant has elected not
8 to testify. That is his constitutional right not to
9 testify. It is his constitutional right to remain
10 silent. You cannot hold that against him. You
11 cannot hold it against a citizen of the United States
12 that he or she exercises a constitutional privilege.
13 As a matter of fact, that is so sacred a privilege
14 and a right in our society and in our country that
15 you cannot even discuss it in your jury room. It is
16 not relevant to your determination in this case.
17 Again, the State has the burden of proving each and
18 every element of the offense beyond a reasonable
19 doubt.

20 Now, ladies and gentlemen, when you look at the
21 evidence, you are going to weigh and you are going to
22 value that evidence that has been presented. And in
23 weighing and valuing that evidence, you will
24 determine what the facts are. Now, you will
25 determine the credibility of witnesses. And when you

1 are valuing and weighing evidence and you are
2 determining what the facts are, you will determine
3 who is credible and who is not credible. That is
4 entirely up to you and it is in your discretion to
5 determine who is believable and who's not believable.

6 Now, understand when you heard a witness
7 testify, you may chose to accept his testimony -- his
8 or her testimony and view it as very credible and
9 very valuable. However, understand that you can take
10 just a portion of that testimony and determine that
11 it is credible and valuable and put weight on it and
12 disregard the remainder. That's entirely up to you.
13 Now, in your own common sense, you recognize when
14 somebody is credible and when they're not credible.
15 You make that determination based on your common
16 sense. That is, what did the witness have to say?
17 How did they say it? How did they express
18 themselves? What was their body language? What were
19 their facial expressions? Did the witness have
20 something to gain or to lose as a consequence of his
21 or her testimony? You take all of that into
22 consideration and you will determine whether, in
23 fact, the witness was credible or not and then what
24 value to place upon that testimony just as all of the
25 evidence.

1 Now, ladies and gentlemen, ordinarily, you're
2 going to receive evidence in two different forms in
3 any case that comes before the court. Evidence comes
4 in the form of direct evidence and circumstantial
5 evidence. Direct evidence is evidence which
6 immediately establishes the main fact being proven.
7 Circumstantial evidence is proof of a chain of facts
8 or collateral facts which taken together prove the
9 main fact to be proven.

10 Now, that's a pretty simple definition.
11 Sometimes I find it helpful to give you an example
12 which may help you conceptualize it a little bit
13 more. So, let's say it's January and you're going to
14 bed at night and you walk past the front window on
15 your way to the bedroom. And you look out in your
16 front yard or your front lawn or parking lot and you
17 see that there's no precipitation on the ground. And
18 you go to sleep that night. You wake up and you look
19 out that very same window or door and you see that on
20 your front lawn or in the front yard or the parking
21 lot, there is a blanket of snow on the ground. You
22 also notice in that snow that there are footprints
23 which lead to your door and lead away.

24 Now, in that set of circumstances, you have
25 direct evidence that it showed last night. Because

1 it's immediately established by the snow that's on
2 the ground. You can pick it up, you can touch it,
3 you can feel it, you can taste it. It's there. But
4 you also have circumstantial evidence that sometime
5 that night or early that morning somebody came to
6 your front door and walked away. You can't see that
7 person, you can't smell them, you can't taste them,
8 you can't touch them, but know as a consequence of
9 the timing of that snowfall and the presence of the
10 footsteps -- footprints in the snow that someone must
11 have necessarily come to your door that night or
12 early that morning. That's circumstantial evidence.

13 Now, ladies and gentlemen, the law does not
14 prefer circumstantial evidence over direct evidence
15 or direct evidence over circumstantial evidence. You
16 decide what has value and what has weight. You
17 decide how to value either direct or circumstantial
18 evidence in your analysis of the evidence. I will
19 tell you, ladies and gentlemen, that to the extent
20 that the State relies on circumstantial evidence, all
21 of the circumstances must be consistent with each
22 other and when taken together point conclusively to
23 the guilt of the accused beyond a reasonable doubt.
24 If the circumstances merely portray the Defendant's
25 behavior as suspicious, the proof has failed.

1 Now, ladies and gentlemen, I haven't read much
2 to you up to now. I'm going to read a little bit to
3 you because I'm going to give you some precise
4 definitions of law. We're going to talk about the
5 charges specifically. And the reason I'm reading it
6 to you is because this is an important case not only
7 for the Defendant and the State, but for you as well
8 because you have invested some time in it. So, it's
9 important that I get precise definitions precisely
10 right. So, you'll pardon me when I read a little bit
11 to you.

12 The first case that is before you, the first
13 case that you must consider is a charge of
14 obstruction of justice. The Defendant is charged
15 with obstruction of justice. The State must first
16 prove beyond a reasonable doubt that the Defendant
17 committed an act which prevented, obstructed, impeded
18 or hindered the administration of justice. The State
19 must also prove beyond a reasonable doubt that the
20 Defendant did the act with intent to obstruct
21 justice. The Defendant does not have to succeed in
22 the effort to obstruct justice. It is enough that
23 some act was done in furtherance of the attempt to
24 obstruct justice. The State must prove beyond a
25 reasonable doubt that the Defendant committed some

1 act in furtherance of his endeavor to obstruct
2 justice.

3 Now, ladies and gentlemen, I'm going to move on
4 now to the second charge you're to consider and that
5 is intimidation of a court official. It is unlawful
6 for a person by threat or force to intimidate or
7 impede a judge, magistrate, juror, witness, or
8 potential juror or witness, arbitrator, commissioner
9 or member of any commission of this state or any
10 other official of any court in the discharge of his
11 duties as such or to destroy, impede or attempt to
12 obstruct or impede the administration of justice of
13 any court. The State must prove beyond a reasonable
14 doubt that the communication was made by the
15 Defendant for the purpose of issuing a threat or that
16 the Defendant knew that the communication would be
17 viewed as a threat.

18 All right, ladies and gentlemen, now we're going
19 to turn to the third charge, misconduct of an
20 official. Misconduct in office occurs when a person
21 in public office fails to properly and faithfully
22 discharge a duty owed by law. Existence of a duty
23 owed to public is essential to sustain a conviction
24 of misconduct in office. Otherwise, if any behavior
25 is merely a private misconduct of one who happens to

1 be an official. Misconduct includes an act, the
2 omission and the breach of duty of public concern by
3 persons in public office provided it was done
4 willfully and dishonestly. Public officers must be
5 impervious to corrupting influences and they must
6 transact their business frankly and openly in the
7 light of public scrutiny so that the public may know
8 and be able to judge them and their work fairly. To
9 find the Defendant guilty of misconduct in office,
10 you must find that he acted with dishonesty and
11 corruption.

12 Now, ladies and gentlemen, in this case and in
13 all -- with respect to all the charges, in order to
14 establish criminal liability, criminal intent is
15 required. Criminal intent must be proven by the
16 State beyond a reasonable doubt. Now, criminal
17 intent is a conscious wrongdoing. It is up to you to
18 determine what the Defendant intended to do based on
19 the circumstances shown to have existed.

20 Now, ladies and gentlemen, in your consideration
21 of this case, you may consider evidence of the
22 Defendant's character along with all the evidence in
23 deciding whether or not the Defendant committed the
24 crime.

25 Now, ladies and gentlemen, I told you I have

1 three verdict forms for you. I'm going to explain
2 them for you very briefly. There is one for
3 intimidation of a court official. There's one for
4 misconduct of a public official and for obstruction
5 of justice. It's important, again, that I point out
6 to you, there are three separate verdict forms. You
7 consider them all independent of one another. Each
8 of them has the caption of the case and then it has,
9 we, the jury, unanimously find the Defendant, Perry
10 Roy Eichor. This is important because it points out
11 to that your verdict must be unanimous. You must
12 unanimously decide. Your verdict cannot be 10 to 2
13 or 11 to 1. It must be a unanimous verdict. The
14 verdict must be based on the evidence that's been
15 present in trial. It can't be based on any passion,
16 prejudice, caprice, bias or anything other the
17 evidence that was presented in trial and the law that
18 has been given to you bearing upon this evidence.
19 You have on each two choices and you have a line next
20 to it, not guilty and guilty.

