

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

JOHN WAYNE BRANNON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000770

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA)
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3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 JOHN WAYNE BRANNON,) 2011-GS-42-4694
8 DEFENDANT.)
9
10 December 12th, 13th, and 15th, 2011
11 Spartanburg, South Carolina
12
13 B E F O R E :
14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.
15
16 A P P E A R A N C E S :
17 WES BOYD
18 ASSISTANT SOLICITOR
19 Attorney for the State
20
21 TANYA JONES
22 ASSISTANT PUBLIC DEFENDER
23 Attorney for the Defendant
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25 PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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1 P R O C E E D I N G S

2

3 THE COURT: All right. We're on the record in the case
4 of the State versus John Wayne Brannon. It's my
5 understanding that the defendant has been arraigned on the
6 charge of attempted murder. The case is Case Number
7 2011-GS-42-4694. Present is the State represented by
8 Mr. Boyd, and the defendant represented by Ms. Tanya Jones.

9 I think you had a motion, Ms. Jones, you indicated you
10 wanted to make before I brought the jury in.

11 MS. JONES: Yes, Your Honor. We would do a motion to
12 settle Mr. Brannon's record.

13 THE COURT: Mr. Boyd, will you put on the record Mr.
14 Brannon's record that the State---

15 SOLICITOR BOYD: Yes, Your Honor.

16 THE COURT: ---intends to introduce.

17 SOLICITOR BOYD: Yes, Your Honor.

18 The State would intend to introduce a 1994 armed
19 robbery conviction, which he was released within the past
20 ten years, Your Honor. Also a 2007 conviction for assault
21 and battery, a 2000 -- assault and battery in 2008, nine
22 counts of fraudulent check in 2009, and an ABHAN in 2009,
23 Your Honor.

24 THE COURT: All right. Yes, ma'am, anything further
25 concerning the record?

1 MS. JONES: Your Honor, we would indicate that the 1993
2 charge is outside the ten year time frame, Your Honor, as
3 well as the, the additional ABHAN would be prejudicial
4 because it is close to the charge that he is currently being
5 tried for, Your Honor. So, we would request that you
6 disallow them to bring that up, sir.

7 THE COURT: Mr. Boyd.

8 SOLICITOR BOYD: Yes, Your Honor.

9 State v. Allaman says attempted armed robbery, excuse
10 me, armed robbery is a crime of dishonesty. Therefore, it
11 is permissible itself, Your Honor. The incarceration date
12 extends through 2000 -- excuse me. Within the past ten
13 years. So, it would fall within the past, previous ten
14 years time frame.

15 THE COURT: Do we agree on this, Ms. Jones, that the
16 incarceration period for armed robbery extended within the
17 last ten years?

18 MS. JONES: Your Honor, my client does tell me he did
19 get released in 2004.

20 THE COURT: Okay. So, it would of been within the last
21 ten years.

22 All right. Anything further?

23 MS. JONES: No, sir.

24 THE COURT: All right. Well, I'm, I'm, I'm going to
25 allow those in. Now, the assault and battery, I'll allow

1 you to refer to it as a felony conviction. Will not allow
2 you to refer to it by name since it is closely related to
3 the charge that's before the Court, and I find, if it were
4 referred to by name, that it would be too prejudicial, the
5 prejudicial effect would outweigh its probative value.
6 However, I will allow you to refer to it as a felony
7 conviction during that period of time, and in that case it
8 would be my determination that the prejudicial affect would
9 not outweigh the probative value.

10 SOLICITOR BOYD: Yes, Your Honor, and as to the other
11 assault and battery, simple assault and battery?

12 THE COURT: Same, same ruling.

13 SOLICITOR BOYD: Thank you.

14 THE COURT: All right. Anything further, Ms. Jones,
15 that you'd like for me to take up before we bring the jury
16 in for jury selection?

17 MS. JONES: No, sir.

18 THE COURT: Mr. Boyd, anything from the State?

19 SOLICITOR BOYD: No, sir, Your Honor.

20 THE COURT: All right. Let's bring the jury panel in.

21 MS. JONES: And, Your Honor, just for clarification,
22 because it's an attempted murder, does the defense receive
23 ten strikes or the five strikes?

24 SOLICITOR BOYD: It's five strikes, Your Honor.

25 THE COURT: I think it's five strikes, my understanding

1 of the rule.

2 MS. JONES: Thank you. Anytime I would agree with you.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, we're about to begin the trial of the State of South
7 Carolina versus John Wayne Brannon. I'm going to go over
8 with you, before we begin our process of jury selection, the
9 indictment in this case.

10 Let me explain to you, the indictment is the document
11 that brings this case before this Court. It contains the
12 formal charges that have been lodged against this defendant.
13 It informs the defendant of the charges that have been
14 lodged against him, and it informs this Court of the charge
15 to be tried.

16 Now, an indictment does not constitute evidence, and
17 can not be used by a jury in any fashion in determining the
18 question of guilt or innocence of a defendant. It is simply
19 the necessary document that informs the Court of the charges
20 and brings the case before this Court for trial.

21 The reason I'm going over the indictment with you is so
22 that you will be informed of what's been alleged. In a few
23 minutes I'm going to ask you questions that pertain
24 specifically to this case, and the information contained in
25 the indictment may give you some information so that you can

1 more fully answer the questions that I'm about to ask.

2 The indictment in this case is in Case Number
3 2011-GS-42-4694. The indictment is for the charge of
4 attempted murder. The indictment states that John Wayne
5 Brannon did, in Spartanburg County, on or about April 10 of
6 2011, with malice aforethought, intend and attempt to kill
7 the victim, Ronnie Brannon, in violation of Section 16-3-29
8 of the Code of Laws of South Carolina, 1976 as amended,
9 against the peace and dignity of the State, and contrary to
10 the statute in such case made and provided.

11 Again, that is the charge that is brought this case
12 before the Court, and it's the charge that informs this
13 Court of the charge to be tried.

14 Now, before I begin asking you questions it's necessary
15 that you be sworn in this case to truthfully, honest, and
16 honestly answer the questions that I'm about to ask.

17 So, Madam Clerk, please swear the jury panel for me.

18 (WHEREUPON, the jury was placed under oath at this
19 time.)

20 THE COURT: Now, if any member of the jury panel either
21 failed or refused to take the oath that was just
22 administered by the clerk, I'd ask that you now please
23 stand.

24 (No response.)

25 THE COURT: The Court record will reflect that all

1 jurors have been sworn for purposes of my questioning.

2 Also I'm going to ask that the attorneys now involved
3 in the trial of this case introduce themselves, and in the
4 case of the State, if the victim is present, I'll ask that
5 the State introduce the victim, Ronnie Brannon.

6 The attorney for the State is?

7 SOLICITOR BOYD: Good afternoon, ladies and gentlemen.
8 My name is Wes Boyd, Assistant solicitor here in
9 Spartanburg.

10 Mr. Ronnie Brannon.

11 THE COURT: Please stand, sir, face the jury panel for
12 me.

13 (Witness complies.)

14 THE COURT: Thank you, sir. You may be seated.

15 And for the defense, if you'll introduce the defendant.

16 MS. JONES: Hi, my name is Tanya Jones, and I am
17 representing John Wayne Brannon.

18 (Defendant stands.)

19 THE COURT: Thank you very much. You can be seated.

20 Now, ladies and gentlemen, we'll follow the same
21 procedure that we followed during jury qualification. I'm
22 going to ask questions, and if you have responses to my
23 questions, I'll be asking that you stand. Again, before I
24 can discuss your response I have to put your name and juror
25 number on the record so that we can identify who is

1 responding to the questions that I'm asking.

2 All right. First of all, has any member of this jury
3 panel ever been related by marriage or are you related by
4 blood to either the defendant, John Wayne Brannon, or the
5 alleged victim, Ronnie Brannon, if that's true, please
6 stand.

7 (No response.)

8 THE COURT: Has any member of this jury, jury panel
9 ever had a close personal or a social relationship with
10 either the defendant, John Wayne Brannon, or the alleged
11 victim, Ronnie Brannon, if that's true, please stand.

12 (No response.)

13 THE COURT: Now, has any member of this jury panel ever
14 been represented by either of the attorneys who are involved
15 in the trial of this case or have they ever appeared on the
16 other side of a legal matter from you, if that is true,
17 please stand.

18 (No response.)

19 THE COURT: Has any member of this jury panel ever been
20 related by marriage or are you related by blood or have you
21 ever had a close personal or a social relationship with
22 either of the attorneys who are involved in the trial of
23 this case, if that is true, please stand.

24 (No response.)

25 THE COURT: Now, ladies and gentlemen, I'm going to

1 read to you a list of people who have been identified as
2 potential witnesses in this case. If any of these
3 individuals are present I'll be asking that they stand and
4 face the jury panel so that you can place a face with the
5 names that I have called.

6 First of all, Mr. Scott Cheeks from Spartanburg, South
7 Carolina.

8 (Witness stands.)

9 THE COURT: Thank you. You may be seated.

10 Doctor Bradley Davis. He's with the Spartanburg
11 Regional Medical Center.

12 Brendall Mathis. He's with the Spartanburg Public
13 Safety Department.

14 (Witness stands.)

15 THE COURT: Thank you, sir.

16 Louis Nelson also with the Spartanburg Public Safety
17 Department.

18 (Witness stands.)

19 THE COURT: Thank you, sir.

20 Mr. Mike West with the Spartanburg County Emergency
21 Communications.

22 And, of course, Mr. Ronnie Brannon who is the victim in
23 this matter, alleged victim.

24 Please stand, sir, again.

25 (Witness stands.)

1 THE COURT: Thank you very much.

2 Now, as to the individuals that I've just named as
3 potential witnesses in this case, has any member of the jury
4 panel ever been related by marriage or are you related by
5 blood or have you had a close personal or a social
6 relationship with any person that I've named as a potential
7 witness, if that's true, please stand.

8 (No response.)

9 THE COURT: Has any member of the jury panel or a
10 member of your immediate family or a close personal friend
11 of yours ever been prosecuted by the Seventh Judicial
12 Circuit solicitor's Office, if that's true, please stand.

13 (No response.)

14 THE COURT: Has any member of the jury panel or a
15 member of your immediate family or a close personal friend
16 of yours ever been prosecuted by any other prosecution
17 agency, either state or federal, if that's true, please
18 stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel who
21 does not allow alcohol in their home or who would disapprove
22 of anyone who did, if that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 has any association with Alcoholics Anonymous or other

1 similar substance abuse groups, if that's true, please
2 stand.

3 (No response.)

4 THE COURT: Has any member of this jury panel gathered
5 or received any information from any source whatsoever such
6 that it would have caused you to form or express an opinion
7 concerning any matter or issue that might be involved in the
8 trial of this case, if that's true, please stand.

9 (No response.)

10 THE COURT: Is there any member of this jury panel who
11 is aware of any bias or prejudice that you might have either
12 for or against either the State or the defense in this
13 matter, if that's true, please stand.

14 (No response.)

15 THE COURT: Has any member of this jury panel or a
16 member of your immediate family or a close personal friend
17 of yours ever been the victim of a violent crime, if that is
18 true, please stand.

19 (No response.)

20 THE COURT: Is there any member of this jury panel who
21 is a member of or a contributor to any group that has as its
22 primary concern the enforcement of laws or the preservation
23 of victims rights?

24 These groups would include, but certainly not be
25 limited to such groups as Mothers Against Drunk Driving,

1 Students Against Drunk Driving, Citizens Against Violent
2 Crime, the South Carolina Sheriff's Association, the South
3 Carolina Troopers Association, or other similarly oriented
4 organizations, if that's true, please stand.

5 (No response.)

6 THE COURT: Does any member of this jury panel know of
7 any reason whatsoever why he or she should not serve as a
8 juror in this case with particular emphasis being placed
9 upon your ability to be both fair and impartial to both the
10 State and the defense, if that's true, please stand.

11 (No response.)

12 THE COURT: Any additional questions from the State at
13 this time?

14 SOLICITOR BOYD: No, sir, Your Honor.

15 THE COURT: Any from the defense?

16 MS. JONES: Your Honor, just whether or not anybody has
17 been a victim of a serious crime.

18 THE COURT: I asked a violent crime.

19 MS. JONES: Violent. Thank you.

20 THE COURT: I'll ask that question.

21 MS. JONES: Thank you.

22 THE COURT: Any others?

23 MS. JONES: No, sir. Thank you.

24 THE COURT: All right. Now, I'll declare that these,
25 that the jury panel is qualified to serve in this case as it

1 now is constituted. I'll direct the clerk to prepare a list
2 of potential jurors.

3 Let me explain to you the process that we're going
4 through at this time. I'll tell juries -- it's the first
5 time I've had you in jury selection, but back in the 70's,
6 when I started practicing law, we use to put everyone's name
7 in a oak barrel and spin it around and we had to have a
8 legally blind person pull the names out of the barrel for
9 the jurors. Now we have computers and apparently our law
10 says that they're legally blind so they get to pull the
11 jury.

12 And, so, the computer is making a list. In just a
13 minute, once that list has been generated, we'll begin to
14 call the names in the order in which the names appear on the
15 list. It's a random selection program that we use.

