

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Florence County  
D. Craig Brown, Circuit Court Judge

**RECEIVED**

AUG 25 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MELVIN DURANT,

APPELLANT

APPELLATE CASE NO. 2016-001390

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE'S EXHIBIT #1 (AUDIO CD); STATE'S EXHIBIT #2 (IN CAR VIDEO);  
STATE'S EXHIBITS #13 AND #14 (PHOTOGRAPHS)**

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-GS-21-00211
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Melvin Durant,	)	
	)	
Defendant.	)	
	)	

June 20-21, 2016  
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge; and a jury

A P P E A R A N C E S:

David Richardson, Esquire  
 Attorney for the Plaintiff

William Vickery Meetze, Esquire  
 Attorney for the Defendant

Krystal J. Smith  
 Court Reporter

1 impeachable offenses. I think that's all I have for the  
2 moment.

3 THE COURT: All right. What about -- is the defendant on  
4 bond?

5 MR. MEETZE: No, Your Honor.

6 THE COURT: He's not on bond? Okay. All right.  
7 Anything from you at this time, Mr. Meetze?

8 MR. MEETZE: No, sir, Your Honor.

9 THE COURT: All right. Two o'clock.

10 MR. MEETZE: Sure.

11 MR. RICHARDSON: That's fine.

12 (WHEREUPON, there was a break in the proceedings from  
13 12:59 p.m. until 2:07 p.m., after which the proceedings  
14 resumed as follows.)

15 THE COURT: All right. Is the State ready to proceed?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: Is defense counsel ready to proceed?

18 MR. MEETZE: Yes, Your Honor.

19 THE COURT: All right.

20 MR. RICHARDSON: Your Honor, first, if it please the  
21 Court, we'll do the *Jackson v. Denno* hearings. The State  
22 would call Mark Happ to the stand.

23 THE CLERK: Please place your left hand on the Bible and  
24 raise your right hand. Do you swear the testimony you give in  
25 this case will be the truth, the whole truth, and nothing but

MARK HAPP - DIRECT BY MR. RICHARDSON

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full name for  
4 the record.

5 THE WITNESS: Mark Richard Happ.

6 MARK HAPP, being first duly  
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q: All right. Officer Happ, back on November 12<sup>th</sup>, 2014, did  
11 you respond to a call at the transitional shelter or homeless  
12 shelter on Jarrett Street here in Florence?

13 A: Yes, I did.

14 Q: And what was the nature of that call?

15 A: I responded to a stabbing call.

16 Q: Okay. When you arrived, did you -- who did you speak  
17 with?

18 A: I believe when I first arrived I spoke with the  
19 responding officer, Officer Cantey. Jimmy Cantey.

20 Q: Okay. And was a suspect already in custody at that  
21 point?

22 A: Yes, he was.

23 Q: All right. Was that Melvin Durant?

24 A: It was.

25 Q: And what did you then do with Mr. Durant?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: When I responded, I was the corporal on-duty, the  
2 supervisor. And so to allow Officer Cantey to proceed with  
3 his investigation and speak to witnesses and that kind of  
4 thing, I had transferred custody to me and placed Mr. Durant  
5 in the back of my police car and stood by with him while the  
6 investigation was taking place.

7 Q: Okay. And this -- where you were located -- that was in  
8 Florence County, city of Florence?

9 A: City of Florence on Jarrett Street --

10 Q: Okay.

11 A: -- was the incident location.

12 Q: All right. So when you had Mr. Durant in your custody  
13 there near your car, did you have an opportunity to speak with  
14 him?

15 A: I did.

16 Q: Okay. And was that memorialized on your DVR?

17 A: Yes, it was.

18 Q: Okay. And I want to show you what has been marked for  
19 identification only as State's 1 and ask if you can ID that?

20 A: This is a CD of the audio from my digital voice recorder.

21 Q: Have you reviewed the contents of that very disk?

22 A: Yes, I have.

23 Q: All right. And is the contents of this disk a true and  
24 accurate representation of your conversation with Mr. Durant  
25 on the evening of November 12<sup>th</sup>, 2014?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: Yes, sir, it is.

2 Q: All right.

3 MR. RICHARDSON: Your Honor, I'd ask to put this into  
4 evidence for the purposes of this hearing only at this time  
5 and publish it to you.

6 THE COURT: All right.

7 MR. MEETZE: No objection, Your Honor.

8 THE COURT: All right. Go ahead.

9 (WHEREUPON, State's Exhibit Number 1, an audio CD, was  
10 played in open court, not transcribed herein, after which  
11 the proceedings resumed as follows.)

12 MR. RICHARDSON: All right.

13 BY MR. RICHARDSON:

14 Q: Corporal Happ, you mentioned at the beginning of that  
15 tape that Mr. Durant was in custody and you read him Miranda  
16 warnings; is that correct?

17 A: I did.

18 Q: Did you read those off a card or by memory or how did you  
19 do that?

20 A: Off my Miranda card.

21 Q: Okay. And you keep that with you all the time?

22 A: I do.

23 Q: All right. And he acknowledged that he understood the  
24 rights you presented to him?

25 A: That is correct.

MARK HAPP - DIRECT BY MR. RICHARDSON

1 Q: Okay. At any point in time during that night, did he ask  
2 for an attorney to be present?

3 A: Not in my presence.

4 Q: Okay. Where were you exactly located when you were  
5 talking to him on this tape? Not in the car, but somewhere  
6 near your car?

7 A: Right next to my police car.

8 Q: Okay.

9 A: I believe they had walked him out from the back of the  
10 shelter around to the front where I was parked. Then I took  
11 custody of him from Officer Cantey.

12 Q: Okay. Was anybody else around you when you were talking  
13 to him?

14 A: There were people, police officers, coming and going.  
15 There were several county officers there as well for a time,  
16 but I don't remember who they were.

17 Q: Okay. But nobody kind of engaged with y'all standing  
18 there observing you talk to him?

19 A: No, no.

20 Q: All right. Was there anything about his physical  
21 condition or your perception of his mental condition that gave  
22 you any pause with respect to him knowing what he was doing  
23 there talking to you?

24 A: No.

25 Q: Okay. So he seemed responsive to the questions you asked

## MARK HAPP - DIRECT BY MR. RICHARDSON

1 him?

2 A: Yes.

3 Q: Okay. At any point in time, did he ask you to terminate  
4 the conversation, that he didn't want to talk to you anymore?

5 A: No, he did not.

6 Q: He had just been placed into police custody at this  
7 point; right?

8 A: That's correct.

9 Q: Okay. A few minutes prior?

10 A: That's correct.

11 Q: Did he appear to be in need of any sort of medical  
12 attention or anything at that point in time?

13 A: No.

14 Q: I noticed -- it's sounded like on the tape that you were  
15 in the process of or trying to adjust handcuffs or something  
16 of that nature. Is that accurate?

17 A: Yes. By my recollection, I think I had mentioned a  
18 deputy's name in there. I think some county officers  
19 responded with the initial responding officer, Cantey, at the  
20 time and I believe one of the deputy's handcuffs was on him  
21 when I took custody, and I swapped his handcuffs out so he  
22 could leave and put my own handcuffs on the defendant.

23 Q: Okay.

24 A: That's what I was doing.

25 Q: Did you do anything off tape to pressure, threaten,

MARK HAPP - DIRECT BY MR. RICHARDSON

1 coerce Mr. Durant into speaking with you that evening?

2 A: No.

3 Q: So is what we heard on that tape kind of the beginning of  
4 your interaction with Mr. Durant that evening?

5 A: That's correct.

6 MR. RICHARDSON: Okay. Please answer any questions Mr.

7 Meetze may have for you.

8 THE COURT: Mr. Meetze?

9 MR. MEETZE: Thank you. May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. MEETZE:

12 Q: How long had you been there when -- prior to talking with  
13 Mr. Durant?

14 A: I believe it was not too long after I rolled up that they  
15 brought him around the front. So I would say within a few  
16 minutes.

17 Q: You weren't the first person --

18 A: I was not the first --

19 Q: -- to respond?

20 A: -- officer from the City of Florence on scene, no.

21 Q: There were already officers there? Had you had an  
22 opportunity to speak to any of the responding officers prior  
23 to speaking to Mr. Durant?

24 A: I don't recall having a long conversation. From what I  
25 understand -- remember of it, you know, Officer Cantey and

MARK HAPP - CROSS BY MR. MEETZE

1 whoever else was there -- I couldn't tell you right now, but  
2 they did -- they brought him around from the back of the  
3 shelter. I was parked out front. There may have been a  
4 conversation between myself and Officer Cantey as to can you  
5 -- can I put him in your car while I continue the  
6 investigation? That's what I recall happened.

7 Q: And they put him in your car you said?

8 A: Yeah.

9 Q: All right.

10 A: Yeah. Because I mean -- I'm sorry. Yes.

11 Q: I'm sorry. Go ahead.

12 A: Officer Cantey brought him already in custody, already in  
13 handcuffs, around to the front of the building where I was  
14 parked on the street and, you know, wanted to be able to  
15 continue the investigation and go inside and talk to witnesses  
16 and that kind of thing. So I don't know if I volunteered or  
17 he asked me if I could, but that's what happened.

18 Mr. Durant was placed in my custody while he continued  
19 the investigation. Per policy, you know, I searched him  
20 before I put him in the car and everything and read him his  
21 Miranda, but that occurred just outside the vehicle. Then he  
22 was placed in the car.

23 Q: You had gotten -- you were called to the scene; correct?  
24 You got a radio dispatch of some kind?

25 A: I don't know if I specifically was dispatched because I'm

MARK HAPP - CROSS BY MR. MEETZE

1 a supervisor; so I don't necessarily get the actual dispatch  
2 calls. Probably the unit assigned to that district, but that  
3 would be something that I would typically respond to as a  
4 supervisor. But I couldn't tell you how far away I was coming  
5 from, but I didn't get there first.

6 Q: Gotcha. Now, in talking to Mr. Durant, you could tell  
7 that he had been drinking?

8 A: That was my impression.

9 Q: All right. And there was another -- of course, you're a  
10 trained law enforcement officer and you've reached supervisory  
11 level; is that correct?

12 A: Yes, sir.

13 Q: So obviously as a law enforcement officer, you -- through  
14 experience, much experience, you can recognize somebody that  
15 has been drinking; correct?

16 A: That's correct.

17 Q: And you could recognize somebody that's been drinking to  
18 a point where they're intoxicated?

19 A: That's correct.

20 Q: And in this case, Mr. Durant had been drinking to that  
21 level? That would be your observation?

22 A: I know he had been drinking. You know, I could tell that  
23 his words were slurred when he spoke, but I didn't do any kind  
24 of testing to say what his level of intoxication was. I  
25 didn't have any prior experience with him, but I could tell he

MARK HAPP - CROSS BY MR. MEETZE

1 had been drinking.

2 Q: All right. But it's certainly possible he could've been  
3 to a level of being intoxicated?

4 A: Oh, absolutely.

5 Q: Okay. And, you know, I think in the statement he gave to  
6 you he referenced to being at 413; is that right?

7 A: Correct.

8 Q: And that's an address on Church Street?

9 A: Correct.

10 Q: And that's a reference to a location that he had been  
11 drinking; is that right?

12 A: I believe that's what he told me, yeah.

13 Q: Okay.

14 A: Something about doing shots.

15 Q: But you had not had a chance to speak really with other  
16 officers that had already been there and had already been  
17 investigating the matter? Like you said, you got there and  
18 within -- within just a couple minutes you were talking with  
19 Mr. Durant?

20 A: Correct.

21 Q: Okay.

22 MR. MEETZE: I don't have any further questions, Judge.

23 MR. RICHARDSON: Your Honor, with respect to that  
24 statement, I don't have any additional questions for him.

25 There was a second statement that was provided in his vehicle,

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 but taken by Investigator Wynn. And I didn't know if you  
2 wanted me to split up.

3 I can -- I intended to ask this officer some preliminary  
4 questions about, you know, the video emanating from his  
5 vehicle even though he wasn't the one doing the statement. I  
6 probably should've done it all at one time, but I would like  
7 to, if the Court will allow, ask him some questions about the  
8 second statement, just camera equipment in his car and that  
9 sort of thing.

10 MR. MEETZE: Judge, I don't have an objection to that.  
11 I'll just say from a standpoint of any argument that I make I  
12 would prefer to make it after the Court has seen all of the  
13 statements that the State intends to admit and all that.

14 THE COURT: Okay. Go ahead, Mr. Richardson.

15 MR. RICHARDSON: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q: All right. Corporal, I want to show you -- before I do  
19 that, you had your car there; correct?

20 A: That is correct.

21 Q: And eventually you put Mr. Durant in your vehicle?

22 A: That is correct.

23 Q: And as Mr. -- excuse me. Is your vehicle equipped with  
24 an in-car camera?

25 A: It was.

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 Q: And is it one of those that can turn around in the car  
2 and face the occupants and record audio?

3 A: Yeah. It actually has two -- two cameras, one that faces  
4 forward and you can switch back and forth. You don't have to  
5 actually turn it around, but it has a backseat view as well.

6 Q: And at some point, did you leave Mr. Durant in the car so  
7 that Investigator Wynn could speak to him?

8 A: I did.

9 Q: All right. Now I'm going to show you -- and after  
10 Investigator Wynn spoke to him, did you then get back in your  
11 car and speak with Mr. Durant --

12 A: I did.

13 Q: -- to some extent?

14 A: Yes, I did.

15 Q: Okay. I'm going to show you what's marked as State's 2  
16 for identification. If you could, take a look at that. And  
17 do you recognize it?

18 A: I do.

19 Q: And what is it?

20 A: That would be the disk containing my in-car video and  
21 audio.

22 Q: Okay. And does this disk contain a true and accurate  
23 representation of what you recall taking place in your car  
24 that night?

25 A: Yes, it does.

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 Q: All right. And when Investigator Wynn was talking with  
2 Mr. Durant, were you standing right there or had you walked  
3 off?

4 A: I typically don't stand over the shoulders of an  
5 investigator when they're questioning a suspect. So I had  
6 walked a short distance away, but I wasn't -- wasn't within  
7 earshot of what they were saying.

8 Q: Okay.

9 MR. RICHARDSON: I think that's all the questions I have  
10 for you with respect to the in-car.

11 THE COURT: All right. Mr. Meetze?

12 MR. MEETZE: I don't have any questions, Your Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 MR. RICHARDSON: I'd call Investigator Howard Wynn.

16 THE COURT: All right.

17 THE CLERK: Sir, if you would, please place your left  
18 hand on the Bible and raise your right hand. Do you swear the  
19 testimony you give in this case will be the truth, the whole  
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes, ma'am, I do.

22 THE CLERK: Please be seated and state your full name for  
23 the record.

24 THE WITNESS: Howard Wynn.

25 HOWARD WYNN, being first duly

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RICHARDSON:

4 Q: Investigator Wynn, were you the on-call investigator for  
5 the Florence Police Department on November 12<sup>th</sup>, 2014?

6 A: Yes.

7 Q: And did you have an opportunity to respond out to the  
8 homeless shelter on Jarrett Street?

9 A: Yes, sir.

10 Q: For a call? And was that the same stabbing incident  
11 Officer Happ just testified about?

12 A: Yes, sir.

13 Q: When you arrived on scene, what did you do when you got  
14 there?

15 A: When I first pulled up, the first person I met with was  
16 Corporal Happ.

17 Q: Okay. And what was the purpose of that meeting?

18 A: He pretty much briefly told me what he had, what they was  
19 dealing with.

20 Q: All right. So you got kind of a lay of the land, so to  
21 speak?

22 A: Yes, sir.

23 Q: And did you have an opportunity to interact with Mr.  
24 Durant?

25 A: Yes, sir, I did.

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: When you first saw him, where was he located?

2 A: In the back seat of Corporal Happ's patrol car.

3 Q: All right. And did you take a statement from him at that  
4 time?

5 A: Yes, sir.

6 Q: Okay. And I'll show you what's been marked as State's 2  
7 for ID. Have you reviewed the contents of that disk?

8 A: Yes, sir, I have.

9 Q: And what is it?

10 A: It's a video -- an in-car video camera of Officer Happ's  
11 patrol car and where I conducted my interview with Melvin  
12 Durant.

13 Q: All right. Is this a true and accurate representation of  
14 what happened that evening?

15 A: Yes, sir.

16 Q: All right.

17 MR. RICHARDSON: Your Honor, I'd like to enter this as an  
18 -- into evidence for the purposes of this hearing only and  
19 publish it to you now.

20 THE COURT: All right. Mr. Meetze?

21 MR. MEETZE: No objection, Your Honor.

22 THE COURT: All right.

23 MR. RICHARDSON: And, Your Honor, before we start, the  
24 video itself is about 30 minutes long, but the first 13  
25 minutes is by my recollection basically Mr. Durant sitting in

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 the car by himself most of the time with not much going on.

2 So I would intend to play beginning at the 13-minute mark

3 through I think like the 33-ish minute mark is when it ends.

4 MR. MEETZE: That's no problem, Your Honor.

5 THE COURT: All right. Go ahead.

6 (WHEREUPON, State's Exhibit Number 2, in-car video, was  
7 played in open court, not transcribed herein, after which  
8 the proceedings resumed as follows.)

9 BY MR. RICHARDSON:

10 Q: Investigator Wynn, was that interaction you had on the  
11 videotape there the complete interaction you had with Mr.  
12 Durant that night?

13 A: Yes, sir.

14 Q: All right. So did he appear to be to a level of  
15 intoxication or have any sort of physical or mental issues  
16 that you perceived that would have given -- that would have  
17 given you pause as far as speaking with him and getting a  
18 statement from him that night?

19 A: No.

20 Q: Did he appear to you to understand the nature of your  
21 questions and provide valid responses to you?

22 A: Yes, sir.

23 Q: Okay. When you came up to -- you said when you came up,  
24 he was already in the back of the patrol car?

25 A: That's correct.

## HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: All right.

2 MR. RICHARDSON: I believe that's all the questions I  
3 have at this time.

4 THE COURT: Mr. Meetze?

5 MR. MEETZE: Thank you, Your Honor. May it please the  
6 Court.

7 CROSS-EXAMINATION

8 BY MR. MEETZE:

9 Q: Investigator Wynn, you talked to Mr. Durant that night  
10 obviously face-to-face?

11 A: Yes, sir.

12 Q: And you reviewed that video that was just played in court  
13 prior to coming here today; correct?

14 A: Yes, sir.

15 Q: And, of course, we just all saw it right here; is that  
16 right?

17 A: Yes, sir.

18 Q: And it's clear that Melvin Durant is under the influence  
19 of alcohol during that conversation; correct?

20 A: Yeah.. He did consume alcohol. Yes, sir.

21 Q: Right. Now, obviously he wasn't tested and it's one  
22 person's opinion versus another as to any level of  
23 intoxication, but in listening to him talk, he certainly has  
24 what you have been trained to recognize as cues for  
25 intoxication; correct?

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 A: Yeah. He did have slurred speech.
- 2 Q: Throughout the whole video?
- 3 A: Yes.
- 4 Q: Okay. Now, when you first started talking with him, you  
5 went over his Miranda rights; correct?
- 6 A: Yes, sir.
- 7 Q: And initially he said he did not want to talk to you;  
8 correct?
- 9 A: He said no. If -- if memory serves me correctly and off  
10 the video, he said no.
- 11 Q: Right. And that was -- no was in response to would you  
12 like to talk to me now or would you like to answer questions  
13 and he said no and then you -- is that correct?
- 14 A: He did say no. Yes, sir.
- 15 Q: Right. And then you responded -- after he said no, you  
16 continued speaking to him by saying you don't, sort of with an  
17 inflection in your voice as if --
- 18 A: Yeah.
- 19 Q: As if it would be a question; correct?
- 20 A: I did ask him something or I told him something to make  
21 sure he understood what I was reading to him.
- 22 Q: Right. And what you told him was -- you said -- when he  
23 said no, you said you don't? Is that --
- 24 A: It's possible.
- 25 Q: -- correct?

## HOWARD WYNN - CROSS BY MR. MEETZE

1 A: It's possible.

2 Q: Okay. Well, we just listened to it. You don't recall  
3 whether that's what you said or not?

4 A: No, I do not.

5 Q: Okay. And after that, he again said no, but he continued  
6 talking at that point in time and he eventually in that string  
7 of interaction with you said he would answer your questions;  
8 correct?

9 A: Yeah, something to that effect. Yes, sir.

10 Q: Okay. That -- you -- were you -- you weren't the first  
11 officer to arrive on the scene?

12 A: No, sir, I was not.

13 Q: And you were not -- was it Officer Cantey the first  
14 officer on the scene or do you know?

15 A: I -- I have no idea.

16 Q: Was Officer Cantey there before you got there?

17 A: Yes. He was there before I got there.

18 Q: So he had been conducting an investigation prior to you  
19 getting there?

20 A: Yes, sir.

21 Q: And you were the on-call investigator on this evening?

22 A: Yes, sir, I was.

23 Q: And when you arrived, you were the only investigator  
24 there?

25 A: There was a crime scene invest -- detective also on-call.

## HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: Okay.

2 A: And he later responded to the scene, but as far as a  
3 criminal investigator, yes, sir, I was the only one.

4 Q: Okay. And when you got there, you spoke to the other  
5 officers that had responded prior to you; correct?

6 A: The officers I spoke with was Corporal Mark Happ and  
7 Jimmy Cantey.

8 Q: Okay.

9 A: Those were the only two officers I spoke with.

10 Q: And that was to get an understanding of where things were  
11 in the investigation; correct?

12 A: Yes, sir.

13 Q: All right. Now -- but once you're there, you take over  
14 as sort of the lead investigator; correct?

15 A: Yes.

16 Q: Okay. As part of you investigating, you speak to the  
17 officers that were there, like you just said. You review  
18 their reports and all of that; correct?

19 A: No. I don't review any reports.

20 Q: Did -- when you spoke with Officer Cantey when he got  
21 there -- when you got there, did he tell you that both parties  
22 were extremely intoxicated?

23 A: I don't recall him saying whether they was extremely  
24 intoxicated or not. I do know both of them consumed alcohol.

25 Q: Okay.

## HOWARD WYNN - CROSS BY MR. MEETZE

1 MR. MEETZE: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. MEETZE: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 MR. MEETZE: All right.

6 BY MR. MEETZE:

7 Q: Do you recognize these documents?

8 A: Yes. That's the incident report.

9 Q: And that's documents commonly used with your office?

10 A: Yes.

11 Q: Who did that incident report?

12 A: Cantey.

13 Q: And how many pages is that incident report?

14 A: Two.

15 Q: All right. On the second page about three lines from the  
16 bottom towards the end, the sentence that starts with the word  
17 both, what does that sentence indicate?

18 MR. RICHARDSON: Your Honor, I think this probably calls  
19 for hearsay.

20 THE COURT: I'm going to allow it.

21 MR. RICHARDSON: Okay.

22 THE COURT: Right now.

23 BY MR. MEETZE:

24 A: Yeah. It says both parties involved were extremely  
25 intoxicated at the time of the incident.

## HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: Okay. Now, I'll take that back from you.

2 A: Okay.

3 Q: Now, when I asked you just a second ago when you talked  
4 to Officer Cantey if he had told you that both parties were  
5 extremely intoxicated, you said you did not recall; is that  
6 correct?

7 A: Yeah. I said I can't recall.

8 Q: Right.

9 A: I can't say for certain, but --

10 Q: But it is in his incident report; correct?

11 A: Yes, it is.

12 Q: So it's certainly possible that he did --

13 A: Yeah, it's possible.

14 Q: -- inform that to you?

15 A: Yes, sir.

16 Q: Okay.

17 MR. MEETZE: I don't have any further questions, Your  
18 Honor.

19 THE COURT: Mr. Richardson, anything else?

20 MR. RICHARDSON: No redirect.

21 THE COURT: Sir, you may step down.

22 MR. RICHARDSON: That's all our witnesses for this  
23 hearing.

24 THE COURT: All right. Mr. Meetze?

25 MR. MEETZE: Your Honor, we would ask that these

1 statements be excluded.

2       The first statement that we heard today, Your Honor, I  
3 would ask that it be excluded based on evidence that Mr.  
4 Durant was extremely intoxicated to a point where he was not  
5 capable of a free and voluntary waiver of his Miranda rights  
6 and fully understanding those rights at the time he was  
7 questioned.

8       With regards to the second statement, Your Honor, I would  
9 include the same argument with regards to the intoxication,  
10 but I would add that Mr. Durant, when asked if he wanted to be  
11 questioned after hearing Miranda rights, said no and at that  
12 point the questions did not stop and they are supposed to at  
13 that point in time.

14       Officer Wynn -- Investigator Wynn kept on talking with  
15 him until eventually he did say that he would answer  
16 questions. Those are my arguments with regards to the  
17 statements in general.

18       Your Honor, in the video that we just watched, I would  
19 also add if the Court believes that in general they are  
20 admissible, I would say towards the end when Officer Happ gets  
21 back in his car, he has further conversation with Mr. Durant.  
22 Some of that conversation -- a good bit of that conversation  
23 is regards to evidence in the case that was not seen or  
24 perceived by Officer Happ, which I think would be hearsay, and  
25 would certainly say that that part with Officer Happ when he's

1 talking about the witness saw you carrying the knife and  
2 whatever else he said, those of that nature, that that part  
3 would be inadmissible if in general the Court finds that the  
4 statements themselves are admissible.

5 THE COURT: Mr. Richardson?

6 MR. RICHARDSON: Your Honor, to state the intoxication  
7 point, I don't believe evidence of intoxication makes the  
8 statement per se involuntary. I think you have to look at it  
9 on a case-by-case basis, the specifics of the case.

10 In this particular one, he indicated to law enforcement  
11 that he understood his Miranda rights. He agreed to speak  
12 immediately with Corporal Happ in the first audio or the first  
13 clip we heard. He denied any involvement in the activities  
14 that evening and stuck with that story. He did admit to  
15 having a knife earlier in the day, which he said fell out of  
16 his pocket. And of course, that statement was rather brief.

17 Then with respect to Investigator Wynn's interaction with  
18 Mr. Durant, he did initially say no, but in the same stream --  
19 I mean it's pretty much the same sentence, basically a run-on  
20 sentence, and they're talking over one another as I recall at  
21 one point or very close to it, but he does agree without any  
22 sort of provocation or anything like that to talk with  
23 Investigator Wynn about the case and on they went from there.

24 Similarly, he denied any involvement. So he -- and he  
25 also had -- he said the knife was left at his cousin's house.

1 So he had a different place for the knife, but still he was  
2 distancing himself from involvement in a crime.

3 I think based on his ability to recognize the situation  
4 he was in -- in fact, there was one point where he gives  
5 Investigator Wynn information where to locate the knife and  
6 Investigator Wynn says something that appeared to me to  
7 indicate he was going to go check on that to try to verify the  
8 information and shut the door, and then Mr. Durant utters  
9 several expletives, as if his story were about to be checked  
10 up on and it may not be accurate.

11 But I think the content of his statement shows that he  
12 did know what he was doing because he was providing denials  
13 about every accusation they made at him, and I would ask that  
14 the Court find those statements to be voluntary.

15 THE COURT: What says the State with regards to the  
16 latter portion after Corporal Happ got back in the car after  
17 Officer -- Investigator Wynn talked to the defendant?

18 MR. RICHARDSON: Your Honor, Miranda is not an issue.  
19 He's been Mirandized twice. The intoxication thing is the  
20 same. I think the only issue would be with respect to the  
21 hearsay and it reminds me of situations where you're sitting  
22 in an interview room trying to elicit a statement from a  
23 suspect and you say X says this. Well, you know, what do you  
24 have? So basically in an effort to elicit a statement.

25 THE COURT: I mean there's some case law that's come out,

1 has it not, in the last year that says you can't do that.

2 MR. RICHARDSON: Well --

3 THE COURT: Is it not?

4 MR. RICHARDSON: I'm -- it may have. I'm not familiar  
5 with it.

6 MR. MEETZE: It may have, Your Honor.

7 MR. RICHARDSON: But in any event, we can redact that  
8 last portion and just keep it to the section where Wynn is  
9 speaking with him.

10 THE COURT: There is some case law. I don't know the  
11 case right off the top of my head, but there's some case law  
12 that's been out within the last year that specifically  
13 addresses that issue that says it is hearsay, as Mr. Meetze  
14 has objected to. I'll have my law clerk look for it, but in  
15 the meantime I want you to plan on redacting that portion.