21 Now, understand that I prepare these verdict
22 forms. And there are two choices and I must put them
23 in some order. Don't think that because they are in
24 some particular order that I have a preference as to
25 what you should select. I don't. If there are two

1 things, one must be first and one must be second. So
2 don't divine from the verdict form that I have a
3 preference, I certainly don't.

4 But Ms. Preston, what you will do is after the
5 jury has come to a unanimous decision, then you would
6 check the box that is appropriate and then sign as
7 foreperson of the jury and then you would date the
8 same. After having come to a unanimous verdict on
9 all three indictments, then you left the bailiff
10 know. The bailiff will let me know and we'll come
11 back into the courtroom and receive the verdict.

12 Now, I told you any number of times don't
13 discuss the case yet. Now, I'm going to send you
14 back to your jury room. I don't want you to discuss
15 the case quite yet. At this point, the attorneys
16 have the opportunity to take exception to the law
17 that I have given to you and to correct any mistakes
18 that I may have made. So if I have made a mistake or
19 I need to tell you something in addition or retract
20 something that I have said, then I'll bring you back
21 out. I will make a clarification and correction on
22 the charge and then I'll send you back to the jury
23 room to begin your deliberations.

24 Now, you'll know when it's time to start because
25 I'm going to send these verdict forms back. When you

1 have physical possession of these verdict forms, then
2 you'll know that it's time for you to begin your
3 deliberations. So ladies and gentlemen, please be
4 patient with me just a few more minutes. Don't
5 discuss the case yet. You may return to your jury
6 room.

7 (WHEREUPON, the jury left open court at
8 approximately 1:55 p.m.)

9 THE COURT: All right, counsel.

10 Is the door shut?

11 Exceptions to the charge?

12 MS. BENTLEY: Nothing from the State.

13 THE COURT: Yes, sir.

14 MR. HENRY: Yes, sir, just a couple of things,
15 Judge.

16 THE COURT: Yes, sir.

17 MR. HENRY: If I heard correctly, I think you
18 left out the part on good character that says that
19 that evidence may in and of itself create doubt as to
20 guilt. I would like that added. I want to preserve
21 my objection to charge number four, which is the
22 charge on ambiguous. I think we've already discussed
23 that. I just wanted to make that for the record.
24 That's under U.S. vs. Barkley. I won't put the whole
25 instruction on there, but it's charge number four.

1 THE COURT: Yes, sir. Okay.

2 MR. HENRY: And I think I have one other one.

3 THE COURT: All right.

4 MR. HENRY: The charge you gave on the Elonis
5 charge, number eight that I submitted.

6 THE COURT: Yes, sir.

7 MR. HENRY: Which you did give.

8 THE COURT: Yes, sir.

9 MR. HENRY: I believe you isolated it to the
10 second indictment only. I think it needs to be for
11 all three indictments and made clear that it covers
12 all the threats in all three cases. And that takes
13 care of it.

14 THE COURT: Okay. All right. Good enough. All
15 right. I thank you for that, Mr. Henry, and you're
16 certainly protected on the record in that regard. I
17 think that the character charge was a direct
18 recitation of the law outstanding in the State of
19 South Carolina. I'm not going to change that. I
20 respect your position on the same and I appreciate
21 it, but I think my charge was a recitation of the
22 law.

23 With respect to your other exceptions, I think
24 that in total and in whole, I substantively addressed
25 all the issues that you had asked me to in your

1 request for charges. That specific case, I know that
2 you had wanted me to charge, request to charge number
3 four; is that correct?

4 MR. HENRY: On Barkley?

5 THE COURT: Yes, sir.

6 MR. HENRY: Request to charge number four, yes.

7 THE COURT: Okay. I want to make sure I
8 referred to it correctly. About the ambiguous nature
9 of the threat and how they must prove it beyond a
10 reasonable doubt, I don't take exception to that as
11 being a proposition of law. However, as we discussed
12 in chambers, that's from an Eighth Circuit case.
13 That is not -- that has not been recited as the law
14 in the State of South Carolina. And I'm not saying
15 that it's not, but I chose not to charge that because
16 I felt like it was, perhaps, a commentary on the
17 facts and I wanted -- I think it's important for the
18 judge -- for the Court to give a general charge on
19 the law and avoid making particularized charges on
20 the facts. That was my concern. So, I'll deny your
21 motion in that regard. But you're protected on the
22 record, certainly.

23 MR. HENRY: One other thing, Judge.

24 THE COURT: Yes, sir.

25 MR. HENRY: You didn't address number eight

1 being isolated to one of the indictments. Did you
2 intend for it to just be the one case?

3 THE COURT: Well, you know, I recognize your
4 position in that regard and I think that I charged it
5 generally. I recognized it as a placeholder in the
6 entire charge that it came after the one
7 particularized indictment.

8 I will ask you, Ms. Bentley, do you have any
9 issue with me addressing that to the juror in a
10 corrected or amended charge?

11 MS. BENTLEY: I think it would give it undo
12 influence if you were to recharge it and bring the
13 jury back out, so I would object to that. I believe
14 the jury heard it.

15 THE COURT: Okay. All right. I'm going to --
16 I'm going to refrain from bringing them back out and
17 giving them an additional charge in that regard,
18 Mr. Henry.

19 MR. HENRY: All right. There is one more,
20 Judge, that we talked about in chambers, which you
21 said you were not going to charge. That was number
22 seven.

23 THE COURT: Yes, sir.

24 MR. HENRY: On the burden of the State to prove
25 beyond a reasonable doubt that any threat made by the

1 Defendant was made with the specific intent to
2 execute it. You rejected that. I just want to make
3 sure I'm protected on the record.

4 THE COURT: Yes, sir, you are.

5 MR. HENRY: Thank you, Judge.

6 THE COURT: Yes, sir.

7 Okay. All right. Counsel, if you will do an
8 inventory of the exhibits and then when you are
9 satisfied that all the exhibits are present, give
10 them to the bailiff to deliver to the jury to begin
11 their deliberations. The two alternate jurors,
12 Ms. Abercrombie and Mr. Godfrey, I intend to dismiss
13 from chambers.

14 I will say -- I do want to say before we receive
15 the verdict that I congratulate y'all on having tried
16 an excellent case. I congratulate everyone involved
17 for having been civil and gracious and professional.
18 I don't know what the result of this case will be,
19 but I can tell you that you all acquitted yourself
20 very favorably and for that, I am very thankful and I
21 congratulate you for it.

22 MR. HENRY: Thank you, Judge.

23 (WHEREUPON, deliberations of the jury began at
24 approximately 2:00 p.m.)

25 (WHEREUPON, the Court was in recess awaiting a

1 MADAM FORELADY: I will.

2 THE COURT: And you can take those exhibits and
3 just put them right on that table.

4 All right, Madam Clerk, publish the verdict,
5 please.

6 THE CLERK: Your Honor, in the case of
7 2014-GS-23-4231, the State of South Carolina vs.
8 Perry Roy Eichor, we, the jury, unanimously find the
9 Defendant, Perry Roy Eichor, as to the charge of an
10 intimidation of a court official, not guilty. In the
11 case of 2014-GS-23-4230, we, the jury, unanimously
12 find the Defendant, Perry Roy Eichor, as to the
13 charge of misconduct of a public official, guilty.
14 In the case of 2014-GS-23-4229, we, the jury,
15 unanimously find the Defendant, Perry Roy Eichor, as
16 to the charge of obstruction of justice, guilty.
17 These are signed by Ms. Preston, our foreperson.