16 When your name is called it's going to be necessary for
17 you to step out, come down the aisle directly in front of
18 the clerk here, and stand and face the back of the
19 courtroom. They'll be a bailiff down here to show you where
20 to come.

21 Now, at that time the attorneys will be in a position
22 to exercise their strikes in this case, and in this case the
23 State has five strikes, the defense has five strikes. We'll
24 pick one alternate with the State having one and the defense
25 having two strikes.

1 Now, as you come down, bring with you any personal
2 belongings that you have. If you have a pocketbook or a
3 purse or a book or something with you, bring that with you
4 because if you're selected to serve on the jury you'll
5 immediately go over to the jury box and have a seat to my
6 left. You won't be going back out into the gallery. So,
7 bring with you anything that you have with you when your
8 name is called.

9 Looks like we've got a little computer glitch. So, I
10 wish I had my barrel back. I tell you that. It will take
11 just a moment.

12 BAILIFF: Your Honor, Juror 99 thinks she may know the
13 gentleman sitting right there.

14 THE COURT: Well, let's, let's -- is that the lady
15 that's standing?

16 Ma'am, ma'am, you got to talk to me. You can't -- no,
17 no, wait right there. Wait right there. Step back in.
18 Thank you.

19 Your name and number is?

20 JUROR: Kim Little, Number 99.

21 THE COURT: And do you know someone that I asked about?

22 JUROR: I did, but I wasn't sure. I haven't seen---

23 THE COURT: All right. Who is it that you know?

24 JUROR: This person here, but I wasn't sure if it was
25 the same person, Brenda'll Mathis, I do know.

1 THE COURT: All right. And can you tell me in what, in
2 what context you know that individual?

3 JUROR: I know his parents. He went to school with my
4 daughter, and actually I kept his little brother a couple of
5 times and we all---

6 THE COURT: All right. Well, let me ask you a
7 question. That seems to be several years ago, is that
8 right?

9 JUROR: (Nods affirmatively.)

10 THE COURT: Is that been several years ago?

11 JUROR: Yes, it has been a while since we've seen one
12 another.

13 THE COURT: All right. Would that fact that you have
14 known his family and perhaps his, his sibling, would that
15 affect your ability to be fair and impartial in the trial of
16 this case?

17 JUROR: No, sir.

18 THE COURT: All right. State wish for me to ask her
19 any additional questions?

20 SOLICITOR BOYD: No, sir, Your Honor.

21 THE COURT: Does the defense wish for me to ask her any
22 additional questions?

23 MS. JONES: No, sir.

24 THE COURT: Thank you for responding, ma'am. You can
25 be seated.

1 BAILIFF: Your Honor, you got Juror Number 109,
2 Mr. Miller, please stand.

3 THE COURT: Yes, sir.

4 JUROR: I think I know the gentleman right here,
5 Brannon, excuse me, Ronnie Brannon.

6 THE COURT: All right. Can you tell me in what context
7 you know him?

8 JUROR: I deal with his cousins.

9 THE COURT: You're related to him?

10 JUROR: No, sir, not related to him. Just his cousin.

11 THE COURT: Oh, you know one of his cousins?

12 JUROR: Might be just David Smith.

13 THE COURT: All right. And how close is that
14 relationship with this individual?

15 JUROR: Haven't seen him in quite a while.

16 THE COURT: All right. Would it affect your
17 impartiality, the fact that you've known him in the past?

18 JUROR: No, sir.

19 THE COURT: All right. Thank you, sir.

20 Any additional questions from the State for this juror?

21 SOLICITOR BOYD: No, sir, Your Honor.

22 THE COURT: Any additional questions from the defense?

23 MS. JONES: No, sir.

24 THE COURT: All right. I'll declare that both
25 individuals who responded are qualified to continue to

1 serve.

2 All right. Now, again, ladies and gentlemen, I'm going
3 to have the clerk call the names of those who appear on the
4 list. When your name is called I want you to come down
5 front in front of the clerk here. The bailiff will be here,
6 turn and face the back-door, and the attorneys will be in a
7 position to exercise their strikes.

8 Madam Clerk, you can begin the jury selection process.

9 CLERK: Yes, sir.

10 (WHEREUPON, a jury panel was selected at this time.)

11 THE COURT: We are now selecting the alternate.

12 (WHEREUPON, an alternate juror was selected at this
13 time.)

14 THE COURT: Any objection to the jury selection process
15 from the State?

16 SOLICITOR BOYD: No, Your Honor.

17 THE COURT: Any from the defense?

18 MS. JONES: No, sir.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: All right. Anything from the State before
22 I swear the jury?

23 SOLICITOR BOYD: No, sir, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. JONES: No, sir.

1 THE COURT: Ladies and gentlemen of the jury, you've
2 been sworn several times today to respond to my questions
3 truthfully and accurately. At this time I'm, again, gonna
4 ask you to take a oath, but this oath has to do with your
5 responsibilities and duties as jurors in the actual trial of
6 this case.

7 Madam Clerk, please swear the jury panel for me.

8 (WHEREUPON, the jury panel was placed under oath at
9 this time.)

10 THE COURT: Now, if any juror failed or refused to take
11 the oath just administered by the clerk, I'd ask that you
12 now stand.

13 (No response.)

14 THE COURT: It appears that all jurors have been sworn
15 concerning their duties in this case.

16 Now, before we begin the trial of this case I want to
17 tell you a little bit about the trial, and what your
18 responsibilities and duties might be in this case. Probably
19 what you're going to be involved in is some, a little bit
20 different from what you might otherwise expect. That's
21 because, for most of you, this is your first experience in
22 actually serving on a jury, and perhaps if that's the case,
23 most of what you might know about what goes on in a jury
24 trial during the trial of the case you would have learned
25 from such things as watching television, or watching movies,

1 or perhaps reading books or things of that nature.

2 And while those sources of information are interesting,
3 and they're always full of high drama, intense action,
4 rivetting, I hope you realize that all of those sources of
5 information are primarily intended for your entertainment.
6 They're designed to keep your attention and tell a good
7 story to you.

8 I think the perfect example of that is the fact that,
9 on television, you can have an event occur, a trial happen,
10 and all the matter be ended in an hour and you still have
11 time for commercials. So, obviously those sources of
12 information about what goes on in a trial or on a jury are,
13 are -- they take what they call literary license. In other
14 words, the people who write those books and that information
15 take a great deal of license with what actually goes on in a
16 trial.

17 Now, while those sources of information are intended
18 primarily for your entertainment, what you're engaged in
19 today is intended for anything but your entertainment. I
20 hope you realize that you're engaged in a fundamental part
21 of our democracy.

22 Our system is one that takes ordinary citizens from
23 their day-to-day lives, we bring you into the courtroom,
24 qualify you as jurors, and then give you the important task
25 of making important decisions concerning the guilt or the

1 innocence of persons who have been charged with the
2 commission of a crime. What you're engaged in is a search
3 for the truth. It's an effort to see that justice is done
4 between the parties that are in front of the Court at this
5 time. In this case, the State of South Carolina that is
6 brought a charge against one of its citizens, and, of
7 course, the defendant who is charged with the commission of
8 that particular crime.

9 Making an effort to see that justice is done and
10 pursuing the truth is going to be a slow, deliberate, and
11 repetitive process. If I were to ask you what you would
12 expect a search for the truth to be, you'd probably tell me
13 that you would expect it to be slow and deliberate and
14 sometimes even repetitive in seeking to find what the truth
15 is in any matter, and I hope you realize that this courtroom
16 is a place of honor. It's dedicated to the preservation of
17 citizens' rights through the system of justice that I've
18 already referred to under the law and the Constitution of
19 this state, and of the United States.

20 Many people believe that the justice system that you're
21 involved in is one of the best justice systems ever devised
22 on the face of this earth because it does allow for direct
23 participation in the decision making process. Now I've
24 never told you that it's a perfect system. No justice
25 system operated by men or devised by men will ever be

1 perfect. But it's our best effort, it's our honest effort
2 to see that justice is done in this situation that's before
3 this Court.

4 Now, the lawyers that are going to appear during this
5 trial are here to represent their clients' interest and I'm
6 sure they'll do an excellent job in presenting their case
7 before you today and into tomorrow. But first and foremost,
8 I hope you realize those lawyers are also officers of this
9 Court. At some point in time they've appeared before this
10 tribunal or some other Court in the State, and they've taken
11 an oath. Part of the oath that they have taken is that they
12 will assist you in your search for the truth.

13 That means that they will act in a professional and a
14 reasonable and an ethical manner in their presentation of
15 their client's cases before you during this trial, and I'll
16 remind you too that you've come before this Court now.
17 You've taken an oath. You're expected to act in a
18 reasonable, a professional, and an ethical manner in the
19 discharge of your duties as jurors during the trial of this
20 case. I've told you a couple of times today, and I'll tell
21 you again, I want to thank you very much for your
22 willingness to come forward and participate in our justice
23 system in this fashion.

24 What I'm telling you now is not intended to be a charge
25 concerning the law in this case. Later on, once all the

1 arguments have been made, and all the evidence has been
2 presented, at that time I will charge you concerning the law
3 to be applied in this matter. Again, what I'm telling you
4 now is an explanation of the procedure that we'll follow and
5 the duties and the responsibilities that each of us has in
6 the trial of this case.

7 A few minutes ago I began this case by reading to you
8 the indictment that's been filed in the Court, and that
9 charge is the charge of attempted murder. I explained to
10 you that the indictment is the charge that brings this case
11 into this Court. It is not, in any sense, evidence of any
12 of the allegations that are contained in the indictment.

13 The defendant has pled not guilty to that indictment,
14 and, therefore, by that plea, under the law and the
15 Constitution of this state and the United States, the burden
16 of proof now rests solely upon the State, and that burden is
17 to prove the allegations that are contained in the
18 indictment by proof beyond a reasonable doubt.

19 Now, later on, I will, during my charge on the law at
20 the close of the trial, I'm going to explain to you that
21 concept and that those theories of, of proof and burdens,
22 burden of proof, but, again, suffice it to say that the
23 State, at this time, has the sole burden of proof in this
24 case.

25 Now, your purpose, as jurors, will be to decide, at the

1 end of the trial, whether or not the State has met its
2 burden of proof in this case. It's your purpose, therefore,
3 as jurors, to find and determine the facts in this matter,
4 and I will tell you now that you will be the sole judges of
5 the facts in this case. Under the law, and, again, the
6 Constitution, every case in which a jury participates in
7 this Court, the jury is always the sole and the exclusive
8 judge of the facts in this case.

9 You are to determine the facts from the evidence and
10 testimony that you hear during the trial of this case. It's
11 up to you to determine what inferences can be drawn from the
12 evidence that's presented. I will tell you it's especially
13 important that you, the jury, perform your duties as jurors
14 both diligently and conscientiously because, at the close of
15 the trial, it will be your responsibility to determine the
16 guilt or the innocence of the defendant in this matter, and
17 ordinarily, under our system of justice, there's no means by
18 which an erroneous determination of the facts made by a jury
19 can ever be corrected.

20 Now, the same law that makes you the sole judges of the
21 facts in this case makes me the sole judge of the law in
22 this case. Under your oath as jurors it's your
23 responsibility to take the law as I give it to you, then
24 apply it to the facts as you determine them to be. That
25 should put you in a position, at the close of the trial, to

1 render a just, a true, and a fair verdict in this case.

2 Now, until I advise you to begin your deliberations in
3 this case, I'm going to ask you, and I'll tell you and
4 instruct you on numerous occasions, not to begin any
5 discussions concerning this matter until I've asked you to
6 do so. The reason I do that is because only when you've
7 heard all the arguments of counsel, all the evidence that
8 will be presented in the trial, and my charge concerning the
9 law will you have all of the information in your possession
10 with which to deliberate on the questions that will be
11 placed in front of you.

12 You've been selected as fair and impartial jurors with
13 an open mind concerning this case, and I hope you realize
14 that even the most innocent conversations you might have
15 among yourselves about what the charge is about or whose
16 been charged or other matters involved in the trial, that
17 might begin to color your ultimate decision in this case
18 before you've heard all the evidence or all the facts
19 necessary to make that decision. So, I'll caution you at
20 every stage of the proceeding, do not discuss the case among
21 yourselves or with anyone else.

22 Also, I want to point out to you that the, that the
23 oath that you have taken in this matter is to decide this
24 case based upon the law and the evidence. Let me explain to
25 you that the only evidence that you will hear in this case

1 will be testimony from witnesses who've been sworn to tell
2 the truth who will testify from this witness stand, and
3 whatever evidence or documents or other things will come
4 into the record through that testimony. That's the only
5 evidence that will be involved in the case, and for that
6 reason it would be highly improper for you to attempt to
7 gather any information outside of this courtroom.

8 There is no evidence outside of this courtroom. For
9 that reason you should not attempt to gather information
10 from media reports, from anyone who might be involved in
11 this case, or from the Internet or any other source. I can
12 assure you that those sources of information, quite often,
13 in fact, most often contain information that would not be
14 allowed into evidence during the trial of a case, and,
15 therefore, should not be considered by a jury whose been
16 sworn to consider only the evidence in reaching a verdict.