16 With regards to the remainder of the statements given by  
17 the defendant, I do find that, first of all, he was in custody  
18 for purposes of Miranda. Second of all, that the State has  
19 provided sufficient evidence to show that his statement was  
20 knowingly, freely, voluntarily given.

21 There is no case law out there that I'm aware of that  
22 specifically says that signs of intoxication are per se  
23 prohibitive of the admissibility of a statement. There is  
24 some case law out there which says -- *US v. Pelton*, 835 F.2d  
25 1067, which was a Fourth Circuit case, and *State v. Saxon*, 201

1 S.E.2d 114, which is a 1973 case, and *State v. Crawley*, 562  
2 S.E.2d 683, which says that the fact that the defendant  
3 exhibits symptoms of drug withdrawal when she confesses does  
4 not alone render her statement involuntary.

5 I do not find simply signs of intoxication or some  
6 evidence of intoxication -- that alone does not render the  
7 statement by the defendant involuntary. Furthermore, in  
8 viewing the tape, as well as listening to the audio and  
9 watching the video, the defendant clearly was appropriately  
10 responsive to the questions that were asked of him by Officer  
11 Happ -- Corporal Happ.

12 Furthermore, with the issue with regards to Investigator  
13 Wynn reading the defendant his rights for the second time and  
14 the defendant saying he did not want to talk, the Court finds  
15 that the defendant continued to initiate conversation with the  
16 investigator, showing a willingness to further discuss the  
17 investigation with the officer.

18 Therefore, I believe the State has proven by a  
19 preponderance of the evidence that such statements are  
20 admissible in this situation, but your objection is so noted.

21 MR. MEETZE: Thank you, Your Honor.

22 THE COURT: All right. Mr. Richardson, anything further?

23 MR. RICHARDSON: No, sir, not with respect to those  
24 findings, but with respect to the last part of the video with  
25 Corporal Happ, I would just plan for trial purposes to --

1 THE COURT: All right.

2 MR. RICHARDSON: -- cut the video at the conclusion of  
3 Investigator Wynn's --

4 THE COURT: Okay.

5 MR. RICHARDSON: -- statement.

6 THE COURT: All right.

7 (WHEREUPON, there was a pause in the proceeding as the  
8 Court conferred with the law clerk, after which the  
9 proceedings resumed as follows.)

10 THE COURT: Anything else?

11 MR. MEETZE: I don't have anything further, Your Honor.

12 THE COURT: All right. Anything before I bring the jury  
13 in?

14 MR. RICHARDSON: Your Honor, we've gone over the NCICs of  
15 the two witnesses that have them in my case and I think we've  
16 come to an agreement on what can be brought out on  
17 impeachment. I don't know if we want to --

18 MR. MEETZE: Like he said, I don't know if it needs to be  
19 put on the record.

20 THE COURT: Y'all have come to an agreement on them  
21 though?

22 MR. MEETZE: We've agreed to it.

23 THE COURT: As long as you've agreed to it, that's fine.  
24 All right?

25 All right. I'm going to stand down for just a second.

1 It will also be the foreperson's duty to write the verdict,  
2 but I will give the foreperson further instructions about that  
3 at the conclusion of the case.

4 Now, in order to preserve everyone's rights, I will give  
5 the parties an opportunity to object to anything that I have  
6 said. Any exception or objection to anything that I have said  
7 to the jury by the State?

8 MR. RICHARDSON: No, Your Honor.

9 THE COURT: Defense counsel?

10 MR. MEETZE: Nothing, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, we will now  
12 begin the trial of this case. The State is so recognized for  
13 opening statement. Mr. Richardson?

14 OPENING STATEMENT ON BEHALF OF THE STATE

15 MR. RICHARDSON: Thank you, Your Honor. Mr. Meetze.

16 What is the value of a life? That's a question that  
17 we're not really allowed to answer as citizens in this country  
18 because we can't take lives. People offend us all the time,  
19 say things to get us mad, cut us off in traffic, upset us in  
20 our homes, all kind of things that make us mad, but we can't  
21 kill those people.

22 We can't try to kill those people and that's the order of  
23 society. We are a society of laws. There are federal laws,  
24 state laws, all kind of laws that we have to follow every day.  
25 And not only do we have to follow them, we get benefit from

1 them because other people have to follow them. Only in rare  
2 circumstances are we allowed to take a life, like a self-  
3 defense kind of situation, but this is not that.

4 This particular case took place on Jarrett Street here in  
5 the city of Florence, Florence County, at a homeless shelter,  
6 and several of the witnesses, as well as the defendant, were  
7 living in that shelter back in November of 2014.

8 Wiley Jones, who is the victim in this case, was a  
9 resident there, as was Melvin Durant, the defendant. Melvin  
10 Durant, this particular evening, was upset with Wiley Jones.  
11 At some point that evening, Mr. Jones went into the restroom  
12 at the homeless shelter to use it. Mr. Durant followed him  
13 into that restroom and surprise attacked him with a knife, and  
14 he went to town on him, opened him up pretty good in multiple  
15 locations on his body.

16 One thing keeps this case as an attempted murder instead  
17 of a murder. One thing kept Wiley Jones alive that night.  
18 And that was the presence of a guardian angel, if you will, a  
19 fellow by the name of Carl Wheeling, who was also a resident  
20 at that shelter, and he heard commotion coming from that  
21 bathroom. He made a conscious decision to take a step inside  
22 to see what was going on and he caught the hand, the wrist, of  
23 Melvin Durant as he's coming down again with that knife. He  
24 was able to hold him just long enough for Mr. Jones to escape  
25 that bathroom. He let Mr. Durant go. He goes running out

1 after him.

2            Luckily again for Mr. Jones, when he exited the place, he  
3 went one way and when Mr. Durant came out, he went the wrong  
4 way. Police got there in time to prevent any further  
5 interaction.

6            So the question you have to determine in this case is do  
7 you believe beyond a reasonable doubt that Mr. Durant  
8 attempted to murder Mr. Jones. And in order to help you  
9 answer that question, we have -- by we, I mean the State --  
10 have evidence to show you. That comes in the form of  
11 testimony from witnesses.

12           We've got several law-enforcement witnesses. We've got  
13 several witnesses from the scene that night who lived in the  
14 shelter. We've got photographs. We've got some video. We've  
15 got some audio. We've got some DNA. We've got the weapon.  
16 We got a bunch of stuff to show you. So we're going to put  
17 that all in your lap and ask you to make that determination.

18           And I believe that once you have reviewed all of the  
19 evidence that we have to show you and heard all the testimony  
20 that we have to present, you'll have more than enough to find  
21 that Mr. Durant did indeed attempt to murder Mr. Jones in that  
22 bathroom that night. Thank you.

23           THE COURT: Mr. Meetze.

24           OPENING STATEMENT ON BEHALF OF THE DEFENDANT

25           MR. MEETZE: Thank you, Your Honor. Good afternoon,

1 ladies and gentlemen.

2       As I told you earlier, my name is Vick Meetze and I work  
3 in the Public Defender's Office here in Florence. We handle  
4 cases in both Florence and Marion Counties and it's certainly  
5 my pleasure to be here today on behalf of and representing  
6 Melvin Durant.

7       Now, I'm not going to rehash -- try not to rehash a lot  
8 of what you've already heard. The one thing I will remind you  
9 of is that what I'm saying to you now and what Mr. Richardson  
10 just got through saying to you and what the judge instructed  
11 you just a little bit ago -- nothing that we say in front of  
12 you is evidence in the case.

13       So at this point in time, you've got no evidence in this  
14 case in front of you. Certainly there will be evidence  
15 presented and once it's presented -- once all of it is  
16 presented is when you, the jurors, are able to get together  
17 and deliberate and make a decision as to what happened in the  
18 case.

19       Now, Mr. Richardson has told you what he intends and  
20 expects the evidence to show, but that's all that is. That's  
21 his expectation and it's his job to get up here and tell you  
22 that. He does a very good job. Mr. Richardson and I have  
23 worked together on any number of cases, but that's all it is.  
24 It's just him telling you what he expects the evidence to  
25 show.

1 Evidence will only be entered through testimony of  
2 witnesses that get on this witness stand or exhibits that may  
3 be presented or things of that nature. So at this point in  
4 time, you still don't have anything to consider.

5 What I will tell you here is, as you've heard, in a  
6 criminal case anybody charged is presumed innocent. That's a  
7 principle of our law that is as solid as any rock there is.  
8 There's nothing more solid in our law than the principle of  
9 the presumption of innocence.

10 So what that means is that as he sits here, right here,  
11 Mr. Durant is as innocent as anybody else in this courtroom,  
12 and that innocence remains cloaked around him until such time  
13 as he can be proven guilty beyond a reasonable doubt, which  
14 brings me to a second principle of law, one that you will hear  
15 any number of times. You've heard it already, but you'll hear  
16 it a number of times throughout the trial and that is proof  
17 beyond a reasonable doubt.

18 That's the burden placed on the State in a criminal case.  
19 It's a very high burden and it's a very high burden for a very  
20 good reason. And that is because in criminal court you're  
21 dealing with the most important thing that you can deal with  
22 and that's people's lives, people's very liberties, and it  
23 doesn't get any more important than that.

24 We're in Circuit Court. There's two branches of Circuit  
25 Court. One is called the Court of Common Pleas, also known as

1 civil court, and then we're in -- you have the Court of  
2 General Sessions or criminal court, which is where we are now.

3 Both branches have jury trials, but in civil court the  
4 burden of proof is different. The burden of proof in a civil  
5 case is called by a preponderance of the evidence. And in  
6 reaching a verdict in a civil case when there's a wreck,  
7 somebody's injured, and you're trying to determine who's at  
8 fault, who may be liable for those injuries, juries are -- the  
9 evidence is presented and you think of a set of scales. If  
10 once all of the evidence is presented, if the scales tilt ever  
11 so slightly in one party's favor, then that's the party that  
12 is ruled in favor of. It's -- like I said, it's a more likely  
13 than not.

14 And not that money and things like that are not  
15 important. It certainly is, but it's not as important as  
16 people's liberty. In civil court, typically you're dealing  
17 with injuries and damages and trying to make people whole from  
18 financial situations where they lost money because they've had  
19 to pay medical bills and they've lost work and things like  
20 that.

21 In General Sessions Court, that's not the case. Like I  
22 said, we're dealing with people's lives and we're dealing with  
23 people's very liberty, and it doesn't get any more serious  
24 than that. It doesn't get any more real than that. And  
25 that's why the burden of proof in a criminal case is that much

1 more high, proof beyond a reasonable doubt.

2 If you think of those same scales in a case -- in a  
3 criminal case, the State would have to present evidence and  
4 present evidence and present evidence to where those scales  
5 are tilted extremely in their favor in order for a verdict of  
6 guilt beyond a reasonable doubt to be rendered. And again,  
7 that's because of what we deal with in criminal court.

8 Ladies and gentleman, you're going to hear a good bit of  
9 evidence. There will be -- it's not going to -- I don't  
10 anticipate the trial lasting very long, but as Mr. Richardson  
11 indicated, there could be testimony regarding DNA. There  
12 could be testimony -- exhibits presented. Certainly, you're  
13 going to be charged on the law and some of the laws that could  
14 be charged to you can get somewhat technical and things like  
15 that.

16 So certainly we appreciate your service and appreciate  
17 your attention in this case. And -- and at the close of the  
18 case, I'll be able to come back before you and at that time  
19 I'll be asking that you render a verdict in this case that  
20 speaks the truth, and that would be a verdict of not guilty.  
21 Thank you.

22 THE COURT: Mr. Richardson, call your first witness,  
23 please.

24 MR. RICHARDSON: Thank you, Your Honor. We'd call Carl  
25 Wheeling.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 THE CLERK: Sir, if you'd please place your left hand on  
2 the Bible and raise your right hand? Do you swear the  
3 testimony you give in this case to be the truth, the whole  
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated and state your full name for  
7 the record.

8 THE WITNESS: Carl Langley Wheeling.

9 MR. RICHARDSON: Thank you, Your Honor.

10 CARL WHEELING, being first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q: Mr. Wheeling, how old are you, sir?

15 A: I'm 61.

16 Q: Okay. And what town do you currently live in?

17 A: Columbia, South Carolina.

18 Q: How long have you been there?

19 A: One year.

20 Q: Okay. Back in November of 2014, where did you live?

21 A: There in the shelter, the transitional shelter.

22 Q: Okay. And that's on Jarrett Street?

23 A: That is correct.

24 Q: All right. Is that in Florence County?

25 A: That is correct.

## CARL WHEELING - DIRECT BY MR. RICHARDSON

1 Q: And is there a proper name for it? What's the -- is it  
2 -- is it called something other than the transitional shelter  
3 or that's just what you know it as?

4 A: I think it's the Pee Dee Transitional Shelter is the  
5 formal name.

6 Q: Okay.

7 A: Yeah.

8 Q: So is it a place where folks who are down on their luck  
9 or that have no place to stay will go for a period of time?

10 A: Yes, it is. It's a homeless shelter and what it is --  
11 it's male as well as female and it's designed for those who  
12 are down on their luck, don't have a place to stay, and they  
13 allow you -- it gives you time to make that transition back  
14 into the real world.

15 Q: Okay. And you were a resident there back in November --

16 A: Yes, I was.

17 Q: -- of 2014?

18 A: Yes, I was.

19 Q: And aside from being a resident, did you have any sort of  
20 supervisory authority or anything of that nature?

21 A: It was never supervisory, but I was considered sort of in  
22 charge after hours, after the staff had left. And what I was  
23 delegated to do is just to keep the director informed of, you  
24 know, fights, arguments, people coming in after hours, after  
25 curfew hours, which was ten o'clock, and just sort of keep the

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 peace. You know, I had no powers to make anybody do anything,  
2 but --

3 Q: You were the classroom monitor?

4 A: Absolutely, absolutely.

5 Q: Okay. So on this particular evening, November 12<sup>th</sup>, what  
6 do you recall about Melvin Durant in the shelter?

7 A: Okay. I remember it being in the evening. I was sitting  
8 on -- we -- our spaces are divided into cubicles with a  
9 curtain across the entrance. I was sitting there in my little  
10 cubicle and I got a knock on the -- on the door there. Well,  
11 the curtain. And it was Mr. Durant.

12 He came in and he said I would like to talk with you. He  
13 said, you got a minute, can you sit down and talk with me?  
14 Can I sit down and talk? I said, sure, of course. He came in  
15 and right off the bat, you know, the alcohol -- the smell of  
16 alcohol was overwhelming, speech slurred, and he was highly  
17 agitated. Those are the things that I remember.

18 So in the back of my mind, you know, he seemingly wanted  
19 to talk; so I let him talk. I just sat there and let him talk  
20 through it because I felt like this was the only way to let  
21 him talk himself through it and calm him down.

22 And from -- and at that point, he said that himself and  
23 Wiley Jones -- they had been to some house. And it's across  
24 from 413 and what it is is it's a bunch of little shotgun  
25 houses there and he said they were all sitting around. Wiley

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 offered to buy him drinks and they were sitting around the  
2 table and he said Mr. Jones, the victim, was going around the  
3 table and was bragging about the money he had.

4 And so -- and this seemed to agitate him a lot. Why, I  
5 don't know. But he said he told -- he pulled him to the side  
6 and said, Mr. Jones -- he said, Wiley, this is not polite for  
7 you to be in somebody else's home and to be flashing this  
8 money around. So -- and he said from there they had a -- they  
9 had a few words.

10 And at the end of this, he had talked himself down. He  
11 was very calm, but he did say -- he said now -- he's sort of  
12 giving me notice, but he said, now, Wiley had been -- he said  
13 Wiley had been messing with him. What this mean, I do not  
14 know, but he says if this continues, there's going to be a  
15 problem.

16 And I -- and he said -- and I think he used the word  
17 hurt. I'm going to hurt him if he continues to pick or poke  
18 at me. Some people say kill, but I never heard the word kill  
19 come from his mouth. It was more if there's a problem, I'm  
20 going to hurt him.

21 So after we had -- and I think that was the last of the  
22 conversation and he thanked me for listening. He got up. He  
23 walked toward the curtain. When he got to the curtain and  
24 pulled it back, there was Mr. Wiley Jones standing there,  
25 which apparently he had been standing there through the whole

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 conversation of him talking to us -- him talking to me.

2       And so Wiley Jones at that moment says, I thought we were  
3 going to leave this outside. I didn't -- we had done  
4 discussed not to bring this in here. And they had a few more  
5 words and the last thing I know, one went one way, one went  
6 the other way, and in about five minutes, I got -- I walked  
7 outside and I walked into a TV lounge. And while I was  
8 standing there in the TV lounge, I heard a rumble in the  
9 bathroom, and a rumble sounds like individuals fighting.

10       So I was -- well, at that point, then I went inside and,  
11 when I walked inside the door, I was kind of mortified at what  
12 I saw because at that moment I walked in -- because I remember  
13 seeing Mr. Durant. He had Wiley Jones. With his left hand,  
14 he was holding him up against the urinal. His right hand --  
15 he had the knife clenched with the blade in a downward  
16 position. And Wiley is kind of tall. He's taller than  
17 Melvin.

18       And at that -- and what he was doing -- essentially, he  
19 was jumping up and reaching over, which would have caught him  
20 right here or in the back. So I had a -- I saw him --  
21 actually the blade hit Wiley about twice.

22       And so I was just out of major heart -- open-heart  
23 surgery. So I -- I had to make a quick decision because I  
24 didn't know whether I was strong enough to fend him off of  
25 Wiley without compromising and jeopardizing my own self

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 because I was not healed at that moment. I still had gauze  
2 and everything. But like I said, it was just a split second  
3 that I had to think and then react.

4 So what I did -- the hand that he had up with the blade  
5 in, I grabbed him on the arm and stopped the thrust so he was  
6 unable to stab him anymore, and I held him. And although it  
7 seemed like five minutes at the time, it was probably no more  
8 than a minute and a half, if it was that long, that I held his  
9 arm.

10 So when I thought about it, I didn't see Mr. Jones. And  
11 what he had done -- during the time that I grabbed his arm and  
12 stopped Melvin from attacking him, that gave him time to ease  
13 out of the bathroom and he must've gone outside.

14 So I eased off Melvin's arm. I let him go. He didn't  
15 offer any resistance -- not a lot of resistance and when I let  
16 him go -- let his arm go, he left out of the bathroom.

17 So at that particular moment, I called the shelter  
18 director and notified her of what had transpired, and so she  
19 said she was on her way. And then I went outside to see where  
20 -- one, where Wiley was and again where Melvin was because I  
21 didn't know whether Melvin had chased him out there.

22 And when I -- when I walked outside, I went around the  
23 long way to the front because by that time I saw the ambulance  
24 and there was a squad car out front. And I saw Mr. Riley --  
25 Wiley Jones. He was crouched down up under the tree and he

## CARL WHEELING - DIRECT BY MR. RICHARDSON

1 was holding his wounds, but at that time, like I said, the  
2 ambulance was there. They were treating him. So then I went  
3 around to the back again and so I was just standing up because  
4 most all the residents was out there and the policemen and  
5 everybody. There was a barrage of people out there.

6 So somewhere from around the back corner, Melvin Durant  
7 -- he appeared and he was calm and he was -- he was walking  
8 like nothing had ever happened. And the policeman at that  
9 time -- although they knew the name of the person, I don't  
10 think they knew who he actually was. But when he walked up,  
11 they asked him what his name was. Are you Melvin Durant? And  
12 then at that time, they arrested him. They kind of threw him  
13 up on the hood of the squad car and handcuffed him and that's  
14 it.

15 Q: Okay. And do you see Mr. Durant in the courtroom today?

16 A: Yes, I do.

17 Q: Could you point him out?

18 A: Yes, sir. Right here. (Indicating.)

19 Q: All right.

20 MR. RICHARDSON: I'd ask that the record reflect he  
21 pointed out the defendant.

22 Q: Mr. Wheeling, I want to show you a few exhibits here.

23 THE COURT: Have you already gone through the exhibits?

24 MR. MEETZE: Yes, sir.

25 MR. RICHARDSON: All right.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: Mr. Wheeling, I'm going to show you several exhibits here  
3 that are marked as follows and ask if you can identify them.

4 One is State's Exhibit 5, State's Exhibit 7, 8, 9, 10, 11, and  
5 12. If you could, take a look at these and let me know if you  
6 recognize what those are and call them out by number if you  
7 recognize them.

8 A: Okay. These brick steps are the side steps to the side  
9 emergency entrance and fire entrance of the shelter.

10 Q: Okay. Is that Number 12 you're looking at there?

11 A: Yes, it is.

12 Q: Okay.

13 A: Okay. This is in the back leading out of the dining hall  
14 and these steps on the opposite side are the stairway --  
15 stairwells to the females' dorm.

16 Q: That's Number 11?

17 A: Yes.

18 Q: Okay.

19 A: This is a shot from the exit door to the dining room  
20 looking down toward the end of the dining room leading into  
21 the TV room.

22 Q: That's Number 10?

23 A: Right. This is a picture here of the back door leading  
24 to the outside.

25 Q: Okay. And that's Number 9?

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 A: Correct. This is a picture of the back door walking out  
2 of the dining room, again opposite side, steps to the female  
3 and there's an alley in between.

4 Q: Okay. That's Number 8?

5 A: Correct. This is a photo of the men's restroom from the  
6 perspective of you walking in through the door with the sinks  
7 on the right and the urinals on the left.

8 Q: Okay. That's Number 7?

9 A: Uh-huh. And these are the two urinals in the men's  
10 restroom, of which Mr. Durant had Wiley up against the one on  
11 the right.

12 Q: Okay. And that's Number 5?

13 A: Correct.

14 Q: Do all of these photographs truly and accurately depict  
15 what that shelter looked like on the evening this occurred?

16 A: Yes, they do.

17 Q: All right.

18 MR. RICHARDSON: Your Honor, at this time, I'd ask that  
19 State's 5, 7, 8, 9, 10, 11, and 12 to be entered into  
20 evidence.

21 MR. MEETZE: No objection, Judge.

22 THE COURT: Without objection, so admitted.

23 (WHEREUPON, State's Exhibits Number 5, 7, 8, 9, 10, 11,  
24 and 12, all photographs, were admitted into evidence.)

25 MR. RICHARDSON: Your Honor, if I may pull up our screen

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 here and publish those to the jury so that Mr. Wheeling can  
2 explain to them what he just explained looking at the photos?

3 THE COURT: All right. Mr. Meetze, if you need to get up  
4 and move, feel free to.

5 MR. MEETZE: Thank you, Your Honor.

6 THE COURT: Go ahead, Mr. Richardson.

7 MR. RICHARDSON: Thank you, Your Honor.

8 BY MR. RICHARDSON:

9 Q: All right. Mr. Wheeling, I'm showing you what's been  
10 entered into evidence as State's Number 5. If you could,  
11 explain to us what we're looking at and what's significant  
12 about it?

13 A: Okay.

14 THE COURT: Hold on a minute. Hold on a minute. What's  
15 that?

16 THE COURT REPORTER: Is that Number 5? That was the last  
17 one.

18 THE COURT: Yeah. He went through them in reverse order.

19 THE COURT REPORTER: Okay.

20 THE COURT: Okay? He went through them 12, 11, 10, 9, 8,  
21 7, 5. That was his last one. Mr. Richardson is picking back  
22 up on 5. Is that right?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: All right.

25 MR. RICHARDSON: All right.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: Mr. Wheeling, if you could, tell us what we're looking at  
3 and what took place there?

4 A: Okay. The urinal on the right is the one that Melvin  
5 Durant had Wiley Jones backed up, and he was backed up with  
6 his back -- Mr. Jones had his back up against the urinal and  
7 he was in a defensive posture here because while Melvin was  
8 stabbing, I think that he was trying to keep from getting  
9 stabbed in the face or in the immediate chest, but he was  
10 offering no resistance. And that's when Mr. Melvin Durant  
11 just kept chopping at him.

12 Q: So you did not see Mr. Jones possess a weapon?

13 A: No, no. No weapon.

14 Q: Okay.

15 A: He had nothing.

16 Q: Okay. So -- all right. This is State's Number 7 that's  
17 already in evidence. What is it we're looking at here?

18 A: Okay. We are looking from the entrance perspective into  
19 the men's restroom and on the right there, as you see, are the  
20 sinks, but directly across, which you can't see, are the  
21 urinals that we just saw in the previous picture.

22 Q: So if you were to walk -- finish walking through that  
23 threshold and hang a left, you'd be looking at the picture we  
24 just saw?

25 A: Absolutely.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 Q: Okay. And this is State's 10. If you could, explain  
2 this to us and try to tell us where the bathroom is in  
3 relation to it?

4 A: Okay. The white door that you see in the forefront,  
5 that's the exit door to the dining facility, which you can see  
6 further down the hall there. You see the dining facility on  
7 the right. The door all the way at the end leads into the  
8 men's TV room and as soon as you enter that door to the  
9 immediate right would be the restroom.

10 Q: Okay. So where you can see how that second exit sign is  
11 glowing in the back, that's where the -- to the right there  
12 would be the bathroom?

13 A: Yes, sir.

14 Q: So if you're going to come out of the back door of the  
15 facility, you've got to come from that second exit sign --  
16 exit sign area down this hallway and come out this door we're  
17 standing in?

18 A: Correct.

19 Q: This is State's 11. Can you tell us what we have here?

20 A: Okay. On your left, you have the door that leads into  
21 the dining hall that we just looked at. Across the right,  
22 which where you see the wood hand railing and the brick steps,  
23 that leads to the female dorm. And straight ahead leads to  
24 the backyard, which is the parking area.

25 Q: Okay. And what in the backyard -- what's behind the

## CARL WHEELING - DIRECT BY MR. RICHARDSON

1 shelter?

2 A: Housing Authority. There's a fence there. There's a  
3 park -- there's your parking area. Then right ahead at the  
4 front of the vehicles, there's a fence that separates the  
5 shelter from Housing Authority.

6 Q: Okay. All right. This is Number 8 that's in evidence.  
7 Will you explain that one to us?

8 A: Okay. Now this picture -- the angle that it's taken from  
9 -- this picture was taken from the parking spaces toward the  
10 dining hall entrance on the right, female accommodations on  
11 the left, and right where the picture frame that you see in  
12 the back all the way to the back there on the female  
13 dormitory, to the -- a sharp right and there's an alley that  
14 you can take and walk through that alley, which would take --  
15 which is a shortcut many of the residents use to get to the  
16 front yard quicker.

17 Q: So you mean right here?

18 A: Yes, sir.

19 Q: Where this siding changes?

20 A: Right.

21 Q: There's a space here?

22 A: There's a space that's an alley.

23 Q: Okay. That's how you can get to the front yard?

24 A: Yes, sir.

25 Q: State's 12?

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 A: Okay. Those are the steps on the far -- looking from --  
2 looking at the shelter from the front all the way to the left-  
3 hand side of the shelter, those are the steps that lead up  
4 into the men's lounge. And this -- and this door is never  
5 open. It's more or less a fire exit.

6 Q: Okay. And State's 9? What are we looking at?

7 A: This is the back door that takes you outside and, from  
8 this perspective, you would be in the dining room hallway  
9 right at the door.

10 Q: Okay. All right. Mr. Wheeling, thank you very much.  
11 Please answer any questions Mr. Meetze may have for you.

12 A: Okay.

13 THE COURT: Cross-examination?

14 MR. MEETZE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MEETZE:

17 Q: Good afternoon, Mr. Wheeling.

18 A: Good afternoon.

19 Q: You spoke with police officers when they got to the  
20 facility that night?

21 A: I did.

22 Q: And do you recall how many folks you spoke with?

23 A: The black gentleman in the dark suit -- he asked me some  
24 questions. And I think that one of the first responders that  
25 got there first.

## CARL WHEELING - CROSS BY MR. MEETZE

1 Q: And do you recall speaking to one of the first responders  
2 that got there?

3 A: Yes.

4 Q: Right. Do you recall his name?

5 A: I do not.

6 Q: Could it have been an Officer Cantey? Is that possible?

7 A: Let's see. He looks familiar, yes.

8 Q: Okay.

9 A: Yes, he does.

10 Q: Well -- and you talked to him and told him what you saw;  
11 correct?

12 A: Correct.

13 Q: Okay. And you didn't see anything that happened prior to  
14 Mr. Durant, according to your testimony, coming back to the  
15 facility?