18 Ladies and gentlemen, if you agree these are the
19 verdicts you reached in your deliberation room, would
20 you please raise your right hand.

21 (WHEREUPON, all members of the jury raised their
22 right hand.)

23 THE COURT: All right. Counsel, anything
24 additional of this jury?

25 MS. BENTLEY: Nothing from the State, Your

1 Honor.

2 MR. HENRY: Not at this time, Judge. I can deal
3 with the other issues.

4 THE COURT: Good enough.

5 All right. Ladies and gentlemen, I appreciate
6 your service on this jury. We're going to proceed to
7 sentencing now. You're welcome to stay or you may
8 retire and go back to your jury room. That is
9 entirely up to you. There are some additional
10 proceedings that we're going to take up now which may
11 take anywhere from five minutes to half an hour. So
12 at this point in time, if you'd like to retire, then
13 you're welcome to do so or you may stay.

14 I also will tell you that I'd like to give you
15 the opportunity at some point in time to ask me any
16 questions that you have, to make any comments that
17 you like to have generally -- make generally about
18 jury service, about your service on jury duty this
19 week, and to informally thank for your service as
20 jurors this week as well. So, I'll ask you as a
21 collective body, would you prefer to stay for
22 additional proceedings or would you like to retire at
23 this point?

24 MADAM FORELADY: Stay.

25 THE COURT: Okay. Then we shall stay.

SENTENCING

1
2 All right. If the parties could please approach
3 for sentencing.

4 I understand, Mr. Henry, you may have some
5 motions to make as well, sir.

6 MR. HENRY: I have, but I'd like to make them in
7 writing within the 10 days, Judge.

8 THE COURT: Yes, sir, you may do so. You may do
9 so.

10 If y'all will approach for sentencing.

11 Okay. Anything further from the State before
12 the sentencing?

13 MS. BENTLEY: Your Honor, just that Mr. Eichor
14 was in a position of public trust. It is noted that
15 he has no prior record, however, most people in his
16 situation convicted of these crimes have no prior
17 record.

18 THE COURT: Okay. All right. Good enough.

19 Mr. Henry, anything you'd like to tell me, sir?

20 MR. HENRY: Nothing that you really probably
21 don't already know. My client is 80 years old. He's
22 had a long career in both military, 21 years in the
23 Air Force. He has an excellent record in public
24 service. I can list all the places he has worked,
25 been director of a jail, etcetera. And we think this

1 is clear a probationary case. There is absolutely no
2 risk to the public for him being placed on probation.
3 The initial offer in this case was for probation for,
4 actually, two counts. So, we think it would be well
5 within the Court's discretion and the right decision
6 to make -- to place him on probation for these
7 offenses.

8 THE COURT: All right. Thank you, Mr. Henry.

9 Mr. Eichor, is there anything you'd like to tell
10 me, sir?

11 MR. EICHOR: No, sir.

12 THE COURT: Okay. Ms. Bentley, what's the
13 maximum possible penalty under the law for
14 obstruction of justice and misconduct in office?

15 MS. BENTLEY: It's 10 years on both, Your Honor.

16 THE COURT: Okay. Okay. All right. I believe
17 the broader message this signal sends to society at
18 large is the importance of the independence of the
19 judiciary. I think that is an important message to
20 send to society.

21 I have told this jury in the charge that they
22 could, in their determination of the facts of this
23 case, take into consideration your character,
24 Mr. Eichor. And I will tell you that in my
25 sentencing, I as well take into consideration your

1 character as it is my prerogative to do. In looking
2 at this case, I find that it is an isolated
3 transgression of good judgment in an otherwise
4 very -- in a very good life that you've led. And
5 looking at it in the context, I have to agree with
6 your attorney that a probationary sentence is
7 appropriate.

8 In each of these cases, the sentence of the
9 Court is that you be committed to the Department of
10 Corrections for a period of three years, suspended to
11 probation for one year. Concurrent, credit for any
12 time that you may have served. Good luck to you.

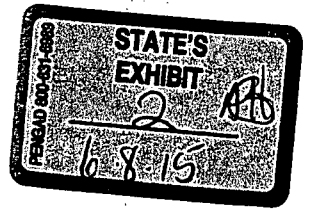
13 MR. HENRY: Thank you, Your Honor.

14 MS. BENTLEY: Thank you, Your Honor.

15 THE COURT: All right, ladies and gentlemen, if
16 you want to retire to the jury room, I'll come back
17 and release you a little more informally.

18 (WHEREUPON, the jury left open court at
19 approximately 3:20 p.m.)

20 (WHEREUPON, the proceedings were concluded.)
21
22
23
24
25



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

GENERAL SESSIONS
14-GS-23-4229, 4230 & 4231

State of South Carolina,

vs.

Perry Eichor,

Defendant.

INTERVIEW OF PERRY EICHOR
CONDUCTED BY SPECIAL AGENTS
E.G. DONOHUE AND RICK CHARLES
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

APRIL 4TH, 2014

KAREN A. BELANGER

FOOTHILLS COURT REPORTING
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SPANDENDO@GMAIL.COM

1 Q. Tell us about this bridge deal thing down here.

2 A. The sign?

3 Q. The sign.

4 A. Okay, strange enough, it's right by my house.
5 Okay?

6 Q. Okay.

7 A. There's Hillpine. There's somebody else's house,
8 and then there's my house. Okay? And then the
9 creek's right in back of my yard, which has
10 nothing to do with anything except the fact that
11 it's just that I'm -- I have [inaudible]. Well, I
12 was driving by. Anyway, last June we had this
13 [inaudible] with rain, okay? It came down there.
14 And I went down and the fire department and the
15 police department were there. And I said, well,
16 the bridge is about [inaudible]. And I think they
17 tried to fix some of the asphalt off that had
18 washed, okay, because it just cost a bundle. And
19 then they came down again and looked at it. And
20 John said, "well, it's okay. It will be a while."
21 So then they went down to put the asphalt back,
22 okay? And John said, "Shit." I think that's what
23 he said. "It's really deteriorated. We're going
24 to close it." And so they put a sign up and it
25 was closed. The weight limit was 5,000 pounds.

1 well, then all of a sudden, I think I find out,
2 and he said it's unsafe, period. Okay, so they
3 closed the thing, put signs up on top. And then I
4 drove by one Saturday or Sunday. I forget which.
5 And all the barriers have been moved to the side,
6 put up on the side. Well, that's weird. I didn't
7 think anything about it. I thought maybe the
8 public works had done it or something, or they've
9 done something. And I came in on Monday and
10 talked to John. He said, "well, no, we just
11 put -- we just went out there and put concrete
12 barriers down there on top." And I went, well,
13 okay. I didn't think to ask him if they'd moved
14 them on -- well, apparently they hadn't. Somebody
15 else moved them. But nevertheless, that all leads
16 up to this. Then they put the concrete barriers
17 and they put all the street signs -- I mean the --
18 Q. Bridge closed and all that?
19 A. Bridge closed with the other signs. Damn, I hate
20 getting old. Then where you have the board across
21 and the two boards coming up the side, that you
22 use for carpentry when you're working --
23 Q. Yeah, a sawhorse.
24 A. Sawhorse.
25 Q. Okay.