17 So, therefore, you should not listen to, watch, or read
18 any media reports that you might be exposed to during the
19 trial. You should not attempt to gather information on your
20 own outside of the courtroom, and you should not discuss the
21 case with anyone during the trial of the case.

22 Again, you have a fair and an open mind. You've been
23 selected in that fashion. I want you to keep that open mind
24 throughout the trial and until such time as I tell you to
25 begin your deliberations in this case. It's going to be

1 your solemn responsibility to determine the guilt or the
2 innocence of the defendant and your verdict must be based
3 solely upon the evidence that's been presented to you during
4 the trial and as, and the law as I instruct it to you at the
5 close of the trial.

6 Now, I've told you that I'm the sole judge of the law
7 in this case. For that reason I will instruct you that if
8 you came into this courtroom with any idea or notion as to
9 what the law is or what you think it ought to be, you should
10 leave those notions outside of the jury room during your
11 deliberations. Under your oath, it's your obligation to
12 take the law exactly as I give it to you, and then apply it
13 to the facts as you determined them to be. Again, that
14 should put you in a position to render a just, a true, and a
15 fair verdict at the close of the trial.

16 Now, we're gonna begin this trial with the attorneys
17 making what's called an opening statement or opening
18 argument to you. That's the first thing we'll do.

19 Now, the opening statements made by attorneys will
20 serve to tell you a little bit about what this case is
21 about, and perhaps what they might expect to prove during
22 the trial. And once all the evidence has been presented,
23 I'll give the attorneys an opportunity to make what's called
24 a closing statement or a closing argument, and on those two
25 occasions the attorneys are allowed to directly address you,

1 the jury.

2 But I will tell you that during those statements and
3 those statements, that information does not constitute
4 evidence in this case. Those statements can't be used by
5 you, by you directly in making a determination of the
6 question or guilt or innocence. At the beginning of the
7 trial they tell you what the case is about. At the close of
8 the trial they'll sum up the evidence that you've heard from
9 their clients' prospective or position. But, again,
10 statements made by lawyers do not constitute evidence. The
11 only evidence is the testimony of witnesses who've been
12 sworn to tell the truth, who will testify before you, and
13 whatever information comes into the record through that
14 testimony.

15 Now, it's my job, as the presiding officer of this
16 trial, and that's my other job, is to preside over this
17 case, to rule on questions of the admissibility of evidence
18 or perhaps the appropriateness, appropriateness of a
19 question that's been asked, and I will tell you, on
20 occasion, during my, my conducting those, those
21 responsibilities, that I will discuss matters with
22 attorneys, perhaps in your presence, perhaps not in your
23 presence. But I will tell you that you should not take from
24 anything that I do in the discharge of my duties to indicate
25 to you, in any manner whatsoever, that I might have an

1 opinion one way or the other as to how you determine the
2 facts in this case.

3 I've told you already, you are the sole judges of the
4 facts in this case. The law does not allow me an opinion
5 concerning the facts. I can assure you I have no opinion as
6 to how you determine the facts in this case. You see, it's
7 my job, however, to see that the attorneys follow the rules
8 of evidence and follow the rules of procedure in the
9 presentation of testimony and evidence in this case. And if
10 I decide, during an objection to something that's going on
11 in the courtroom, that that discussion might involve
12 something that I believe later on will be ruled to be
13 inadmissible and shouldn't be something that you consider, I
14 may decide to send you back to the jury room while I have
15 those discussions with the lawyers so that you won't hear
16 that information.

17 You see, that's me doing my job. My job is to see that
18 you only consider the properly admissible evidence under the
19 rules of evidence and the rules of criminal procedure that
20 govern the trial of this case. So, if I ask you to step out
21 of the courtroom while I have that discussion, don't, again,
22 think that I have an opinion as to how you determine the
23 facts in this case. It's just me doing my job to see to it
24 that you only consider properly admitted information in
25 reaching a verdict in the case.

1 Once I've had that discussion with the lawyers, and
2 I've made a ruling, I'll ask you to come back into the
3 courtroom, I'll announce my ruling, and we'll proceed with
4 the trial in the case, and that may happen from time to time
5 during the trial, and I want to be sure you understand what
6 that process is about, and why I'm asking you to leave the
7 courtroom while I have those discussions with the lawyers.

8 Now, in determining what true facts are in the case,
9 I'm going to tell you, as jurors, it's going to be necessary
10 that you decide the credibility or believability of
11 witnesses who are going to testify during this trial, and
12 that's what credibility means. It means believability. And
13 I'm going to tell you to use your own good common sense in
14 making that determination.

15 Every single day you make common sensical decisions as
16 to what you choose to believe and what you choose not to
17 believe. Today and tomorrow will be no different than any
18 other day in your life. Again, I urge you to use your own
19 good common sense in determining the credibility or
20 believability of the witnesses that you will hear during
21 this trial. You, as jurors, have the right to consider such
22 factors as whether or not a witness has a bias or prejudice
23 one way or the other, whether or not a witness has a stake
24 in the outcome of the trial, whether or not a witness
25 actually has the ability or had the ability to know the

1 facts about which the witness testified, and perhaps, most
2 importantly of all, some people believe it is, you'll
3 have -- the witness stand is always right in front of the
4 jury box. You'll have the right and the ability to observe
5 the witnesses as they testify, the way they deliver their
6 testimony. You can take any or all of those factors into
7 consideration. Again, use your own good common sense, but
8 make a determination as to the credibility or believability
9 of the witnesses and the testimony that you hear during the
10 trial.

11 I will tell you, as the sole judge of the facts, you
12 have the right to believe all of what a witness is told you,
13 none of what a witness has told you, or part of what a
14 witness has told you. If there's ten witnesses in the case,
15 you can believe one against all the others or all the others
16 against one. You're the sole judges of the facts. That
17 makes you the sole judges of credibility and the
18 believability of the witnesses that you will hear during the
19 trial of this case.

20 For that reason I will tell you to pay close attention
21 to what goes on in the courtroom. You have the right to
22 consider anything that's in the record of the trial that
23 will help you evaluate the testimony of the witnesses. That
24 means it's your duty to pay close attention to what goes on,
25 to listen to the witnesses and the attorneys, try not to let

1 your thoughts wonder during the trial, try to stay focused
2 on what's being said and what's going on in the courtroom.
3 That will put you in a position, at the close of the trial
4 when I send you out to deliberate, to be able to discuss
5 those matters with your fellow jurors during your
6 deliberation. So, again, try to pay close attention and
7 focus on what is going on in the courtroom as the trial goes
8 forward.

9 Now, ladies and gentlemen of the jury, I do not appoint
10 a foreperson of the jury until the close of the trial. I
11 know, on television, they do that differently. I like to
12 observe the jury. I like to consider a few factors in
13 making that determination. Also I want to stress one other
14 thing to you.

15 When I do send the case out with you to the jury room
16 for your deliberations, your verdict has to be unanimous.
17 That means all 12 of the jurors who are considering the case
18 must agree upon the verdict before it is the verdict of the
19 jury. That means no other juror has any greater say than
20 any other juror in the ultimate outcome of the case. That
21 includes whoever I appoint as foreperson. Their job will be
22 simply to preside over your deliberations, to write down
23 questions if they have to come back to the Court with a
24 question, and to record the verdict on a verdict form that
25 I'll supply at the close of the trial.

1 So, the foreperson has no duties until deliberations
2 begin and that person has no greater say in the outcome of
3 the case than any other juror. So, I want all of you to pay
4 close attention to what goes on so you'll be able to discuss
5 this among yourselves during deliberations when I turn the
6 case over to you.

7 I want to be sure that I haven't violated anyone's
8 rights in what I might of said to you in my opening comment,
9 does the State have an objection to my opening comments?

10 SOLICITOR BOYD: No objection, Your Honor.

11 THE COURT: Does the defense have any objection?

12 MS. JONES: No, sir.

13 THE COURT: All right. Ladies and gentlemen, I've told
14 you that the State has the burden of proof and the only
15 burden of proof in the case, and for that reason we're going
16 to allow them to go first in opening statements, and first
17 with the presentation of their evidence. Does -- the
18 defense will follow and go second concerning, concerning
19 those matters.

20 Now, once all the evidence is in, I've told you I'll
21 let the State's attorney make a closing argument and
22 statement. Then I will charge you concerning the law. Once
23 I've completed that charge I'll turn the case over to you
24 for your deliberations in this matter.

25 All right. I'm gonna take a short break. We've been

1 going for a little while before we begin those opening
2 arguments. The bailiffs are gonna show you back to the jury
3 room that we'll be using in the case. So, we'll have about
4 a ten to fifteen minute break. I don't know if we have a
5 smoker in the crowd. You can't smoke in the building. If
6 you would like to light a cigarette, let the bailiffs know.
7 We'll have to take you outside to do that and you'll be
8 accompanied by a bailiff while we do that.

9 So, at this time I'm going to ask you to retire to the
10 jury room. Again, don't discuss anything about the case
11 until I've advised you to do so.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. We'll take a short recess.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. State ready to proceed?

17 SOLICITOR BOYD: We are, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. JONES: Your Honor, I have two children I need to
20 pick up from day care. So, it's very hard for me to run
21 past five o'clock since I have two pick-ups. I don't
22 anticipate this case taking longer, longer than a day, Your
23 Honor. If we could start at 9:00.

24 THE COURT: I understand.

25 Do you want them just to adjourn to start back at nine

1 o'clock in the morning?

2 MS. JONES: I would be most appreciative.

3 THE COURT: Is that okay with you?

4 SOLICITOR BOYD: State has no objection, Your Honor.

5 THE COURT: All right. Let's do that.

6 MS. JONES: Thank you, Your Honor.

7 THE COURT: Bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 the jury has returned to the courtroom.

12 Ladies and gentlemen, I'm sorry for the long break.
13 I'm -- this is the first day of this week's trial term, and
14 what I did, I took a plea in a case that has nothing to do
15 with this case, but I was able to dispose of four other
16 cases while we had our break. So, I took the opportunity to
17 do that. I appreciate your patience.

18 I do note though that we're only ten minutes from five
19 o'clock. I don't want to hold you past five o'clock. So,
20 I'm gonna decide -- I've decided we'll just start the actual
21 trial of the case at nine o'clock in the morning. I want
22 you to be back in the jury room at that time, and we'll be
23 in a position to start shortly thereafter. Try to be there
24 on time. We'll get started quicker.

25 We're aware the court house is closed, cold. We have

1 made the clerk aware of that. They've had the maintenance
2 people over here, and hopefully by in the morning they'll
3 have that solved, but bring with you something warm to wear
4 if you, if you feel cold because if it's not running
5 properly there's not a lot I can do about that rather than
6 go forward with court. So, just be aware that we're aware
7 of the problem. We're doing what we can to fix it, but be
8 sure you bring a sweater or jacket or something that you
9 might need to wear that while we go forward.

10 Again, I'm gonna caution you not to discuss the case
11 with anyone. Don't listen to any media reports. Don't try
12 to gather any information on your own. Don't allow anyone
13 to discuss the case with you, and I want to tell you, if
14 someone tries to call you or contact you about your service
15 on this jury, I've already told you about jury tampering,
16 please report that in the morning to the Court if that were
17 to happen. I can assure you I'll take the appropriate steps
18 should that occur.

19 Nine o'clock in the morning. The bailiffs will show
20 you how to come back to the jury room that's in use for this
21 courtroom. Be in that, that room at nine o'clock. We
22 should be able to start shortly thereafter. I hope everyone
23 has a good evening. The bailiffs will show you out.

24 Thank you very much.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. We have begun the trial of this
3 case. I'm going to require that the defendant be taken into
4 custody during the trial of the matter. So, he will be
5 taken into custody at this time.

6 We'll start at nine o'clock in the morning.

7 Thank you very much.

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9 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, December 13th, 2011

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3 THE COURT: All right. Good morning. I have been
4 informed by the Clerk's Office that Juror Number 123, Amy
5 Ofair, is having car trouble this morning, and is not going
6 to be able to get here, in my opinion, within a reasonable
7 length of time. So, I am going to remove her from the jury.
8 That means that Deana Shockley will become a member of the
9 jury. The alternate will be placed on to the jury.

10 Is the State ready to proceed?

11 SOLICITOR BOYD: We are, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MS. JONES: We are, Your Honor.

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

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. Good morning, ladies and
18 gentlemen. My first inquiry is if any of you had any
19 difficulty in complying with my instructions concerning your
20 behavior overnight, I'd ask if someone had a difficulty in
21 doing that, please stand.

22 (No response.)

23 THE COURT: It appears that everyone has been able to
24 follow my instructions.

25 I have been informed by the Clerk's Office that Juror

1 123, Amy Ofair, is having car trouble and is not going to be
2 able to arrive in a timely fashion. Therefore, I have
3 removed her from the jury.

4 And, Mrs. Shockley, you will -- which is Mrs. Shockley?
5 Over here. You're now a member of the jury instead of
6 the alternate. Okay.

7 All right. Now, when we broke yesterday afternoon we
8 had completed my opening comments and we were ready to begin
9 the trial with the opening statements by counsel.