16 A: No.

17 Q: And talking to you?

18 A: No.

19 Q: Now, he indicated to you that something had occurred,  
20 according to your testimony, outside of the facility at  
21 wherever they had gone?

22 A: Yes.

23 Q: Do you know where they were?

24 A: We had -- the director launched her own investigation in

25 --

## CARL WHEELING - CROSS BY MR. MEETZE

- 1 Q: Well, I don't mean to cut you off.
- 2 A: Okay.
- 3 Q: If you don't know, then that's fine.
- 4 A: Okay.
- 5 Q: All right.
- 6 A: No.
- 7 Q: Mr. Durant didn't tell you --
- 8 A: No.
- 9 Q: -- where they were?
- 10 A: Oh, yes, he did. Yes, he did.
- 11 Q: Okay.
- 12 A: He told me he was at a little house there. Like I said,
- 13 a little shotgun -- there's a series of little shoddy-looking
- 14 houses right beside 413, which is a drug -- I think drug and
- 15 alcohol recovery and it's named 413, but the houses are sort
- 16 of right beside it.
- 17 Q: All right. And you said when he came back when he talked
- 18 to you, the first thing you noticed was an overwhelming odor
- 19 of alcohol?
- 20 A: Yes.
- 21 Q: Okay. And that he was highly agitated?
- 22 A: Yes.
- 23 Q: And he explained to you why he was highly agitated?
- 24 A: Yes.
- 25 Q: Now, did he indicate to you -- ever indicate to you -- I

CARL WHEELING - CROSS BY MR. MEETZE

1 know you testified that this was over -- he was agitated over  
2 his perception of Mr. Jones flashing money and things like  
3 that and that not being appropriate. Did he make any kind of  
4 -- did he tell you anything about cigarettes?

5 A: No. No, he did not.

6 Q: Nothing about that? All right.

7 A: Only that Mr. Jones -- and the way he stated it was  
8 constantly messing with him. He kept -- he repeated that a  
9 couple of times.

10 Q: I gotcha. And you testified that Mr. Durant came and he  
11 spoke to you in your little area with the curtain pulled;  
12 correct?

13 A: Correct.

14 Q: And it was certainly your belief -- you had no reason to  
15 believe anything other than that being a private conversation  
16 between the two of you; correct? Is that right?

17 A: That's correct.

18 Q: Okay. And you testified that when Mr. Durant was done  
19 speaking with you and he left, it became apparent to both of  
20 you that Mr. Jones had been standing there listening; correct?

21 A: All the time, yes.

22 Q: And you've glossed over it a little bit and I think your  
23 testimony was that Mr. Jones said something to him along the  
24 lines of I thought we were going to leave this outside?

25 A: Yes, sir.

## CARL WHEELING - CROSS BY MR. MEETZE

1 Q: And basically not bring it back into here?

2 A: Yes, sir.

3 Q: And I think your testimony earlier was that they  
4 exchanged words?

5 A: Yes.

6 Q: Okay.

7 A: There was some words exchanged.

8 Q: But when you talked to Officer Cantey, you told him --  
9 you went into a little bit more detail than that; correct?

10 A: And I could have because it was fresh -- fresh then and  
11 --

12 Q: Right.

13 A: It's been a year since then.

14 Q: And not necessarily a lot of detail, but -- and do you  
15 recall the argue -- you say -- your testimony earlier was that  
16 they had some words. Do you recall classifying it as an  
17 argument?

18 A: I think, you know, Mr. Jones had a smirk, you know, he --  
19 but, like I said, Melvin Durant -- he was agitated and  
20 Melvin's voice was agitated. He was agitated. So he was loud  
21 enough where, yes, it would have seemed like an argument.

22 Q: In fact, did you tell Officer Cantey that after the  
23 suspect -- after Mr. Durant realized that Mr. Jones had been  
24 listening that a heated argument between the two occurred?

25 A: Well, like I said, it was loud. But heated in the sense

CARL WHEELING - CROSS BY MR. MEETZE

1 of to the point that it would be physical, no.

2 Q: No, sir. I'm not asking you to characterize it as that,  
3 but heated to the point of them -- first of all, I'm asking  
4 you did you characterize the argument to Officer Cantey as a  
5 heated argument? That's what --

6 A: And -- and I probably did, yes.

7 Q: Okay. Sure. And no, heated just means two people angry;  
8 correct?

9 A: Correct.

10 Q: Okay. Now, you testified just now that after that heated  
11 exchange between the two, one went one way and one went the  
12 other way; correct?

13 A: Correct.

14 Q: All right. And then you testified that you went into --  
15 I think you called it the TV room?

16 A: Well, I actually went back into my area for about three  
17 or four minutes.

18 Q: For a little bit, but I mean -- yes, sir. But I meant --

19 A: And then I eventually wound up in the TV room.

20 Q: And that you heard a commotion?

21 A: I heard a rumble, yes.

22 Q: You did not see either one of them go into the bathroom?

23 A: I did not.

24 Q: Is that your testimony?

25 A: I did not.

CARL WHEELING - CROSS BY MR. MEETZE

1 Q: Okay. I just wanted to make -- be clear on that. Did  
2 you -- do you recall whether or not you gave any written  
3 statements to the police?

4 A: I did not.

5 Q: You did not?

6 A: I did not.

7 Q: Okay. All the statements that you made were oral  
8 statements; is that correct?

9 A: Correct.

10 Q: And again, once -- according to your testimony, when you  
11 grabbed Mr. Durant, Mr. Jones left and sometime after that --  
12 and you said it seemed like five minutes, but it might have  
13 been as short as less than a minute and half?

14 A: Absolutely.

15 Q: But at some point in time, Mr. Durant left?

16 A: Right.

17 Q: And you didn't see what happened after that?

18 A: No.

19 Q: Okay.

20 A: No.

21 Q: So that's when your -- anything that you saw or perceived  
22 or anything like that ended at that point; correct?

23 A: Correct.

24 Q: Okay. When they got into this heated argument, you don't  
25 recall anything specific that was said necessarily outside of

## CARL WHEELING - CROSS BY MR. MEETZE

1 -- I mean you said that Mr. Jones said I thought we were going  
2 to leave this on the outside. Other than that, anything?

3 A: No.

4 Q: But certainly -- and like you said, it's been a good bit  
5 of time that's passed already; right?

6 A: Right.

7 Q: You didn't write anything down for the police?

8 A: I did not.

9 Q: And as time goes forward, our memories don't get better,  
10 do they?

11 A: That's correct.

12 Q: They just get -- they get worse. You don't remember as  
13 well things that happened 18 months ago as you remember the  
14 things that happened two days ago?

15 A: Absolutely. Some degradation.

16 Q: And so it's certainly possible that at the time you may  
17 have remembered the things that were said during the argument;  
18 correct?

19 A: Maybe. Yes.

20 Q: But we don't know that for sure?

21 A: Right.

22 Q: All right.

23 MR. MEETZE: I don't have any further questions, Judge.

24 THE COURT: Mr. Richardson?

25 MR. RICHARDSON: No redirect and I'd ask that Mr.

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Wheeling be excused.

2 THE COURT: Any objection?

3 MR. MEETZE: No, Your Honor.

4 THE COURT: Sir, you may step down. You're free to go.

5 Thank you for being here. Have a nice day.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness.

8 MR. RICHARDSON: We'd call Tommy Nesmith.

9 THE CLERK: Sir, please place your left hand on the Bible  
10 and raise your right hand. Do you swear the testimony you  
11 give in this case to be the truth, the whole truth, and  
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for  
15 the record.

16 THE WITNESS: Tommy L. Nesmith.

17 MR. RICHARDSON: All right.

18 TOMMY NESMITH, being first duly  
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q: Mr. Nesmith, can you tell us how old you are?

23 A: I am 52 years old.

24 Q: Okay. And do you live here in Florence?

25 A: Yes, sir.

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Q: All right. Back in November of 2014, were you living at  
2 the transitional shelter on Jarrett Street?

3 A: Yes, sir, I was.

4 Q: Okay. So did you know Mr. Durant and Mr. Jones and Mr.  
5 Wheeling?

6 A: Yes, sir.

7 Q: Okay. On the night of November the 12<sup>th</sup>, what do you  
8 remember about seeing Mr. Durant?

9 A: The only thing I remember about seeing Mr. Durant -- he  
10 came outside and threw a knife across the fence.

11 Q: All right. And where were you located?

12 A: I was outside smoking a cigarette at the time.

13 Q: Now, were you in the back of the facility?

14 A: The back of the facility. Yes, sir.

15 Q: Okay. And let me show you, if I can, something that's  
16 already in evidence. This is State's 11. It's already in  
17 evidence. Do you recognize this viewpoint?

18 A: Yes, sir. That's coming right in the back door off the  
19 men's side going into upstairs into the women's side and the  
20 entrance going to the backyard.

21 Q: So that's aimed out towards the backyard?

22 A: It's aimed out towards the backyard.

23 Q: All right.

24 A: Yes, sir.

25 Q: So you were back in there somewhere smoking a cigarette?

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: And so did you see Mr. Durant come out the back door?

3 A: Yes, sir.

4 Q: Okay. And so he would've had to have walked down this  
5 pathway?

6 A: Yes, sir.

7 Q: And what did you observe him do?

8 A: He come outside. He stand beside me because I give him a  
9 cigarette and he took the knife and throw the knife across the  
10 fence like that.

11 Q: All right. And we're talking about the fence that  
12 separates --

13 A: Yes, sir.

14 Q: -- the shelter from the Housing Authority?

15 A: Yes, sir.

16 Q: Okay. Did he say anything to you about what had just  
17 happened?

18 A: No, sir.

19 Q: So you just saw him throw it?

20 A: Yes, sir.

21 Q: All right. And I'm going to ask you -- well, what did  
22 you do later with respect to that knife?

23 A: About three days later, I went and I retrieved the knife.

24 Q: All right. Where did you find it?

25 A: Behind the Housing Authority.

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

- 1 Q: Behind the -- the --
- 2 A: Behind the Housing Authority.
- 3 Q: Okay. So it was over that fence?
- 4 A: It was over the fence. It was between -- you got a fence
- 5 like this separating the shelter and the Housing Authority,
- 6 and you got another fence coming like that, and it was between
- 7 the back of the fence behind the Housing Authority.
- 8 Q: All right. So you -- had you just seen kind of the
- 9 general direction he through it?
- 10 A: Yes, sir.
- 11 Q: So you went back there looking for it?
- 12 A: Yes, sir.
- 13 Q: Three days later?
- 14 A: Yes, sir.
- 15 Q: And what -- what caused you to go three days later?
- 16 A: Because other people was being accused of having the
- 17 knife at the time.
- 18 Q: So you knew the direction it was thrown?
- 19 A: I knew the direction it was thrown.
- 20 Q: All right. So you found it and what did you do with it?
- 21 A: I give it to the victim, Wiley Jones.
- 22 Q: Okay. And I want to show you a couple of items here that
- 23 have been marked. This one is State's 3 and one is State's 4
- 24 for identification. Can you take a look at those and tell me
- 25 if you recognize them?

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 A: That's the knife right there.

2 Q: All right.

3 A: I can't -- the knife is turned the opposite direction.

4 So it's hard to --

5 Q: But you're sure about Number 4?

6 A: I'm sure that's the knife right there.

7 Q: Okay. Is this what the knife looked like when you picked

8 it up?

9 A: Yes, sir.

10 Q: All right.

11 MR. RICHARDSON: Your Honor, I'd asked for State's 4 to

12 be entered into evidence.

13 THE COURT: Any objection?

14 MR. MEETZE: No, Your Honor.

15 THE COURT: Without objection, State's Exhibit Number 4

16 so admitted.

17 (WHEREUPON, State's Exhibit Number 4, a photograph, was

18 admitted into evidence.)

19 MR. RICHARDSON: Okay.

20 BY MR. RICHARDSON:

21 Q: I'm going to -- is this the picture you just looked at?

22 A: Yes, sir.

23 Q: And when you picked the knife up, do you remember that --

24 that red stain being on it?

25 A: That was on the knife when I picked it up.

## TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Q: It was?

2 A: Yes, sir.

3 Q: And was it -- was it dried on there?

4 A: Yes, sir.

5 Q: Okay. So after you turned it over to Mr. Jones, do you  
6 know what he did with it?

7 A: No, sir. Not at that point in time.

8 Q: All right. Very good. Please answer any questions Mr.  
9 Meetze may have.

10 THE COURT: Cross-examination?

11 MR. MEETZE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MEETZE:

14 Q: Mr. Nesmith, you indicated that you went back three days  
15 later?

16 A: Yes, sir.

17 Q: Could it have been four days?

18 A: No, sir. It was three days.

19 Q: All right. The -- and you took what you found at the  
20 Housing Authority -- you took to Wiley Jones?

21 A: Yes, sir.

22 Q: And he's the victim in this case?

23 A: Yes, sir.

24 Q: All right. And you indicated through your testimony you  
25 saw Mr. Durant throw the knife in that direction; correct?

## TOMMY NESMITH - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: But you didn't go pick it up then?

3 A: No, sir.

4 Q: All right. It didn't dawn on you to pick it up then?

5 A: No, sir.

6 Q: Just sometime later, at least three days, you go over  
7 there looking for it and then you find the knife that you've  
8 identified in that picture; correct?

9 A: Yes, sir.

10 Q: And you give that to Wiley Jones; correct?

11 A: Yes, sir.

12 Q: All right. Mr. Nesmith, you've got prior criminal  
13 convictions on your record?

14 A: Yes, sir.

15 Q: Back in 2009, you got a conviction for indecent exposure;  
16 is that correct?

17 A: Yes, sir.

18 Q: And also in 2012, you got a conviction for aggravating  
19 stalking -- aggravated stalking; is that correct?

20 A: Yes, sir.

21 Q: And your testimony is the knife went -- after you found  
22 it, you took it to Mr. Jones?

23 A: Yes, sir.

24 Q: You didn't give it to anyone else?

25 A: No one else.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 MR. MEETZE: I don't have any further questions, Your  
2 Honor.

3 MR. RICHARDSON: No redirect and I ask that he be  
4 excused.

5 THE COURT: Sir, you may step down. You're free to go.  
6 Thank you for being here.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MR. RICHARDSON: We'd call Wiley Jones.

10 THE CLERK: Sir, please place your left hand on the Bible  
11 and raise your right hand. Do you swear the testimony you  
12 give in this case to be the truth, the whole truth, and  
13 nothing but the truth, so help you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Please be seated and state your full name for  
16 the record.

17 THE WITNESS: My full name is Wiley E. Jones.

18 WILEY JONES, being first duly  
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q: All right. Mr. Jones, where do you live now?

23 A: Ohio.

24 Q: All right. The state of Ohio?

25 A: Yes, sir.

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: All right. And how long have you been living in Ohio?

2 A: Almost a year now.

3 Q: All right. So back in November of 2014, were you living  
4 at the transitional shelter here in Florence?

5 A: Yes, sir.

6 Q: All right. So you're familiar with Mr. Nesmith, Mr.  
7 Durant, Mr. Wheeling, and folks --

8 A: Yes, sir.

9 Q: -- we've had in here so far? This evening of November  
10 the 12<sup>th</sup> -- we've heard testimony from Mr. Wheeling already  
11 about some discord between you and Mr. Durant. Based on your  
12 recollection, what was the nature of the problem between you  
13 two guys leading up to this night?

14 A: To be honest, I really can't tell you what problem Mr.  
15 Durant had with me or what problem I had with him. It's like  
16 I come from the north and I'm here in the south and my point  
17 of views in life is different and theirs is different. So we  
18 kind of clashed on not a lot of things, but on things. I got  
19 my opinion and they have theirs.

20 Q: Okay. So for whatever reason, it's safe to say y'all  
21 weren't getting along very well this day or these days leading  
22 up to this incident?

23 A: Yeah.

24 Q: Had there been any acts of violence prior to this  
25 stabbing incident between you two guys?

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: No. Just -- no.

2 Q: Okay.

3 A: No.

4 Q: Mr. Wheeling mentioned you standing outside of his little  
5 living area there at the curtain --

6 A: Uh-huh.

7 Q: -- while Mr. Durant and Mr. Wheeling were having a  
8 conversation about you bothering Mr. Durant. Do you recall  
9 that?

10 A: Yes, sir.

11 Q: All right. And do you remember standing out there and  
12 hearing some of that?

13 A: Yes, sir.

14 Q: And what was your recollection? When that curtain opened  
15 up and Mr. Durant came out of there, what do you recall about  
16 your interaction with him there?

17 A: I asked Mr. Durant -- I thought we wasn't going to bring  
18 our problems into the facility because the facility is low  
19 tolerance. So if me and him have a problem with each other,  
20 we go to the director. The director, if she can't settle it,  
21 she'll put us back out on the street. So I asked Mr. Durant  
22 could you not bring this back into the facility. Them are the  
23 only words I said to Mr. Durant.

24 Q: Okay. And did he at that moment say anything back to you  
25 that you recall?

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Not that I recall because -- no. I went to -- I went to  
2 go to the restroom. After I spoke with him, then I went to  
3 the restroom then.

4 Q: Okay. And what was your purpose in going to the restroom  
5 at that point?

6 A: I had to use the restroom.

7 Q: All right. Were you -- is there showers and all kinds of  
8 stuff in there?

9 A: Yeah.

10 Q: So you're just going in there to use the restroom?

11 A: Yes, sir.

12 Q: So when you walk into the bathroom, take us through what  
13 you do?

14 A: It's a stand-up urinal; so I stood. I'm standing there,  
15 you know, about to take a little -- about to go to the  
16 restroom and relieve myself. I felt someone behind me. It  
17 was Mr. Durant with a knife and he just started stabbing me  
18 and stabbing me. My back was turned towards the wall. So I  
19 turned around and looked at him and I put my hands up, you  
20 know, and I asked him why did you stab me. And --

21 Q: Well, you said your back was --

22 A: Like, the urinal --

23 Q: Yeah.

24 A: I was using the bathroom; so my --

25 Q: So you were looking at the urinal?

## WILEY JONES - DIRECT BY MR. RICHARDSON

- 1 A: Yeah. And he was behind me.
- 2 Q: Okay.
- 3 A: And he stabbed me a couple times and in getting stabbed  
4 -- I've never been stabbed or shot; so I was in shock. So the  
5 only thing I did was went into defensive mode because I  
6 finally turned around to look at him. I put my hands up and I  
7 asked him why did he stab me. He said I told you to leave me  
8 alone. I ran out the bathroom. I looked behind me. He was  
9 maybe five -- maybe ten steps behind me. I went to the left  
10 and I hear him screaming off to the right. There's a little  
11 cubbyhole that I crossed in and fell out in the yard. Well, I  
12 called 9-1-1 and told them what happened.
- 13 Q: Do you recall Mr. Wheeling coming in the bathroom?
- 14 A: Yeah. Yes, I do.
- 15 Q: All right. So by the time Mr. Wheeling came in the  
16 bathroom, had you already been hit with the knife?
- 17 A: Yeah, several times. Yes.
- 18 Q: Okay. And what do you recall Mr. Wheeling doing when he  
19 came in?
- 20 A: After -- after -- after Mr. Durant stabbed me, I turned  
21 around and looked at him and I asked him why did you stab me.  
22 Why are you stabbing me? And --
- 23 Q: Was it in that calm a voice?
- 24 A: No, no, no. But I asked him and, like, he didn't care.  
25 So he was going to stab me again and Mr. -- Mr. Carl gripped

WILEY JONES - DIRECT BY MR. RICHARDSON

1 his wrist. And when he did that, I was penned up; so I  
2 scooted away and I ran out the facility. I looked behind me  
3 and I seen -- you know what? I didn't see him. I seen an  
4 orange shirt that he was wearing, and I looked and I was  
5 scared then; so I really panicked and I ran outside and just  
6 hit 9-1-1 and just --

7 Q: So when you got out, you had to run out that back door?

8 A: Yes, sir.

9 Q: And your options -- when you hit that back door, you go  
10 left or right?

11 A: Yeah.

12 Q: So if you come out that back door and take a left, which  
13 way -- where are you headed?

14 A: I'm headed to the parking lot.

15 Q: To the back parking lot?

16 A: Yes.

17 Q: If you take a right?

18 A: There's a little -- there's a little slide place. You  
19 know, everyone can't fit through there. Only, you know -- so  
20 I was able to slide through it.

21 Q: And you got out to the front yard?

22 A: Yeah.

23 Q: So the last time you saw him, he was running behind you  
24 in the hallway?

25 A: Yeah. No. He wasn't running at full speed. He was

WILEY JONES - DIRECT BY MR. RICHARDSON

1 coming. He was coming in the same direction I was.

2 Q: He still had the knife with him?

3 A: Yes, sir. The knife was down to his -- his side.

4 Q: Okay. Once the -- so you called 9-1-1 from your own  
5 phone?

6 A: Yeah. Like Mr. Carl stated, he -- he called the director  
7 of the facility. Why, I don't know, when you just witnessed a  
8 stabbing; so I called 9-1-1 for myself. I saved -- I saved --  
9 well, Mr. Carl saved me too, but, you know, I called 9-1-1  
10 myself.

11 Q: You had to be proactive?

12 A: Yeah.

13 Q: So did the police get there pretty quickly?

14 A: Yes, sir.

15 Q: And had you had any other interactions with Mr. Durant by  
16 the time they got there or were you still separate from him?

17 A: Yeah. I was separate, but he was yelling expletives,  
18 just he was in a rage. That's the word. He was in a rage.

19 Q: So you heard him yelling things?

20 A: The lady on the 9-1-1 -- she was like, is that him? I'm  
21 like, yes, that is him.

22 Q: All right. Do you remember anything specific about the  
23 words he was saying when he was yelling?

24 A: I told you. I told y'all. I told y'all. I told y'all.  
25 I told y'all. That's all he kept saying. I told y'all. I

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 told y'all.

2 Q: Okay. And when -- did EMS get there?

3 A: Yes, sir.

4 Q: Did they take you to the hospital?

5 A: Yes, sir. Fifty-two staples and stitches.

6 Q: So did -- so they had to use staples and stitches on you?

7 A: Yes, sir.

8 Q: Did they put any sort of anesthetic on your body?

9 A: Yeah, they did. They numbed me. They took proper  
10 procedures. Yes.

11 Q: So they numbed you up a little bit?

12 A: Yes, sir.

13 Q: All right. I want to show you a couple photographs of --  
14 this is State's 13 and 14, and ask you if you recognize those  
15 there?

16 A: Yes, sir.

17 Q: And what are those photographs of?

18 A: Me stabbed, cut up.

19 Q: Is this an accurate representation of what you looked  
20 like that night after the stabbing?

21 A: Yes, sir.

22 Q: Okay.

23 MR. RICHARDSON: Your Honor, I'd asked to put 13 and 14  
24 into evidence.

25 MR. MEETZE: No objection.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 THE COURT: Without objection, so admitted.

2 (WHEREUPON, State's Exhibit Number 13 and State's Exhibit  
3 Number 14, photographs, were admitted into evidence.)

4 MR. RICHARDSON: May I publish these, if I might, Your  
5 Honor?

6 BY MR. RICHARDSON:

7 Q: Mr. Jones, right here -- is this your left shoulder area  
8 we're looking at?

9 A: Yes, sir.

10 Q: All right. Is that series of things there all caused by  
11 the stabbing by Mr. Durant?

12 A: Yes, sir.

13 Q: And this is State's 13. Is this a photo of your back and  
14 the stab wounds suffered?

15 A: Yes, sir.

16 Q: Okay. Do you recall about how many times -- in that  
17 incident that stabbing was going on, how many times he came  
18 down on you with that knife?

19 A: No. I didn't count them, but the physician the night at  
20 the hospital told me seven times.

21 MR. MEETZE: Objection, Your Honor.

22 THE COURT: Objection sustained.

23 BY MR. RICHARDSON:

24 Q: Based on your examination of your own body, do you  
25 remember how many puncture wounds or cuts or anything you had?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: I witnessed four of my own that I --

2 Q: So you saw four?

3 A: Yeah.

4 Q: Different wounds on your body?

5 A: Yeah. But some was -- some wasn't -- didn't need staples  
6 or stitches. Some was scrapes, like nicks or whatnot, but  
7 actual puncture wounds -- there was four.

8 Q: State's Number 4 -- it's already in evidence. Do you  
9 recognize that?

10 A: Yes, I do.

11 Q: And what is that?

12 A: That's the knife that Melvin Durant had the night that he  
13 stabbed me.

14 Q: Okay. And how did you come into contact with this knife  
15 afterwards?

16 A: It was at the facility. Mr. Durant had a -- well, yeah,  
17 Mr. Durant had a female that was on the women's side. So  
18 everyone was saying that the knife was here, the knife was  
19 there.

20 MR. MEETZE: Objection, Your Honor.

21 A: Well, I was --

22 THE COURT: Hold on a minute. Objection sustained. Go  
23 ahead.

24 BY MR. RICHARDSON:

25 Q: Well, at some point in time, did somebody bring you --

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Yes.

2 Q: -- this knife?

3 A: Mr. Tommy Nesmith did, yes.

4 Q: Okay. And when you got the knife, did it look just like  
5 it did in this picture with the red stain on the end and  
6 everything?

7 A: Yes, it did.

8 Q: And was that substance there on the end of that knife  
9 dried on there?

10 A: Yes, it was.

11 Q: All right. And when you got that knife from Mr. Nesmith,  
12 what did you do with it?

13 A: I took it to the director of the shelter and told him  
14 that Tommy found the knife, and they called the police.

15 Q: All right.

16 MR. RICHARDSON: I beg the Court's indulgence one moment.

17 THE COURT: All right.

18 BY MR. RICHARDSON:

19 Q: Do you see Mr. Durant in the courtroom here today?

20 A: Yes, I do.

21 Q: Would you point him out to us?

22 A: (Indicating.)

23 Q: And is he the individual who stabbed you in that shelter  
24 that night?

25 A: Yes, he is.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: Please answer any questions Mr. Meetze may have for you.

2 A: Absolutely.

3 THE COURT: Cross-examination?

4 MR. MEETZE: I beg the Court's indulgence.

5 CROSS-EXAMINATION

6 BY MR. MEETZE:

7 Q: Mr. Jones, you and Mr. Durant went out on this night;  
8 correct?

9 A: You said we went out?

10 Q: Yeah. Did you all go out drinking?

11 A: Well, actually -- actually, I just got off work. You  
12 have to work to be at the shelter. So I got off work and seen  
13 Mr. Durant and asked Mr. Durant would he like to have a couple  
14 drinks with me. So yes.

15 Q: Right. Okay.

16 A: Yes.

17 Q: And -- and at some point in time over that while y'all  
18 were out, you got into an argument?

19 A: No, it wasn't an argument. Mr. Durant likes to be an  
20 authority figure. So he's telling me how to spend my earned-  
21 hard money. So the conflict was I could spend it the way I  
22 wanted to. You don't have to tell me. And he got offended by  
23 what I just told you. He got offended by it.

24 Q: And you indicated earlier in your testimony that this had  
25 been sort of an ongoing thing between the two of you?

## WILEY JONES - DIRECT BY MR. RICHARDSON

- 1 A: No. Not just with him. My two witnesses too. Like, if  
2 you ask me for something and I say no, then you look at me  
3 like, uh, but if I say yeah, you're my friend. So the  
4 altercation is just you dislike what I say, I dislike what you  
5 say. We'll go our separate ways.
- 6 Q: And later on that evening at the shelter --
- 7 A: Uh-huh.
- 8 Q: -- y'all got into a further argument?
- 9 A: Huh-uh. I just asked him -- I thought what me and you  
10 had going on in the streets -- we wasn't going to bring it to  
11 the facility. Them the only words I said to him. There was  
12 no heated exchange. There was no argument back and forth,  
13 none of that.
- 14 Q: Okay. Now, when you -- you say you got a knife from Mr.  
15 Nesmith; is that correct?
- 16 A: Yes, sir.
- 17 Q: And at some point in time, an officer came?
- 18 A: Immediately.
- 19 Q: Immediately?
- 20 A: Yeah. She dialed 9-1-1.
- 21 Q: And they came; correct?
- 22 A: Yeah.
- 23 Q: And you told that officer that you found the knife on the  
24 table beside [REDACTED]; correct?
- 25 A: I don't recall that.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: You don't recall that? All right.