- 1 A. They had the sawhorse up there and some orange
2 barrels and stuff. So anyway, I'm driving by on
3 Monday, okay? Or maybe it was -- I guess it was
4 on -- it could have been on Sunday, okay, the next
5 week. And I look up there, and there's this sign
6 stretched out that says "Chief Grounsell, give
7 back your" -- something like, "Chief Grounsell,
8 give back your pay and fix our bridge," okay? I
9 didn't think anything about, because, I mean, if
10 the road is this wide right here, the sign took up
11 about this much of it.
- 12 Q. Okay.
- 13 A. And you could still see "Bridge Closed" and you
14 could see all the other stuff around it. So I
15 didn't think much about it. And then I find out
16 that they've arrested this lady who lives down the
17 street for putting it up. And apparently -- and
18 she called me and told me. And I said, well,
19 okay. And she said, "And I told them I did it."
20 She said, "I will not lie, if they ask me if I did
21 it." And so that's all I know about it.
- 22 Q. Is there some kind of ordinance or something that
23 they used, or, I mean, what did they base that on?
- 24 A. I asked this at a Council meeting. Why would you
25 arrest that? Normally just take the damn banner

1 down.

2 Q. Right.

3 A. I mean, if they said, you know, fuck the mayor,
4 okay, fix our bridge, I would have said just tell
5 them to take the banner down. Okay? But they
6 took this damn banner down to forensics, to get
7 them to process it for prints. I know what they
8 were thinking. They were probably hoping, okay,
9 that my prints would be on it. But I just didn't
10 know anything about it. And somebody, old Cromer
11 -- you know Bill Cromer?

12 Q. Yeah, I know Bill.

13 A. He comes to the front door and he said, "we ain't
14 getting involved in that." And so I asked at a
15 Council meeting. I said, "Grounsell," I said,
16 "you know, what's the deal on this, you know?
17 what are you doing?" "Well, we're going to charge
18 her with a felony," because there's a State Law
19 that says that you cannot deface or obscure a
20 sign, you know, a road hazard sign.

21 Q. Yeah.

22 A. Well, I looked at that. And myself, I don't think
23 it was defacing it or anything else. You could
24 see. Hell, 90 percent of us saw the sign. It was
25 still -- you could see it. This was down below.

1 And so I thought, what the hell? And so
2 apparently a couple Council members got mad at me
3 for asking that. But he said, "well, we just
4 charged her with a misdemeanor." And I happened
5 to know, okay, because everybody's kept me
6 informed. And she's got an attorney in
7 Spartanburg, and they're going to fight this damn
8 thing all the way to the Supreme Court. I mean
9 that's just -- I thought that was another -- Gene,
10 I know you all have to be in neutral.

11 Q. Yeah.

12 A. But that's stupid. I mean, you just don't -- I
13 mean, that's looking for an excuse. And we had a
14 sign ordinance at the time. Jason here will
15 explain the whole thing. But it's -- but we find
16 them all the time and we take them down. They
17 won't charge you --

18 Q. You mean like signs people put on the side of the
19 road, and stuff like that?

20 A. Yeah, stuff like that. And we've had stuff,
21 banners put up and stuff. And people put yard
22 sale signs on the stop signs, okay?

23 Q. Yeah.

24 A. So that's defacing a warning sign. But, you know,
25 it's --

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. [REDACTED]

7 A. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. [REDACTED]

12 A. [REDACTED]

13 Q. [REDACTED]

14 A. [REDACTED]

15 [REDACTED]

16 Q. [REDACTED]

17 A. [REDACTED]

18 [REDACTED]

19 Q. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. [REDACTED]

23 A. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

2

3

4

5

6 Q. Let me get back to the bridge thing --

7 A. Okay.

8 Q. -- so we can get that out of the way. So from
9 what you're saying, you disagreed with the way

10 they handled it? Strongly, I would guess to say.

11 A. Yeah, I mean, come on, gang. I mean just because
12 it has your name on it, I mean, doesn't mean -- I
13 don't think if it hadn't had his name on it -- I
14 mean, I don't think they would have taken him down
15 to process for prints or anything like that. I
16 wouldn't have.

17 Q. Have you talked to anybody about it, besides
18 Council in meetings or anything, that you
19 remember?

20 A. The gal who they arrested --

21 Q. What's her name? Do you know?

22 A. Dixy Nance, and I think it's in the 500 block of
23 North Almond.

24 Q. Okay.

25 A. And probably -- I'm not sure. I may have talked

1 to Matthew Gooch or somebody like that, you know,
2 but --

3 Q. Did they actually hook her up and bring her in,
4 and process her through, or just --

5 A. No, they called her on a Tuesday maybe. Okay? I
6 can't remember the exact time. But they called
7 her on a Tuesday, or whatever. They just called
8 her one day and said, you know, you need to come
9 down here. And she said, well, I've got three
10 kids, and I just can't go off. And they said,
11 well, come tomorrow, then. Well, they came down.
12 Apparently they booked her and went through the
13 whole process.

14 Q. But did they do a PR bond or whatever?

15 A. They did a PR on her, yeah. They were smart
16 there. They didn't give her a ticket, because it
17 had been over one day.

18 Q. Yeah.

19 A. So they did a PR bond on her.

20 Q. Yeah, I'm still trying to figure that rule out. I
21 don't know. You've got to do what the Court says,
22 I guess.

23 A. Yeah.

24 Q. So it was an ordinance. The City's handling it?
25 It's not a Magistrate's Court deal, right?

1 A. They're going to bump it up to Magistrate's Court,
2 because the City Judge says that -- you know,
3 whatever he does, it will be the wrong thing.

4 Q. Who's that? The City Judge?

5 A. [Inaudible]. We'll go back here and find out in a
6 second. I just can't think of his name right off
7 the top of my head. And Marie will be able to
8 tell you that, our [inaudible].

9 Q. Have you sat down and talked with him about it?

10 A. No. I just -- I mean, if I talk to him, I talk to
11 the City Administrator. Our ordinance says that
12 we're not supposed to have contact with employees,
13 okay?

14 Q. Okay.

15 A. The mayor or the [inaudible] not have contact with
16 the employees except through the City
17 Administrator. And that's what got Grounsell in
18 trouble on that Friday the first time. He was
19 going directly to Council members about stuff and
20 bypassing the City Administrator, in direct
21 violation of the ordinance. So I've been
22 contacting -- I've been going through David.

23 Q. What's David's last name again?

24 A. Dyrhaug, D-Y-R-H-A-U-G. And I had a meeting with
25 Grounsell and Dyrhaug the other day about --

1 Q. Is he still the acting City Administrator?

2 A. He's acting. I've never been without Freedom of
3 Information Act in what we're doing on that. I've
4 got -- there's been some concerns that they've
5 just been letting people just go in police
6 departments and go through records and trying to
7 find stuff.

8 Q. Trust me. We had an entire training session on
9 Freedom of Information Act in our last in-service.

10 A. Yeah, well, and we want to write something up.
11 And my attitude's always been it's different. The
12 Freedom of Information Act is great, okay?
13 There's certain things here. But when it comes to
14 police work, there's some more training that goes
15 into it. There has to be. But you don't let just
16 someone come in and go through your records. So I
17 suggested that Grounsell and Dyrhaug at the time,
18 they contact Jenny Moran. You know Jenny?

19 Q. Oh, yeah, I had to go see Jenny last week, matter
20 of fact.

21 A. Yeah. And I said, you know, see how they handled
22 it, because they -- she worked for me, for years,
23 and they handled it in the City and County both.

24 Q. Poor Jenny. I went in her office. I was doing a
25 background on a guy, and I had to get some

1 information. They're going to be in trouble if
2 she ever leaves her desk. Must have had four feet
3 of papers stacked on it, and I don't think anybody
4 in their right mind could find what was in there.

5 A. But she knows where everything's at.

6 Q. Oh, yeah, she does.

7 A. But, see, SLED investigates her all the time,
8 audits her all the time. Milton [Inaudible]. I
9 don't know if you know -- do you know Milton?