10 State may proceed.

11 SOLICITOR BOYD: Please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 SOLICITOR BOYD: Ms. Jones.

14 Good morning, ladies and gentlemen.

15 As Judge Couch said yesterday, this is gonna be a slow
16 and deliberate search for the truth. The truth starts and
17 ends with that man in the white shirt, Mr. Ronnie Brannon,
18 and involves Mr. Brannon, his cousin, John Wayne Brannon.
19 You're gonna hear evidence about what happened at
20 Mr. Brannon's home on Bonair Avenue the morning of
21 April 10th of this year.

22 You're gonna hear from his friend who found him,
23 Mr. Cheeks. He's gonna tell you what he saw, what he did.
24 You're gonna hear from officers who responded to the
25 hospital and also later to Mr. Brannon's home. You're also

1 gonna hear from the doctor who treated Mr. Brannon and his
2 injuries. He's gonna tell you what he saw and what he did,
3 what he observed.

4 Finally you're gonna hear that from Mr. Brannon
5 himself. He's gonna tell you what he was doing in his
6 house, who else was in his house, and what happened from
7 that morning.

8 This is a slow and deliberate search for the truth.
9 Judge Couch will remind you to use your common sense.
10 Whenever a witness takes the stand, you can believe that
11 witness or don't believe that witness. But use your common
12 sense, and do it deliberately, slowly, and carefully.

13 THE COURT: For the defense.

14 MS. JONES: Good morning, ladies and gentlemen.

15 My name is Tanya Jones and I represent the defendant in
16 this matter, John Wayne Brannon, and as the State indicates
17 or has alleged, my client is accused of attempted murder.
18 My client is accused of attempting to murder his cousin,
19 Ronnie Brannon, and what that means is he tried to kill him.
20 He had a malignant heart, a depraved heart, ladies and
21 gentlemen.

22 Now, I'm not going to suggest what the evidence is
23 necessarily gonna show because a lot of times what I think
24 is going to happen, reading all the police reports and the
25 witness statements, isn't always what happens on the stand.

1 But I can tell you this, ladies and gentlemen. John Wayne
2 Brannon, as well as Ronnie Brannon, are cousins and they
3 live together, and the evidence is also gonna show that that
4 night, as well as probably into the morning, Ronnie Brannon
5 was drunk, highly intoxicated. The doctor also is going to
6 support that, that he was highly intoxicated.

7 He was told to stop drinking. He was so intoxicated he
8 couldn't even tell the doctor what had happened. They
9 called him a poor historian. His memory is what is at stake
10 today, ladies and gentlemen, is what you believe from Ronnie
11 Brannon today, and at the end of the day, ladies and
12 gentlemen, cause I don't think this is gonna be a long
13 trial, I think actually we'll probably be finished today,
14 you're gonna come back with a not guilty verdict on
15 attempted murder. The elements just aren't going to be met.

16 Thank you.

17 THE COURT: Mr. Boyd, you may call the first witness
18 for the State.

19 SOLICITOR BOYD: Thank you, Your Honor.

20 The State calls Scott Cheeks to the stand.

21 THE COURT: Come forward, sir, to be sworn.

22 SCOTT CHEEKS, having been first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat please, sir.

25 (Witness complies.)

Scott Cheeks - Direct examination
by Solicitor Boyd

1 THE COURT: State your name.

2 WITNESS: My name is Mr. Scott Cheeks, Miller Cheeks.

3 THE COURT: Mr. Boyd, your witness.

4 DIRECT EXAMINATION

5 BY SOLICITOR BOYD:

6 Q Morning, Mr. Cheeks.

7 A Good morning.

8 Q Do you know Ronnie Brannon?

9 A Yes, sir.

10 Q How do you know Mr. Brannon?

11 A He's a good friend of mine.

12 Q How long have you known Mr. Brannon?

13 A About six years.

14 Q Have you been friends with him the entire time?

15 A Yes, sir.

16 Q How often do you see Mr. Brannon?

17 A Almost every day.

18 Q Okay. Did you see him on Sunday, April 10th---

19 A Yes, sir.

20 Q ---2011?

21 A Yes, sir.

22 Q Okay. Where did you see him?

23 A At his home.

24 Q What were you doing at his home?

25 A I normally stop by there from time to time to check on

Scott Cheeks - Direct examination
by Solicitor Boyd

1 him to see if he needs anything or if he needed to go
2 somewhere, stores or anything, to check on him.

3 Q Approximately what time, on April 5th, did you see him?

4 A That's about 8:30, nine o'clock.

5 Q What did you do when you got to his front door?

6 A Knocked on the door as I always do. I normally knock
7 twice. If I don't hear him twice I know he ain't there.
8 So, I leave. But the second knock I heard a moan, you know
9 what I'm saying, and sometimes he do be a little bit
10 intoxicated. So, I figured he was in there laying down, he
11 done got a little bent.

12 And, so, I knocked again. It was a different kind of
13 moan. I said something ain't right. I said, man, come
14 outside, man, come outside on the porch, and he moaned
15 again. So, I opened the door. The door was already opened.
16 I opened the door, and he was coming from the back room up
17 the hallway and it's a one room. It's another room in the
18 back to the right, and I couldn't hardly see him until he
19 got on towards me. I noticed he had a thing around his
20 head.

21 So, when he came on outside, we normally come on
22 outside on the porch and chit-chat, when he came on the
23 porch I got to messing with him. I said man, what you doing
24 with that Daniel Boone thing on your head, and he said man,
25 something happened to me last night. I got into something.

Scott Cheeks - Direct examination
by Solicitor Boyd

1 I said what you got into it with.

2 MS. JONES: I'm gonna object to hearsay, Your Honor.

3 THE COURT: I'll sustain the objection.

4 Sir, I'm going to caution you. You're not allowed to
5 quote what anyone said unless you're quoting what the
6 defendant may have said. If there's an exception to that
7 rule I'm sure the lawyer will ask you the question that's
8 appropriate. But at this time I'll instruct you the hearsay
9 rule prevents you from quoting what anyone may of said to
10 you---

11 WITNESS: Yes, sir.

12 THE COURT: ---except under certain circumstances.

13 You may proceed.

14 Q Mr. Cheeks, did you see Mr. Brannon?

15 A Huh?

16 Q Did you see Ronnie Brannon?

17 A Yes, sir.

18 Q What did he look like?

19 A Well, he had a white like a t-shirt tied around his
20 head. I thought it was red cause he, he seen something
21 parts of it. You know, it was, it was white, but it had all
22 kind of blood in it. You could squeeze it and get blood out
23 of it. I said man, take that off, you need to go to the
24 hospital. He like no, it ain't that bad.

25 MS. JONES: I object again to hearsay.

Scott Cheeks - Direct examination
by Solicitor Boyd

1 THE COURT: Sustain the objection.

2 Q Mr. Cheeks---

3 THE COURT: Sir, don't quote -- let me finish,

4 Mr. Boyd.

5 WITNESS: Sorry.

6 THE COURT: Don't quote what the gentleman said to you.

7 Go ahead, Mr. Boyd.

8 Q Mr. Cheeks, when you saw Mr. Brannon, did you think he
9 was hurt?

10 A Yeah.

11 Q Okay. Did you call 9-1-1?

12 A Yes, sir.

13 Q Okay. Do you see any injuries to Mr. Brannon?

14 A Yes, sir.

15 Q What did you see?

16 A A long cut all the way across there. Now, that was
17 before he turned around to go back in the house. When he
18 turned around, I noticed he -- I said you got another gash
19 in the back of your head.

20 Q Did you try to stop the bleeding?

21 A Uh-huh. (Affirmative).

22 Q What happened when you tried to stop the bleeding?

23 A It just got worse and I said man -- you know what I'm
24 saying, I said it's open, man, you need to go on to the
25 doctor. It's real open back---

Scott Cheeks - Direct examination
by Solicitor Boyd

- 1 Q Did you call 9-1-1?
- 2 A Yes, sir.
- 3 Q Okay. Did they send an ambulance?
- 4 A Well, they sent one, but I had already took him to the
- 5 doctor.
- 6 Q So, you drove---
- 7 A I didn't want to leave him there like that.
- 8 Q You drove Mr. Brannon to the hospital?
- 9 A Yes, sir.
- 10 Q Okay. How long were you with him at the hospital?
- 11 A About 20 minutes, something like that. That's -- when
- 12 he got all the way to the back where everybody took care of
- 13 him, that's when I left. I told them if he needed anything,
- 14 give them my number.
- 15 Q Okay. You said Mr. Brannon was wearing a, had a shirt
- 16 around his head?
- 17 A Uh-huh. (Affirmative).
- 18 Q Okay. What color was his shirt?
- 19 A Looked like a white t-shirt.
- 20 Q Was it colored in anyway?
- 21 A Red from, from the blood.
- 22 Q Okay. Did he have anything else around him?
- 23 A Hu huh. (Negative).
- 24 Q Anything else on his head?
- 25 A Hu huh. (Negative).

Scott Cheeks - Direct examination
by Solicitor Boyd

1 Just that.

2 Q Okay. Do you know John Wayne Brannon?

3 A Yeah, I know him.

4 Q Do you consider yourself friends?

5 A Yeah, we -- I don't consider him no friend, but I know
6 him. Like I said, I don't see him that much like I know
7 Ronnie.

8 Q Okay. No further questions.

9 THE COURT: Ms. Jones, your witness.

10 MS. JONES: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. JONES:

14 Q You indicated that you stopped by to see him about 8:30
15 or nine o'clock in the morning?

16 A Yes, ma'am.

17 Q And at that time you, you -- how much -- how long were
18 you there until you called the ambulance?

19 A About ten, fifteen minutes.

20 Q And you indicated that Mr. Brannon is usually
21 intoxicated in the morning?

22 A Yeah, maybe not bad. He might have a beer or so.

23 Q In the morning?

24 A Uh-huh. (Affirmative).

25 Q Okay. Is it fair to say that Mr. Brannon drinks

Scott Cheeks - Cross-examination
by Ms. Jones

1 everyday?

2 A Yeah, you could say that.

3 Q Okay. And, so, he drinks at night and then wakes up in
4 the morning and has a beer?

5 A Well, I, I don't see him between all that. So, I can't
6 say.

7 Q Okay. You just know in the morning?

8 A Yes, ma'am.

9 Q Okay. And this morning did he appear intoxicated to
10 you?

11 A Yes, ma'am, I could smell it on his breath.

12 Q Okay. Nothing further.

13 THE COURT: Redirect.

14 SOLICITOR BOYD: No, thank you, Your Honor.

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

17 Do you wish to have this witness excused?

18 SOLICITOR BOYD: Please, Your Honor.

19 THE COURT: Any objection to his leaving the courtroom?

20 MS. JONES: No, sir.

21 THE COURT: Sir, you're free to go if you'd like.
22 You're free to stay also.

23 You may call your next witness.

24 SOLICITOR BOYD: Thank you, Your Honor.

25 State calls Brendall Mathis to the stand.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 THE COURT: Come forward, sir, and be sworn.

2 BRENDALL MATHIS, having been first
3 duly sworn, testified as follows:

4 THE COURT: Have a seat please, sir. Once seated, I'd
5 ask that you state your name.

6 MS. JONES: Brendall Mathis.

7 THE COURT: Mr. Boyd, your witness.

8 DIRECT EXAMINATION

9 BY SOLICITOR BOYD:

10 Q Morning, Mr. Mathis.

11 A Morning.

12 Q Where do you work?

13 A Spartanburg Public Safety.

14 Q How long have you been there?

15 A Just about four years.

16 Q Okay. What are your current duties?

17 A I'm assigned to the violent crimes task force.

18 Q How long have you been doing that?

19 A Just about five to six months.

20 Q Okay. Before that what did you do?

21 A I was on patrol.

22 Q Okay. What areas did you patrol?

23 A The north side of town basically from downtown, out
24 Howard Street, and Church Street.

25 Q Were you working on April 10th, 2011?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir.

2 Q Okay. Were you dispatched to the hospital on that day?

3 A Yes, sir.

4 Q Okay. And in reference to what?

5 A In reference to an assault.

6 Q Okay. When you got to the hospital, did you see

7 Mr. Ronnie Brannon?

8 A I did.

9 Q Okay. Did you see the injuries on Mr. Brannon?

10 A I did.

11 Q Did you take those -- did you take pictures of

12 Mr. Brannon while he was at the hospital?

13 A Yes, sir.

14 (WHEREUPON, four photographs were marked as State's
15 Exhibit Nos. 1 through 4 for identification purposes only at
16 this time.)

17 SOLICITOR BOYD: Approach the witness, Your Honor?

18 THE COURT: You may.

19 Q Showing you what's been identified as State's Exhibits
20 1 through 4, can you look at those?

21 (Witness complies.)

22 Q Are you familiar with those images?

23 A Yes, sir.

24 Q Okay. Are those photographs that you took of

25 Mr. Brannon?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir, they are.

2 Q Do they fairly and accurately represent, represent the
3 way Mr. Brannon looked when you saw him?

4 A Yes, sir.

5 SOLICITOR BOYD: Your Honor, at this time I would like
6 to move State's Exhibit 1 through 4 into evidence.

7 THE COURT: Any objection?

8 MS. JONES: Your Honor, may we approach?

9 THE COURT: You may.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 THE COURT: Ladies and gentlemen, this is one of those
13 occasions that I told you I may send you out of the
14 courtroom while I discuss a matter with the attorneys. As
15 always, before you leave, I'll ask you not to begin any
16 discussions concerning the case until I advised you to do
17 so.