2 A: I know Mr. Nesmith told me that he didn't want to be  
3 involved in it. So when he gave it to him -- when he gave me  
4 the knife, I told Ms. -- I might have did tell Ms. Nash that,  
5 yeah, I found it. I might have did tell her that not to  
6 involve Mr. Nesmith in it. I might have, but I'm not sure.

7 Q: All right. And that's fine. My question to you is did  
8 you also tell the officer that reported -- that showed up to  
9 collect that that you found the knife? That you found the  
10 knife on a table at [REDACTED] Street?

11 A: I'm not sure. I might have, but I'm not sure.

12 Q: Okay. Of course -- and if you did say that, that was not  
13 true?

14 A: I didn't hear you.

15 Q: If you did tell the officer that, that's not true,  
16 correct?

17 A: That I found it?

18 Q: Right.

19 A: Yeah. Because I didn't find it.

20 Q: And if you told the director that, Ms. Nash, it's not  
21 true as well; correct?

22 A: Yeah, correct. But once again, it's a low tolerance at  
23 the facility and so I didn't want to get Mr. Nesmith kicked  
24 out on the altercation me and Durant had because eventually  
25 they got rid of all three of us.

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: And when officers came to McLeod to speak with you, you  
2 refused to speak with them; is that correct?

3 A: No. I spoke with them.

4 Q: At first?

5 A: I spoke with the gentleman over there to your -- to my  
6 left.

7 Q: You didn't at first tell them you didn't want to speak  
8 without a lawyer present?

9 A: Maybe so. I was -- I was discombobulated. I was  
10 confused. I wanted to go home. I might have. I got stabbed.  
11 I probably did. A lot of things I might've said that night,  
12 but I know I got stabbed by Melvin Durant.

13 Q: Now, you ended up -- as you just said, you went to the  
14 emergency room?

15 A: Uh-huh.

16 Q: And you've identified pictures of that. And you went to  
17 the emergency room at about 7:30 on the evening of the 12<sup>th</sup>; is  
18 that right?

19 A: It was 7:01 I believe.

20 Q: 7:01?

21 A: Yeah.

22 Q: Sometime around there?

23 A: Yeah.

24 Q: And you were discharged just a little bit after midnight  
25 --

## WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Yeah.

2 Q: -- on the 13<sup>th</sup>. So you were there about five to five-and-  
3 a-half hours?

4 A: Probably so.

5 Q: At the emergency room?

6 A: Yes.

7 Q: Okay. Now, you've got a prior drug trafficking  
8 conviction?

9 A: Yeah. Ten years ago. Yeah. That's why I came to South  
10 Carolina to Florence to change my life, but ten years ago,  
11 yeah, 2006.

12 MR. MEETZE: I don't have any further questions.

13 THE WITNESS: I know.

14 MR. RICHARDSON: Nothing further, Judge.

15 THE COURT: Sir, you may step down. Thank you.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Can y'all approach a minute?

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

21 THE COURT: All right. Ladies and gentlemen, what we are  
22 going to do at this time is we are going to stop for this  
23 afternoon. I'm going to ask you to be back in your jury room  
24 tomorrow morning at 9:30 -- at 9:30 and we'll resume the trial  
25 of this case as promptly at that time as possible.

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RICHARDSON:

4 Q: Officer Ervin, are you with the Florence Police  
5 Department?

6 A: Yes, sir.

7 Q: And how long have you been with them?

8 A: About three years.

9 Q: And what are your job duties with the department?

10 A: I'm a patrol officer. I respond to 9-1-1 calls.

11 Q: Okay. And so three years -- you've been there three  
12 years; so November of 2014, you were already there working as  
13 an officer?

14 A: Yes, sir.

15 Q: Did you have an opportunity to respond to a call at the  
16 homeless shelter back in November of 2014, a few days after  
17 another incident had taken place there?

18 A: Yes, sir.

19 Q: And what was the nature of the call you responded to?

20 A: A Mr. Jones called in to say that he had recovered a  
21 knife that was used in a stabbing case earlier.

22 Q: All right. And what -- what did you do in response?

23 A: I went out there and collected the knife from the  
24 director at the homeless shelter there.

25 Q: Okay.

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 A: And logged it into evidence as well.

2 Q: I am going to show you State's Exhibit 4. I think it's  
3 already in evidence. Do you recognize that?

4 A: Yes, sir. That's the knife we logged in.

5 Q: All right. So that's the knife you picked up from the  
6 homeless shelter?

7 A: Yes, sir.

8 Q: And that red stain -- do you recall that being on it?

9 A: Yes, sir. It was there.

10 Q: All right. And when you picked it up, what did you do  
11 with it?

12 A: I put it into a brown paper bag and took it to evidence  
13 and logged it in.

14 Q: Okay. And describe the evidence log-in process to us.  
15 How does that work?

16 A: I fill out an evidence log sheet that basically describes  
17 the item, what's on it, and it just goes into a locker that is  
18 locked up and secured until the evidence custodian can come  
19 get it out and take it into the evidence room proper I guess.

20 Q: Okay. So when you put in that locker, the only person  
21 that has access to it would be the evidence custodian?

22 A: Yes, sir.

23 Q: And when you put it in, how does the evidence custodian  
24 get it out? Or do you know?

25 A: I believe he has a key. He's the only one with the key

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 to it and he gets it out and logs it into a bin somewhere in  
2 the evidence room.

3 Q: Okay. That knife -- did you put it in the paper bag  
4 where you picked it up or --

5 A: Yes, sir. I didn't touch it at all. I used my gloves to  
6 pick it up and put it into that bag.

7 Q: So you didn't do anything with it between the homeless  
8 shelter and the police department to manipulate it, mess with  
9 it?

10 A: No, sir.

11 Q: Nothing? You just turned it in?

12 A: Yes, sir.

13 MR. RICHARDSON: All right. Thank you. Please answer  
14 any questions that Mr. Meetze may have for you.

15 THE COURT: Cross-examination?

16 MR. MEETZE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MEETZE:

19 Q: Officer Ervin, as you said, your role in this was very  
20 minimal?

21 A: Yes, sir.

22 Q: You were dispatched out to pick up some evidence; is that  
23 correct?

24 A: Yes, sir.

25 Q: And that's what you did; is that right?

## SAM ERVIN - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: And you got there -- Mr. Jones did tell you that he found  
3 the knife; correct?

4 A: He did. Yes, sir, until he was corrected.

5 Q: And that was not true?

6 A: Right.

7 MR. MEETZE: I don't have any further questions.

8 THE COURT: Any redirect?

9 MR. RICHARDSON: No, sir.

10 THE COURT: Sir, you may step down. Thank you.

11 MR. RICHARDSON: And I ask that he be excused.

12 THE COURT: Any objection? Mr. Meetze, any objection to  
13 him being excused?

14 MR. MEETZE: I'm sorry, Your Honor. No, sir.

15 THE COURT: All right. Sir, you're excused. You're free  
16 to go. Thank you for being here.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness, please.

19 MR. RICHARDSON: I'd call Jimmy Cantey.

20 THE CLERK: Please place your left hand on the Bible and  
21 raise your right hand. Do you swear the testimony you give in  
22 this case will be the truth, the whole truth, and nothing but  
23 the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name for

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 the record.

2 THE WITNESS: Jimmy Cantey.

3 JIMMY CANTEY, being first duly  
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q: Officer Cantey, are you with the Florence Police  
8 Department?

9 A: Yes, sir.

10 Q: And how long have you been there?

11 A: I've been there going on ten years.

12 Q: All right. And what are your job responsibilities?

13 A: Currently, I'm assigned to the criminal investigation  
14 division of the police department.

15 Q: Back in November of 2014, what were your job  
16 responsibilities?

17 A: I was on patrol.

18 Q: All right. And is that similar to what Mr. Ervin has  
19 testified about, responding to 9-1-1 calls?

20 A: Yes, it is.

21 Q: And did you have an opportunity to respond to a 9-1-1  
22 call on November 12<sup>th</sup>, 2014?

23 A: Yes, I did.

24 Q: And where did you go?

25 A: It was [REDACTED] Street, which is a homeless shelter in

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 the city of Florence.

2 Q: All right. Is that also in Florence County?

3 A: Yes, it is.

4 Q: Okay. And what did you -- what information did you  
5 receive? I guess what was the nature of the call?

6 A: The call I received was in reference to a stabbing. The  
7 actual victim had called in 9-1-1 and dispatch had given the  
8 call to me.

9 Q: And what did you do? Or what time of day or night do you  
10 recall getting there?

11 A: It was around seven p.m., maybe a little after seven p.m.

12 Q: So it would have been nighttime I guess?

13 A: Yes.

14 Q: That time of year? And what did you do upon arrival?

15 A: When I got there, I observed Mr. Jones, the victim, up  
16 under a tree in the front yard. He was bleeding from his neck  
17 and his left arm area and advised that he had been stabbed.

18 Q: Okay. And what took place then?

19 A: I asked him if the person that stabbed him was still  
20 there or who stabbed him and he said the guy had an orange  
21 shirt on and his name was Melvin. I then located a subject in  
22 the backyard that had an orange shirt on who was detained at  
23 that time so we could figure out who he was and conduct an  
24 investigation.

25 Q: All right. Once you detained Mr. Durant, what did you do

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 with him from that point?

2 A: At that point, he was placed in the rear of another  
3 officer's vehicle to secure him so we could make sure the  
4 scene was also secured.

5 Q: Okay. Did you take a look at the inside of the place or  
6 the perimeter of the place to look for any blood or weapons or  
7 anything like that?

8 A: We checked the parking lot for the knife that was  
9 supposed to be involved. At that time, we did not locate a  
10 knife. I walked through the inside of the residence from  
11 where they were sleeping to the back exit door that leads to  
12 the parking lot. There were some small blood droplets between  
13 the restroom and the back door.

14 Q: Okay. And did you identify any witnesses?

15 A: I did. I spoke to Carl Wheeling.

16 Q: Okay. And did he have a conversation with you about what  
17 he observed?

18 A: He did. What he told me he observed -- he -- the -- Mr.  
19 Jones and Mr. Durant were in an argument over something that  
20 happened earlier in the day. They had separated. Mr. Jones  
21 went into the restroom. Mr. Durant went into the restroom  
22 behind him. Mr. Wheeling said he heard a commotion coming  
23 from the restroom and when he opened the door to see what was  
24 going on, he observed Mr. Durant punching and stabbing Mr.  
25 Jones.

## JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 Q: And did you notify investigations at that point to come  
2 out?

3 A: Yes, we did. Investigator Wynn arrived on scene and took  
4 over the investigation.

5 Q: All right. Is that pretty much the extent of what you  
6 did there that evening?

7 A: Yes, sir.

8 MR. RICHARDSON: All right. Please answer any questions  
9 Mr. Meetze may have for you.

10 THE COURT: Cross-examination?

11 MR. MEETZE: Thank you, Your Honor. May it please the  
12 Court.

13 CROSS-EXAMINATION

14 BY MR. MEETZE:

15 Q: Officer Cantey, how are you doing this morning?

16 A: How are you, sir?

17 Q: And is officer all right?

18 A: Yes, sir.

19 Q: I don't --

20 A: Yes, sir, that's fine.

21 Q: You just testified as to your involvement in this case.  
22 Were you the first responder to get there from the police  
23 department?

24 A: Yes, I was.

25 Q: Okay. And your -- you've been now in law enforcement for

JIMMY CANTEY - CROSS BY MR. MEETZE

1 ten years. I guess back then you had been in law enforcement  
2 or here in Florence for about eight-and-a-half years?

3 A: Yes, sir.

4 Q: And to be a police officer or law enforcement officer of  
5 any kind, you go through a lot of training; correct?

6 A: Yes, sir.

7 Q: You've got to go through training to even become a  
8 police officer; is that right?

9 A: Yes, sir.

10 Q: And you continue training throughout your career; is that  
11 right?

12 A: Yes, sir.

13 Q: And, of course, like a lot of jobs, being a police  
14 officer, there's a lot of on-the-job training, so to speak?

15 A: Yes, there is.

16 Q: Always stuff to learn in other words?

17 A: Yes.

18 Q: Part of what you're trained to do is how to investigate a  
19 crime scene and things like that; correct?

20 A: Yes, sir.

21 Q: You're taught how to collect evidence; correct?

22 A: Yes, sir.

23 Q: And how to preserve evidence?

24 A: Uh-huh.

25 Q: Correct?

## JIMMY CANTEY - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: How to interview witnesses; correct?

3 A: Yes, sir.

4 Q: How to preserve their testimony or statements that they  
5 make to you; correct?

6 A: Yes, sir.

7 Q: And typically when somebody -- when you interview a  
8 witness, what they tell you may go into an incident report;  
9 correct?

10 A: Yes, sir.

11 Q: And you did an incident report in this case; correct?

12 A: Yes, sir.

13 Q: And the incident reports are extremely important in your  
14 job; correct?

15 A: Yes, sir.

16 Q: And because that's -- you know, cases may come up for  
17 trial way on down the road; correct?

18 A: Yes, sir.

19 Q: And incident reports help us with our memory and things  
20 like that?

21 A: Yes, sir.

22 Q: Because our memories sort of fade as time goes on?

23 A: Yes, they do.

24 Q: So we need to memorialize what we hear and see and what  
25 people tell us at the time it's happening so our memories will

JIMMY CANTEY - CROSS BY MR. MEETZE

1 stay as fresh as possible as time goes on; correct?

2 A: Yes, sir.

3 Q: And so for that reason, it's important for incident  
4 reports and things like that to be as detailed as possible;  
5 correct?

6 A: Yes, sir.

7 Q: And that's for any number of reasons, not just to help  
8 people's memories, but folks are going to be reviewing those;  
9 correct?

10 A: Yes, sir.

11 Q: You have supervisors on your job; correct?

12 A: Yes, sir.

13 Q: And a lot of times they'll review incident reports that  
14 you've done; correct?

15 A: Yes, sir.

16 Q: Obviously, the Solicitor's Office, attorneys for folks  
17 charged with crimes -- they are going to be getting those  
18 documents and needing to review those documents; correct?

19 A: Yes, sir.

20 Q: And you did -- like I said, you did an incident report in  
21 this case; correct?

22 A: Yes, sir.

23 Q: And it chronicles what your investigation told you?

24 A: Yes, sir.

25 Q: And what you learned from the investigation that you did

JIMMY CANTEY - CROSS BY MR. MEETZE

1 was that -- from what witnesses you talked to, that Mr. Durant  
2 and Mr. Jones had been in an argument?

3 A: Yes, sir.

4 Q: All right. And that it had been sort of carried on from  
5 one location to another; correct?

6 A: Yes, sir.

7 Q: And that it was a heated argument?

8 A: Yes, sir.

9 Q: And that both Mr. Jones and Mr. Wiley were extremely  
10 intoxicated?

11 A: Yes, sir.

12 Q: Okay. And all of that you got through the investigation  
13 that you did?

14 A: Yes, sir.

15 Q: All right. Outside of -- I think you indicated you were  
16 the first responder. You located a potential -- you talked to  
17 the victim first?

18 A: Yes, sir.

19 Q: You located a potential suspect; correct?

20 A: Yes, sir.

21 Q: You spoke with Mr. Wheeling; correct?

22 A: Yes, sir.

23 Q: And outside of that, that was pretty much the end of -- I  
24 guess Investigator Wynn had gotten there and he sort of took  
25 over things from there?

JIMMY CANTEY - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: Okay. All right.

3 MR. MEETZE: I don't have any further questions, Your  
4 Honor.

5 THE COURT: Any redirect?

6 MR. RICHARDSON: Nothing further. I'd ask that he be  
7 excused.

8 THE COURT: Any objection, Mr. Meetze?

9 MR. MEETZE: No, sir, Your Honor.

10 THE COURT: Sir, you may step down. You're free to go.  
11 Thank you for being here.

12 THE WITNESS: Thank you.

13 MR. RICHARDSON: Your Honor, we'd call Mark Happ.

14 THE COURT: All right.

15 THE CLERK: Sir, if you'd please place your left hand on  
16 the Bible and raise your right hand? Do you swear the  
17 testimony you give in this case to be the truth, the whole  
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full name for  
21 the record.

22 THE WITNESS: My name is Mark Richard Happ.

23 MARK HAPP, being first duly  
24 sworn, testified as follows:

25 DIRECT EXAMINATION

## MARK HAPP - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: All right. Officer Happ, how long have you been with  
3 Florence police?

4 A: A little over twelve years.

5 Q: Okay. And what are your job responsibilities?

6 A: A corporal on A squad on the patrol side, which means I'm  
7 a --

8 Q: Okay.

9 A: -- first-line supervisor.

10 Q: All right. So you're kind of a supervisor on the -- on  
11 the road, so to speak?

12 A: That's correct.

13 Q: All right. And were you in that position back in  
14 November of 2014?

15 A: Yes, I was.

16 Q: Okay. Did you respond to the shelter on Jarrett Street  
17 that evening?

18 A: I did.

19 Q: Okay. What did you do upon arrival?

20 A: I wasn't the first one on scene, and the defendant was  
21 already detained by the time I pulled up in front of the  
22 shelter. And Officer Cantey brought the defendant over to my  
23 car and I believe he asked to have me take custody of him  
24 while he continued his investigation. That would free him up,  
25 and that's what I did.

## MARK HAPP - DIRECT BY MR. RICHARDSON

1 Q: Okay. So you had Mr. Durant there next to your vehicle?

2 A: Yeah. He was brought to me in handcuffs already  
3 detained.

4 Q: All right. And at that point, did you initiate a  
5 conversation with him?

6 A: I did. Since he had been already detained, I first read  
7 him his Miranda rights and he said he understood his rights  
8 and he agreed to talk to me and I started a conversation with  
9 him outside the police car while he was being searched before  
10 being put in the police car.

11 And he had another officer's handcuffs on him at the time  
12 and I believe it was from Florence County, and I changed out  
13 the handcuffs so that officer could leave because, you know,  
14 it wasn't their case and they didn't need to be there anymore.  
15 And then I spoke with him briefly and then placed him in the  
16 back of the police car awaiting the arrival of Sergeant Wynn.

17 Q: All right. And when you were talking to him, were you  
18 wearing any sort of equipment on your uniform that could  
19 record a conversation?

20 A: Yeah. We have digital voice recorders. I had one in my  
21 pocket, which is typical for us, and by policy we activate on  
22 scene and it was running.

23 Q: Okay. And you had that on when you talked with him?

24 A: Yes, sir.

25 Q: Okay. I'm going to show you what's been marked as

MARK HAPP - DIRECT BY MR. RICHARDSON

1 State's 1 for identification at this point. Do you recognize  
2 that?

3 A: Yes, sir, I do.

4 Q: Okay. And what is that?

5 A: That is the CD disc of the audio from my personal digital  
6 voice recorder.

7 Q: Okay. So you've reviewed the content?

8 A: I have.

9 Q: And is it a true and accurate representation of your  
10 conversation with Mr. Durant there on the scene that night?

11 A: Yes, sir, it is.

12 MR. RICHARDSON: Your Honor, I'd asked for State's 1 to  
13 be entered into evidence.

14 MR. MEETZE: No objection, Your Honor.

15 THE COURT: All right.

16 MR. MEETZE: I say that. Pursuant to --

17 THE COURT: Subject to prior objection.

18 MR. MEETZE: -- same objection. And I apologize.

19 THE COURT: So noted for the record. Over objection.

20 (WHEREUPON, State's Exhibit Number 1, an audio CD, was  
21 admitted into evidence.)

22 MR. RICHARDSON: Your Honor, may we go ahead and publish  
23 this one?

24 THE COURT: Yes, sir.

25 (WHEREUPON, State's Exhibit Number 1, an audio CD, was

## MARK HAPP - DIRECT BY MR. RICHARDSON

1           played in open court, not transcribed herein, after which  
2           the proceedings resumed as follows.)

3 BY MR. RICHARDSON:

4 Q:   Officer Happ, when you met with Mr. Durant, was he having  
5 any sort of medical emergencies or any sort of problems that  
6 would have given you pause in talking to him?

7 A:   No, sir.

8 Q:   Was he able to stand and walk on his own and that sort of  
9 thing?

10 A:   Yes.

11 Q:   And was he able to respond to your questions --

12 A:   Yes, he was.

13 Q:   -- appropriately?

14 A:   Yes.

15 Q:   All right. And you read him his -- the Miranda warnings  
16 that we heard on the tape. That was off -- how did you do  
17 that?

18 A:   I carry a card in my pocket at all times that has the  
19 Miranda on it inside my business card holder. I read it to  
20 him off of that.

21 Q:   Okay. And at no time did he ask to stop the questioning  
22 or anything like that?

23 A:   No, sir.

24 Q:   I want to -- now, you have -- you had your car out there;  
25 correct?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: That's correct.

2 Q: And is your car equipped with a video camera?

3 A: It was.

4 Q: All right. And is it one that can turn around and look  
5 inside the car at the occupants?

6 A: Yeah. It has two views, forward through the dash or  
7 through the windshield and then also in the rear prisoner  
8 compartment.

9 Q: Okay. And after you talked to -- this statement we just  
10 heard -- did that occur outside the car?

11 A: Yes, it did.

12 Q: Okay.

13 A: Before he was placed into the car.

14 Q: All right. So after he talked to you outside of the car,  
15 was he placed in your car?

16 A: Correct. In the backseat.

17 Q: All right. I want to show you what's been marked as  
18 State's 2 for ID. Do you recognize that?

19 A: Yes, sir.

20 Q: And what is it?

21 A: That is a CD of my in-car video.

22 Q: All right.

23 MR. RICHARDSON: Very good. Please answer any questions  
24 that Mr. Meetze may have for you at this time.

25 THE COURT: Cross-examination?

MARK HAPP - CROSS BY MR. MEETZE

1 MR. MEETZE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MEETZE:

4 Q: Officer Happ, how are you doing?

5 A: Good. Good morning.

6 Q: You got on the scene subsequent to the other officers.  
7 Officer Cantey was already there at least; correct?

8 A: That's correct.

9 Q: And you didn't -- other than the conversation you had  
10 with Mr. Durant that was just played, you didn't do any other  
11 investigation in this case?

12 A: No. I did not participate in any other facets of the  
13 investigation.

14 Q: You didn't speak to any other witnesses?

15 A: No, sir.

16 Q: You didn't collect any evidence?

17 A: No, I did not.

18 Q: You did a supplemental report that's strictly based on  
19 the involvement that you've testified to?

20 A: That's correct.

21 Q: You didn't personally witness anything that happened;  
22 correct? As far as in the incident?

23 A: No, I did not.

24 Q: Okay.

25 MR. MEETZE: I don't have any further questions, Your

## HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Honor.

2 MR. RICHARDSON: Nothing further and I ask that he be  
3 excused.

4 THE COURT: Sir, you may step down. Thank you. Any  
5 objection to him being excused?

6 MR. MEETZE: No, Your Honor.

7 THE COURT: You're free to go. Have a nice day.

8 THE WITNESS: Thank you, Your Honor.

9 MR. RICHARDSON: We'd call Howard Wynn.

10 THE CLERK: Sir, if you will, please place your left hand  
11 on the Bible and raise your right hand. Do you swear the  
12 testimony you give in this case to be the truth, the whole  
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am, I do.

15 THE CLERK: Please be seated and state your full name for  
16 the record.

17 THE WITNESS: Howard Wynn.

18 MR. RICHARDSON: All right.

19 HOWARD WYNN, being first duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q: Investigator Wynn, are you with the Florence Police  
24 Department?

25 A: Yes, sir, I am.

## HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: How long have you been working there?

2 A: Right at 14 years.

3 Q: Okay. And what are your job responsibilities there now?

4 A: Currently, I'm a sergeant on patrol.

5 Q: Okay. And back in November of 2014, what were your job  
6 responsibilities?

7 A: Criminal investigator.

8 Q: All right. So you recently got -- what? -- a promotion  
9 to patrol?

10 A: Yes, sir.

11 Q: Okay. Were you the on-call investigator on the night of  
12 November 12<sup>th</sup>, 2014?

13 A: Yes, sir, I was.

14 Q: Okay. And just briefly describe to us what a -- what an  
15 investigator is, does, and what being on call means.

16 A: Pretty much -- well, a police officer has got a lot of  
17 duties and responsibilities, but our main goal is to serve and  
18 protect the public. As a criminal investigator, I'm  
19 responsible for investigating crimes and solving crimes.

20 Being on call -- normally you have investigators assigned  
21 for day shift and you have one investigator assigned for night  
22 shift and after hours in case something happens at nighttime.  
23 That particular night, I was the on-call investigator.

24 Q: And did you respond out to the shelter on Jarrett Street?

25 A: Yes, sir, I did.

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: And what was going on out there when you arrived?

2 A: When I arrived on scene, the first officer I met with was  
3 Corporal Happ. He was standing by his vehicle. When I met  
4 with him, he pretty much told me he had the defendant, Melvin  
5 Durant, detained. He was suspected of stabbing the victim,  
6 Wiley Jones.

7 Q: Okay. And what did you do from there?

8 A: After I met with Corporal Happ, I met with Jimmy Cantey.  
9 He was actually inside of the facility, probably coming out  
10 the door meeting me. He told me what he had also and we  
11 entered the facility, where we were approached by Carl  
12 Wheeling.

13 Q: All right. So you met with several of the witnesses out  
14 there?

15 A: I met with Carl and another individual and that's all I  
16 recall meeting with.

17 Q: All right.

18 A: By name.

19 Q: Did you have an opportunity to talk to Mr. Durant on the  
20 scene?

21 A: Yes, sir, I did.

22 Q: Okay. And when you talked to him, where was he located?

23 A: In the backseat of Corporal Happ's patrol car.

24 Q: All right. I want to show you State's 2 that's marked  
25 for identification at this point. Are you familiar with that?

## HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 A: Yes, sir, I am.

2 Q: And what is it?

3 A: In-car video of Corporal Happ's patrol car.

4 Q: All right. And does this show your conversation with Mr.  
5 Durant?

6 A: Yes, sir, it does.

7 Q: Is it a true and accurate representation of your  
8 conversation with him that night?

9 A: Yes, sir.

10 Q: All right.

11 MR. RICHARDSON: Your Honor, I'd ask for State's 2 to be  
12 put in evidence.

13 MR. MEETZE: Pursuant to previous objections.

14 THE COURT: Subsequent to previous objections, so noted  
15 for the record, but overruled. You can put it in. So  
16 admitted.

17 (WHEREUPON, State's Exhibit Number 2, a video disc, was  
18 admitted.)

19 MR. RICHARDSON: Thank you, Your Honor. If we could go  
20 ahead and publish it?

21 THE COURT: All right. Go ahead.

22 (WHEREUPON, State's Exhibit Number 2, a video on disk,  
23 was played in open court, not transcribed herein, after  
24 which the proceedings resumed as follows.)

25 BY MR. RICHARDSON:

## HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: All right. Sergeant Wynn, you met with him pretty much  
2 directly after Corporal Happ did?

3 A: Yes, sir.

4 Q: And was -- did you observe any, you know, medical issues,  
5 physical or whatever, that Mr. Durant was having that would  
6 have given you pause about talking to him?

7 A: No, sir.

8 Q: All right. Did he appear to be able to appropriately  
9 answer questions you were asking him?

10 A: Yes, sir.

11 Q: And once you finished talking with him, what did you do  
12 then?

13 A: After I spoke with Melvin Durant, I want to say a crime  
14 scene investigator -- he was notified to process the scene and  
15 shortly thereafter I went to the hospital and met with the  
16 victim, Wiley Jones.

17 Q: All right. And after that, did you do any -- was that  
18 pretty much the extent of it or did you do anything else?

19 A: For the most part, yes, sir, that's the extent of it.

20 MR. RICHARDSON: Please answer any questions Mr. Meetze  
21 may have.

22 THE COURT: Cross-examination?

23 MR. MEETZE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MEETZE:

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 Q: Investigator Wynn, you're the lead investigator on this  
2 case?
- 3 A: Yes, sir.
- 4 Q: All right. Which pretty much means you -- once you got  
5 there, you took charge --
- 6 A: Correct.
- 7 Q: -- of everything; correct?
- 8 A: Yes, sir.
- 9 Q: And I think you indicated you've been in law enforcement  
10 for twelve years or just Florence for twelve years?
- 11 A: Fourteen. Then, it was roughly around twelve years or  
12 so.
- 13 Q: Okay. Fourteen now?
- 14 A: Yes, sir.
- 15 Q: All right. And obviously, as a law enforcement officer,  
16 you go through a lot of training?
- 17 A: Yes, sir.
- 18 Q: Correct? And you're trained in how to take control of a  
19 crime scene; correct?
- 20 A: Yes, sir.
- 21 Q: And how to interview witnesses?
- 22 A: Yes, sir. Correct.
- 23 Q: How to collect evidence; correct?
- 24 A: Yes.
- 25 Q: And how to preserve that evidence?