10 Q. Yes.

11 A. Okay, well, he --

12 Q. No, Jenny's on top of things. She knows what's
13 where and what's what.

14 A. And I would suggest -- I mean, they never came to
15 see me about any of the audits on her, okay?
16 Unless it was a minor thing, just piddly. And so
17 I suggested that. And then I also told him that I
18 was concerned about the access to dispatch,
19 because -- and I'll tell you this. One of the
20 reasons we terminated him at the time, was he was
21 allowing Channel 7 access to dispatch. Well,
22 dispatchers have to be certified. And you don't
23 allow access to that screen down there, because
24 the NCI --

25 Q. Exactly, I mean, that's -- we don't even own that.

- 1 A. No.
- 2 Q. Department of Justice owns it.
- 3 A. Well, I know, yeah. He said she gave -- she
4 emailed Channel 7 so they could have access to
5 dispatch. This guy just doesn't know what he --
6 he's -- no experience is really what it boils down
7 to. He don't come in immediately and just do
8 everything. It's the old Second Lieutenant
9 Syndrome.
- 10 Q. Oh, yeah. Oh, yeah.
- 11 A. I mean that's the advantage. I've been in 10
12 years.
- 13 Q. I want to make an impact.
- 14 A. When I made Second Lieutenant, I'd been in 10
15 years.
- 16 Q. I have, too. Yeah, I have too.
- 17 A. Came in and kept my mouth shut and asked the
18 Sergeant what the hell to do, yeah.
- 19 Q. I used to want to look at that [inaudible], give
20 me crap [inaudible]. This guy may have a clue
21 what he's doing.
- 22 A. That's all I know so far, guys.
- 23 Q. Okay.
- 24 A. I wasn't one pushing complaining on the bridge.
- 25 Q. Yeah, they just said that -- I don't know where it

1 came from, but they asked us to come down here.

2 A. I didn't ask it.

3 Q. No, because we get -- it comes from Columbia and
4 goes to us, and then we get told to come down here
5 and talk about it.

6 A. But this one they can't pin on me for bitching
7 about it.

8 Q. Let's go find out who the judge is, and then we'll
9 go from there and find out what the status of this
10 thing is. We can do that. Marie's the clerk?

11 A. Yeah. I mean she's in Court. She's the clerk up
12 there, yeah. They --

13 Q. Is the Court in here?

14 A. No, we keep --

15 Q. Oh, okay.

16 A. Les Sharff.

17 Q. Les Sharff.

18 A. L-E-S and then S-H-A-R-F-F. Marie can tell you
19 where it's being referred to.

20 Q. Yeah, that's what I'm going to find out, what the
21 status of it is real quick. And then we can get
22 out of there. Do you want to walk back there and
23 see?

24 A. Sure.

25 Q. And show us where she's at here.

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA



Published by Order of the City Council

Dyllis Long - City Clerk



OFFICIALS
Of the
CITY OF
SIMPSONVILLE, SOUTH CAROLINA
AT THE TIME OF THIS RECODIFICATION

Mayor
Dennis C. Waldrop

City Council
Ronald K. Bridges
Brown Garrett
Geneva D. Lawrence
Robert G. Gecy
Michael Zitricki
Bruce Larson

City Administrator
Russell B. Hawes

City Attorney
David W. Holmes

City Clerk
Pamela J. Bodkins

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Simpsonville, South Carolina.

Source materials used in the preparation of the Code were the 1995 Code, which includes ordinances through December 6, 1994, and ordinances subsequently adopted by the City Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is now and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1995 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of

ordinances, which may or may not appear in this Code at this time and their corresponding prefixes:

CODE	CDI:1
CODE APPENDIX	CDAI:1
CODE COMPARATIVE TABLES	CCTI:1
STATE LAW REFERENCE TABLE	SLT:1
CODE INDEX	CDi:1

INDEX

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology; others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

The publisher is most grateful to David W. Holmes, City Attorney and Pam Bodkins, City Clerk, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinance which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

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CODE OF ORDINANCES

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CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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- Sec. 1-6. Effect of repeal or expiration of ordinances.
- Sec. 1-7. Amendments to Code.
- Sec. 1-8. Supplementation of Code.
- Sec. 1-9. General penalty
- Sec. 1-10. Liability of corporation and agents for violations.
- Sec. 1-11. Altering Code.
- Sec. 1-12. Certain ordinances, rights not affected by Code.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

“I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

“As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God.”
(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

Sec. 2-34. Duties of mayor.

The mayor shall provide the city council with information, guidance and leadership in matters of policy determination.

(Code 1995, § 2-39)

Sec. 2-35. Qualifications of mayor and council members; proceedings to vacate offices.

(a) The mayor and council members shall be qualified electors of the city. Except where authorized by law, neither the mayor nor any member of council shall hold any other elected position in local, state or federal government or any other municipal office or municipal employment. The mayor or any councilmember shall forfeit his office if he:

(1) Lacks at any time during his term of office any qualification for the office prescribed by city ordinance or the general law and constitution of the state;

(2) Violates any express prohibition of S.C. Code 1976, §§ 5-1-10 through 5-17-30;

(3) Is convicted of a crime of moral turpitude.

(b) The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office as provided in S.C. Code 1976, § 5-7-210.

Sec. 2-35. Communication between the mayor and the city council.

The mayor shall relate to and communicate with the chair of council committees and with the city council as a whole any and all problems, situations and conditions which arise concerning any department or activity of the city. Except for the purpose of inquiry, the members of the city council shall communicate only with the mayor and city administrator in any and all matters concerning any department or activity of the city.

(Code 1995, § 2-40)

Sec. 2-36. Emergency powers of mayor.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance, catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare, or property.

(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

(Code 1995, § 2-41)

Sec. 2-37. Compensation of mayor and council members.

(a) The annual salary of the mayor, the mayor pro tem, and the council members shall be set from time to time in accordance with S.C. Code 1976, § 5-7-170.

(b) No ordinance changing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42)

Secs. 2-38 – 2-60. Reserved.

(e) After the introduction of an ordinance, any member of the council may request a public hearing which may be held at any time designated by the council prior to final adoption.

(f) Upon final adoption by a vote of the council, an ordinance shall be signed by the mayor or presiding member and attested by the clerk, who shall file the original in the council minutes.

(Code 1995, § 2-107)

Sec. 2-98. Adoption of resolutions.

Written or oral resolutions may be adopted on one reading unless a public hearing is set by a majority of the members of the council present.

(Code 1995, § 2-108)

Secs. 2-99 – 2-130. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Sec. 2-131. Offices established.

The council may create and establish city offices, departments and sections as they may deem proper for the orderly and efficient government of the city.

(Code 1995 § 2-141)

State law reference – Departments and offices established by ordinance, S.C. Code 1976, § 5-7-260.

Sec. 2-132. Term of office.

All appointed officers and employees shall serve at the pleasure of the appointing authority.

(Code 1995 § 2-142)

Sec. 14-1. Creation of municipal court.

There is hereby created and established a municipal court.
(Code 1995, § 14-1)

Sec. 14-2. Powers, duties, and jurisdiction of municipal courts.

The municipal court created in this chapter shall have jurisdiction to try all cases arising under the ordinances of the city. The municipal court shall also have all such powers, duties, and jurisdiction in criminal cases made under state law and conferred upon magistrates. However, the municipal court shall not have the authority of a magistrate to appoint a constable. The municipal court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed upon municipal courts by state law. The municipal court shall have no jurisdiction in civil matters.
(Code 1995, § 14-2)

State law reference – Similar provisions, S.C. Code 1976, § 14-25-45.

Sec. 14-3. Trials presided over by municipal judge.