18 You may retire to the jury room.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. Do you wish to place your
22 objection on the record, Ms. Jones?

23 MS. JONES: I -- yes, Your Honor, I would.

24 Give me one second.

25 (Pause.)

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 MS. JONES: Your Honor, we would object to the
2 photographs of the -- if I may note the specific objection.

3 May I approach the witness, sir?

4 THE COURT: You may.

5 MS. JONES: Thank you. Just to make sure we get
6 everything. Just these ones.

7 Your Honor, we would object to State's Exhibit No. 2 --
8 well, State's Exhibit No. 1, No. 2, No. 3 as well as No. 4
9 in that they arouse the, that they're, their prejudice and
10 arouse the sympathies, calculated to arouse sympathies of
11 the jury, Your Honor, and not only that, they're cumulative
12 in effect, Your Honor. There's one, two -- there's two of
13 the, of the, the head, Your Honor. State's Exhibit No. 1
14 and as well as State's No. 3, we would argue that would be
15 cumulative as well as State's Exhibit No. 2 and State's
16 Exhibit No. 4.

17 They're of the same injuries, Your Honor, and, again,
18 are aroused to -- we would argue that that would be
19 cumulative and is unfairly prejudicial to my client.
20 They're going to have testimony from the doctor to indicate
21 the injuries as well as Mr. Brannon to testify as to the
22 injuries he suffered from. Your Honor, these were injuries
23 that were closed via stitches with a local anesthesia, and
24 we believe that these again are, especially State's Exhibit
25 No. 4, is very gruesome and, again, is calculated to arouse

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 the passions and the sympathy of the jury, sir.

2 Thank you.

3 THE COURT: Well, will you pass them up so I can take a
4 look at them?

5 MS. JONES: Yes, sir. Sorry.

6 THE COURT: Thank you.

7 I'll hear from the State.

8 SOLICITOR BOYD: Your Honor, it's not the State's
9 intention to play on the sympathy of the jury. Rather, as
10 this is a general intent crime, the jury has a right to see
11 the extent of the injuries sustained by my victim. It's a
12 blunt force trauma to the head. The jury can infer whatever
13 type of malice they want to from those injuries. It's a
14 question for the jury whether they believe the injuries do
15 rise to the level as alleged by the State in the
16 indictments.

17 Each picture shows a different aspect of it. The
18 close-up shows the depth of the wound. The more wide angle
19 shots, Your Honor, show the size of the wound, and there's
20 also the wound to the back of the head that's un, that's
21 unavailable to be seen on the rest of the pictures, Your
22 Honor.

23 THE COURT: Well, in looking at Photos 1, 3, and 4,
24 those all appear to be of a wound just about where the, one
25 person would have their normal hairline. But they're all

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 pictures of the same wound. I realize they're from
2 different distances, but I find those to be cumulative and
3 to allow all three would be unduly prejudicial.

4 Do you want to tell me which one of these three that
5 you do want to introduce and I understand that you're trying
6 to get to the depth of the wound, which may have some
7 bearing on the, the force by which the blow or the, the
8 wound was inflicted. So, I realize that may be a matter
9 that the jury should consider. But, again, three pictures
10 of the same wound, I'm not gonna allow that.

11 The other is a, a picture of the, a wound that appears
12 to the back of the head or towards the back of the head, and
13 it does indicate the size of that wound. It has been
14 cleaned up I note, notice at least partially. It appears to
15 have been anyway but the time this photo was taken. I'm
16 going to allow that one because it does show the location of
17 the injury, and I do not find that unduly prejudicial. But
18 of those three, I'm not allowing all three.

19 Do you want to tell me which one you want to introduce?
20 I'll consider the one you do wish to have introduced?

21 SOLICITOR BOYD: Yes, sir, Your Honor.

22 May I look at the exhibits again?

23 THE COURT: Sure. Please do.

24 Pass that down to him, Mr. Bishop.

25 SOLICITOR BOYD: The State would move Exhibit 3 as the,

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 to the exclusion of one and four, Your Honor. Three will be
2 on top.

3 THE COURT: You want to take a look?

4 Let Ms. Jones take a look at that one and I'll hear
5 from her on that one if there's additional concerns given my
6 ruling.

7 MS. JONES: Your Honor, we've taken a look at that and
8 I would say it's better than the actual close-up one, but,
9 again, we would argue that it is unduly prejudicial and
10 arouses the sympathy of the jury.

11 THE COURT: I understand the position. I do find that
12 those, the probative value of those two photographs, which
13 is State's 3 and State's 2, do outweigh the prejudicial
14 effect and I will allow them. I have made the opposite
15 ruling as to one and four because they are duplicative, they
16 are cumulative, and also, especially the close-up of the one
17 head wound that close, I find that to be highly prejudicial.

18 I'm gonna have those marked. The ones I didn't allow
19 in, they have been marked, and will serve as marked for
20 identification purposes. They will remain a part of the
21 record for any review of them will indicate what I have,
22 what I have included and what I left in.

23 THE COURT: All right. So, I'm going to admit Exhibits
24 2 and 3.

25 Anything further before I bring the jury in?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 SOLICITOR BOYD: Nothing from the State, Your Honor.

2 MS. JONES: No, sir, Your Honor.

3 THE COURT: You can bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect the
7 jury's returned to the courtroom.

8 The State has offered Exhibits 1 through 4. I have
9 admitted Exhibits 2 and 3. I have excluded Exhibits 1 and
10 4.

11 (WHEREUPON, State's Exhibit Nos. 2 and 3 were received
12 into evidence at this time.)

13 THE COURT: You may proceed.

14 SOLICITOR BOYD: Yes, Your Honor.

15 Your Honor, State request permission to publish
16 Exhibits 2 and 3.

17 THE COURT: You may so.

18 By publication we mean I'll allow you to, let you look
19 at those things. That's what publish means for you.

20 Lower the lights please and the, and the screen.

21 CONTINUED DIRECT EXAMINATION

22 BY SOLICITOR BOYD:

23 Q Officer Mathis, showing you State's Exhibit 2.

24 what are we looking at?

25 A That was a photograph that I took of Mr. Brannon when I

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 got to the hospital. That was to the back of his head more
2 or less right at the -- I guess you would consider that like
3 the crown of his head. There's, there's approximately an
4 inch to an inch and a half long.

5 Q Okay. Showing you State's Exhibit No. 3.

6 Can you tell us what we're looking at?

7 A That was Mr. Brannon when I first arrived into the
8 hospital room. That was a larger gash, probably 3-inches or
9 so just to the front of his head that was split open pretty
10 wide. Still, still bleeding pretty good at the time when I
11 got there.

12 Q Okay. And how did Mr. Brannon appear to you when you
13 saw him?

14 A He was, he was pretty disoriented. Just -- he seemed
15 to be in a pretty good bit of pain, but he was -- he still
16 seemed to be kind of out of it, just unaware of what I think
17 had actually happened, what was, what was going on with his
18 head.

19 Q And approximately how large is that wound?

20 A It's probably about 3-inches from what I recall.

21 Q Did you see if the wound had any depth to it?

22 A Yes, sir, it was -- when I first walked in, the doctor
23 was actually checking out his head, and you could pretty
24 much see his skull I guess is the best way to explain it,
25 and when they would, when they would clean it up initially,

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 you could actually see the skull.

2 Q Did you see his skull?

3 A Yes, sir.

4 MS. JONES: I'm gonna object to this, Your Honor. He's
5 not the doctor in this case. He's only a lay person. He
6 certainly has the doctor who is going to testify as to the
7 nature and extent of the injury.

8 THE COURT: Well, I find that he's not offering an
9 opinion. He is offering an observation. He has the right
10 to testify concerning what he observed.

11 Overruled.

12 Q Were you able to speak to Mr. Brannon at that time?

13 A I was.

14 Q Did you obtain consent to search his house?

15 A I did, yes, sir.

16 Q Okay. Where is this house located?

17 A Bonair.

18 Q Is that in Spartanburg County?

19 A Yes, sir, in the city as well.

20 (WHEREUPON, ten photographs were marked as State's
21 Exhibit Nos. 5 through 15 for identification purposes only
22 at this time.)

23 SOLICITOR BOYD: Approach the witness, Your Honor?

24 THE COURT: You may.

25 Q Officer Mathis, I'm handing you what's been marked for

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 identification as State's Exhibit 5 through 15.

2 Would you please look at those images?

3 A (Witness complies.)

4 Q Do you recognize those photographs?

5 A Yes, sir.

6 Q What are those photographs of?

7 A Photographs of Mr. Brannon's house, Bonair, that I
8 took the day that, right after I left the hospital to go
9 perform the consent search of the residence.

10 Q To your knowledge, is those -- have those images been
11 altered in anyway?

12 A No, sir.

13 Q Do they fairly and accurately represent what you saw at
14 the time?

15 A Yes, sir.

16 SOLICITOR BOYD: Okay. Your Honor, I move State's
17 Exhibit 5 through 15 into evidence.

18 THE COURT: Objections?

19 MS. JONES: No, sir.

20 THE COURT: Without objections they'll be admitted as
21 numbered.

22 (WHEREUPON, State's Exhibit Nos. 5 through 15 were
23 received into evidence at this time.)

24 SOLICITOR BOYD: Permission to publish, Your Honor?

25 THE COURT: You may publish.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 Q Showing You State's Exhibit 5, Officer Mathis, whose
2 house is that?

3 A Mr. Brannon's.

4 Q Is that at Bonair?

5 A Yes, sir.

6 Q In the city limits of Spartanburg?

7 A Yes, sir.

8 Q Okay. That window on the left, looking at the picture,
9 left of the door --

10 A Yes, sir.

11 Q -- what's underneath that window?

12 A There's a table right there and just pretty much
13 in-between the table and the door was where I actually
14 located the rock that I believed to be used.

15 Q Okay. Showing you State's Exhibit 6, what are we
16 looking at?

17 A That's the table just to the left of the door. The
18 rock was laying just underneath that in, in front of that
19 chair. We placed it on the table to get a, to get a better
20 photograph of it.

21 Q Approximately how big is that rock?

22 A I would say it's a foot and a half in length and
23 probably 8-inches or so high.

24 Q Okay. Did you manipulate, manipulate the rock?

25 Did you handle the rock?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A Yes, sir, I picked it up off of the, the porch and set
2 it up on the table just for the, the pictures.

3 Q To your best estimate, how heavy was the rock?

4 A I would say between ten and fifteen pounds is what,
5 what I would estimate.

6 Q Okay. Showing you State's Exhibit 7, what are we
7 looking at?

8 A Just to the left of the door is a small piece of the
9 rock. It, it looked as if the rock had fallen to the ground
10 and a, just a piece of it had flew off and was laying there.
11 They're actually on the rug, the smaller little white specs
12 were, were actual pieces of the rock as well.

13 Q And State's Exhibit No. 8.

14 A That was -- the, the bannister to the left of the table
15 on the outside of the porch, that was a, just another small
16 piece of the rock that was, that was found laying there.

17 Q It was found laying on the bannister?

18 A Yes, sir.

19 Q Okay. State's Exhibit 9, where is this?

20 A When you first walk into the front door, probably five
21 to six feet inside of the door right in the, right in the
22 center of the, the walkway is, is where that's at. That's a
23 blood stain from where Mr. Brannon said that he actually
24 laid.

25 Q Okay. How large is that discoloration, that stain?

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 A It's probably six to eight inches round.

2 Q Okay. On the right side of the image --?

3 A That's a black jacket was sitting in a chair right in
4 front of I believe what's his fireplace. The jacket also
5 had blood stains on that.

6 MS. JONES: I do object to that, Your Honor. I don't
7 think that jacket or the carpet was actually tested for
8 blood. So, we don't know what substance it is. There's
9 lack of foundation there.

10 THE COURT: I'll, I'll allow the witness to state what
11 it appeared to him, but if he has an opinion concerning what
12 it actually was, I'm going to sustain the objection.

13 So, I'll ask you to rephrase the question.

14 SOLICITOR BOYD: Yes, Your Honor.

15 THE COURT: You may proceed.

16 Q Did that stain on the ground appear to be blood to you?

17 A Yes, sir, it did.

18 Q Did you see a discoloration on the jacket?

19 A Yes, sir.

20 Q What did that appear to be?

21 A It appeared to be blood as well. Same thing that was
22 on the floor from what it looked like.

23 Q Is that why you took the picture?

24 A Yes, sir.

25 Q Showing you State's Exhibit 10, is this the same jacket

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 you saw in State's 9?

2 A Yes, sir, it is. Just a little bit wider view. You
3 can see that same, what appears to be blood also towards
4 the, the right side of the jacket from what we're looking
5 at, and you can also see the, the stain that was on the
6 floor.

7 Q And State's Exhibit No. 11, is there a discoloration on
8 that, on that jacket?

9 A Yes, sir.

10 Q Where do you see the discoloration?

11 A There's one on the, the left side of the jacket down
12 kind of on the sleeve, and there's a larger portion right in
13 the center, and there was also some on the, the right side
14 where you can see just a little bit at the very top.