## HOWARD WYNN - CROSS BY MR. MEETZE

- 1 A: Yes, sir.
- 2 Q: How to take statements from witnesses; correct?
- 3 A: Yes, sir.
- 4 Q: And how to preserve those; correct?
- 5 A: Yes, sir.
- 6 Q: You also do incident reports; is that right?
- 7 A: Yes, sir.
- 8 Q: All right. And all of that -- throughout your career,  
9 you're trained on all of that; correct?
- 10 A: Yes, sir.
- 11 Q: And your training continues as you move on in your  
12 career. You have to get continued training; correct?
- 13 A: Yes, sir.
- 14 Q: Because things change, laws change, and you've got to be  
15 on top of all of that as part of your responsibilities;  
16 correct?
- 17 A: Yes, sir.
- 18 Q: All right. In this case, you spoke with Mr. Durant;  
19 correct?
- 20 A: Correct.
- 21 Q: And that was just played. You were able to search him?
- 22 A: No, I did not search Melvin Durant.
- 23 Q: You were able to view him; correct?
- 24 A: Yes.
- 25 Q: He did not have any blood on him?

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 A: Not that I recall. No, sir.
- 2 Q: Okay.
- 3 A: But his hands were -- like I said, he was handcuffed in  
4 the back of a car. It was dark. No, sir, not that I recall.
- 5 Q: Certainly, as the lead investigator, you would know  
6 whether or not there was any evidence in this case that  
7 contained Mr. Durant's blood; correct?
- 8 A: Yes.
- 9 Q: All right.
- 10 A: Yes.
- 11 Q: And there's nothing of that nature; correct?
- 12 A: No. No, sir, not to my knowledge.
- 13 Q: And there was no evidence taken from Mr. Durant that  
14 contained Mr. Jones's blood; correct?
- 15 A: No, sir.
- 16 Q: Okay. He didn't have any -- to your knowledge as the  
17 lead investigator, he didn't have any cuts, scrapes or  
18 anything on his hands or anywhere?
- 19 A: Not to my knowledge.
- 20 Q: Okay. Once you arrived as the on-call investigator and  
21 you indicated you spoke with Officer Happ and Officer Cantey  
22 and talked to Mr. Durant and then talked to Mr. Jones, did you  
23 go to McLeod to talk to him?
- 24 A: Yes. I met with Wiley Jones, the victim. I met with him  
25 at McLeod Hospital.

## HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: After -- after that, that's when you -- that was --  
2 that's all you did with regards to investigation. At that  
3 point in time, you started doing your reports and things like  
4 that?

5 A: Well, for the most part. Like I said, I met with  
6 Corporal Happ. After I met with him, I met with Cantey and we  
7 met with Carl Wheeling, who was over the facility at night.  
8 And then I met with Melvin Durant. After I met with Melvin  
9 Durant, I went to McLeod Hospital and met with the victim.

10 Q: And after all that is when you started compiling --

11 A: Yes. Yes, sir.

12 Q: -- your report?

13 A: Yes, sir.

14 Q: Okay.

15 MR. MEETZE: I don't have any further questions, Your  
16 Honor.

17 THE COURT: Any redirect?

18 MR. RICHARDSON: No, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 THE WITNESS: Okay.

21 MR. RICHARDSON: Your Honor, we'd call Tim Matthews.

22 THE COURT: All right.

23 THE CLERK: Please place your left hand on the Bible and  
24 raise your right hand. Do you swear the testimony you give in  
25 this case to be the truth, the whole truth, and nothing but

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and then state your full  
4 name for the record.

5 THE WITNESS: Tim Matthews.

6 TIM MATTHEWS, being first duly  
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q: Investigator Matthews, could you tell us how long you've  
11 been with the Florence Police Department and what you do  
12 there?

13 A: I've been with the department for about eight years now.  
14 I'm with the crime scene unit. We're called out to process  
15 scenes and process evidence, collect it, log it into evidence.

16 Q: And did you have those responsibilities back in November  
17 of 2014?

18 A: I did.

19 Q: Did you respond out to the shelter on Jarrett Street on  
20 November 12<sup>th</sup>?

21 A: I did.

22 Q: And what did you do when you arrived?

23 A: I arrived on scene. I spoke with Officer Cantey when I  
24 first arrived on scene. He briefed me on what happened. And  
25 then after I spoke with him, he walked me through the scene

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 and then I began processing the scene. I photographed it and  
2 then I collected swabs from the blood that was left in the  
3 bathroom, the dining room hall, and the exterior wall of the  
4 dining room hall.

5 Q: So you went looking for blood spots or droplets or what  
6 have you?

7 A: Yes.

8 Q: I want to show you what's marked as State's 6. It's for  
9 identification only right now. If you could, take a look at  
10 that.

11 A: Yes.

12 Q: Do you recognize it?

13 A: Yes, I do.

14 Q: And what is that?

15 A: That was the blood that was found on the bathroom sink.

16 Q: All right. That's in the bathroom of the shelter?

17 A: Yes, sir.

18 Q: All right. And this photograph is an accurate depiction  
19 of what you saw?

20 A: Yes.

21 Q: Okay.

22 MR. RICHARDSON: Your Honor, if we could move State's 6  
23 into evidence?

24 THE COURT: Any objection?

25 MR. MEETZE: No, Your Honor.

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 THE COURT: Without objection, State's Exhibit Number 6  
2 admitted into evidence.

3 (WHEREUPON, State's Exhibit Number 6, a photograph, was  
4 admitted into evidence.)

5 MR. RICHARDSON: All right.

6 BY MR. RICHARDSON:

7 Q: If you could -- so when you went into the bathroom, which  
8 direction, if you recall, were the sinks? It may help you to  
9 look at State's 7.

10 A: As you enter the bathroom, they're on the right side.

11 Q: Okay. And are those sort of across the room from the  
12 urinals?

13 A: Yes, it is.

14 Q: Okay. And you collected blood from this surface right  
15 here?

16 A: Yes, I did.

17 Q: And how did you collect it?

18 A: I used a cotton-tipped swab.

19 Q: Where else in the place did you collect blood?

20 A: From the hallway of the dining hall and then on the  
21 exterior wall of the dining hall on the outside.

22 Q: Okay. This is State's 8. Is that --

23 A: Yes.

24 Q: -- where you collected some?

25 A: Yes.

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 THE COURT: Hold on. Has that been admitted into  
2 evidence?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: Okay.

5 BY MR. RICHARDSON:

6 Q: So this would be the exterior wall you were talking  
7 about?

8 A: Yes.

9 Q: All right. Is this the spot --

10 A: Yes, it is.

11 Q: -- right there? All right. And at the end of this wall  
12 here before you get to this wall, is there a pathway there or  
13 do you recall?

14 A: I believe so.

15 Q: Okay. So you got it from the sink, the floor inside?

16 A: Yes.

17 Q: That wall there. Is there any other places?

18 A: No, I don't believe so.

19 Q: Okay. Let me show you State's 18 for identification at  
20 this point. Can you take a look at it?

21 A: These are the swabs that I collected from the incident  
22 location.

23 Q: All right. And when you got those swabs, what did you do  
24 with them when you were finished there at the scene?

25 A: I take them back to our lab. I secure them in a locker

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

- 1 and then I put them in a package and they are sent to SLED for  
2 testing.
- 3 Q: Okay. Is the package you put them in contained in that  
4 --
- 5 A: Yes.
- 6 Q: -- clear plastic?
- 7 A: Yes. The manila -- manila envelope there.
- 8 Q: So when you finish doing what you're doing with the  
9 swabs, you put them in that manila envelope and log them into  
10 evidence?
- 11 A: Yes.
- 12 Q: And then somebody will take them?
- 13 A: Yes. Once I log them into evidence, then an evidence  
14 custodian will transport them to SLED.
- 15 Q: Okay. And these are the swabs from the incident  
16 location?
- 17 A: Yes.
- 18 Q: Did you also take swabs from a knife?
- 19 A: I did.
- 20 Q: Is that contained in here as well?
- 21 A: That may be what's behind the swabs from the incident  
22 location.
- 23 Q: That second envelope in there?
- 24 A: Yes.
- 25 Q: And did you do the same routine with that?

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 A: I did. I photographed the knife and then I collected the  
2 swabs of blood from it using cotton-tipped swabs, and then  
3 they were sent to SLED.

4 Q: I want to show you State's 3 for identification. Do you  
5 recognize that?

6 A: I do.

7 Q: All right. What is it?

8 A: That is the knife that was logged into evidence by  
9 patrol.

10 Q: Okay.

11 MR. RICHARDSON: Your Honor, I'd ask for State's 3 to be  
12 put in evidence.

13 THE COURT: Any objection?

14 MR. MEETZE: No objection.

15 THE COURT: Without objection, Number 3 admitted into  
16 evidence.

17 (WHEREUPON, State's Exhibit Number 3, a photograph, was  
18 admitted into evidence.)

19 BY MR. RICHARDSON:

20 Q: I'm going to show you State's 4. Is this the opposite  
21 view of the knife?

22 A: It is.

23 Q: And was that red stain on there when you got it?

24 A: Yes, it was.

25 Q: And is that where you took the swab from?

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

- 1 A: Yes.
- 2 Q: Did you also meet with the victim in the case?
- 3 A: I did. After going to the scene, processing the scene,  
4 and collecting the evidence from there, then I went to the  
5 hospital and met with him.
- 6 Q: Okay. And when you were there with him at the hospital,  
7 did you take any swabs?
- 8 A: I took a buccal swab or an oral swab from him for a --  
9 it's used for a known standard against any other DNA testing.
- 10 Q: All right. So the swabs you took were from the location  
11 that night, the knife a few days later, and from the victim?
- 12 A: Yes.
- 13 Q: And all those swabs were packaged into evidence?
- 14 A: Yes, they were, and they were sent to SLED for testing.
- 15 Q: Okay. And this is State's 17 for identification. Is  
16 that --
- 17 A: That's the buccal swab, the oral swab that I collected  
18 from Mr. Jones at the hospital.
- 19 Q: Okay. In similar manila packaging?
- 20 A: Yes.
- 21 Q: Okay. So you don't put it in the clear plastic? You  
22 just put it in the manila?
- 23 A: I just put it in the manila.
- 24 Q: Okay. I'll show you State's 19. Do you recognize this?
- 25 A: I do.

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 Q: And what's -- what's in there?

2 A: That is the knife that was collected by patrol that I  
3 processed.

4 Q: Okay.

5 MR. RICHARDSON: And, Your Honor, if we could move  
6 State's 19 into evidence?

7 THE COURT: Any objection?

8 MR. MEETZE: No objection.

9 THE COURT: Without objection, so admitted.

10 (WHEREUPON, State's Exhibit Number 19, a knife, was  
11 admitted into evidence.)

12 BY MR. RICHARDSON:

13 Q: And are you in a position where you could remove it from  
14 the bag and show it to the jury?

15 A: I can.

16 (WHEREUPON, State's Exhibit Number 19 was opened and the  
17 knife removed by the witness.)

18 BY MR. RICHARDSON:

19 Q: All right. Can you un --

20 (WHEREUPON, the folding knife blade was opened by the  
21 witness.)

22 BY MR. RICHARDSON:

23 Q: Okay. Okay. So once you took the swabs to SLED or took  
24 the swabs and put them in evidence, you had the knife in  
25 evidence, you took those photographs, is there anything else

## TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 that you did with respect to the case?

2 A: No.

3 Q: Thank you, sir. Please answer any questions Mr. Meetze  
4 may have for you.

5 A: Yes, sir.

6 THE COURT: Cross-examination?

7 MR. MEETZE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MEETZE:

10 Q: Officer Matthews, you work with the -- as you said, the  
11 crime scene?

12 A: Yes, sir.

13 Q: With the police department?

14 A: Yes, sir.

15 Q: That's sort of like the CSI --

16 A: Yes, it is.

17 Q: -- team I guess, so to speak, if we're going to try to  
18 put forth a familiar reference I guess?

19 A: Yes, it is.

20 Q: I don't know if that bothers you or not --

21 A: No.

22 Q: -- to be sort of linked with that, but that's what you do  
23 though?

24 A: Yes, you're right.

25 Q: And is that -- you've done that your entire career with

## TIM MATTHEWS - CROSS BY MR. MEETZE

1 the police department?

2 A: I've been with the unit for about three years now.

3 Q: All right. And during that course of time, you've had an  
4 opportunity to process numbers of crime scenes?

5 A: Yes, I have.

6 Q: Things like that. And your job here was to collect  
7 evidence; correct?

8 A: Yes, it is.

9 Q: You didn't do the actual testing or anything like that?

10 A: No. We just package it and send it to SLED. They  
11 actually do the testing there.

12 Q: And you -- you don't send the items. You just send the  
13 swabs that you collect?

14 A: Yes. We just take the swabs from it.

15 Q: So for example, the knife didn't go to SLED, just the  
16 swabs?

17 A: No, it did not.

18 Q: You did not -- you were not given or did not collect any  
19 samples from any of Mr. Durant's clothing or anything like  
20 that?

21 A: No, I did not.

22 Q: You didn't take pictures of him or anything like that?

23 A: No, I did not.

24 Q: No evidence from his clothing or person or anything like  
25 that?

## TIM MATTHEWS - CROSS BY MR. MEETZE

- 1 A: No.
- 2 Q: That you were --
- 3 A: No, sir.
- 4 Q: -- asked to look at it and collect anything like that?
- 5 A: No, sir.
- 6 Q: Okay. You got there and you were taken through the
- 7 scene, but you didn't see actually anything that happened in
- 8 this case?
- 9 A: No, I did not.
- 10 Q: You were there, as you said, to collect evidence and
- 11 eventually package it properly so that it can be sent to SLED?
- 12 A: Yes, sir.
- 13 Q: Once you did that, your responsibility with regard to the
- 14 case, outside of showing up here today, was done?
- 15 A: Yes, sir.
- 16 Q: Okay.
- 17 MR. MEETZE: I don't have any further questions.
- 18 THE COURT: Any redirect?
- 19 MR. RICHARDSON: No, sir.
- 20 THE COURT: Sir, you may step down. Thank you.
- 21 THE WITNESS: Thank you, Your Honor.
- 22 MR. RICHARDSON: I ask that he be excused.
- 23 THE COURT: Any objection?
- 24 MR. MEETZE: No, Your Honor.
- 25 THE COURT: Sir, you're excused. You're free to go.

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 this case to be the truth, the whole truth, and nothing but  
2 the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full name for  
5 the record.

6 THE WITNESS: Frank Mizell.

7 FRANK MIZELL, being first duly  
8 sworn, testified as follows:

9  
10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q: All right. Tell us what you do for a living?

13 A: I am the evidence custodian with the Florence Police  
14 Department.

15 Q: And tell us what those responsibilities entail?

16 A: We maintain the records and the evidence in these cases  
17 until either time where the case is dismissed or brought to  
18 court.

19 Q: And were you doing this job back in November of 2014?

20 A: Yes, sir, I was.

21 Q: Explain to us, if you will, the nature of the evidence  
22 box at the Florence Police Department, how things are put in  
23 it, how things are removed from it, and what you do with it?

24 A: Yes, sir. We have approximately 25 lockers. Each locker  
25 has an individual lock. There's only two sets of keys that

## FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 can open those locks. I have one. The other is a spare set  
2 that is maintained inside the evidence room. So unless you  
3 have access to the evidence room, you can't even get to the  
4 spare keys.

5 The officer logs in the evidence. We have an evidence  
6 form that they fill out describing the incident and the  
7 evidence that's being logged in. They place it inside a  
8 locker. They lock it. They have no access to it after that.  
9 So if there's additional evidence that has to be logged in,  
10 they have to actually use a separate locker.

11 Q: So if an officer comes in -- let's say in this case Tim  
12 Matthews just testified that he brought some swabs in and he  
13 put them in a locker.

14 A: Yes, sir.

15 Q: So when he would approach the locker, would it, like, be  
16 a door on a locker that's open already?

17 A: Yes. It's an actual locker. The door opens, it closes,  
18 and then there's an individual lock that's inside the locker.

19 Q: So he would put the item in the locker, close it, and put  
20 this lock on it?

21 A: Yes, sir.

22 Q: And at that point, only you can get that lock open?

23 A: Yes, sir.

24 Q: All right. In this particular case, did you handle some  
25 items of evidence that were placed in a locker?

## FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: 'And I'll show you State's 17 --

3 A: Yes, sir.

4 Q: -- for identification only at this point. If you'd take  
5 a look at that?

6 A: Yes, sir.

7 Q: And do you recognize it?

8 A: Yes, sir, I do.

9 Q: What is it?

10 A: It is a manila envelope that was logged in by Officer  
11 Matthews with buccal swabs. They place them in the manila  
12 envelopes and then they put a seal on them that they initial  
13 and date. It's tamper resistant. If anybody touches it, it  
14 tears and it cannot be just replaced.

15 Q: And State's 18 for identification?

16 A: Also same manila envelopes that were logged in by Officer  
17 Matthews.

18 Q: All right. So these were all the swabs that Investigator  
19 Matthews just testified about that he took?

20 A: Yes, sir.

21 Q: Now, you mentioned when you take them out of the evidence  
22 locker, they're only in this manila envelope?

23 A: Yes, sir.

24 Q: Not this clear plastic?

25 A: No, sir.

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 Q: So when you get it out, what did you do with it?

2 A: I take them and I log them into our computer system, and  
3 I have a special locker that all our evidence that's going to  
4 SLED go into, and we try to go to SLED every -- approximately  
5 once every two weeks. So all of the evidence that's going to  
6 SLED gets collected in one spot. It gets logged out on the  
7 day that I'm taking it to SLED. I deliver it to SLED. They  
8 sign for it from me and then I bring back any evidence that  
9 they have that's been processed.

10 Q: When you remove the manila envelopes from the locker --

11 A: Yes, sir.

12 Q: -- initially, do you do anything to that manila envelope  
13 to open it, unseal it, tamper with it, mess with it?

14 A: No, sir. That's why they have the tamper-resistant tape  
15 on it that they initial and date.

16 Q: All right. So Tim Matthews taped it, initialed it, dated  
17 it, so you knew who dropped it off and who sealed it?

18 A: Yes, sir.

19 Q: All right. And you did not open any of those?

20 A: No, sir.

21 Q: So you took them to SLED?

22 A: Yes, sir.

23 Q: And when you -- when you take them, that's in Columbia;  
24 correct?

25 A: Yes, sir.

## FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 Q: When you take them there, what do you -- what do you do  
2 when you go inside the building?

3 A: We usually get assigned to one of the processing agents  
4 that's at SLED. We go in and we individually hand them each  
5 case that's being submitted. Depending on what type of case  
6 it is, as to how they seal it. These cases, they take the  
7 manila envelope and they place them in a heat-sealed pack.  
8 They heat seal them. At that time, I initial and date when I  
9 submitted it and then I also sign and date on the form, and  
10 then they process it from there.

11 Q: So you actually eyeball them putting those manila  
12 envelopes in those plastic bags and sealing them?

13 A: Yes, sir.

14 Q: So you did not observe anybody open the manila envelopes,  
15 tamper with anything inside?

16 A: No, sir.

17 Q: And you may recall or you may not. Do you recall exactly  
18 who you gave those to that day?

19 A: No, sir. Again, they have four agents up there and  
20 depending on the workload as to which one you get on each  
21 occasion.

22 Q: Okay. That would be their records and not yours as to  
23 who you dropped them off with?

24 A: Yes, sir.

25 Q: Is that the extent of what you did in this case in terms

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 of evidence?

2 A: As to delivering it, yes, sir.

3 Q: Okay.

4 MR. RICHARDSON: Very good. Please answer any questions  
5 that Mr. Meetze may have for you.

6 THE COURT: Mr. Meetze?

7 MR. MEETZE: Thank you, Your Honor. Just briefly.

8 CROSS-EXAMINATION

9 BY MR. MEETZE:

10 Q: You never went to the crime scene in this case?

11 A: No, sir, I did not.

12 Q: Other than retrieving that evidence from the evidence  
13 lockers that they were in and couriering them to SLED, that's  
14 pretty much the extent of your involvement?

15 A: Yes, sir, it was.

16 Q: Did you go pick them up?

17 A: Yes, sir, I did. I was the one that retrieved them when  
18 they were -- when they were done with them.

19 Q: Sure.

20 A: When they were done processing.

21 Q: And that was I guess officially the end of your  
22 involvement once you got them back here?

23 A: Yes, sir. I take them. Again, I return them to the  
24 evidence room and I place them wherever we have all the other  
25 evidence located; so they're easily accessed.

FRANK MIZELL - CROSS BY MR. MEETZE

1 Q: So any substantive issues with regards to what happened  
2 in this case, you've got no idea?

3 A: No, sir, I do not.

4 Q: I gotcha. Thank you very much.

5 A: Thank you.

6 MR. RICHARDSON: No further questions, Judge. I'd ask  
7 that he be excused.

8 THE COURT: Any objection?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: Sir, you may step down. Thank you.

11 THE WITNESS: Thank you.

12 MR. RICHARDSON: We'd called Jennifer Clayton.

13 THE CLERK: Please place your left hand on the Bible and  
14 raise your right hand. Do you swear the testimony you give in  
15 this case will be the truth, the whole truth, and nothing but  
16 the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated and state your full name for  
19 the record.

20 THE WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

21 JENNIFER CLAYTON, being first  
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHARADSON:

25 Q: Ms. Clayton, tell us where you work and what you do

## JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 there?

2 A: I'm currently employed by the South Carolina Law  
3 Enforcement Division, also known as SLED. And I am a forensic  
4 DNA analyst, which means when evidence is submitted to SLED  
5 that may contain DNA, either from blood, semen, saliva or just  
6 skin cells that may have been left behind on an item, I will  
7 attempt to develop a DNA profile from that item.

8 I will also attempt to develop a DNA profile from known  
9 standards. Those are standards or samples that are taken  
10 directly from a particular individual. That way I know the  
11 DNA profile developed from that item came from a particular  
12 individual. And then I will attempt to compare those two  
13 profiles, the profile from the evidence and the profile from  
14 the standard, to determine if the individual that submitted  
15 the standard could have contributed DNA to the item of  
16 evidence.

17 Q: It sounds like you've got to go to school for that.

18 A: I do.

19 Q: All right. Where did you go to school for it and what  
20 kind of degrees do you have to have for it?

21 A: I earned a Bachelor's of Science in Biology from the  
22 University of North Carolina at Chapel Hill. I have also  
23 taken classes at NC State and USC. My coursework includes  
24 molecular biology, genetics, biochemistry, and statistics.

25 I also completed an internship with the North Carolina

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 State Bureau of Investigation's Molecular Genetics Department,  
2 which is the equivalent of SLED's DNA Department. I  
3 originally hired on with SLED as a forensic technician in the  
4 DNA Department and then was hired as a DNA analyst.

5 Q: How long have you been doing that?

6 A: I've been a DNA analyst for approximately twelve years.

7 Q: And do you have to attend trainings, keep up to speed on  
8 new developments, that sort of thing?

9 A: Yes. We are required to have continuing education every  
10 year to make sure that we don't fall behind in the science.

11 Q: And have you ever testified in court as an expert witness  
12 before?

13 A: Yes, I have.

14 Q: And in what area?

15 A: Forensic DNA analysis and serology. Serology is testing  
16 for body fluids, such as blood, semen or saliva.

17 Q: And about how many times, if you recall, have you  
18 testified as an expert?

19 A: Approximately 45 times.

20 MR. RICHARDSON: Your Honor, at this time, I'd ask that  
21 she be qualified as an expert in forensic DNA analysis.

22 THE COURT: Any objection?

23 MR. MEETZE: No, Your Honor.

24 THE COURT: Ladies and gentlemen, let me give you this  
25 charge real quick.

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 Normally when a person testifies, they cannot give  
2 opinion testimony. Normally, they must testify as to what  
3 they either saw, heard or sensed by smell or something of that  
4 nature. However, there is an exception when someone is  
5 qualified as an expert because of education or experience. In  
6 that situation, they are permitted to give their opinion in  
7 certain areas, if the Court qualifies them that way.

8 This particular individual is going to be qualified as an  
9 expert in the field of forensic DNA analysis to give opinion  
10 testimony in that area. That does not mean -- that does not  
11 mean that you must accept the opinion, but it is evidence for  
12 you to use in any way that you see fit and give it the weight  
13 and credibility that you believe is appropriate.

14 You may continue.

15 MR. RICHARDSON: Thank you, Your Honor.

16 BY MR. RICHARDSON:

17 Q: Ms. Clayton, with respect to this particular case, did  
18 you have an opportunity to review some swabs sent to SLED by  
19 the Florence Police Department?

20 A: Yes, I did.

21 Q: Now, explain to us how -- when a packet of swabs gets  
22 dropped off by Frank Mizell, how do they get to you?

23 A: When evidence is submitted to SLED -- thousands of pieces  
24 of evidence are submitted to SLED every year and the majority  
25 of evidence is stored in their Evidence Control Department

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 until it is time to analyze the evidence.

2           So once a case is assigned to me, I retrieve the  
3 evidence. I go down to the Evidence Control Department and an  
4 evidence custodian or evidence technician from our Evidence  
5 Control Department will retrieve the evidence from whatever  
6 shelf it's stored on and then we'll perform a person-to-person  
7 transfer. I will take custody of the evidence at that time  
8 and that transfer is -- is tracked in our computer system.

9 Q: And when you're dealing with items like swabs of what is  
10 suspected to be blood, items that could easily be mistaken one  
11 for another or, you know, fungible items I guess is the word  
12 commonly used, how do you ensure that there is no tampering  
13 or, you know, mess ups along the way before it gets you?

14 A: Whenever I first open evidence, the first thing I do is  
15 an inventory that involves checking the items that are  
16 submitted against the description in the computer to make sure  
17 that the evidence that's submitted is, in fact, what the  
18 paperwork says was submitted. And I also check to make sure  
19 there's no indication of tampering with the evidence. It  
20 doesn't look like the evidence has had, you know, anything  
21 spilled on it. It doesn't look like anybody's broken any  
22 seals or anything like that. As long as the evidence  
23 descriptions match and there appears to be no indication of  
24 tampering, then I can begin my analysis.

25 Q: I want to show you two exhibits here, State's 17 and 18,

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 both for identification, and 18 has I think two envelopes in  
2 it. If you could, take a look at those and tell me if you  
3 recognize those items?

4 A: Okay. I do. This pouch -- it's identified with the SLED  
5 lab number. Every case that's submitted to SLED has a unique  
6 number assigned to it and this is the SLED lab number for this  
7 case. I also recognize my date and initials from when I  
8 resealed the heat-sealed pouch.

9       Additionally, on the actual envelope inside, I wrote the  
10 lab number, the item numbers that are contained in that  
11 envelope, and my initials. There's another envelope behind  
12 it. I can't actually read it, but it should be Item Number 4,  
13 and they were all packaged in the same heat-sealed pouch. So  
14 I would have also written the item number, the lab number, and  
15 my initials on that item as well.

16       And the same is true for this item. This is SLED Item  
17 Number 5. It has the lab number on it, the item number, the  
18 date, and my initials of when I resealed it. And again, the  
19 lab number, the item number, and my initials on the actual  
20 envelope inside the heat-sealed pouch.

21 Q: So the one you're holding know that you just described is  
22 State's 17 and the one you described before that was State's  
23 18?

24 A: That's correct.

25 Q: Okay. When you received these things, they were sealed

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 in the packaging that we see here?

2 A: That's correct.

3 Q: And does SLED have a way of determining who all within  
4 SLED has handled these items before they get to you?

5 A: Yes. We have an electronic system that we use to track  
6 all transfers between individuals and from an individual to a  
7 storage location.