The municipal judge shall preside at all trials to be conducted in the municipal court.
(Code 1995, § 14-3)

Sec. 14-4. Municipal judge.

(a) *Appointment.* The city council shall appoint the municipal judge. The appointment shall be for one year. The term is to begin on January 1 and expire on December 31.

(b) *Compensation.* The compensation of the municipal judge shall be as determined by the city council from time to time.

(c) *Oath.* Before entering in upon his duties and the discharge thereof, the municipal judge shall take and subscribe the oath of office prescribed by article VI, section 5 of the state constitution.

(d) *Vacancy.* In the event of a vacancy in the office of the municipal judge, a successor shall be appointed by the city council in the manner of the original appointment for the unexpired term. In the case of the temporary absence, sickness, or disability of a municipal judge, the court shall be held by a judge of another municipality, by a practicing attorney, or some other person who has received training or experience in municipal court procedure, who shall be designated by the mayor and take the oath of office before entering upon his duties.

(e) *Educational requirements.*

- (1) Municipal court judges shall have such formal education as is required of magistrates by the S.C. Code 1976, § 22-1-10.
- (2) Municipal court judges shall attend such mandatory continuing judicial training as may be prescribed by the state supreme court.
- (3) Municipal court judges, unless they are licensed, practicing attorneys or former magistrates, shall attend the orientation in criminal law at the Criminal Justice Academy in Columbia, South Carolina, mandated for magistrates. A municipal judge must demonstrate knowledge of municipal court procedure prior to conducting trials. A certificate from the current municipal judge that a new appointee has met these requirements shall be filed with the clerk of the municipal court. Upon the filing of such a certificate, the new appointee may assume all duties of the office of municipal judge.

(Code 1995, S 14-4)

State law reference – Similar provisions, S.C. Code 1976, §§ 14-25-15, 14-25-25.

Sec. 14-5. Terms of court.

The municipal judge shall set the time for holding each term of municipal court, unless otherwise provided by the city council.

(Code 1995, § 14-5)

Sec. 14-6. Rules of procedure.

The municipal judge shall establish and prescribe all necessary and proper rules of procedure for the municipal court; provided, however, that the rules shall not conflict in any manner with existing state and city laws.

(Code 1995, § 14-6)

Sec. 14-7. Selection of jurors.

(a) Jurors for the municipal court shall be selected from time to time as they shall be needed by the municipal clerk of court from the lists of registered voters residing within the city.

(b) Such names shall be drawn at random by the clerk of court in the presence of two witnesses, using such procedures as the clerk may prescribe.

(c) All jurors who are notified of their selection and who appear at court on the date and time for which they are notified shall receive the sum of \$15.00 compensation. Those jurors who actually serve upon the trial of a case, provided that the jury has been sworn and empanelled, shall receive the further compensation of \$30.00. However, such compensation shall not be cumulative per case heard. Thus, no juror can receive more

than \$45.00 for service in any one term of court regardless of the number of jury panels upon which the juror may serve.

(Code 1995, § 14-7)

State law reference – Drawing and composing juries, S.C. Code 1976, § 14-25-165.

Sec. 14-8. Court costs.

A court cost shall be assessed, in addition to the fines imposed.

(Ord. No. 95-09, § 2-7011, 6-27-1995)

NUMBER 2

(Defendant's good character)

Evidence of the defendant's good character and good reputation may in and of itself create doubt as to guilt and should be considered by the jury, along with all of the other evidence, in determining the guilt or innocence of the defendant.

Ralph King Anderson, Jr., South Carolina Requests to Charge – Criminal, 2012, §1-13

State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982)

State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000)

NUMBER 4

(Ambiguous threats)

When a communication contains language which is equally susceptible of two interpretations, one threatening, and the other nonthreatening, the state carries the burden of presenting evidence to remove that ambiguity. If the state does not remove that ambiguity beyond a reasonable doubt, you must find the defendant not guilty.

U.S. v. Barclay, 452 F.2d 930 (8th Cir. 1971)

NUMBER 7

(Threat – as to all charges)

The state has the burden of proving beyond a reasonable doubt that any threat made by the defendant was made with the specific intent to execute it.

U.S. v. Patillo, 438 F.2d 13 (4th Cir. 1971)

Elonis v. U.S. 575 U.S. ____ (2015)

NUMBER 8

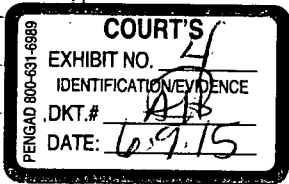
The State must prove beyond a reasonable doubt that the communication in this case was made by the defendant for the purpose of issuing a threat or that the defendant knew that the communication would be viewed as a threat.

Elonis v. United States, 575 U.S. ____ (2015)

Can the judge provide the
writing to read defining
the 3 charges:

- 1) Intimidation
- 2) Misconduct
- 3) Obstruction of Justice

Can we get a definition of
of mayor's what he
"can + can't do -
"canon of ethics"
R, can he talk about cases to
anyone, or is it actually
a violation?



May Preston

Can we hear the audio?

Mary
7 Proctor

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>5</u>
	IDENTIFICATION EVIDENCE
	DKT.# <u>AB</u>
DATE: <u>6.9.15</u>	

THE AUDIO WAS
NOT ENTERED
INTO EVIDENCE.

135

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) 2014-GS-23-4229, 4230 & 4231

STATE OF SOUTH CAROLINA,)
)
v.)
)
PERRY EICHOR,)
)
Defendant.)
)
)
)
)
)

MOTION FOR A NEW TRIAL

FILED-CLERK OF COURT
PAUL R. WICKENS
GREENVILLE CO. SC
2015 JUN 17 AM 9:44

TRIAL AND CONVICTIONS

IN MAY 2014 the Greenville County Grand Jury returned true bills of indictment against the defendant on three charges: obstruction of justice, misconduct of a public official and intimidation of a court official. Each indictment alleges that the defendant made an implied threat to a city judge, that the threat was to the judge's job and that it related to a pending matter in the city court.

ON JUNE 9, 2015 THE JURY returned guilty verdicts on the obstruction of justice and misconduct of a public official indictments and a not guilty verdict on the intimidation of a court official charge.

THE JURY asked for additional instructions as to the law on all three charges. The verdicts were split in spite of the fact that the same factual allegations were contained in each indictment.

THE ISSUES PRESENTED in this motion, for the most part, were raised and rejected in the defendant's motion for directed verdict. This court's denial of the defendant's motion for directed verdict is also challenged in this motion for a new trial.

THE DEFENDANT moves for a new trial challenging his convictions for the crimes of obstruction of justice (obstruction) and misconduct of a public official (misconduct). The defendant challenges the trial court's rulings on his pretrial motions, rulings on evidence, the trial judge's charges to the jury and other issues.

DENIAL OF MOTION TO QUASH INDICTMENTS DUE TO THE STATE'S RELIANCE ON IMPLIED THREATS WHICH ACTS ARE INSUFFICIENT TO STATE A VIOLATION OF THE TWO COMMON LAW VIOLATIONS FOR WHICH THE DEFENDANT WAS CONVICTED

This issue was raised and rejected in pretrial motions. The defendant alleges that the obstruction and misconduct charges require more than an IMPLIED threat to be a crime. Both charges are common law crimes and neither allows conviction for actions by implication.

DENIAL OF MOTION TO QUASH INDICTMENTS DUE TO INSUFFICIENT ALLEGATIONS AS TO CRIMINAL INTENT

This issue was raised and rejected in pretrial motions. The indictments allege that these crimes were committed knowingly and willfully. This mental element is not the standard required by the law. Since the only act alleged was an implied threat, the law as to threats must be reviewed. That was not done by the trial court although the defendant presented the proper case law decisions for consideration.