15 Q Do those discolorations appear to be from the same
16 substance?

17 A Yes, sir.

18 Q Is that why you took the picture?

19 A Yes, sir.

20 Q Looking at State's Exhibit No. 12, could you tell us
21 what that is?

22 A That's the, the sleeve that we're just looking at on
23 the, the left-hand side. Just a little bit closer picture
24 of the same, same substance that I thought was blood at the
25 time.

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 Q Okay. State's 13, just tell us what we're looking at
2 please.

3 A That's just a close-up of the, the substance that was
4 on the, the jacket that was sitting in the chair.

5 Q Is that the same jacket as the previous exhibits?

6 A Yes, sir.

7 Q Looking at State's No. 14, where is this picture taken?

8 A This is the, the very back of the, the kitchen pretty
9 much at the back of the house. In his sink, it's just kind
10 of a dish pan that had the shirt that seemed to be
11 discolored from, from what I thought was blood at the time.

12 Q Okay. Could you tell what color that shirt is?

13 A I couldn't tell. It almost looked white, but I wasn't
14 real sure. Everything was pretty well saturated and it was,
15 it was the red color. So, I wasn't real sure if it had an
16 original color other than that.

17 Q Okay. And finally State's Exhibit No. 15, where was
18 this picture taken?

19 A That's at the end of Mr. Brannon's sidewalk that leads
20 up to his, to his front porch.

21 Q Okay.

22 A That was the, as we were leaving the house, that
23 appeared to be where that, the large rock on the porch came
24 from. It was really the only thing that was, that appeared
25 out of place or where that, that large rock would of, would

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 of came from.

2 Q And approximately how far distance is that from that
3 corner to Mr. Brannon's living room?

4 A Oh, it's a good 20 to 30 feet at least.

5 Q Okay. Were you made aware of any suspects?

6 A When I first went to the hospital to speak with
7 Mr. Brannon he advised that it, it was his cousin, John
8 Brannon, that, that actually hit him. He said he hit him
9 over the head with something, and it was big and it hurt was
10 pretty much what he told me.

11 Q Okay. And after you took these pictures, did you speak
12 with Mr. Brannon again?

13 A I did.

14 Q Okay. When did you speak with him again?

15 A On the 12th.

16 Q Okay. Were you advised of the same situation?

17 A I was.

18 Q At what point did you develop the defendant as a
19 suspect?

20 A Initially when I originally spoke with him at the, the
21 hospital, like I said, he was adamant that it was John
22 Brannon that, that caused the injuries as well as was
23 adamant about that, again, on the 12th when I spoke with
24 him.

25 Q In your experience, did Mr. Brannon seem certain as to

Brendall Mathis - Cross-examination
by Solicitor Boyd

1 who hit him?

2 A Absolutely, yes, sir.

3 Q Did he waiver?

4 A No, sir, when I spoke with him he was, it was, it was
5 John Brannon is what he told me everytime I asked him.

6 Q Okay. And subsequently you arrested the defendant---

7 A Yes.

8 Q ---for this act?

9 A Yes, sir. Well, I signed a warrant on him, yes, sir.

10 Q And did you collect any of the items in the pictures
11 that we just saw?

12 A I did not.

13 Q Please answer any questions Ms. Jones might have for
14 you.

15 THE COURT: You need the lights up or down, Ms. Jones?

16 MS. JONES: Up please.

17 THE COURT: Bring the lights up. Thank you.

18 You may proceed.

19 MS. JONES: Thank you.

20 CROSS-EXAMINATION

21 BY MS. JONES:

22 Q Were you the, the initial officer to respond to the
23 scene?

24 A Yes, ma'am.

25 Q Okay. And per your report, it appears that you were

Brendall Mathis - Cross-examination
by Ms. Jones

1 dispatched at approximately 11:57?

2 A Yes, ma'am.

3 Q Okay. And you actually wrote the initial incident
4 report, is that correct?

5 A Yes, ma'am.

6 Q Were there any other officers involved in the
7 investigation?

8 A I was speaking with Mr. Brannon at the hospital and
9 checking his residence and Investigator Nelson looked over
10 the case and checked the case after, afterwards for that.

11 Q Okay. But fair to say you did the initial
12 investigation?

13 A Yes, ma'am.

14 Q Okay. And you wrote a report, correct?

15 A Yes, ma'am.

16 Q Okay. And you put all the important information into
17 that report, correct?

18 A Yes, ma'am.

19 Q Okay. Now, in regard to being dispatched, did it
20 appear to you that Mr. Brannon was drunk?

21 A I could smell alcohol on him, yes, ma'am, but I didn't,
22 didn't have any other reasons -- he didn't, he didn't get up
23 and move around much from the hospital. So --.

24 Q But he could certainly smell it on him---

25 A Yes, ma'am.

Brendall Mathis - Cross-examination
by Ms. Jones

1 Q ---correct, and this was already 11:57---

2 A Yes, ma'am.

3 Q ---AM going into the noon, correct?

4 A Yes, ma'am.

5 Q Okay. And when you initially interviewed him, you also
6 wrote in your report Mr. Brannon was still unclear as to
7 exactly what happened to him and how he was hit, correct?

8 A Yes, ma'am.

9 Q Okay. So, at some point when you were interviewing him
10 he had no idea what had really happened to him, correct?

11 A The -- he was pretty sure on what had happened to him
12 as far as what took place with the assault. The only thing
13 that was a little hazy was his, his time frame that he was
14 giving me.

15 Q Okay. But, again, you write reports --

16 A Yes, ma'am.

17 Q -- to make sure, when you come to court, you remember
18 exactly what you wrote, correct?

19 A Yes, ma'am.

20 Q And what happened---

21 A Yes, ma'am.

22 Q ---correct, and what you had observed---

23 A Yes, ma'am.

24 Q ---correct, cause this is a long time ago and memories
25 get hazy and fuzzy, right?

Brendall Mathis - Cross-examination
by Ms. Jones

1 A Uh-huh. (Affirmative).

2 Q And you go on to a lot of different calls and things
3 like that, correct?

4 A Yes, ma'am.

5 Q And, in fact, in your report you put he was unclear as
6 to what happened and how he was hit, correct?

7 A Just that he was, he was unclear of the situation at
8 the time.

9 Q Okay. And he was also unclear as to the time it
10 happened, correct?

11 A Yes, ma'am.

12 Q He initially told you he thought it was at five
13 o'clock, correct?

14 A Yes, ma'am.

15 Q And then he indicated it happened in the morning,
16 correct?

17 A Yes, ma'am.

18 Q Okay. And you also talked with another witness who
19 indicated she saw Mr. Brannon at 2200 hours, which is what?

20 A Ten o'clock.

21 Q Ten o'clock at night?

22 A Yes, ma'am.

23 Q He was highly intoxicated and had no injuries, correct?

24 A Correct.

25 Q Okay. So, you have a very big time frame, correct?

Brendall Mathis - Cross-examination
by Ms. Jones

1 A Yes, ma'am.

2 Q Okay. And it's really no clear indication as to what
3 had really happened or the time that it happened, correct?

4 A At that time, yes, ma'am.

5 Q Okay. And you testified that you believed that this
6 brick was the weapon, correct?

7 A At the time when I got to the, the residence, that was
8 the only thing that I could see that would possibly cause
9 that, that type of injury to him, yes, ma'am.

10 Q Okay. And the police have the capability to swab items
11 to check for blood, correct?

12 A Yes, ma'am.

13 Q Did you do that with this?

14 A No, ma'am.

15 Q Okay. And I think you indicated those are fragments of
16 that rock, correct?

17 A Yes, ma'am.

18 Q Did you swab that for blood?

19 A No, ma'am.

20 Q You also indicated that that was a fragment you
21 believed from the rock, correct?

22 A Yes, ma'am.

23 Q Did you swab that for blood?

24 A No, ma'am.

25 Q Is it fair to say that this house was, was fairly

Brendall Mathis - Cross-examination
by Ms. Jones

1 messy?

2 A Not as to some of them I've seen, but yes, ma'am.

3 Q Fairly run down, correct?

4 A Somewhat.

5 Q And, in fact, this house is now been condemned,

6 correct---

7 A I---

8 Q ---on Bonair Avenue?

9 SOLICITOR BOYD: Objection, Your Honor. Relevance.

10 THE COURT: Sustained.

11 Q Now, these stains you indicated on the carpet that
12 could of been blood, did you swab any of those?

13 A No, ma'am.

14 Q Okay. And you didn't swab the jacket?

15 A No, ma'am.

16 Q Didn't do any of that follow-up, correct?

17 A No, ma'am.

18 Q You just took a statement, took some pictures, signed a
19 warrant --

20 A Yes, ma'am.

21 Q -- fair to say?

22 I have nothing further, Your Honor.

23 THE COURT: Redirect?

24 SOLICITOR BOYD: Thank you, Your Honor.

25 THE COURT: Yes, sir.

Brendall Mathis - Redirect examination
by Solicitor Boyd

1 REDIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q You testified that when you initially spoke to
4 Mr. Ronnie Brannon he was hazy on the time frame of the
5 injuries?

6 A Yes, sir.

7 Q Okay. Subsequently, after speaking with him again, did
8 you -- were you able to narrow down the time frame?

9 A Yes, sir, once we, once we talked again we were able to
10 determine that it actually happened the morning of the, the
11 10th.

12 Q Okay. Were his answers to your questions more or less
13 coherent subsequent, after you spoke with him the first
14 time?

15 A When I talked with him on the 12th he was very clear
16 about what had happened at that time.

17 Q Okay. The rock in question, showing you State's 6, did
18 there appear to be any blood on that stone when you just saw
19 it?

20 A Not that I can tell. There was some discoloration on
21 one of the corners, but it doesn't -- it appeared to be like
22 the texture of the rock. It didn't appear to be any blood
23 at all.

24 Q Would you have swabbed every piece of evidence you saw
25 even if it didn't appear to have blood on it?

Brendall Mathis - Redirect examination
by Solicitor Boyd

- 1 A No, sir.
- 2 Q Okay. Did this fragment appear to have blood on it?
- 3 A No, sir.
- 4 Q If it appeared to have blood on it would you have had
- 5 it swabbed?
- 6 A Sure.
- 7 Q Okay. And this fragment?
- 8 A Yes, sir.
- 9 Q If it had blood on it, would you have had it swabbed?
- 10 A Yes, sir.
- 11 Q Okay. You testified you didn't have the rock
- 12 fingerprinted, did you?
- 13 A No, sir.
- 14 Q Okay. In your experience, can fingerprints be left on
- 15 any object?
- 16 A It's -- that's able to retrieve them, yes, sir.
- 17 Q Okay. In your experience, is a rock of this texture,
- 18 this apparent texture, a good candidate for a solid
- 19 fingerprint?
- 20 A No.
- 21 Q Okay. Is that why you didn't have it fingerprinted?
- 22 A Yes, sir.
- 23 Q Okay. And you told Ms. Jones that the victim smelled
- 24 of alcohol when you met with him?
- 25 A Yes, sir.

Brendall Mathis - Redirect examination
by Solicitor Boyd

1 Q In your experience in interviewing people for cases,
2 investigating cases, is it possible for a person to be drunk
3 and still tell the truth?

4 A Yes, sir.

5 SOLICITOR BOYD: No further questions.

6 THE COURT: Recross.

7 MS. JONES: I have no questions, sir.

8 THE COURT: You may step down, sir.

9 The State may call its next witness.

10 SOLICITOR BOYD: Thank you, Your Honor.

11 The State calls Doctor Bradley Davis.

12 THE COURT: Come forward, sir, to my left and be sworn.

13 BRADLEY DAVIS, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please, sir, and once you're
16 seated I'd ask that you state your name.

17 WITNESS: My name is Bradley Davis.

18 THE COURT: Mr. Boyd, your witness.

19 DIRECT EXAMINATION

20 BY SOLICITOR BOYD:

21 Q Good morning, Doctor Davis.

22 where do you work?

23 A I work at Spartanburg Regional Emergency Center.

24 Q Okay. What do you do there?

25 A I'm an emergency physician.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. How long have you been in that position?

2 A Eight years.

3 Q Okay. What are your current duties?

4 A My current duties are clinical, clinical work in the
5 Emergency Center, and I also have administrative duties for
6 the Emergency Center.

7 Q Okay. Are you some type of director or position?

8 A I'm the medical director of the Emergency Center.

9 Q Okay. Where did you get your medical degree?

10 A From Lake Lanier College of Osteopathic Medicine.

11 Q What year was that?

12 A That was in 2000.

13 Q Okay. And where did you do your residency?

14 A At Dozier Medical Center in Pennsylvania.

15 Q Okay. What did you do during your residency?

16 A I did emergency medicine residency and a transitional
17 year internship. So, it was four years total after
18 training.

19 Q Okay. And how long have you been at Spartanburg
20 Regional?

21 A For seven and a half, eight years.

22 Q Okay. Your best guess, how many trauma patients have
23 you seen in your seven or eight years at Spartanburg
24 Regional?