8 Q: Okay. And do we call that, like, a verified chain of  
9 custody?

10 A: That would be our internal chain of custody. That's  
11 correct.

12 Q: I want to show you State's 16 for identification. If you  
13 could, take a look at that.

14 A: This is a printed copy of our internal chain of custody.

15 Q: And is that the complete chain of custody on those two  
16 packets of items we have here?

17 A: Yes. It tracks it from the time that it was submitted by  
18 Frank Mizell. Is that how you pronounce that?

19 Q: Mizell.

20 A: Mizell. Frank Mizell until the time that Frank Mizell  
21 picked it up once analysis was complete.

22 Q: And is that a document that you keep up with as part of  
23 your job duties at SLED to ensure who has handled the items  
24 you're testing?

25 A: Well, it's maintained electronically. So as each

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1 individual handles an item, it is recorded in our computer  
2 system, and then it can be retrieved as a printout.

3 MR. RICHARDSON: Your Honor, at this time, I'd ask for  
4 State's 16, the chain of custody, be entered into evidence.

5 MR. MEETZE: No objection, Your Honor.

6 THE COURT: So admitted.

7 (WHEREUPON, State's Exhibit Number 16, chain of custody,  
8 was admitted into evidence.)

9 MR. RICHARDSON: Thank you.

10 BY MR. RICHARDSON:

11 Q: And could you tell us the names of the people at SLED who  
12 handled these items before you?

13 A: Yes. The only individual at SLED that handled the item  
14 before I originally took custody of it was Dodi Yarborough.  
15 She took custody of it from Frank Mizell and then she placed  
16 it on a storage shelf in our Evidence Control Department. And  
17 then later she retrieved it from that shelf and transferred  
18 the item to me for analysis.

19 Q: And when you got it, it was completely sealed, unopened  
20 from when she sealed it in front of Frank Mizell?

21 A: That's correct.

22 Q: Okay. Now, back to the swabs. When you got the packets,  
23 you obviously would've had to open them to do any testing. So  
24 what did you do with them?

25 A: In the case of the evidence, there was a request for

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1 blood testing, and so I performed a presumptive test, which  
2 indicates the presence of blood on an item. And then I moved  
3 to DNA analysis and attempted to develop a DNA profile from  
4 both the evidence and from the buccal swabs that were  
5 submitted.

6 Q: Explain to us, if you will, the testing procedure that  
7 you do for DNA?

8 A: For DNA analysis, the first step is what's called  
9 extraction. That's separating the DNA from everything else,  
10 from other components of the blood, from the cotton swab that  
11 it was collected on, so that I have a tube that contains only  
12 the DNA. And then the instruments that we use -- they have a  
13 target amount of DNA. If there's too much DNA in the sample,  
14 then it will give poor results. And if there's not enough DNA  
15 in the sample, then it will not give a result at all.

16 So the next step is to quantitate the DNA to determine  
17 how much DNA is present and then at that point, if necessary,  
18 I make adjustments to the concentration of the sample. And  
19 then I do an amplification step, which takes -- makes copies  
20 of the sections of the DNA that we test.

21 And at that point, I put it on our final machine, which  
22 yields a DNA profile. And a DNA profile is reported as a  
23 sequence of numbers and, with the exception of identical  
24 siblings, no two individuals are born with the same DNA  
25 profile.

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1 Q: Okay. So the point of testing for DNA is, with the  
2 exception of twins, we all have different DNA?  
3 A: That's correct. Everyone has a unique DNA profile.  
4 Q: So you did this testing on these swabs and did you  
5 generate a report with your -- what you tested and the results  
6 therefrom?  
7 A: Yes, I did.  
8 Q: I'm going to show you State's 15. If you can, identify  
9 that?  
10 A: This is a copy of the report that I issued. However, it  
11 does appear to be missing a portion of the table on the third  
12 page.  
13 Q: With respect to what was tested and what your final  
14 conclusions were, does that report contain those?  
15 A: Yes, it does.  
16 Q: All right.  
17 MR. RICHARDSON: Your Honor, I'd ask that State's 15 be  
18 placed into evidence.  
19 THE COURT: Any objection?  
20 MR. MEETZE: No, Your Honor.  
21 THE COURT: So admitted.  
22 (WHEREUPON, State's Exhibit Number 15, DNA analysis  
23 report, was admitted into evidence.)  
24 MR. RICHARDSON: All right.  
25 BY MR. RICHARDSON:

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1 Q: Ms. Clayton, if you could, tell us I guess by item number  
2 what you tested and then the results?

3 A: Okay. The first item that I tested was SLED Item Number  
4 1, which was swabs from a restroom. I tested it for the  
5 possible presence of blood. And the presumptive testing for  
6 blood was positive, which means blood was indicated on that  
7 item.

8 I then took it to DNA analysis and the DNA profile  
9 developed from that item matches the DNA profile of Wiley  
10 Jones. The probability of randomly selecting an unrelated  
11 individual having a DNA profile matching this item is  
12 approximately one in 28 quintillion.

13 What that statistic means is that if you were to go out  
14 into the population and just choose any one person at random  
15 that's unrelated to the individual that actually left the  
16 stain, the probability that that individual would have that  
17 same DNA profile is approximately one in 28 quadrillion --  
18 sorry -- one in 28 quintillion, meaning it's very, very  
19 unlikely that you could choose someone at random that would  
20 just happen to have the same DNA profile.

21 Q: Okay. And while we're at it, the swabs that you tested  
22 --

23 MR. RICHARDSON: If I could go ahead and move 17 and 18  
24 into evidence?

25 THE COURT: Any objection?

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1 MR. MEETZE: No, Your Honor.

2 THE COURT: 17 and 18 admitted into evidence without  
3 objection.

4 (WHEREUPON, State's Exhibit Number 17 and State's Exhibit  
5 Number 18, swabs, were admitted into evidence.)

6 MR. RICHARDSON: Thank you, Your Honor.

7 BY MR. RICHARDSON:

8 Q: So we have one in whatever quintillion from the blood in  
9 the bathroom. What was your next item?

10 A: The next item I tested was swabs from a dining room.  
11 Again, I tested it for blood. The presumptive testing for  
12 blood was positive, meaning blood was indicated on that item.  
13 The DNA profile from that item also matches the DNA profile of  
14 Wiley Jones and, again, the probability of randomly selecting  
15 an unrelated individual having a DNA profile matching this  
16 item is approximately one in 28 quintillion.

17 Q: And the DNA profile of Wiley Jones -- was that developed  
18 from the buccal swab taken from him?

19 A: That's correct. A buccal swab is just a swab that's  
20 taken from the inside of the cheeks, and it collects skin  
21 cells that have come loose on the inside of the cheek and  
22 contains the DNA of that individual.

23 Q: So you then compared his standard taken from his mouth to  
24 these items that you're listing now, bathroom and other  
25 places?

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1 A: That's correct.

2 Q: I'm sorry I keep interrupting you. What's the next item  
3 on your list?

4 A: The next item I tested was SLED Item Number 3, which was  
5 swabs from an exterior wall. And again, blood was indicated  
6 on that item, and the DNA profile developed from that item  
7 matches Wiley Jones. And again, the probability of randomly  
8 selecting an unrelated individual having a DNA profile  
9 matching this item is approximately one in 28 quintillion.

10 Q: Okay. And is there another item or was that the last  
11 one?

12 A: There was one more.

13 Q: Okay.

14 A: There was swabs from a knife blade. That was SLED Item  
15 Number 4. Blood was indicated on that item as well. The DNA  
16 profile developed from Item 4, which would be the knife blade,  
17 also matches the DNA profile of Wiley Jones, and the  
18 probability of randomly selecting an unrelated individual  
19 having a DNA profile matching this item is approximately one  
20 in 28 quintillion.

21 Q: So all the blood that was picked up on the swabs from the  
22 various locations in your analysis and expert opinion was  
23 whatever quintillion probability that it belonged to Wiley  
24 Jones?

25 A: It was approximately one in 28 quintillion that if you

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1 chose an individual at random that that profile would match  
2 this item. So it's not that -- it's not the probability that  
3 he matches it. It's the probability that if you chose a  
4 random individual just by chance he would match it.

5 Q: So --

6 A: I know it's a fine distinction, but --

7 Q: So if we threw a dart into a crowd of 29 quintillion  
8 people, there would be one -- I mean if it randomly hit  
9 somebody? Is that accurate or I'm just messing it all up?

10 A: Well, it's really -- the number is independent of the  
11 population, but yes, if you were just to go into a crowd of  
12 any size and just to choose someone at random, just walk up to  
13 an individual and say I would like to test you, the  
14 probability that they would have that same DNA profile is  
15 approximately one in 28 quintillion, meaning it's very  
16 unlikely. I believe the probability of winning the jackpot is  
17 one in 240 million right now, which means you're much, much  
18 more likely to win the jackpot than you are to pick someone at  
19 random that what just happen to have the same DNA profile.

20 Q: How many zeros comes after the 28 in quintillion?

21 A: When you're counting, it's hundreds, thousands, millions,  
22 billions, trillions, quadrillions, quintillions. So it would  
23 be the number 28 with 18 zeros behind it would be 28  
24 quintillion.

25 Q: Okay.

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1 MR. RICHARDSON: Your Honor, I just checked with the  
2 court reporter. We'd move 15 into evidence.

3 MR. MEETZE: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 15, DNA analysis  
6 report, was admitted into evidence again.)

7 MR. RICHARDSON: I believe that's all the questions I  
8 have for Ms. Clayton at this time.

9 THE COURT: All right. Mr. Meetze?

10 MR. MEETZE: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MEETZE:

13 Q: Good morning. How are you doing, Ms. Clayton?

14 A: I'm doing well. Thank you.

15 Q: The testing that you did on the samples that you received  
16 was short tandem repeat PCR DNA analysis?

17 A: That's correct.

18 Q: All right. And PCR stands for polymorphic chain  
19 reaction?

20 A: Polymerase chain reaction.

21 Q: Okay. When you do that type of analysis, isn't it true  
22 that you're not comparing 100 percent of the DNA from your  
23 sample to 100 percent of DNA from the known sample?

24 A: That's correct. We test -- the kit that we use tests 15  
25 locations. The majority of DNA is very similar between

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1 individuals. So for both time expedience and cost, the  
2 scientific community has chosen 15 locations that have a high  
3 amount of variability between individuals, and those are the  
4 -- well, there's more locations, but the kit we use tests 15  
5 of those locations and those are the results that are  
6 reported.

7 Q: And you say the scientific community has come up with 15  
8 locations for you to test. Those 15 locations comprise a  
9 very, very small percentage of the entire strand of DNA;  
10 correct?

11 A: That's correct.

12 Q: I mean when we say very small, less than one percent?

13 A: I don't know the exact percentage, but that is probably  
14 accurate.

15 Q: And that -- and I'm going to -- I may ask questions that  
16 shows how little I know about what you do and everything; so  
17 please forgive me if I sound unintelligent. But when you say  
18 the 13 sites that you test, is that 13 genes from a stem -- a  
19 DNA stem or exactly what are those 15 sites?

20 A: The 15 locations that we test are non-coding genes, as in  
21 they don't determine eye color, hair color, anything like  
22 that. They are locations that are -- have a high amount of  
23 variability between individuals and so therefore can develop a  
24 unique profile for an individual.

25 Q: And so it's a gene or even something smaller than a gene

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1 that you're testing?

2 A: It is a very small piece of DNA, relative to an entire  
3 strand of DNA. That's correct.

4 Q: All right. And are you aware -- do you know the number  
5 of genes in a DNA?

6 A: I believe the estimate now is 23,000. It was at one time  
7 considerably larger than that, but they have reassessed their  
8 estimate.

9 Q: It's still a good bit more than --

10 A: Oh, correct.

11 Q: -- the 15?

12 A: It's considerably more than the 15 locations that we  
13 tested. Correct.

14 Q: So really what you're talking about with the 15 then is  
15 just a vast majority of generic material is not used for  
16 comparison?

17 A: Right. We just use a -- as I said before, for cost and  
18 time issues, we just chose 15 locations that have unique --  
19 unique results for individuals in most of those locations.

20 Q: And when you are doing your analysis and, you know, we  
21 may not have used -- but you don't actually -- you can't  
22 actually see the 15 sites? You're not looking at them with  
23 your eyes?

24 A: No, no. DNA is obviously extremely small. It's  
25 contained in cells in the body, which just to see a cell you

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1 would need a microscope to be able to see a cell, and DNA is  
2 much, much smaller than a cell. So no, I cannot visualize  
3 DNA.

4 Q: And like you said, even with a microscope, you don't  
5 visualize it?

6 A: I do not, no. I do believe there are some high-powered  
7 microscopes with some advanced technology that can do some  
8 detection of DNA.

9 Q: Okay. And the genetic material that you receive and  
10 test, in this case blood or whatever it may be, the cells  
11 contained on those swabs or those pieces of evidence are not  
12 alive; correct?

13 A: Not at the time that I receive them. They would not be,  
14 no.

15 Q: Right. And so you have to somehow get them to replicate?

16 A: No. I don't cause the DNA -- I don't cause the cells to  
17 replicate. The process we use is called DNA amplification or,  
18 as he said earlier, it's short tandem repeat polymerase chain  
19 reaction DNA analysis.

20 And what that means is that it tests these certain  
21 locations. We have the kits that we use. The kits contain  
22 probes that are specific for the locations that we use. The  
23 DNA -- DNA is double-stranded; so the test that we use causes  
24 the DNA to melt into two strands and then that strand is  
25 copied. And that copy of the strand has a fluorescent dye on

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1 it and so we go through this process over and over and over  
2 again. It goes through a cycle. It becomes two strands. It  
3 melts again. It becomes one strand and makes another copy and  
4 does this over again so that we can make detectable copies of  
5 the locations that we're interested in.

6 The locations that we test are tagged with fluorescent  
7 dye and then we can run it on our final instrument, which has  
8 a laser which excites the fluorescent dye on the DNA and then  
9 it passes by a camera, which can then detect the fluorescence  
10 from the pieces of DNA.

11 Q: So you add a fluorescent dye that sort of causes these  
12 not-living cells to replicate? Is that -- I don't know if  
13 that's the right word or not.

14 A: Well, the cell itself does not replicate. They -- at the  
15 point that we do the amplification step, the DNA has already  
16 been extracted from the cell. So the tube that we're using  
17 for amplification only contains the DNA in liquid and then we  
18 add to that our -- what's called a reaction mix, which  
19 contains the nucleotides that we need to build the DNA  
20 strands, and the probes, which have the fluorescent dye in  
21 them to detect the DNA strands, and then the polymerase, which  
22 is another protein that actually causes the nucleotides to be  
23 added to the strand. We don't actually replicate the cells  
24 themselves. We only replicate sections of the DNA.

25 Q: And it's these -- you said you build up these cells or

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1 these sections, and that built-up part or whatever -- that's  
2 what the computer reads; correct?

3 A: The computer detects -- or the instrument detects the  
4 final product, yes. Once the DNA copying or the polymerase  
5 chain reaction portion of the analysis is complete, the final  
6 instrument detects the DNA and then translates -- uses a  
7 computer program to translate that information into numbers  
8 and those numbers are what's reported as the DNA profile.

9 Q: And the computer reads those; correct?

10 A: Yes, that's correct.

11 Q: All of this is done --

12 A: The instrument detects it and then the computer  
13 translates the information from the instrument.

14 Q: Now -- and there's -- because you can't see these and,  
15 like you said, you don't see them with the microscope, there's  
16 no way for you to go behind the computer and double check the  
17 computer's work individually?

18 A: No. If I'm understanding your question correctly, I  
19 cannot look at the DNA itself. So is that -- is that what  
20 you're asking?

21 Q: Yeah. You can't manually compare the DNA using a  
22 microscope or anything like that?

23 A: Right. That's correct. I can't hold one piece of DNA up  
24 and look at another piece of DNA and see if those two pieces  
25 of DNA are the same. I have to depend on our validated

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1 testing methods and use the results that come from those.

2 Q: And in this case, the computer came up with a probability  
3 of one in 28 quintillion -- I don't know the right word. You  
4 --

5 A: Yes.

6 Q: Is it one in 28 quintillion probability that a randomly-  
7 selected person would have the same genetic profile; correct?

8 A: That would be a separate computer that we use, but yes.  
9 I did use a computer to calculate that statistic. The  
10 instrument that we use to develop the DNA profile is called a  
11 capillary electrophoresis instrument. I would then use the  
12 computer to -- from that instrument to determine the DNA  
13 profile. That DNA profile is then entered into a different  
14 program which is used to calculate the statistic of one in 28  
15 quintillion.

16 Q: And, of course, as you have testified to already, 28  
17 quintillion is a gigantic number?

18 A: That's correct. Twenty-eight quintillion is a very, very  
19 large number. One in 28 quintillion is a very, very, very  
20 small probability.

21 Q: In fact, 28 quintillion is almost incomprehensible?

22 A: It is not a number that most people work with. That's  
23 correct.

24 Q: In fact, when you're dealing with probability of someone  
25 else having genetic material that is the same and you apply

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1 those kinds of numbers, that's actually more people than have  
2 ever lived on the face of the earth?

3 A: Twenty-eight quintillion is probably more people than  
4 have ever lived on the earth. That's correct.

5 Q: Certainly more than currently live on the earth?

6 A: Certainly. The current population I believe is estimated  
7 to be approximately seven billion.

8 Q: And as you said, you would still have to go to trillion,  
9 quadrillion, before you're even sniffing quintillion?

10 A: That's correct.

11 Q: So it's, like I said, a very incomprehensible number when  
12 you're dealing with humans. All right.

13 MR. MEETZE: I don't have any further questions, Your  
14 Honor.

15 THE COURT: Mr. Richardson?

16 MR. RICHARDSON: No, sir.

17 THE COURT: All right. Ma'am, you may step down. Thank  
18 you.

19 MR. RICHARDSON: We'd ask that she be excused.

20 THE COURT: Any objection?

21 MR. MEETZE: No, Your Honor.

22 THE COURT: Without objection, you are excused. You're  
23 free to go. Have a nice day.

24 MR. RICHARDSON: The State rests, Judge.

25 THE COURT: All right. Can the lawyers approach a

1 THE COURT: All right.

2 MR. MEETZE: Your Honor, at this time, I would just renew  
3 all previous motions and objections for the record.

4 THE COURT: All right. For the record, the Court's prior  
5 rulings remain the same.

6 Ladies and gentlemen, you all have heard all of the  
7 testimony that you're going to hear in this case. That which  
8 remains is closing arguments by the counsel -- by counsel.  
9 The State will close first, followed by defense counsel, and  
10 then I will charge you on the law applicable to this case.

11 Before we begin closing arguments, let me remind you,  
12 ladies and gentlemen, that closing arguments is not evidence.  
13 It is not evidence in this case.

14 Mr. Richardson, you're so recognized.

15 CLOSING ARGUMENT ON BEHALF OF THE STATE

16 MR. RICHARDSON: Thank you, Your Honor. Mr. Meetze.

17 I think it's pretty clear what happened as far as the  
18 facts go. We've had ample testimony about what happened in  
19 the bathroom, what happened after the bathroom, before the  
20 bathroom, and then what the police did and the SLED analyst.  
21 Not a whole lot of wiggle room in terms of what literally took  
22 place with these people involved in this incident.

23 Carl Wheeling, who was our first witness, did an  
24 outstanding job of explaining exactly what occurred in that  
25 bathroom and also standing up and demonstrating it to you.

1 And I think, to paraphrase him, he heard this noise in the  
2 bathroom, knowing that these two guys had some ill will with  
3 one another. Mr. Durant was upset with Mr. Jones at least.

4 So knowing this goes on, he hears this rumbling coming  
5 from the bathroom. He steps in and I think he said he saw him  
6 come down on him blade down with the knife at least twice  
7 before he was able to get there and catch his arm before it  
8 came down again. And he said Mr. Durant, who was the shorter  
9 of the two individuals, was jumping to come down on him as if  
10 to aim for the chest or the back.

11 And we saw some of the injuries that Mr. Jones suffered  
12 in those photographs. Grisly looking things. I'm not going  
13 to throw them back on you on the big screen here, but you'll  
14 have the pictures that are in evidence to look at if you wish,  
15 along with a trashcan I guess. But anyway, it was -- I mean  
16 the description of it is extremely violent.

17 Mr. Jones told you similarly that he was outside that  
18 curtain, you know, when Mr. Durant was talking to Mr.  
19 Wheeling. They had a few words there and Mr. Jones goes in to  
20 use the bathroom. Now, he says he started off at the urinal  
21 and was using it. He was there to use the bathroom and got  
22 sneak attacked from behind, at which point he turned, did the  
23 defensive posture, and got caught, you know, in the front, got  
24 caught in the arm. I'm not sure how he got hit in the back,  
25 whether that was from the initial, you know, when his back was

1 to him or what.

2 And then Mr. Wheeling comes in and obviously prevents  
3 further damage or death by stopping that knife from coming  
4 down again and holding him there for what he says he thought  
5 was maybe about a minute and a half so that Mr. Jones could  
6 get away. He was clearly trying to kill him and I say that to  
7 say what is the foreseeable consequence of coming down on  
8 somebody with a knife at all, much less that many times?

9 I mean Mr. Jones indicated he had four puncture wounds  
10 and other scratches and abrasions on his body, and that's just  
11 before Mr. Wheeling caught his arm. I mean this easily could  
12 be a murder case you're sitting on right here but for Carl  
13 Wheeling.

14 That's why I argue to you that this is an attempted  
15 murder. Mr. Durant tried to get it done, but he got held up.  
16 And we, you know, went the extra mile so to speak, the police  
17 collecting the blood and sending it off to SLED and, of  
18 course, every last drop came back to the victim.

19 So this wasn't some mutual-combat situation. This wasn't  
20 some self-defense situation. This was a sneak attack trying  
21 to kill this guy for what sounds like, you know, rather  
22 childish reasons, but you know alcohol gets involved maybe.

23 Who knows what was going on with those two guys before?  
24 That doesn't really matter. What matters is the actions taken  
25 by the defendant. You don't resolve your conflicts with folks

1 by trying to carve them open, but that's what happened in this  
2 case.

3 We've got the knife. We had Mr. Nesmith testify that he  
4 saw Mr. Durant chunk the knife over the fence behind the  
5 property. So I mean guilt is all over Mr. Durant in terms of  
6 committing this act.

7 So what you have to determine then is the law that  
8 applies to this act. I strenuously argue to you it's an  
9 attempted murder, as is charged. But I caution you because at  
10 the conclusion of the closings here when the judge gives you  
11 the law, he's going to give you not only the law on attempted  
12 murder, but our assault and battery statutes as well, a number  
13 of them from top to bottom in our Code of Laws. And those are  
14 called included offenses or lesser-included offenses of the  
15 attempted murder.

16 And each of those different assault and battery levels  
17 have different elements or things, different sorts of injuries  
18 that have to be present. It's very injury focused. And I  
19 don't want you to get confused by that by looking at Mr.  
20 Jones's arm and his back and thinking about injuries because  
21 for attempted murder, injuries don't really matter. You know,  
22 if somebody fires a gun at you and misses, you're not going to  
23 have an injury. That doesn't mean they didn't try to kill  
24 you.

25 So in a case like this, you know, what if Mr. Durant had

1 run in that bathroom, but Mr. Wheeling got there in time  
2 before the first knife swing came down and caught him? He's  
3 still trying to kill him, but there wouldn't be any injuries  
4 because he didn't strike him. So the injuries are completely  
5 irrelevant.

6 What we're looking at is the intent of Mr. Durant here.  
7 And that is where we get into the definition of attempted  
8 murder, and the law and the statute reads a person who with  
9 intent to kill attempts to kill another person with malice  
10 aforethought, either express or implied.

11 So we've got a person, Mr. Durant, who intends to kill  
12 Mr. Jones with malice aforethought, either express or implied.  
13 Now, that's the legalese part of this.

14 Malice is ill will towards somebody, dislike, hatred.  
15 You've got a problem with somebody. And it can be either  
16 expressed -- I'm going to kill you -- or implied, meaning you  
17 can look at the actions taken by the individual and say he's  
18 trying to kill him.

19 And that's what we've got in this case. Running in that  
20 bathroom and carving away, aiming at his chest and his back,  
21 causing him grisly injuries, but it's implied malice. He had  
22 a problem with him right before. We know that. There's ill  
23 will there. He acted on that.

24 Now, I don't know and the evidence isn't clear whether he  
25 already had the knife on him or if he had to go to his bedroom

1 or, you know, bed and get it. We don't know that, but Mr.  
2 Jones had enough time to go from wherever they had words to  
3 the bathroom and start -- you know, begin to use it before Mr.  
4 Durant enters that bathroom and sneak attacks him.

5 So malice aforethought. Aforethought, of course, means  
6 beforehand. So you have to have malice right before the  
7 attack and during the attack, and I think that is abundantly  
8 clear here. We have the testimony that they had problems.  
9 This wasn't an accident. You know, he didn't pick the wrong  
10 guy. Everybody knew each other. They all testified. Mr.  
11 Wheeling, Jones, Nesmith, everybody knew everybody.

12 So that's what I caution you on. When you hear these  
13 other laws being read to you about terms like great bodily  
14 injury, moderate bodily injury, and even the word injury,  
15 completely irrelevant to why we're here. We're here because  
16 of his intent, his evil intent, his hatred towards this guy  
17 and his actions that he took to show him his displeasure.

18 Now, the judge is going to also tell you the law with  
19 respect to a number of things, but one in particular I want to  
20 talk to you about is reasonable doubt. Reasonable doubt is  
21 the highest burden in the law in terms of, you know, proving  
22 something. I can't just make you think, yeah, you know, maybe  
23 he did it. It has to be more than that. You have to be  
24 what's called firmly convinced that he did this stuff. That's  
25 why we present all this evidence to you to show that it's not

1 some maybe.

2 And I argue to you now that the evidence in this case is  
3 way past beyond a reasonable doubt for this attempted murder.  
4 It's -- I mean we've got everything from a factual standpoint.  
5 We've got eyewitnesses, we've got DNA, we've got the weapon,  
6 blood on the weapon, you know, statements made by the  
7 defendant that were inconsistent.

8 If you listen to the first statement we played for you  
9 through Officer Happ's voice recorder, if you pay close  
10 attention -- you can listen to these again if you want to. He  
11 asks him -- well, first, you know, he denies this even  
12 happening, which is ridiculous, but he denied it even taking  
13 place.

14 But he did acknowledge that he had a knife earlier in the  
15 day. So Officer Happ asked him where is that knife. If you  
16 listen carefully on there, you'll hear what sounds to me like  
17 it fell out my pocket. Well, he goes from Happ's custody and  
18 then he's put in the back of the car, and Investigator Wynn  
19 starts talking to him and he's asking him similar questions.  
20 Well, what happened to the knife? Well, it's in a case at my  
21 cousin's house. So he's distancing himself from the weapon.  
22 Of course, we know through Tommy Nesmith that he chunked it  
23 over the fence in the backyard.

24 But he's showing through these denials of anything  
25 happening and distancing himself from the weapon a

1 consciousness of guilt here. You know, he's running from this  
2 by telling the police these misleading things. So we have  
3 that, in addition to all the overwhelming evidence.

4 Really, Carl Wheeling makes the whole case. I mean I  
5 probably could've rested yesterday after the first three  
6 witnesses because Carl Wheeling -- you know, him coming in and  
7 catching it happen and his testimony about, you know, stopping  
8 him, that -- there's an attempted murder going on and that  
9 prevents the murder going on and that's as plain as I can  
10 explain it to you.

11 So I just ask you, when you hear the law, listen to it  
12 carefully and just use your common sense. I mean that's what  
13 it all comes down to. Use your common sense and apply it to  
14 the facts of this case and there's only one reasonable  
15 conclusion. Mr. Durant was trying to kill this guy, you know.

16 So I can't put it any plainer than that. So I thank you  
17 for listening, and go back in that room and go through all  
18 this stuff. If you need to listen to anything again, you  
19 certainly can. Look at all the pictures. Discuss it. And  
20 I'm sure after you do that and apply your common sense to it,  
21 the only logical conclusion here is attempted murder. Thank  
22 you.

23 THE COURT: Mr. Meetze?

24 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

25 MR. MEETZE: Thank you, Your Honor. Mr. Richardson.

1 I told you at the beginning of the case and you've heard  
2 a number of times you can only make decisions and deliberate  
3 once you've heard all the evidence and you've heard the  
4 arguments from the lawyers and you've gotten the charge on the  
5 law. So we -- we're heading in that direction. You've gotten  
6 all of the evidence. You've heard from Mr. Richardson.  
7 You're going to hear from me now.