The proper intent standard for criminal charges involving actual or direct threats is that set forth in the recent decision of Elonis v. United States, 575 U.S. ____ (June 1, 2015). The standard would be no less than for an implied threat. The Elonis decision resolved a dispute among the federal circuit courts in this area. Under Elonis the state must prove that the communication was made for the purpose of issuing a threat or with the knowledge that the communication will be viewed as a threat. Prior to Elonis the Fourth Circuit Court of Appeals had adopted the same standard. U.S. v. Patillo, 438 F.2d 13 (4th Cir. 1971).

The trial judge allowed these indictments to stand without the proper intent element. A trial judge must consider all relevant law, including applicable decisions from courts outside of South Carolina. And of course the highest court in the land deserves particular deference.

In Elonis the federal law for which the defendant was being tried involved a direct threat to the President of the United States. That federal law, like the obstruction and misconduct indictments in defendant's case, included a willfully

and knowingly mental element. The comparison is a nearly identical fit with the case at bar. The defendant's conviction was reversed in Elonis.

The trial judge's failure to require the state to include the Elonis mental element in defendant's indictments was error. The indictments should have been quashed.

The failure to require the indictments to include the proper mental element was compounded by the trial judge's failure to give the proper jury instruction on this issue.

DENIAL OF MOTION TO QUASH DUE TO LACK OF NOTICE OF CHARGES IN VIOLATION OF DUE PROCESS WITH RESPECT TO THE TWO INDICTMENTS FOR WHICH THE DEFENDANT WAS CONVICTED

This motion was presented during pretrial motions and rejected by the trial court. The due process clauses of the state and federal constitutions require adequate notice of charges to a criminal defendant. Notice of charges means more than conclusions. Without clear factual allegations an indictment is defective. The trial court ruled that these indictments did have sufficient facts. The defendant argued pretrial that the factual allegations were insufficient.

The state chose to indict the defendant for three crimes involving a single incident. The indictments for which the defendant was convicted are common law crimes. The obstruction indictment's facts were as follows: 1) the offense happened on March 20, 2014; 2) L.S. was the victim and a city court judge, 3) an implicit threat was made to the judge, 4) the implicit threat was regarding the judge's future employment and 5) there was a pending matter before the court. The misconduct indictment's facts were as follows: 1) the offense happened on March 20, 2014, 2) L.S. was the victim and a city court judge, 3) an implied threat was made to the judge, 4) the implicit threat was regarding the judge's future employment and 5) there was a pending matter before the court.

These charges were essentially identical. Missing from these indictments were key facts. The implied threat language was not included. Motions were filed pretrial on this issue of lack of notice and are incorporated by reference.

The motions list the specific facts which should have been, but were not included in the indictments.

The trial judge's denial of the defendant's motions to quash the indictments due to the absence of sufficient facts failed to take into account the principle set forth in the Florida case of State v. Dilworth, 397 So.2d 292 (Fla. 1981) that sometimes more facts are needed in an indictment beyond a recitation of statutory (or common law) language to comply with due process.

DENIAL OF MOTION TO QUASH INDICTMENTS BASED UPON THE NUMBER OF INDICTMENTS PRESENTED TO AND RETURNED BY THE GRAND JURY

The defendant introduced into evidence at the pretrial motion hearing a packet of information from the clerk of court without objection outlining the number of cases presented to the grand jury during the same term of the grand jury during which he was indicted. There were 460 true bills and not one no bill. It is a denial of due process to allow the state to "present" so many cases for the grand jury to consider.

This argument could be considered an argument against the precedent set in State v. Duncan, 264 S.E.2d 421 (S.C. 1980). However the number of indictments has increased since the Duncan case from 158 to 460. The defendant submits that at some point the numbers have to be too high for the court to ignore their impact on the grand jury process. Also, in Duncan the only challenge to the indictment was based solely on the numbers. That is not the case here. This is an important state constitutional protection. The South Carolina Supreme Court has warned against prosecutorial abuse of the grand jury. It is time once again for the courts to step in and give meaning to the grand jury protection.

DENIAL OF MOTION TO QUASH INDICTMENTS BASED UPON THE PRESENTATION OF HEARSAY TESTIMONY BEFORE THE GRAND JURY IN VIOLATION OF CAPPS AND ANDERSON

The state prosecutors, including in the 13th judicial circuit, have been caught manipulating the grand jury and denying the rights of criminal defendants. State v. Capps, 279 S.C. 59 (1981); State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993) In Capps the state presented summaries of "evidence" to the grand jury and no witnesses, firsthand or otherwise. The state had been using this "procedure" for years – until caught. The Capps court decided 4 votes to 1 that the defendant's indictments should not be quashed but warned the state not to use the same procedure again. Prosecutors did not listen and in 1993 Anderson was decided. In Anderson the South Carolina Supreme Court was upset that its warning to prosecutors around the state had been ignored. The Court ruled again that a summary of facts by prosecutors to the grand jury was wrong and quashed the indictments.

In the present case, only the SLED agent testified as evidenced by his being the only witness listed on the back of the indictment and based upon his testimony. The SLED agent did not have any firsthand evidence. The entire case against the defendant was based on an alleged implied threat during a single conversation between the defendant and the city judge. That judge should have, but did not testify before the grand jury. The grand jury could not weigh his credibility since the city judge did not appear before them. The use of a state officer, whether a prosecutor or a police officer to present only hearsay evidence was condemned in Capps.

The trial court rejected the argument that the defendant's indictments were defective and should be quashed based upon the use of hearsay evidence by a state officer warned against by the Capps court.

DENIAL OF MOTION TO QUASH INDICTMENT BASED ON UNLAWFUL ARREST

The defendant was arrested by warrant. The warrants were signed by Magistrate Diane Cagle. Magistrate Cagle was also a potential state's witness. She was contacted by the alleged victim long before she was asked by SLED to sign the defendant's arrest warrants. A fair reading of Judge Sharff's recorded statement to SLED as well as his handwritten statement to SLED leads to the conclusion that Magistrate Cagle recommended that the city judge have the alleged threat investigated as a criminal charge. Magistrate Cagle was the catalyst for the city judge

Later, Magistrate Cagle signed the defendant's arrest warrants. She was not neutral or detached when she did that. She should have recused herself under Canon 3 of the Code of Judicial Conduct.

The trial judge erred when he concluded as a matter of law that Magistrate Cagle was neutral and detached when she signed the warrants.

DENIAL OF REQUEST TO CHARGE THAT EVIDENCE OF GOOD CHARACTER "MAY IN AND OF ITSELF CREATE DOUBT AS TO GUILT"

The defendant request #2 about good character evidence was charged in part but not completely. During the charge conference the trial judge stated that he would give this charge. When the judge charged the jury, however, he omitted the key portion of the jury charge that evidence of good character and good reputation "may in and of itself create doubt as to guilt".

The defendant objected to the omission and asked for a further charge which the trial judge denied.

The defendant submitted a correct jury charge on good character. The trial judge agreed during the charge conference. The judge then did not charge the jury on the key portion.

Adding to the prejudice to the defendant was the fact that following the charge conference and the judge's assurance that he would give the full charge on good character defense counsel argued to the jury that "the judge will charge

you" on good character and that good character alone is justification for a not guilty verdict.

Then the trial judge did not charge the full good character charge as he stated he would during the charge conference.

In addition to the cases cited in his jury charge the defendant points to the case of State v. Harrison, 343 S.C. 165, 539 S.E.2d 71 (S.C. App. 2000) in support of his position. In the Harrison case the defendant's conviction was reversed due to the trial judge's refusal to give a good character jury charge. In the present case the trial judge found that a good character charge was warranted but refused to give the full charge which would have, in this close case, made a difference in the outcome. The Court of Appeals wrote in Harrison as follows, "Generally, where requested and there is evidence of good character, a defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant."