25 A Many. Multiple hundreds.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. Were you working on April 10th, 2011?

2 A Yes, sir.

3 Q Okay. Did you have occasion to treat Ronnie Brannon
4 that day?

5 A Yes, sir.

6 Q Okay. What did you treat him for?

7 A I treated him for head injury.

8 Q Okay. What was your diagnosis of his injuries?

9 A Traumatic head injury and multiple scalp lacerations.

10 Q Okay. Showing you State's 3, it's already in
11 evidence---

12 THE COURT: Mr. Hayes, you want to bring the lights
13 down for us. Thank you, sir.

14 Q Is that the injury you're talking, you're speaking
15 about of Mr. Brannon?

16 A That's one of the two lacerations.

17 Q Okay. Approximately how many centimeters is that
18 laceration?

19 A It's approximately ten centimeters.

20 Q Okay. Did you examine it to how -- about how deep was
21 that injury?

22 A The injury was down to the, what's called the galeal,
23 which is a covering of the skull, and there's very little
24 subcutaneous tissue in this area over the entire scalp. So,
25 approximately, if you had to have, give it a measurement, it

Bradley Davis - Direct examination
by Solicitor Boyd

1 would be, you know, approximately three-fourths of a
2 centimeter probably.

3 Q Okay. Is that considered a deep wound for a, a head
4 injury?

5 A Well, it's, it's a laceration down through the
6 subcutaneous tissue to the galeal. So, down to the covering
7 of the skull. So, certainly it was as deep as it could go.

8 Q Okay. And how many lacerations did you identify on his
9 head?

10 A Two.

11 Q Okay. Is this the other laceration identified?

12 A Yes, sir, that's a posterior scalp laceration.

13 Q And that means it's on the back of his head---

14 A Yes, sir.

15 Q ---correct?

16 Okay. How long is that laceration?

17 A It's approximately four centimeters.

18 Q Okay. Is that laceration as deep as the first one?

19 A It was probably slightly more shallow because of it
20 wasn't as -- anterior laceration wasn't a bulging injury.
21 So, it seemed to take more subcutaneous tissue than the
22 posterior injury.

23 Q In layman's terms, what does that mean?

24 A The, the front injury, because it was a larger injury,
25 took more of the tissue underneath with it as it got pulled

Bradley Davis - Direct examination
by Solicitor Boyd

1 away from the, the scalp. The posterior injury was probably
2 more of a direct injury or not as much of an indirect
3 injury. So, it was more just a laceration and not pulled
4 away from the scalp.

5 Q Okay. What treatments did you administer to
6 Mr. Brannon?

7 A The treatments that we administered for him was a C.T.
8 Scan of the brain to confirm that there was no skull or
9 intracranial injury, that means inside the skull, injury to
10 the brain or bleeding inside the skull, and then we started
11 to clean the wound and repaired it primarily with sutures.

12 Q Okay. How many sutures did you use?

13 A I can't recall exactly the number that was listed, but
14 I mean it took a number of sutures to close both wounds.

15 Q Would you say more than ten?

16 A Yeah, it's listed on the medical record.

17 Q Okay. You mentioned you gave Mr. Brannon a C.T. Scan?

18 A Yes, sir.

19 Q Briefly what does a C.T. Scan show?

20 A A C.T. Scan will show any type of bone injury. What we
21 are specifically looking for in that situation was a skull
22 fracture underneath the areas of trauma or any kind of
23 bleeding inside the brain which would be what we would call
24 a subdural hematoma or, from the traumatic force, that a
25 blood vessel ripped underneath the skull and caused bleeding

Bradley Davis - Direct examination
by Solicitor Boyd

1 and that could potentially be harmful.

2 Q Do you normally order C.T. Scans for lacerations?

3 A We do not order C.T. Scans for simple lacerations
4 because of the radiation exposure that's incurred by them.

5 Q Okay. Why did you feel it necessary to order a C.T.
6 Scan in Mr. Brannon's case?

7 A It was necessary medically in this case to order a C.T.
8 Scan because of a number of instances. Although the patient
9 had a Glasgow Coma Score of 15, he was clinically
10 intoxicated and thus a poor medical historian. He could not
11 describe symptoms. That could be somewhat concerning for
12 injury inside the head or I guess more specifically some
13 symptoms from alcohol intoxication may mimick symptoms of
14 injury inside the head, and then with the nature of the
15 wound, although externally we didn't see any injury on
16 direct examination, we needed to make sure there was no
17 skull fracture that had happened or any internal injury
18 because of, because of the, the nature of the wounds and
19 because of the nature of the, the presentation of the
20 patient. The patient was intoxicated and could not provide
21 a reliable medical history symptoms standpoint to help us
22 determine if there was or was not an internal injury to the
23 brain.

24 Q Okay. Is a C.T. Scan capable of showing concussions?

25 A No, sir.

Bradley Davis - Direct examination
by Solicitor Boyd

1 Q Okay. Can a person have a concussion, but have a
2 positive C.T. Scan?

3 A A person can have a -- concussion's a clinical
4 diagnosis from symptoms. So, a concussion will not show up
5 on a C.T. Scan or M.R.I. or any imaging study. So,
6 certainly a concussion is caused by traumatic injury to the
7 head. So, anytime there's traumatic injury, whether or not
8 that results in a laceration or skull fracture, anything
9 like that, somebody can suffer a concussion with or without
10 any of those things.

11 Q A person suffering a concussion, could they be a poor
12 historian with a concussion?

13 A Certainly.

14 Q Okay. In your experience as a trauma physician, having
15 seen multiple hundreds of patients, are lacerations
16 generally a result of direct impact?

17 A Lacerations can occur with any kind of traumatic
18 injury. This appears, from a medical standpoint, to be not
19 what we call a penetrating trauma or a trauma caused by some
20 sort of sharp object, but more of a blunt trauma because of
21 the, the laceration type of---

22 Q Okay. And from a medical standpoint, would the
23 laceration to the front of Mr. Brannon's head be caused by a
24 direct blow or a indirect or a glancing blow?

25 A This is, you know, the speculation with this type of

Bradley Davis - Direct examination
by Solicitor Boyd

1 injury is that force applied to this wound was that, was
2 indirect or at an angle and thus caused the evulsion. That
3 means it kind of peeled the skin back. It's not just a
4 single slight line. You see that there's a crescent shape
5 and then there's skin and subcutaneous tissue pulled down.

6 Q Okay. Is a direct blow to the skull more, more capable
7 of saying I guess -- let me rephrase it.

8 Is a direct blow more dangerous to a patient than an
9 indirect blow?

10 A I would say that either blow is, is dangerous to a
11 patient. Certainly a direct blow, you could argue that that
12 may cause, because the force is directed perpendicular to
13 the skull or directly at the skull, that it can cause more
14 injury to the skull and underlying structures to the brain.

15 Q In your medical opinion, medical opinion, was this
16 patient fortunate not to receive a direct blow to the skull?

17 A Well, I mean certainly I would say that anybody would
18 probably benefit from an indirect blow as opposed to a
19 direct blow.

20 Q Okay. In your medical opinion, are head traumas ever
21 considered deadly?

22 A Absolutely.

23 Q Why would they be considered deadly?

24 A Well, because, you know, certainly, you know, head
25 trauma, you know, there's an assault to the brain, and you

Bradley Davis - Direct examination
by Solicitor Boyd

1 have -- your skull is relatively thick in certain places,
2 but can easily be fractured and cause injury underneath the
3 skull, potential bleeding that could cause pressure and
4 cause injury to the brain. And, so, any head injury has a
5 potential to cause damage that the amount of C.T. Scans we
6 do of the head overall is much greater because of the
7 concern for head injury.

8 Q Please answer any questions Ms. Jones might have.

9 THE COURT: Ms. Jones, before you begin your
10 cross-examination, Mr. Boyd elicited several opinions from
11 this witness. He was never qualified by the Court as an
12 expert.

13 Mr. Boyd, are you offering him as an expert within the
14 field of emergency medicine?

15 SOLICITOR BOYD: Yes, sir, Your Honor.

16 THE COURT: Any objection to his designation as such?

17 MS. JONES: No, sir.

18 THE COURT: All right. Ladies and gentlemen, the
19 distinction I'm making here is that, under the rules of
20 evidence in South Carolina, witnesses are generally not
21 allowed to give opinions concerning matters. They're
22 allowed to give testimony concerning what they saw,
23 observed, or experienced, but not opinions. An exception to
24 that general rule is made for witnesses who, because of
25 their training or expertise in some field, they're declared

Bradley Davis - Direct examination
by Solicitor Boyd

1 to be experts by the Court, and for those witnesses they are
2 allowed to give opinions concerning matters.

3 This gentleman has now been offered to the Court as an
4 expert within the field of emergency medicine. The defense
5 is not objecting to that designation. So, I will designate
6 him as an expert. He's been offering opinions and he
7 appears to be qualified as such. But I want to be sure that
8 he's formally designated as an expert within that field.
9 We'll allow him to state his opinions within the field.

10 You may proceed, Ms. Jones.

11 MS. JONES: Thank you, Your Honor.

12 THE COURT: Bring the lights up.

13 BAILIFF: I'm trying to.

14 THE COURT: It takes a minute.

15 BAILIFF: It's slow this morning.

16 THE COURT: There we go.

17 MS. JONES: There we go.

18 THE COURT: You may proceed, Ms. Jones. Thank you.

19 MS. JONES: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. JONES:

22 Q You were the emergency doctor on, on the scene so to
23 speak, is that correct?

24 A Yes, ma'am, I was working that day.

25 Q Okay. You were -- isn't it fair to say that the

Bradley Davis - Cross-examination
By Ms. Jones

1 patient was brought in at round 12:11PM, is that correct?

2 A That -- if the admission time says so on the medical
3 chart.

4 Q Okay. And, in fact, he was released at about 2:25,
5 correct?

6 A The discharge time is on the chart too.

7 Q Okay.

8 A Whatever that says.

9 Q Well, your recollection, you only treated him for about
10 a couple hours, correct?

11 A Yes, ma'am.

12 Q Okay. He didn't need surgery, correct?

13 A No, ma'am.

14 Q Didn't take him to the O.R.?

15 A No, ma'am.

16 Q Okay. You talked a lot about a fractured skull and,
17 and different things.

18 According to your assessment, Mr. Brannon didn't have a
19 fractured skull---

20 A No, ma'am.

21 Q ---correct, and, in fact, you treated his wound with
22 some sutures, correct?

23 A Yes, ma'am.

24 Q It appears that you did nine sutures in the anterior
25 and six sutures in the posterior, is that correct?

Bradley Davis - Cross-examination
By Ms. Jones

- 1 A Yes, ma'am.
- 2 Q Okay. And, in fact, you used a local anesthesia,
- 3 right?
- 4 A Yes, ma'am.
- 5 Q You didn't even put him under?
- 6 A No, ma'am.
- 7 Q Okay. So, he was basically alert for the whole
- 8 process?
- 9 A Yes, ma'am.
- 10 Q Okay. Stitches, is that fair to say?
- 11 A Yes, ma'am.
- 12 Q You also indicated that he was intoxicated, correct?
- 13 A Yes, ma'am.
- 14 Q And that he was a poor historian, correct?
- 15 A He was a poor medical historian, yes, ma'am.
- 16 Q Okay. In fact, according to the hospital notes, he
- 17 couldn't even recall what had happened other than he was
- 18 drinking alcohol, correct?
- 19 A Yes, ma'am, we don't -- we never ask about situations
- 20 that occur that lead to something. We ask about symptoms
- 21 that may be helpful in determining a patient's medical
- 22 condition at the time.
- 23 Q But you also want to know how the injury happened,
- 24 correct?
- 25 well, you talked about the indirect and the direct

Bradley Davis - Cross-examination
By Ms. Jones

1 blows and how that might be important and how it might not
2 be important, correct?

3 A Yes, I was giving you my opinion on the nature of the
4 injury because of the way that the laceration looked.

5 Q Okay. And this, this patient couldn't tell you how
6 this injury had occurred, whether, how he was hit, what he
7 was hit with, correct?

8 A Not clearly, no, ma'am.

9 Q And that is one of the reasons why you had to order the
10 C.T. Scan cause you wanted to make sure you got everything
11 cause he couldn't tell you?

12 A Right, we, we ordered the C.T. Scan because he can not
13 provide a good medical history that, support that nothing
14 was wrong inside his head. So, we needed to make sure that
15 that was the case.

16 Q Okay. And, in fact, when you discharged him, one of
17 the things you had told him is he needed to stop drinking
18 alcohol?

19 A Yes, ma'am.

20 Q Okay. He was very intoxicated and he showed signs of
21 alcoholic abuse?

22 A Yes, ma'am.

23 MS. JONES: I have nothing further, Your Honor.

24 THE COURT: You may redirect.

25 SOLICITOR BOYD: Thank you, Your Honor.

Bradley Davis - Redirect examination
by Solicitor Boyd

1 REDIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q If a patient appears to be intoxicated, severely
4 intoxicated, would it be good medical practice to put him
5 under anesthesia, general anesthesia?