8 The only thing left will be to hear the charges on the  
9 law from the judge and then the case will be in your hands,  
10 but just because it won't be around -- won't be too much  
11 longer before you have that doesn't mean that the different  
12 parts that are still going on in this trial are not very, very  
13 important because they are. Because just having the evidence  
14 is not enough. You have to have that in conjunction with the  
15 law that the judge will charge to you to be able to see how to  
16 apply the evidence that you have received to the law that the  
17 judge is going to charge you.

18 And the judge is going to charge on a number of different  
19 laws and certainly I appreciate your patience and your  
20 attention, and it'll be required for a little while longer  
21 because some of the law can be -- like a lot of things I  
22 suppose, it's not always written the way you would like it to  
23 be written to be able to understand it entirely, but that's  
24 just how things are.

25 Nothing is always black-and-white. There sometimes can

1 be gray and that's why we have charges and that's why we --  
2 that's why we have laws and arguments and interpretations and  
3 things like that, and that's why Mr. Richardson and I get to  
4 stand up here and talk to y'all about the evidence and give  
5 you our feelings as to what the evidence has shown.

6 As I told y'all earlier, in criminal court proof beyond a  
7 reasonable doubt is required to find somebody guilty of any  
8 criminal offense, and that is a very, very high burden, and  
9 you'll be charged on the law as to what that means exactly.  
10 I'll submit to you that proof beyond a reasonable doubt does  
11 not require proof that overcomes any and all doubt. That  
12 certainly would be an extreme burden, but it's a -- it comes  
13 up just short of that. It's not too far off from that. It's  
14 very important because of what we deal with here in General  
15 Sessions court, in criminal court. It doesn't get any more  
16 important than that.

17 And, you know, we started this thing right around a day  
18 ago, right around 24 hours. So from the standpoint of this  
19 trial, it's not a very long trial. You know, you see trials  
20 from other states and things like that. They can last four --  
21 five -- six months, which is just unbelievable for me to even  
22 comprehend because here that's just not reality. Obviously,  
23 it is in some places and how folks can do that I don't know,  
24 but here a day trial is certainly not a long trial, but it's  
25 not unusual. The length of a trial doesn't matter either.

1 It's still extremely important to both sides and again  
2 certainly everybody appreciates what you all are here and the  
3 purpose y'all are serving.

4 Mr. Richardson tells you or told you that, if it weren't  
5 for Mr. Wheeling, Mr. Durant would be charged with murder.  
6 Well, let me tell you what that is. That's speculation.  
7 Nobody can stand here and tell you that for sure. That's pure  
8 speculation. We don't know it.

9 Obviously, what we say is not evidence, but he wants you  
10 to use your common sense and I would echo that, and certainly  
11 common sense says we don't know what would have happened in  
12 that bathroom had Mr. Wheeling not gone in there and to do so  
13 is merely speculative. And speculation -- there's really no  
14 room for that in a court of law. We deal with evidence. We  
15 deal with facts. We deal with what we know, and not what we  
16 speculate on.

17 Another thing that I will tell you is to that. Let's  
18 just say, for example, Mr. Richardson alluded to the same  
19 thing in his opening statement and here when he talked to you  
20 that the only thing that keeps this from being a murder charge  
21 is that Mr. Jones did not die, and obviously common sense  
22 tells you that in order to have a murder charge at all you do  
23 have to have a deceased individual and we don't have that  
24 here. So certainly murder is not appropriate.

25 But because it's been mentioned to you and I've sort of

1 explained to the law on that and it's similar to attempted  
2 murder and that the only difference is with attempted murder  
3 and with murder -- the difference is with attempted murder you  
4 don't have a deceased person, with murder you do. Otherwise,  
5 murder is the intentional killing of an individual with malice  
6 aforethought. Attempted murder is attempting to kill somebody  
7 with malice aforethought.

8       The key in both of those is the malice. Mr. Richardson  
9 focused on that and obviously that's the important part  
10 because every killing -- intentional killing of somebody under  
11 our law is not murder. Every intentional killing is not  
12 murder, even killings that aren't justifiable in another way,  
13 like by self-defense or stand your ground or something like  
14 that. We have those laws that can justify killings.

15       I'm not about talking about that. There are unlawful  
16 intentional killings that aren't murder because there are  
17 unlawful intentional killings that don't have malice  
18 accompanying that killing.

19       The same thing here. You have a charge of attempted  
20 murder, but you can only have attempted murder if you find  
21 that there is malice. An example of a murder -- excuse me.  
22 An example of an intentional killing that would not be a  
23 murder is in a situation where there's what's called under our  
24 law sudden heat of passion with sufficient legal provocation.  
25 All right?

1           What that means is in a situation where you've got two  
2 people that are mad at each other and tempers rage and, as a  
3 result of that rage, somebody flies off the handle and commits  
4 an intentional act where someone dies. All right?

5           That's provocation. That's sudden heat of passion.  
6 That's not malice. In those circumstances, we have laws that  
7 cover that. Voluntary manslaughter is an intentional killing  
8 of another human being with sudden heat of passion and  
9 sufficient legal provocation.

10          And I submit to you that's what we have here, and the  
11 testimony is clear. Mr. Wheeling testified, of course, it was  
12 a long time ago. His testimony and his statement to the  
13 police was an oral statement. It wasn't written down. So he  
14 didn't have a hundred percent memory on what he told them, but  
15 when I asked him if he could remember telling him that he saw  
16 the two in a heated argument, heated meaning an elevated, a  
17 serious argument with one another. They're both really mad.  
18 You're not heated if you're not both really mad at each other.

19          And he says, yeah, I probably said that and, of course,  
20 the officer that he said that to was Officer Cantey, and  
21 Officer Cantey did not hesitate. His investigation was that --  
22 and he determined through his investigation that these two  
23 were in a heated argument with one another.

24          And this is an argument that had been ongoing, and even  
25 Mr. Jones told you, you know, and, you know, if you remember

1 testimony differently than what I say to you, obviously your  
2 memories are the ones to go on with regards to that, but Mr.  
3 Jones told you from here that, you know, he's from somewhere  
4 else. He's from maybe Ohio or somewhere up north or whatever  
5 and people do act different and things like that and folks  
6 down here are different. And he said that a number of people  
7 at this transitional shelter had problems with him.

8       So he certainly gave indication that any sort of ill --  
9 any sort of animosity between Mr. Durant and Mr. Jones was  
10 sort of ongoing, but on this particular evening you heard  
11 testimony that there was a call that they had gotten into it  
12 with one another wherever they went out drinking and then when  
13 they both got back to the shelter, however they got back --  
14 whether it was together or separately is not really clear from  
15 the testimony, but Mr. Wheeling told you that Mr. Durant came  
16 in there to talk to him about what happened. You heard  
17 testimony that, you know, you've got to act in a particular  
18 way in order to be able to keep your spot at the shelter.

19       So Mr. Durant came in to tell Mr. Wheeling what happened.  
20 That, you know, they had gotten into it out there and Mr.  
21 Wheeling testified that he had sort of calmed down at that  
22 point in time and at that point in time you can certainly  
23 infer that it was over. However, as Mr. Durant got up to  
24 leave from his conversation with Mr. Wheeling, he pulled back  
25 the curtain and he sees Mr. Jones has been there eavesdropping

1 on his conversation.

2 And you couple already being mad at somebody, two people  
3 already being mad at each other, already had gotten into it  
4 outside, couple that with alcohol, which certainly common  
5 sense tells you people that have been drinking too much --  
6 their emotions can be raised to a much higher level than they  
7 would ordinarily be raised if they hadn't been drinking. And  
8 testimony from Officer Cantey through his investigation was  
9 that he determined that both parties were extremely  
10 intoxicated is what his testimony was.

11 So you've got that coupled with -- with the intoxication.  
12 He sees that Mr. Jones has been eavesdropping on his  
13 conversation with Mr. Wheeling and then that sends him back to  
14 a level of anger that led to what happened happening, and that  
15 is not malice. That is not malice. That's heat of passion.  
16 That's provocation.

17 I'm not saying anything that happened was appropriate,  
18 not necessarily lawful, but it's not attempted murder. If  
19 there's no malice, there's no attempted murder, and the facts  
20 of this case do not rise to attempted murder because there is  
21 not malice in this case.

22 This is -- you know, of course, it's something to be  
23 inferred from the facts of this case, but I certainly submit  
24 you that it can be inferred that we wouldn't be here if Mr.  
25 Jones hadn't have been eavesdropping. Mr. Wheeling said Mr.

1 Durant had calmed down. He was fine at that point in time.

2 Not to necessarily, like I said, blame the victim in that  
3 case. We all make decisions every day. Sometimes we make  
4 decisions we regret. Sometimes decisions lead to things that  
5 we don't anticipate and we go, oh, I shouldn't have done that.

6 So certainly eavesdropping on a conversation should not  
7 have resulted in Mr. Jones suffering injuries that he  
8 suffered, but we never will know what would've happened. And  
9 that's because the actions that took place, the things that  
10 took place, took place as a result of the heat of passion, the  
11 anger in that moment that was there and, like I said, it was  
12 from both parties. So when one person is mad at another  
13 person, common sense will tell you it doesn't calm down from  
14 there. It only gets higher and higher.

15 It's certainly unfortunate, but there's no malice there.  
16 You have heat of passion. You've got provocation. That led  
17 to what happened.

18 So you've already heard that based on our law and based  
19 on the evidence that you have, you're going to hear charges on  
20 a number of different kinds of law, and I'm going to do my  
21 best to explain some of those -- to explain those to you for  
22 your consideration.

23 The first of those is called assault and battery of a  
24 high and aggravated nature. Now, assault and battery of a  
25 high and aggravated nature -- I will tell you that under the

1 law a person commits the offense of assault and battery of a  
2 high and aggravated nature if the person unlawfully injures  
3 another person and the act is accomplished by means likely to  
4 produce death or great bodily injury.

5 Now, likely to produce death or great bodily injury. In  
6 this case, Mr. Jones was stabbed. As far as the pictures go  
7 -- and you'll have the pictures to look at, and he testified  
8 that there were some cuts and scrapes on other parts of his  
9 body, but you can see two primary -- what I would say primary  
10 injuries, one on the top of his back and one on his arm. And  
11 both appeared to be more slashing than stabbing wounds. Okay?  
12 But a slash to the upper back, a slash to the arm being the  
13 primary injuries.

14 And I submit to you that, you know, just because you use  
15 a knife -- and I'm not going to sit here and try to argue with  
16 you that somebody can't be killed with a knife. That's  
17 ridiculous. But I can say to you and I do submit to you that  
18 not every attack with a knife is an attack that's likely to  
19 produce great bodily injury.

20 Let me define for you under the law what great bodily  
21 injury is. Great bodily injury means bodily injury which  
22 causes a substantial risk of death or which causes serious  
23 permanent disfigurement or protracted loss or impairment of a  
24 function of a bodily member or organ.

25 Slashes that cause deep gashes in the top of his back and

1 top of his arm is not that type of injury that's going to  
2 cause that type of injury, what would be classified under our  
3 law as great bodily injury. It's just not.

4 And I submit to you the force and the injury that  
5 happened here is -- is what it is. It's an injury that -- and  
6 testimony was that this was -- you know, he was stabbing or  
7 slashing with this knife or whatever it was, but what it  
8 produced was a hospital visit for about five to five-and-a-  
9 half hours that required two staples and stitches.

10 There's no testimony at all in regards to any injury  
11 beyond that. No testimony as to any kind of even follow-up  
12 care, whether he was prescribed any kind of medication or  
13 anything. There's nothing. The only testimony was that I  
14 went to the hospital. They gave me a few staples and  
15 stitches.

16 And, you know, that's -- you know, using a knife doesn't  
17 mean that automatically -- oh, it was a knife, automatically  
18 somebody who injured somebody with a knife, that injury is of  
19 the type that is likely to cause great bodily injury, likely  
20 to cause substantial risk of death or which causes serious  
21 permanent disfigurement or protracted loss or impairment of a  
22 bodily function. There's just no evidence to that in this  
23 case that what was done was likely to cause any of that and I  
24 submit to you based on that that this is not assault and  
25 battery of a high and aggravated nature.

1           So you also have assault and battery in the first degree.  
2 Assault and battery in the first degree: a person commits the  
3 offense of assault and battery in the first degree if a person  
4 unlawfully offers or attempts to injure another person with  
5 the present ability to do so and the act is accomplished by  
6 means likely to produce death or great bodily injury.

7           Again, same argument. Still requires an injury or an  
8 attempt to cause an injury that is likely to cause great  
9 bodily injury, likely to produce great bodily injury. So you  
10 go from -- well, in both of them, you know, likely to produce  
11 great bodily injury. It's just not that kind of an injury and  
12 the actions that occurred were not likely to. Stabbing  
13 somebody in the top of the back and slicing somebody on the  
14 top of the back and slicing them on the arm is not likely to  
15 produce that kind of injury.

16           If somebody pulled out a rifle and aims it and fires it  
17 and it just happened to miss the person, if that bullet hits  
18 him in the chest or something like that, that's likely to  
19 produce death. If somebody wants to run over somebody with a  
20 car and they've got a bead on them and they're heading for  
21 them and they're driving at a reasonably fast rate of speed  
22 and the guy dives out of the way at the last minute, all  
23 right, that's something that's likely to produce death or  
24 great bodily injury.

25           Just because somebody is attacked with a knife doesn't

1 mean that that's a situation likely to produce death or great  
2 bodily injury. So I submit to you that assault and battery in  
3 the first degree is also not appropriate in this case.

4 You'll also be charged on the law of assault and battery  
5 in the second degree. That law says that if a person  
6 unlawfully injures another person or offers or attempts to  
7 injure another person with the present ability to do so and  
8 moderate bodily injury to another person results or moderate  
9 bodily injury to another person could have resulted.

10 Moderate bodily injury is defined as a physical injury  
11 that involves prolonged loss of consciousness -- there's no  
12 evidence of that -- or that causes temporary or moderate  
13 disfigurement or temporary loss of the function of a bodily  
14 member or organ -- there's no evidence of that -- or injury  
15 that requires medical treatment when the treatment requires  
16 the use of regional or general anesthesia.

17 There was testimony obviously that there were staples  
18 used to close the wound, as well as stitches, and I do think  
19 Mr. Jones testified that in order to perform that on him they  
20 did I think numb him up or whatever they do. So certainly a  
21 reasonable person could find that based on the facts and based  
22 on the law of assault and battery in the second degree that --  
23 that that could fit moderate bodily injury.

24 The rest of the definition of moderate bodily injury says  
25 results -- the injury results in a fracture, dislocation.

1 There's no fracture or dislocation here.

2 So that's at least a possibility. And you also have the  
3 option of assault and battery in the third degree, which makes  
4 it unlawful -- assault and battery third degree is the person  
5 unlawfully injures another person or offers or attempts to  
6 injure another person with the present ability to do so.

7 It's also obviously arguable on assault and battery in  
8 the second degree that simply suturing somebody up with  
9 stitches is not what's contemplated by our legislature when  
10 they enacted the law. All right? That it should be something  
11 more than that for even moderate bodily injury, but you  
12 certainly can read and tell by the definitions and you'll hear  
13 those charged to you as well and those definitions will be  
14 given to you as part of your charge. It's still -- it's  
15 substantial injury, for someone to be injured to a level that  
16 would be considered under our law moderate bodily injury.

17 So certainly, at the most, that's what this case is. I  
18 submit to you that it is not attempted murder because there is  
19 no malice. Unfortunately, you've got two people that went out  
20 and had too much to drink. That's where your problems start  
21 right there. All right?

22 They get into an argument while they're out drinking.  
23 They come back to their residence. Things seem to be calmed  
24 down, but they're heightened back up again to a level where  
25 one may fly off the handle and do something that is certainly

1 not appropriate and it shouldn't have happened, but it doesn't  
2 make it malice.

3       So it's not attempted murder. It's provocation. It's  
4 heat of passion, which makes it an assault and battery, and I  
5 submit to you that it's certainly no worse than assault and  
6 battery in the second degree. And certainly it's certainly  
7 possible that it is assault and battery in the third degree,  
8 but assault and battery of a high and aggravated nature and  
9 first degree assault and battery, which require a likelihood  
10 to produce great bodily injury -- great bodily injury under  
11 our law is extreme injuries which are just not likely with the  
12 actions that were done here.

13       And an injury that the -- when you have actual injury  
14 that occurs and the extent of the injury is -- and, of course,  
15 I don't want it to happen to me obviously, but the extent of  
16 the injury is a five to five-and-a-half hour stay at the  
17 hospital with no follow-up and stitches and a couple of  
18 staples is nothing coming remotely close to great bodily  
19 injury and nothing coming remotely close to even being likely  
20 to cause great bodily injury.

21       Just because you actually had an injury here -- you know,  
22 those situations I submit to you under this law are for when  
23 in a situation where somebody tries to injure somebody, but  
24 they really don't carry it out. It's not -- you know, it's  
25 like the example of a car. All right? The person wasn't

1 actually injured, but had they been, it would've been bad.

2 This is a case where the person was actually injured. We  
3 got -- you get to see the pictures. You can see the injury.  
4 The injuries are not that level, not even close. So I submit  
5 to you the assault and battery of a high and aggravated nature  
6 and assault and battery in the first degree are also not  
7 appropriate in this case, and certainly we are asking for a  
8 verdict in this case that would be more consistent with the  
9 facts in this case and that would be at worst assault and  
10 battery in the second degree, but assault and battery in the  
11 third degree would also be appropriate.

12 So we're asking you to bring back a verdict that speaks  
13 the truth and it's certainly a verdict of one of those two  
14 things. We certainly appreciate your attention and  
15 consideration in this case. Thank you.

16 CHARGE ON THE LAW

17 THE COURT: All right. Ladies and gentlemen of the jury,  
18 it's now my duty as the trial judge under the Constitution of  
19 this state to charge and instruct you on the law applicable to  
20 this case. It is your duty as jurors to accept and apply the  
21 law as I will now state it to you.

22 Furthermore, it is your exclusive duty to decide all the  
23 issues of fact in this case and to determine the effect,  
24 value, weight, and truth of the evidence. Both the State and  
25 the defendant have a right to expect that you will carefully

1 consider and evaluate the evidence and apply the law of this  
2 case to it so that in the end both the State of South Carolina  
3 and the defendant will receive a fair and impartial trial.

4 I want you to understand that when I use the word  
5 defendant, I refer to Mr. Melvin Durant.

6 The charge alleged in the indictment is for one count of  
7 attempted murder. To this charge, the defendant has entered a  
8 plea of not guilty. This plea of not guilty places the burden  
9 of proof on the State to prove the guilt of the defendant to  
10 you, the jury, beyond a reasonable doubt.

11 I remind you, ladies and gentlemen, that the fact that  
12 the defendant was arrested, charged, and indicted in this case  
13 is not evidence in this case and cannot be considered by you  
14 as evidence of guilt in this case, nor does it create any  
15 presumption or inference of guilt.

16 The indictment is simply the formal written instrument  
17 which contains the charge made against the defendant. It is  
18 the formal document by which this case is brought into this  
19 court.

20 It is vital to understand that the defendant is presumed  
21 under the law to be innocent of this charge. The defendant  
22 has no obligation to prove his innocence. It is a fundamental  
23 rule of our law that a defendant, irrespective of the  
24 seriousness of the charge against him, is always presumed  
25 innocent of the crime for which he is charged unless and until

1 his guilt has been proven by evidence that satisfies you, the  
2 jury, beyond a reasonable doubt.

3       The presumption of innocence is not a mere legal theory  
4 or a legal phrase. The presumption of innocence is very  
5 important and you, ladies and gentlemen, need to understand  
6 that this presumption accompanies the defendant from the time  
7 of his arrest and appearance in this court and continues with  
8 the defendant even after you retire to the jury room to  
9 deliberate. In other words, the defendant receives the  
10 benefit of the presumption of innocence until the very end of  
11 this trial when you, the jury, will deliberate upon the  
12 evidence and decide whether the State has proven his guilt  
13 beyond a reasonable doubt.

14       Now, what is a reasonable doubt in the law? A reasonable  
15 doubt, ladies and gentlemen, is the kind of doubt that would  
16 cause a reasonable person to hesitate to act. Proof beyond a  
17 reasonable doubt is proof that leaves you firmly convinced of  
18 the defendant's guilt.

19       Now, there are very few things in this world that we know  
20 with absolute certainty. So even in criminal cases, the law  
21 does not require proof that overcomes every possible doubt.  
22 However, if, based on your consideration of the evidence, you  
23 are firmly convinced that the defendant is guilty of the crime  
24 charged, you must find him guilty. If, on the other hand, you  
25 think there is a real possibility that he is not guilty, you

1 must give him the benefit of the doubt and find him not  
2 guilty.

3       Please understand, ladies and gentlemen, that reasonable  
4 doubt may arise from evidence which has been presented in the  
5 case or from the lack of evidence in the case. It is your  
6 responsibility to determine whether or not reasonable doubt  
7 exists as to the guilt of the defendant.

8       I charge you that the defendant is entitled to every  
9 reasonable doubt arising in the whole case. If upon any issue  
10 of fact essential to conviction and a verdict of guilty you  
11 have a reasonable doubt as to how that issue should be  
12 resolved, it would be your duty to resolve that reasonable  
13 doubt in favor of the defendant.

14       Now, during this trial, ladies and gentlemen, you and I  
15 have had separate duties to perform. As the trial judge, it  
16 is my responsibility to preside over this trial, and I also  
17 have the duty to rule upon the admissibility of the evidence  
18 offered during the course of this trial.

19       In that regard, you are to consider only the competent  
20 evidence before you and you are to disregard from your mind  
21 any testimony ordered stricken from the record of this case  
22 during the progress of the trial, if there was any. And you  
23 are to consider only the testimony which is been presented  
24 from this witness stand, together with any exhibits admitted  
25 into the record of this case and any stipulations of counsel

1 made into the record.

2           Furthermore, I have the additional duty to charge you on  
3 the applicable law of this case and, in that regard, I am the  
4 sole judge of the law in this case. It is your duty to accept  
5 and apply the law as I state it to you. If you have any  
6 preconceived ideas as to what the law is or what the law  
7 should be and it does not agree with what I tell you the law  
8 is, you are obligated under your oath to abandon these  
9 preconceptions because you are sworn to accept and apply the  
10 law precisely as I state it to you.

11           In this trial, you are the sole and exclusive judge of  
12 the facts and I am the judge of the law. Do not infer that I  
13 have any opinion about the facts in this case from anything  
14 that I have said during the course of this trial in ruling  
15 upon the admissibility of evidence or otherwise or from  
16 anything that I say during the course of this charge to you.

17           In this regard, the law simply does not permit me to have  
18 an opinion about the facts. As jurors, it is your duty alone  
19 to determine the effect, value, weight, and truth of the  
20 evidence presented during the course of this trial.

21           Now, in determining what the facts of this case are, you  
22 must judge the credibility, which simply means the  
23 believability of the witnesses and the value of weight to be  
24 given to their testimony. You alone must decide the force,  
25 effect, and truth of the testimony.

1           Now, in making this decision, there are many things that  
2 you may and should take into consideration, such as the  
3 appearance and manner of the witness on the stand, a  
4 characteristic often referred to as the demeanor of the  
5 witness. Was the witness forthright or hesitant? Was the  
6 witness's testimony consistent or did it contain  
7 discrepancies? What was the ability of the witness to know  
8 the facts about which he or she testified? Did the witness  
9 have a cause or reason to be biased and prejudiced in favor of  
10 the testimony he or she gave? Was the testimony of the  
11 witness corroborated or made stronger by other testimony and  
12 evidence or was it made weaker or impeached by such other  
13 testimony and evidence?

14           As jurors, please understand that you have the right to  
15 believe a small portion of a witness's testimony and discard  
16 the larger portion or vice versa. You may believe all of a  
17 witness's testimony or none. You may believe the testimony of  
18 a single witness against that of many witnesses or the other  
19 way around.

20           In exercising your mental processes and attempting to  
21 decide the truth, the law simply requires that you exercise  
22 your good judgment, your common sense, your sense of logic and  
23 reason, and your experiences in life. You then apply these  
24 attributes to the evidence and apply the law as I state it to  
25 you and thus arrive at a verdict.

1           Now, there are two types of evidence, ladies and  
2 gentlemen, which are generally presented during a trial:  
3 direct evidence and circumstantial evidence.

4           Direct evidence is the testimony of a person who claims  
5 to have actual knowledge of a fact, such as an eyewitness. It  
6 is evidence which immediately establishes the main fact to be  
7 proved.

8           Circumstantial evidence is proof of a chain of facts and  
9 circumstances indicating the existence of a fact. It is  
10 evidence which immediately establishes collateral facts from  
11 which the main fact may be inferred. Circumstantial evidence  
12 is based on inference and not on personal knowledge or  
13 observation.

14           The law makes absolutely no distinction between the  
15 weight or value to be given to either direct or circumstantial  
16 evidence, nor is a greater degree of certainty required of  
17 circumstantial evidence than of direct evidence. You should  
18 weigh all of the evidence in this case. If after weighing all  
19 the evidence you are not convinced of the guilt of the  
20 defendant beyond a reasonable doubt, you must find the  
21 defendant not guilty.

22           Now, ladies and gentlemen, during the course of the  
23 trial, you heard testimony from individuals who had a prior  
24 criminal record. An individual who has a prior or a past  
25 criminal record is competent to testify during a trial. A

1 past record does not affect the ability of that witness to  
2 testify. The past record may only be considered by you, if at  
3 all, in determining the witness's believability. Remember,  
4 ladies and gentlemen, you are the sole judge of the facts in  
5 the case and of the believability of any and all of the  
6 witnesses.

7 Now, in this case, ladies and gentlemen, you heard the  
8 testimony of someone who was qualified as an expert. The  
9 rules of evidence -- as I previously told you before, the  
10 rules of evidence ordinarily do not permit witnesses to  
11 testify to opinions or conclusions.

12 An exception to this rule exists for witnesses that we  
13 call expert witnesses. A witness who by education and  
14 experience has become an expert in some art, science,  
15 profession or calling may state an opinion as to relevant and  
16 material matter in which the witness claims to be an expert  
17 and may also state the reasons for the opinion.

18 You should consider any expert opinion received in  
19 evidence in this case and, like any other evidence, give it  
20 the weight that you think it deserves. If you decide that the  
21 opinion of an expert witness is not based on sufficient  
22 education and experience or if you conclude that the reasons  
23 given in support of the opinion are not sound or that the  
24 opinion is outweighed by other evidence, you may disregard the  
25 opinion entirely.

1           Furthermore, an expert witness's testimony is to be given  
2 no greater weight than that of other witnesses simply because  
3 the witness is an expert. Furthermore, you are not required  
4 to accept an expert's opinion, even though it is not  
5 contradicted.

6           Now, ladies and gentlemen, in this case, the defendant  
7 chose not to testify. I instruct you and I emphasize that the  
8 fact that the defendant did not testify is not a factor to be  
9 considered by you in any way in your deliberations and in your  
10 consideration on the question of the guilt or innocence of the  
11 defendant. It must not be considered by you in any manner  
12 whatsoever.

13           A defendant has the constitutional right to remain  
14 silent, and the assertion of this right must not be considered  
15 by you in your deliberations. I repeat, under your oath, you  
16 are to draw no conclusion whatsoever from the fact that the  
17 defendant in this case did not testify. The fact that this  
18 defendant did not testify should not even be discussed in the  
19 jury room.

20           The burden of proof, as I have stated to you, is on the  
21 State. The defendant is not required to prove his innocence.  
22 The burden of proof remains on the State to prove guilt beyond  
23 a reasonable doubt.

24           Now, ladies and gentlemen, in order to establish criminal  
25 liability, criminal intent is required. For example, the

1 mental state required to be proven by the State for a  
2 particular crime might be purpose, intent, knowledge,  
3 recklessness or criminal negligence. Criminal intent must be  
4 proven by the State beyond a reasonable doubt.