In the present case, the key wording was left out by the trial judge. The case came down to credibility between the defendant's denial of an alleged threat in his statement to SLED introduced by the state and the victim's claim that the defendant did threaten him. It is hard to imagine a case where the appropriate and complete charge on good character and reputation would have been more important.

DENIAL OF REQUEST TO CHARGE ON AMBIGUOUS THREATS

The indictments each alleged an implied threat, not a direct threat. An implied threat is subject to interpretation. The implied threat in this case was "remember you work for city council". The victim admitted that others might not have interpreted those words as a threat. The threat was ambiguous plus it was an implied threat, not a direct one. The jury was not given an instruction as to how to deal with the evidence of an ambiguous threat.

The defendant provided the court with an 8th Circuit Court of Appeals case dealing with a very similar situation to that presented during this trial. This case of U.S. v. Barclay, 452 F.2d 930 (8th Cir. 1971) was cited in the defendant's jury charge request #4. There is no South Carolina case on point. However, the Barclay case provided an important legal framework which should have been included in the trial judge's jury charges.

In Barclay the alleged threat was a letter from Homer Barclay to his lawyer. There were a number of inflammatory comments including the following, "... as soon as I can get this case situated around in the position I want you are the first S.O.B. that will go, Sam Sechser will next." Mr. Sechser was the prosecuting attorney. The defendant was convicted at trial. The circuit court recognized that the letter's wording might be construed as threatening but reversed the conviction since the wording could have another, non-threatening interpretation. This is precisely the argument made by the defendant in the present case, but without the support of a jury charge.

The Barclay court concluded as follows, "where a communication contains language which is equally susceptible of two interpretations, one threatening, and the other nonthreatening, the government carries the burden of presenting evidence serving to remove that ambiguity."

This law was not charged to the jury in this case and it should have been.

DENIAL OF THE DEFENDANT'S REQUEST TO CHARGE ON THE SPECIFIC INTENT TO EXECUTE THE THREAT

In jury charge #7, the defendant asked the trial judge to charge language requiring the state to prove the defendant's specific intent to execute the threat under Elonis.

FAILURE TO INSTRUCT THE JURY AS TO EACH INDICTMENT THAT THE STATE HAD TO PROVE THAT THE COMMUNICATION BY THE DEFENDANT WAS MADE FOR THE PURPOSE OF ISSUING A THREAT OR THAT THE DEFENDANT KNEW THAT THE COMMUNICATION WOULD BE VIEWED AS A THREAT

The trial judge gave defendant's jury charge #8 as to only one of the three indictments. When the defendant brought this mistake to the court's attention, the judge did not correct it by recharging the jury. As a result this key wording was omitted with respect to two of the charges against the defendant. Since the trial judge agreed that jury instruction #8 was a correct statement of the law, he should have charged it for each of the indictments presented to the jury.

The failure to properly charge the jury was error.

INCONSISTENT VERDICTS

As previously noted the three indictments against the defendant alleged the same act. The jury convicted the defendant of the two common law offenses and found him not guilty of the statutory crime.

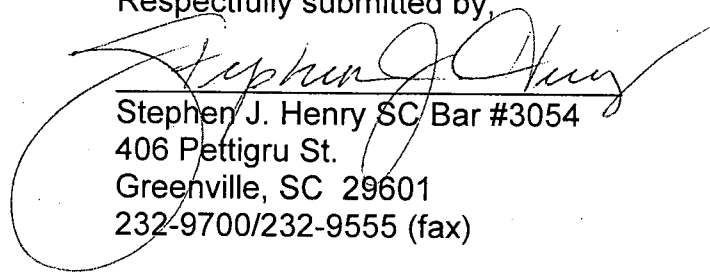
It is inconceivable that the jury concluded that the defendant impliedly threatened the city judge's job in the obstruction of justice and misconduct of a public official cases but found he did not commit the same implied threat for the same purpose and to the same person in the intimidation of a court official case.

The state made the choice to have the defendant indicted three times for one incident and for the same actions in all three cases. Now they face the consequence – inconsistent jury findings.

CONCLUSION

For the reasons set forth herein and based upon the other objections made during the course of the trial, the defendant asks the trial judge to grant his motion for a new trial.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Stephen J. Henry", is written over a horizontal line. The signature is fluid and cursive.

Stephen J. Henry SC Bar #3054
406 Pettigru St.
Greenville, SC 29601
232-9700/232-9555 (fax)

June 16, 2015

Cc: Lisa Bentley, Assistant Solicitor
Fax: 467-8640

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA,)

v.)

PERRY EICHOR,)
Defendant.)

COURT OF GENERAL SESSIONS
2014-GS-23-4229, 4230 & 4231

NEW TRIAL MOTION- ATTACHMENTS

1	Written pretrial motions
2	Pretrial motion exhibits admitted by court
3	Brief in support of pretrial motions
4	Indictments
5	Verdicts
6	U.S. v. Barclay
7	State v. Harrison
8	Elonis v. U.S.

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

2015 JUN 17 AM 9:45

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2015-001648
Circuit Court case Nos. 2014-GS-23-4229 &
2014-GS-23-4230

The State,

Respondent,

v.

Perry Eichor,

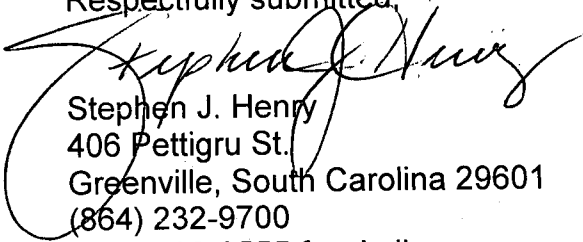
Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all of the matter designated by Parties and no other matter.

I further certify that the Record on Appeal has been redacted pursuant to the Supreme Court's Interim Order relating to private data and personal identifiers.

Respectfully submitted,


Stephen J. Henry
406 Pettigru St.
Greenville, South Carolina 29601
(864) 232-9700
(864) 232-9555 facsimile

Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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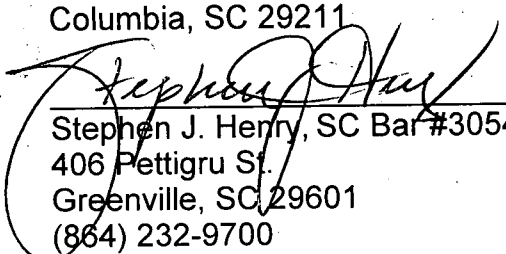
Perry Eichor,

Appellant.

CERTIFICATE OF SERVICE

I certify that on April 15, 2016 I served a copy of the Record on Appeal in this case upon counsel for the State of South Carolina, David Spencer, Senior Assistant Deputy Attorney General by mailing it with sufficient postage to the following address:

David Spencer
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211


Stephen J. Henry, SC Bar #3054
406 Pettigru St.
Greenville, SC 29601
(864) 232-9700
Counsel for Appellant
April 15, 2016

STEPHEN JOHN HENRY
Attorney at law
406 Pettigru Street
Greenville, SC 29601
(864) 232-9700.232-9555 (fax)
sjhlaw@sjhlaw.com
www.sjhlaw.com

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SC Court of Appeals

April 15, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter St.
P.O. Box 11629
Columbia, SC 29211

Re: State v. Perry Eichor
Appellate Case No. 2015-001648

Dear Ms. Kitchings,

The record on appeal and a certificate of service are enclosed.

Thank you.

Sincerely,


Stephen J. Henry

Sjh/tbff

Cc: David Spencer
Senior Assistant Attorney General