5 Criminal intent is always a matter that must be  
6 determined by the jury from the circumstances surrounding the  
7 situation. There is no way, ladies and gentlemen, to prove  
8 intent to a mathematical certainty. There is no way that  
9 medical science can dissect a person's brain and determine  
10 what the person had in mind. So the law says that criminal  
11 intent may be inferred from the circumstances shown to have  
12 existed. This is how you make a determination of whether or  
13 not the element requiring intent was present.

14 It is not necessary to establish intent by direct and  
15 positive evidence, but intent may be established by inference  
16 in the same way as any other fact by taking into consideration  
17 the acts of the parties and all the facts and circumstances of  
18 the case. Criminal intent is a mental state, a conscious  
19 wrongdoing.

20 It is up to you to determine what the defendant intended  
21 to do based on the circumstances shown to have existed.  
22 Criminal intent can arise from action or a failure to act. It  
23 may arise from negligence, recklessness or an indifference to  
24 duty or to consequences that is considered by the law to be  
25 the equivalent of criminal intent.

1           Now, an attempt, ladies and gentlemen, is an effort to  
2 accomplish a crime which does not succeed. An attempt  
3 includes a specific intent to do a particular criminal act,  
4 along with an act falling short of the act intended.

5           The State must show more than mere preparation and  
6 intent. There must be some overt act committed in the effort  
7 to commit the crime. Intent means intending the result which  
8 actually occurs, not accidentally or involuntary. It may be  
9 shown by acts and conduct of the defendant and other  
10 circumstances from which you may naturally and reasonably  
11 infer intent.

12           Now, the defendant, ladies and gentlemen, is charged with  
13 attempted murder. In order to prove this crime, the State  
14 must prove the defendant attempted to kill another person with  
15 malice aforethought, either express or implied.

16           Malice is hatred, ill will, or hostility towards another  
17 person. It is the intentional doing of a wrongful act without  
18 just cause or excuse and with an intent to inflict an injury  
19 or under circumstances that the law will infer an evil intent.

20           Malice aforethought does not require that malice exist  
21 for any particular time before the act is committed, but  
22 malice must exist in the mind of the defendant just before and  
23 at the time of the act is committed. Therefore, there must be  
24 a combination of the previous evil intent and the act.

25           Malice aforethought may be expressed or inferred. These

1 terms, expressed and inferred, do not mean different kinds of  
2 malice, but merely the manner in which malice may be shown to  
3 exist. That is either by direct evidence or by inference from  
4 the facts and circumstances which are proved.

5 Express malice is shown when a person speaks words which  
6 express hatred or ill will for another or when the person  
7 prepared beforehand to do the act which was later  
8 accomplished. For example, lying in wait for a person or any  
9 other acts of preparation going to show that the deed was  
10 within the defendant's mind would be expressed malice. Malice  
11 may be -- malice may be inferred from conduct showing a total  
12 disregard for human life or when circumstances demonstrate a  
13 wanton or reckless disregard for human life.

14 If facts are proved beyond a reasonable doubt sufficient  
15 to raise an inference of malice to your satisfaction, this  
16 inference would be simply an evidentiary fact to be considered  
17 by you, the jury, along with the other evidence in the case,  
18 and you may give it the weight that you decide it should  
19 receive.

20 A specific intent to kill is an element of attempted  
21 murder. Intent means intending the result which actually  
22 occurs, not accidentally or involuntary. Intent may be shown  
23 by acts and conduct of the defendant and other circumstances  
24 from which you may naturally and reasonably infer intent.

25 Evidence of the character of the act, the character of

1 the instrument used, the manner in which it was used, the  
2 purpose to be accomplished and the resulting wounds or  
3 injuries may be considered in determining the intent with  
4 which the act was committed. Intent may also be inferred when  
5 it is demonstrated that the defendant voluntarily and  
6 willfully commits an act, the natural tendency of which is to  
7 destroy another's life.

8 Assault and battery. Ladies and gentlemen, if you find  
9 -- I'm going to start charging you on what is called lesser-  
10 included offenses. Okay?

11 The first lesser-included offense is assault and battery  
12 of a high and aggravated nature. If you find, ladies and  
13 gentlemen, that the State has failed to prove that the  
14 defendant committed the offense of attempted murder, you may  
15 then or you must then consider whether the State has proven  
16 beyond a reasonable doubt that the defendant committed the  
17 lesser-included offense of assault and battery of a high and  
18 aggravated nature.

19 A person commits the offense of assault and battery of a  
20 high and aggravated nature if the person unlawfully injures  
21 another person and the act is accomplished by means likely to  
22 produce death or great bodily injury.

23 Now, if you find the State has failed to prove beyond a  
24 reasonable doubt that the defendant committed assault and  
25 battery of a high and aggravated nature, you must then

1 determine whether the State has proven beyond a reasonable  
2 doubt that the defendant committed the lesser-included offense  
3 of assault and battery in the first degree.

4 A person commits the offense of assault and battery in  
5 the first degree if the defendant unlawfully offers or  
6 attempts to injure another person with the present ability to  
7 do so and the act is either accomplished by means likely to  
8 produce death or great bodily injury.

9 Now, if you find the State has failed to prove beyond a  
10 reasonable doubt that the defendant committed assault and  
11 battery in the first degree, you must then determine whether  
12 the State has proven beyond a reasonable doubt that the  
13 defendant committed the lesser-included offense of assault and  
14 battery in the second degree.

15 A person commits the offense of assault and battery in  
16 the second degree if the defendant unlawfully injured another  
17 person or offered or attempted to injure another person with  
18 the present ability to do so and moderate bodily injury to  
19 another -- to another person results or moderate bodily injury  
20 to another person could have resulted.

21 Now, if you find the State has failed to prove beyond a  
22 reasonable doubt that the defendant committed assault and  
23 battery in the second degree, you must then determine whether  
24 the State has proven beyond a reasonable doubt that the  
25 defendant committed the lesser-included offense of assault and

1 battery in the third degree.

2 A person commits the offense of assault and battery in  
3 the third degree if the defendant unlawfully injured another  
4 person or offered or attempted to injure another person with  
5 the present ability to do so.

6 Now, the last few offenses are lesser-included offenses  
7 that I charged you on, ladies and gentlemen. There were a  
8 couple terms that were used within those charges, one being  
9 great bodily injury and moderate bodily injury. As those  
10 terms are used in this charged -- charge, they are defined as  
11 follows.

12 Great bodily injury is defined as bodily injury which  
13 causes a substantial risk of death or which causes serious,  
14 permanent disfigurement or protracted loss or impairment of  
15 the function of a bodily member or organ.

16 Moderate -- moderate bodily injury is defined as physical  
17 injury requiring treatment to an organ system of the body  
18 other than the skin, muscles and connective tissues of the  
19 body except when there is penetration of the skin, muscles and  
20 connective tissues that require surgical repair of a complex  
21 nature or when treatment of the injuries requires the use of  
22 regional or general anesthesia.

23 Now, ladies and gentlemen, I am now drawing near the end  
24 of my charge to you and I want you to clearly understand that  
25 you, ladies and gentlemen, are not partisans or advocates for

1 the State of South Carolina or the defendant. It is your --  
2 your duty by your joint deliberations to determine the truth  
3 in this case, giving the defendant the benefit of every  
4 reasonable doubt on each and every issue.

5 Then to the facts which you determine to be true, ladies  
6 and gentlemen, you should take and apply the law which has  
7 been given to you by this Court and thus arrive at a verdict  
8 which speaks the truth in this case. In fact, the word  
9 verdict, which has a Latin derivative, means a true saying.  
10 Thus, when you have accomplished these responsibilities, you  
11 will have satisfied your oath as jurors and you will have  
12 discharged your duty to this Court.

13 Now, once you retire to the jury room, the bailiff will  
14 give the verdict form to you, Mr. Foreman. When you, the --  
15 when you, the jury -- when you, the jury, arrive at a verdict  
16 as to the offense charged in this case, you, Mr. Foreman, will  
17 select the verdict as to the charge on the verdict form.

18 If the State has failed to prove the guilt of the  
19 defendant beyond a reasonable doubt, your verdict will be not  
20 guilty. Likewise, if the State has proven the guilt of the  
21 defendant beyond a reasonable doubt, your verdict will be  
22 guilty.

23 Now, once a decision has been made, the foreman will  
24 check whichever choice is the verdict of the jury as to the  
25 charge. The verdict, ladies and gentlemen, that you render in

1 this case -- the verdict that you render, ladies and  
2 gentlemen, must be the verdict of each and every juror. It  
3 must be your unanimous verdict. All twelve jurors must agree  
4 on the verdict which you authorize the foreman to write for  
5 the jury.

6 Ladies and gentlemen, I want you to further understand  
7 that the order in which the choices of verdict appear on the  
8 verdict form are not suggestive of any verdict on the part of  
9 this Court. The verdict in this case, ladies and gentlemen,  
10 is to be determined by you, the jury, not the Court.

11 Furthermore, ladies and gentlemen, please understand that  
12 even though I will give the verdict form to the foreman, it is  
13 not his verdict alone. It must be the verdict of all twelve  
14 of you, and I emphasize again that it must be unanimous.

15 I am also, ladies and gentlemen, going to give you all a  
16 copy of these instructions in written form. During your  
17 deliberations, you may refer to the instructions to guide your  
18 decision-making. You must consider, ladies and gentlemen, the  
19 instructions as a whole and not follow some and ignore others.

20 Please, Mr. Foreman, when you all return a verdict,  
21 please return these instructions to the Court at that time as  
22 well. What I am going to do now, ladies and gentlemen, is I  
23 am getting ready to ask you to retire to the jury room, but  
24 hold on just a minute here.

25 On the verdict form, Mr. Foreman and ladies and gentlemen

1 of the jury, there are five -- five questions on here. All  
2 right?

3 The first question deals with the charge of attempted  
4 murder. And it's got in bold below each question, but on the  
5 first question, for instance, it says as to the charge of  
6 attempted murder, we, the jury, unanimously find the  
7 defendant, Melvin Durant, either guilty or not guilty.

8 If you were to find Mr. Durant guilty and you were to  
9 check that box, that would be the end of your deliberations.  
10 You would sign and date the verdict form. If you were to find  
11 Mr. Durant not guilty, then you go to the next question.

12 And you go through likewise on question two. If you were  
13 to find him guilty on question two after not -- after having  
14 found him not guilty on question one, if you were to find him  
15 guilty as to the lesser-included of assault and battery of a  
16 high and aggravated nature, you would mark guilty, sign and  
17 date.

18 If you were to find Mr. Durant not guilty, then and only  
19 then would you move to the next question. I hope I'm clear on  
20 what I am explaining there.

21 The only situation wherein you continually move down the  
22 lesser-included offenses is if you find the defendant not  
23 guilty on one of the questions, on the first question for  
24 instance. Only then would you move to question two. I think  
25 it's very self-explanatory on the verdict form.

1           Now, what I'm going to ask you all to do is to retire to  
2 your jury room, but do not -- do not begin your deliberations  
3 until you're instructed to do so. The law, ladies and  
4 gentlemen, requires that I consult with the attorneys to make  
5 sure that I have not left anything out of these instructions.

6           Now, once I have consulted with the attorneys, the items  
7 of evidence will be brought in to you, along with the verdict  
8 form and a copy of these instructions, and Mr. Sammy will  
9 instruct you to begin your deliberations.

10          During your deliberations, ladies and gentlemen, if you  
11 have any questions, Mr. Foreman, it will be your  
12 responsibility to reduce such question to writing, knock on  
13 the door, let the bailiff know that you have a question, give  
14 it to him, and he'll get it to me and I'll answer it however  
15 the Court deems appropriate.

16          Likewise, when you all have reached a verdict in this  
17 case and you have filled out the verdict form, signed and  
18 dated the verdict form, knock on the door, let the bailiff  
19 know that you've reached a verdict, and we will get you back  
20 into the courtroom as quickly as possible.

21          Before I let you retire to the jury room, does everyone  
22 on the jury feel okay? Does anyone not feel well? All right.  
23 I'm going to ask that you step to the jury room, but do not  
24 begin your deliberations.

25                 (WHEREUPON, the jury exited the courtroom at 2:48 p.m.)

1 THE COURT: I mean you can send them back, but just tell  
2 them -- Mr. Sammy, tell them the knife is out here. If they  
3 want to see that knife, then they can come back out here and  
4 see it. Likewise, if they want to hear any of the audio or  
5 see any of the video that we can bring them back out here and  
6 show it to them.

7 THE BAILIFF: Okay.

8 THE COURT: Hold on just a minute before you go back  
9 there. I've got to get this charge -- one correction to this  
10 charge.

11 (WHEREUPON, there was a pause in the proceedings, after  
12 which the proceedings resumed as follows.)

13 THE COURT: All right. Here you go.

14 (WHEREUPON, jury deliberations began at 2:51 p.m.)

15 THE COURT: Hey, get my alternate out. Tell him to get  
16 the alternate out. Mr. Harrell. Mr. Carroll Harrell is the  
17 alternate.

18 (WHEREUPON, the alternate juror was released at 2:53  
19 p.m.)

20 THE COURT: All right. We'll stand at ease.

21 (WHEREUPON, there was a break in the proceedings from  
22 2:53 p.m. until 3:34 p.m., after which the proceedings  
23 resumed as follows.)

24 THE COURT: All right. I've received a note from the  
25 jury, which I have shared with the attorneys back in chambers.

1 It simply says clarify between high and aggravated -- high and  
2 aggravated and first degree.

3 After discussing this with the attorneys, I'm going to  
4 bring the jury back into the courtroom and simply offer to  
5 charge them on those two offenses. All right?

6 I'm going to mark this note as a Court's exhibit. Bring  
7 me the jury, please, sir.

8 (WHEREUPON, the jury note was marked as Court's Exhibit  
9 Number 2.)

10 (WHEREUPON, the jury entered the courtroom at 3:35 p.m.)

11 THE COURT: All right. Mr. Foreman and ladies and  
12 gentleman of the jury, I received your note asking the Court  
13 to clarify between high and aggravated and first degree.

14 All that I can do for you -- I've given you -- I've  
15 charged you on the law as it relates to each of those  
16 offenses, lesser-included offenses of attempted murder. I  
17 mean I've given you a copy of the instructions that I read to  
18 you. All that I can do is reread what the law is under those  
19 charges of which I have given you. All right?

20 Assault and battery of a high and aggravated nature is --  
21 occurs when a person commits the offense of assault and  
22 battery of a high and aggravated nature -- let me start over.  
23 All right?

24 A person commits the offense of assault and battery of a  
25 high and aggravated nature if the person unlawfully injures

1 another person and the act is accomplished by means likely to  
2 produce death or great bodily injury.

3 That is the definition of assault and battery of a high  
4 and aggravated nature. Assault and battery in the first  
5 degree is as follows.

6 A person commits the offense of assault and battery in  
7 the first degree if the defendant unlawfully offers or  
8 attempts to injure another person with the present ability to  
9 do so and the act is either accomplished by means likely to  
10 produce death or great bodily injury.

11 All right. I have read you the law as it relates to  
12 those two charges, which you, Mr. Foreman, inquired about.  
13 And I have previously defined great bodily injury as it is to  
14 be applied to those respective offenses.

15 At this time, I'm going to ask you to return to your jury  
16 room and continue with your deliberations.

17 (WHEREUPON, the jury exited the courtroom at 3:37 p.m.)

18 THE COURT: Any exception or objection to anything that I  
19 have said to the jury from the State?

20 MR. RICHARDSON: No, sir.

21 THE COURT: Defense counsel?

22 MR. MEETZE: No, Your Honor.

23 THE COURT: We'll stand at ease.

24 (WHEREUPON, there was a break in the proceedings from  
25 3:37 p.m. until 3:48 p.m. after which the proceedings

1 resumed as follows.)

2 THE COURT: All right. It's my understanding the jury  
3 has got a verdict. Anything from the State before I bring the  
4 jury back out?

5 MR. RICHARDSON: No, sir.

6 THE COURT: Defense counsel?

7 MR. MEETZE: Nothing, Your Honor.

8 THE COURT: All right. If you'll bring me the jury,  
9 please.

10 THE BAILIFF: Yes, sir.

11 (WHEREUPON, the jury entered the courtroom at 3:48 p.m.)

12 THE COURT: All right. Madam Clark?

13 THE CLERK: Mr. Foreman, have you reached a verdict?

14 THE FOREMAN: Yes, we have.

15 (WHEREUPON, the verdict form was passed by the clerk to  
16 the Court.)

17 THE COURT: All right. The verdict form appears to be in  
18 order. Madam Clark, would you publish the verdict, please?

19 VERDICT

20 THE CLERK: The State of South Carolina, County of  
21 Florence, in the Court of General Sessions, Indictment Number  
22 2015-GS-21-211, the State of South Carolina versus Melvin  
23 Durant.

24 As to the charge of attempted murder of Wiley Jones, we,  
25 the jury, unanimously find the defendant, Melvin Durant, not

1 guilty.

2 As to the charge of assault and battery of a high and  
3 aggravated nature, we, the jury, unanimously find the  
4 defendant, Melvin Durant, guilty.

5 Dated -- Tommy Cantrell, Foreperson, signed -- I'm sorry.  
6 dated June 21<sup>st</sup>, 2016, signed Tommy Cantrell, Foreperson.

7 Members of the jury, if this is your verdict, please  
8 raise your right hand?

9 (WHEREUPON, all jurors complied.)

10 THE COURT: All right. Anything from the State at this  
11 time?

12 MR. RICHARDSON: No, sir.

13 THE COURT: Defense counsel?

14 MR. MEETZE: No, sir, Your Honor.

15 THE COURT: All right. Ladies and gentleman of the jury,  
16 I want to thank you for your service and your attentiveness  
17 throughout the trial of this case. You all have performed  
18 your responsibilities as jurors.

19 I told you when we started this trial yesterday not to  
20 discuss the case at all -- not to discuss the case at all  
21 until you were instructed to do so. When I release you here  
22 today, you can talk about the case if you so desire. Okay?  
23 If you so desire. No one can make you talk about the case.

24 If you -- if someone approaches you to talk about the  
25 case and you tell them you don't want to talk about it and

1 leave. If you wish to stay for sentencing, you may stay for  
2 sentencing as well. That is left entirely up to you.

3 If you wish to leave, now is your time to leave.  
4 Otherwise, we're going to move forward straight into  
5 sentencing. Okay?

6 (WHEREUPON, two jurors exited the courtroom.)

7 THE COURT: Mr. Richardson, are you ready?

8 MR. RICHARDSON: Yes, sir. May it please the Court, Your  
9 Honor.

10 THE COURT: Yes, sir.

11 MR. RICHARDSON: Before you is Melvin Durant. As the  
12 Court is aware, he was just found guilty of assault and  
13 battery of a high and aggravated nature. That is a zero to  
14 20-year offense. I've got the appropriate boxes checked on  
15 the sentencing sheet. It's a violent offense. It's a serious  
16 offense. It's a lesser included of what he was charged with.

17 He does have a prior record, Your Honor. He had a  
18 trespass in '88, DUS in '88, trespass in --

19 THE COURT: Hold on. Slow down. All right? All right.  
20 Trespass and DUS, driving under suspension.

21 MR. RICHARDSON: Trespass in '89, assault and battery  
22 with intent to kill in '89.

23 THE COURT: All right.

24 MR. RICHARDSON: Trespass in '90.

25 THE COURT: All right.

1 MR. RICHARDSON: Probation revocation in '91.

2 THE COURT: All right.

3 MR. RICHARDSON: Two counts of DUS in '92.

4 THE COURT: All right.

5 MR. RICHARDSON: A DUS in '94.

6 THE COURT: All right.

7 MR. RICHARDSON: A DUS in '96.

8 THE COURT: All right.

9 MR. RICHARDSON: Assault and battery of a high and  
10 aggravated nature in 2006.

11 THE COURT: All right.

12 MR. RICHARDSON: Criminal domestic violence in 2008.

13 THE COURT: All right.

14 MR. RICHARDSON: A DUI in 2011.

15 THE COURT: All right. Anything further from the State?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: All right. Mr. Meetze, happy to hear from  
18 you, sir.

19 MR. MEETZE: Thank you, Your Honor. May it please the  
20 Court.

21 Your Honor, Mr. Durant has been incarcerated since his  
22 arrest back on November the 12<sup>th</sup> of 2014. That's 588 days.

23 Your Honor, recognizing he does have some prior record,  
24 we would just point out to the Court that the majority of the  
25 more serious stuff is ten years old or older. Mr. Durant has

1 been very involved in his case. We've meant any number of  
2 times down at the jail. He's certainly remorseful for having  
3 been here and certainly is here to ask the Court for mercy in  
4 this matter.

5 Certainly, you've heard the facts of the case. This case  
6 was tried here over the last day and certainly we're asking  
7 for whatever mercy the Court believes is appropriate in this  
8 matter. He's I think 50 --

9 THE DEFENDANT: Three.

10 MR. MEETZE: Fifty-three years old?

11 THE DEFENDANT: Right.

12 MR. MEETZE: And his life has been full of ups and downs  
13 and certainly that's no excuse, but we would just ask for  
14 mercy in this case.

15 THE COURT: All right. Thank you, Mr. Meetze. Mr.  
16 Durant, anything you wish to say, sir?

17 THE DEFENDANT: Yes, sir. And I would like to apologize  
18 to the Court for being here today and taking up the jurors'  
19 time. Thank you all for y'all deliberation and having  
20 patience to be here to listen to everything that went on.

21 THE COURT: Please direct your comments to me, Mr.  
22 Durant.

23 THE DEFENDANT: Oh, I'm sorry. I appreciate the jury. I  
24 appreciate you, Judge, and if you really can take it into  
25 consideration and look like all my past in this case in the

1 sentencing and I apologize for being here. I'm trying to get  
2 my life together, which that's what I was always doing, but  
3 things happen. Like I said, it's just another bad day in the  
4 world. But I apologize for being in your court and I hope not  
5 to see you again.

6 THE COURT: This prior assault and battery with intent to  
7 kill back in '89, that would fall within the three-strike  
8 rule, Mr. Meetze?

9 MR. MEETZE: It would actually fall -- my understanding  
10 of the law is that it would fall within both the two- and  
11 three-strikes law.

12 THE COURT: I'm sorry?

13 MR. MEETZE: It's my understanding and belief based on  
14 the law it would fall within both the two- and three-strikes  
15 law.

16 THE COURT: All right.

17 MR. MEETZE: I think on that particular charge he got a  
18 probationary sentence, but --

19 THE COURT: It still falls within.

20 MR. MEETZE: It does not change the nature of the  
21 conviction.

22 THE COURT: All right. All right. Mr. Durant, it's --  
23 what I see day in and day out in the courtroom, especially in  
24 criminal court, the pattern in your life of drugs --

25 THE DEFENDANT: Yes, sir.

1 MR. RICHARDSON: -- and alcohol has kept you in and out  
2 of the system for almost 30 years -- 30 years.

3 THE DEFENDANT: I am --

4 THE COURT: Since '88. Since '88.

5 THE DEFENDANT: Yes, sir.

6 SENTENCE

7 THE COURT: And so -- all right. On Indictment 2015-GS-  
8 21-00211, the defendant is committed to the State Department  
9 of Corrections for a period of 20 years. Give him credit for  
10 588 days. Good luck to you, Mr. Durant.

11 MR. RICHARDSON: Judge, is that 588?

12 THE COURT: It's 588 days, yes, sir. All right. Mr.  
13 Meetze, anything at this time? Anything further?

14 MR. MEETZE: No, sir, Your Honor.

15 THE COURT: All right. Ladies and gentleman, again,  
16 thank you for your service. Some of you may have some  
17 questions. I'm not exactly sure. I'll just kind of leave it  
18 at that.

19 What he was convicted of, the assault -- I will say a  
20 couple things. Assault and battery high and aggravated nature  
21 is considered under South Carolina law to be a serious  
22 offense, as well as a violent defense. Under that law, if the  
23 fact that it's a serious offense --

24 MR. MEETZE: Actually, most serious offense.

25 THE COURT: It's a most serious offense. It falls under

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

## FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY  
Governor



MARK A. KEEL  
Chief

Tim Mathews  
Florence Police Department  
180 North Irby Street, Box JJ  
Florence, SC 29501-3456

**DNA ANALYSIS**  
September 18, 2015  
SLED LAB: L15-00233  
Your Case No: 2014010251  
Incident Date: 11/12/2014  
[V] Wiley Jones  
[S] Melvin Durant

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief  
South Carolina Law Enforcement Division

### SEROLOGY ANALYSIS

#### Items Submitted:

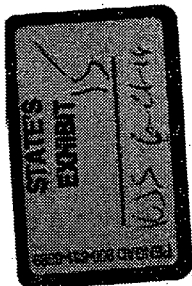
#### Results of Examinations:

1	Swabs from restroom	1	Presumptive testing for blood was positive. See DNA analysis.
2	Swabs from dining room	2	Presumptive testing for blood was positive. See DNA analysis.
3	Swabs from exterior wall	3	Presumptive testing for blood was positive. See DNA analysis.
4	Swabs from knife blade	4	Presumptive testing for blood was positive. See DNA analysis.
5	Buccal swab from Wiley Jones	5	See DNA analysis.



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



**DNA ANALYSIS****ITEMS ANALYZED:**

- 5 Buccal swab from Wiley Jones.
- 1 Swabs from restroom
- 2 Swabs from dining room
- 3 Swabs from exterior wall
- 4 Swabs from knife blade

**EXAMINATIONS**

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in the following table(s).

**RESULTS**

The DNA profile developed from items 1, 2, 3, and 4 matches the DNA profile of Wiley Jones. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 28 quintillion.

**Note: Any remaining evidence and/or packaging will be returned to the requesting agency.**

*This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.*



Jennifer L. Clayton  
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

Table 1 - Identifiler Plus

Case Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D
<sup>5</sup> Wiley Jones	12,14	29,30,2	10,12	11	15,16	7,8	12,13	9,10	21,23	12,14	17,18	9,11	
<sup>1</sup> Restroom	12,14	29,30,2	10,12	11	15,16	7,8	12,13	9,10	21,23	12,14	17,18	9,11	
<sup>2</sup> Dining room	12,14	29,30,2	10,12	11	15,16	7,8	12,13	9,10	21,23	12,14	17,18	9,11	
<sup>3</sup> Exterior wall	12,14	29,30,2	10,12	11	15,16	7,8	12,13	9,10	21,23	12,14	17,18	9,11	
<sup>4</sup> Knife blade	12,14	29,30,2	10,12	11	15,16	7,8	12,13	9,10	21,23	12,14	17,18	9,11	

( ) = stochastic range      - = no result      Bold = major contributor      Inc = Inconclusive



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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7300

WITNESSES

Howard Wynn Florence Police Department

DOCKET NO. 2015-GS-21-00211

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE

vs.

MELVIN DURANT

David A Richardson

ARREST WARRANT NUMBER

2014A2120201631

ACTION OF GRAND JURY

TRUE BILL

*Veronica J. [Signature]*

Foreperson of Grand Jury

Date: 3-12-15

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ATTEMPTED MURDER

2015 MAR 12 AM 11:49  
CONNIE REEL-SHEARIN  
CCJP & GS  
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
ATTEMPTED MURDER


At a Court of General Sessions, convened on MARCH 12, 2015 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Melvin Durant did in Florence County on or about November 12, 2014, with intent to kill Wiley Jones, attempt to kill the victim with malice aforethought, either expressed or implied, by stabbing the victim with a knife, in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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



**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

COUNTY OF Florence
STATE VS. Melvin Durant

INDICTMENT/CASE#: 2015-GS-21-00211
A/W#: 2014A2120201631
Date of Offense: 11/12/2014
S.C. Code §: 16-03-0029
CDR Code #: 3410

AKA:
[Redacted]
[Redacted]
[Redacted]
SID#:

SENTENCE JUN 30 2016

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Assault/ Assault & Battery of a High & Aggravated Nature

RECEIVED
SC Court of Appeals
CONVICTED OF

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory-GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST Richardson, David A SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable\*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services, standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 588 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment

Table with columns for Recipient, Fine, and amounts. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.15, TOTAL \$108.15

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

CERTIFIED TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Appointed PD or appointed other counsel § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: M. B. ...
Court Reporter: K. Smith
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2780
Sentence Date: 6-21-16

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

*Lara M. Candy* For: \_\_\_\_\_  
Susan B. Hackett  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 25th day of August, 2017.

**RECEIVED**  
AUG 25 2017  
SC Court of Appeals