6 A No, I mean it depends, it depends on the situation.
7 Now, if somebody is intoxicated, they need an emergency
8 surgery, then certainly those folks would be under general
9 anesthesia. The, the local anesthesia that he received,
10 that the victim received for his wounds was the standard
11 practice for repair for those type of wounds.

12 Q Okay. Can a patient ever be a poor historian due to
13 head trauma?

14 A Absolutely.

15 Q Can, can you, in your medical opinion, attribute his
16 being a poor historian a hundred percent to head trauma or a
17 hundred percent to alcoholism?

18 A I can not differentiate what caused the nature of his
19 being a poor historian. But at that time when he was
20 clinically evaluated he was not able to offer the
21 information that we needed to make sure that he was
22 medically okay at the time thus requiring further studies
23 that may not have been needed to be done if he was not a
24 poor historian for whatever reason that he was. But
25 certainly head trauma, intoxication, or base line mental

Bradley Davis - Redirect examination
by Solicitor Boyd

1 status could all lead to being a poor historian.

2 Q Did it matter to you why he was a poor historian?

3 A Did it matter to me why he was a poor historian?

4 well, the fact that he was a poor historian was the
5 only thing that was needed at that time to clinically treat
6 him.

7 Q So, you couldn't attribute his inability to recall what
8 happened to his alcohol abuse, could you?

9 A I can not speculate what caused his, his being a poor
10 historian.

11 Q So, it's equally feasible that his ability to recollect
12 was due to his head trauma?

13 A I could not speculate whether or not it's from head
14 trauma, alcohol abuse, or another cause.

15 Q But as his treating physician, it didn't matter to you?

16 A At that point in time, what mattered to me was that he
17 could not provide me with a medical history that, that I
18 needed to make sure that he didn't have a life threatening
19 injury. So, I needed to do further studies at that point in
20 time.

21 Q And that's why you ordered the C.T. scan?

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

23 Q Okay. No further questions.

24 THE COURT: Recross?

25 MS. JONES: No, sir.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 THE COURT: Sir, you may step down.

2 SOLICITOR BOYD: Your Honor?

3 THE COURT: Would you like to excuse the witness?

4 SOLICITOR BOYD: Please, Your Honor.

5 THE COURT: Any objection?

6 MS. JONES: No, sir.

7 THE COURT: Sir, you're free to go. Thank you very
8 much.

9 WITNESS: Thank you, sir.

10 THE COURT: State may call its next witness.

11 SOLICITOR BOYD: Yes, Your Honor.

12 State calls---

13 THE COURT: Is this gonna be a fairly lengthy witness
14 you think?

15 SOLICITOR BOYD: Not too lengthy, Your Honor.

16 THE COURT: All right. You may call, call him now.

17 SOLICITOR BOYD: State calls Lewis Nelson.

18 THE COURT: Come forward, sir, and be sworn.

19 LEWIS NELSON, having been first duly
20 sworn, testified as follows:

21 THE COURT: Have a seat please, sir, and once you're
22 seated, state your name.

23 WITNESS: My name is Lewis Nelson.

24 Thank you.

25 THE COURT: Your witness, Mr. Boyd.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 DIRECT EXAMINATION

2 BY SOLICITOR BOYD:

3 Q Morning, Mr. Nelson.

4 A Morning.

5 Q Where do you work?

6 A Spartanburg Public Safety.

7 Q What are your duties there?

8 A I'm a criminal investigator in the criminal
9 investigations division.

10 Q Okay. How long have you been doing that?

11 A Been doing that for about four years now.

12 Q Okay. And how long have you been in law enforcement?

13 A Nearly 18 years.

14 Q Okay. How did you become involved in Mr. Brannon's
15 case?

16 A Traditionally in cases sometimes we get assigned to do
17 follow-ups, to go out and do follow-ups on certain cases.
18 This is one of those cases where I was assigned as a
19 follow-up to just make sure that state, we had statements
20 and whatnot in this particular case.

21 Q Okay. As part of your follow-up, did you go to
22 Bonair Avenue?

23 A I did.

24 Q Whose home did you know that to be?

25 A Mr. Brannon, Ronnie Brannon.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 Q Okay. Why did you go there?

2 A I was directed to, to go there to recover some items
3 that were a part of a incident that the police were
4 dispatched to.

5 Q Okay. Did you know what you were collecting prior to
6 your approval?

7 A Yes, I think it was a, it was a rock and a jacket and I
8 think it was a towel also that was suppose to be collected.

9 Q Did you collect those items?

10 A Yes, I did.

11 Q What did you do when you collected those items?

12 A Once I collected the items -- I went over, I went over
13 to Mr. Brannon's house. He was on the front porch I
14 believe. I spoke with him. I explained who I was, and my
15 purpose for being there, and I told him that I needed to
16 recover these items. The items were readily available. I
17 took custody of them, and I returned them to City Hall and
18 placed them into our evidence.

19 Q Have the items that you collected been secured in
20 evidence at City Hall ever since you collected them?

21 A Yes, they have.

22 MS. JONES: Objection, Your Honor. He is not a
23 qualified witness to determine whether or not it was
24 properly secured in the evidence room. That would be the
25 evidence technician.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 Q Did you retrieve those items from the evidence locker
2 at City Hall?

3 THE COURT: So, you withdrew the last question?

4 SOLICITOR BOYD: Yes, sir, Your Honor. Withdrawn.

5 THE COURT: All right. Go ahead.

6 Q Did you retrieve those items from the evidence locker
7 at City Hall?

8 A Yes, I did.

9 Q Did you bring those with you today?

10 A Yes, I did.

11 SOLICITOR BOYD: Okay. Your Honor, I need to mark
12 three exhibits if the Court will permit.

13 THE COURT: Yes, sir.

14 Q Do you have those items in the, a box with you?

15 A Yes, sir.

16 Q Okay. Can you retrieve what's marked as a towel out of
17 the box?

18 A Yes, I can.

19 Q Investigator Nelson, is that the towel that you
20 retrieved from Bonair Avenue?

21 A Yes, this is the towel I retrieved that day.

22 SOLICITOR BOYD: Your Honor, I like to mark this for
23 identification as State's 16.

24 THE COURT: Be marked for identification purposes.

25 (WHEREUPON, the towel was marked as State's Exhibit No.

Lewis Nelson - Direct examination
by Solicitor Boyd

1 16 for identification purposes only.)

2 Q Investigator Nelson, can you retrieve what's labeled as
3 a jacket out of that same box?

4 A (Witness complies.)

5 Q Is that the jacket you retrieved from Bonair
6 Avenue?

7 A Yes, it is.

8 SOLICITOR BOYD: Please allow the clerk to mark that as
9 State's Exhibit 16 or State's Exhibit 17 for identification.

10 (WHEREUPON, a jacket was marked as State's Exhibit No.
11 17 for identification purposes only at this time.)

12 Q Finally, can you pull out the last item in that box?

13 A (Witness complies.)

14 Q What is in your hand?

15 A This is a rock that was on the front porch when I
16 arrived at Bonair that is believed to be used in this
17 incident.

18 Q Is that the same rock you put into evidence?

19 A Yes, sir, it is.

20 SOLICITOR BOYD: Your Honor, I'd like to mark this for
21 identification State's 18.

22 THE COURT: Be so marked for ID purposes.

23 (WHEREUPON, the rock was marked as State's Exhibit No.
24 18 for identification purposes only at this time.)

25 Q Investigator Nelson, besides collecting the items that

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by Solicitor Boyd

1 you just identified, did you do anything else in this case?

2 A Well, the day that I went to the residence, I went
3 ahead and asked Mr., Mr. Brannon to sign a medical release
4 so that we could obtain his medical records from the night
5 that he went to the hospital.

6 Q At what point did your involvement in this case cease?

7 A Pretty much at the point once I recovered the evidence
8 and the medical records and just put together the case file.

9 SOLICITOR BOYD: Okay. No further questions, Your
10 Honor.

11 THE COURT: Your witness, your witness, Ms. Jones.

12 MS. JONES: I have no questions, Your Honor.

13 THE COURT: You may step down. Thank you very much.

14 All right. Ladies and gentlemen of the jury, we've
15 been going for a short while. We'll take a break at this
16 time. If they're smokers we'll take care of that for you
17 during this break. So, this will be a little longer than
18 just a trip back to the jury room.

19 As always, I'll instruct you not to begin any
20 discussions until I've advised you to do so. You may retire
21 at this time. Thank you very much.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Just for Court planning purposes, how many
25 more witnesses do you anticipate, Mr. Boyd?

1 SOLICITOR BOYD: One more, Your Honor.

2 THE COURT: One more?

3 Is that concerning this evidence, is that what we're
4 gonna do?

5 SOLICITOR BOYD: Yes, Your Honor.

6 THE COURT: All right. Okay. We're in recess for
7 about ten minutes. Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Is the State ready to proceed?

10 SOLICITOR BOYD: State's ready, Your Honor.

11 THE COURT: Is the defense ready?

12 MS. JONES: We are, sir.

13 THE COURT: Bring the jury in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. The record will reflect the
17 jury has returned to the courtroom.

18 The State may call its next witness.

19 SOLICITOR BOYD: Thank you, Your Honor.

20 State calls Ronnie Brannon.

21 THE COURT: Come forward, sir, to be sworn.

22 RONNIE BRANNON, having been first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat, sir.

25 WITNESS: Yes, sir.

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by Solicitor Boyd

1 THE COURT: Once you're seated I'm gonna ask that you
2 state your name please.

3 WITNESS: Ronnie Lee Brannon.

4 THE COURT: All right. Have a seat, sir.
5 Mr. Boyd, your witness.

6 SOLICITOR BOYD: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR BOYD:

9 Q Mr. Brannon, on April 10th, 2011, where did you live?

10 A I stayed on Bonair---

11 Q Okay.

12 A ---Avenue.

13 Q Is that in Spartanburg County?

14 A Spartanburg County.

15 Q Okay. Do you know John Wayne Brannon?

16 A Yes, that's my first cousin.

17 Q Okay. How long have you known Mr. Brannon?

18 A All my life.

19 Q Okay. Has John Wayne Brannon ever stayed at your
20 house?

21 A No, never.

22 Q Was he staying with you at Bonair anytime this
23 year?

24 A Yes, he was.

25 Q Okay. What were the terms of your arrangement with

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 Mr. Brannon?

2 A Well, my father had passed away and he stayed with my
3 father, and when my father passed away somewhere in January,
4 and he didn't have nowhere to go after my father died cause
5 my sister was clearing his apartment.

6 So, he came to me and asked me could he put some
7 clothes on my back porch for a few days and I told him yes,
8 you know. I said, you know, you didn't have no where to put
9 them, yes, you can put them on the back porch, and then he
10 asked me, he say well, once I put them on there, he say can
11 I have a few days to stay till I can find me somewhere,
12 about three days, to a week, and I told him yes, you can
13 find yourself somewhere to go within that time limit, yes,
14 you know. I told him he could stay.

15 So, I say a week came, another week came, and I told
16 him, I say, you know, I got a lot of my wife's stuff in
17 here, and, you know, she's staying with her brother, you
18 know, cause me and her separated, and I say, you know, it
19 gonna be conflict between me and her by you staying here.
20 So, as soon as possible, you know, you need to leave. So,
21 he understood what I was saying.

22 So, he kept on saying he gonna try to find somewhere to
23 go. So, I kept giving him time, and then time started
24 getting where me and him start having conflicts, got to
25 arguing, and then I couldn't have friends around because he

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by Solicitor Boyd

1 was trying to bogart them when they came to my house, and I
2 was telling him, I said, them my friends, you know. So, you
3 can't take over my house that way. I say, you know, you
4 just suppose to be here that long or whatever and so what.

5 So, one night, me and him we got doing a little
6 drinking. You know, sometimes, you know, we sit on the
7 porch, and we have a, you know, we sit back and drink and
8 shoot the stuff as usual, and this particular night, he had,
9 he had brought his girlfriend there, and I told him, you
10 know, my wife ain't here. I don't have no ladies in the
11 house, and I say I'm doing good letting you stay here.

12 So, he got kind of pissed off about that. Ah, your
13 wife ain't gonna mind, she ain't gonna mind. I said you
14 don't know my wife. He said well, man, look here, you know,
15 it ain't about all this, it ain't about all that. So, me
16 and him, we got into a conversation. Then he got where he
17 pushed me over the couch, and I said no, you not gonna be
18 fighting in my house. I said well, you need to just go now.
19 I mean we not gonna, we not even gonna let it go this far
20 like this.

21 I said you was here just for a week and just to put
22 your clothes here, and now you're gonna try to run my house,
23 now you done moved your clothes in. I said no, it ain't
24 gonna go.

25 So, I was -- I had got real juice. He had got real

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1 juiced. So, I got mad, I got really pissed off at him, and
2 I -- and he got pissed off -- I really got pissed off when
3 he pushed me in my own house.

4 Q Mr. Brannon, let me stop you there.

5 A Uh-huh. (Affirmative).

6 Q I want to take you to Saturday before the incident.

7 A Yes, sir.

8 Q Okay. That would be April 9th of this year?

9 A Yes, sir.

10 Q Did you go to work that day?

11 A No, I worked in my yard.

12 Q Okay. You did yard work?

13 A I did yard work in my yard. He went, I think, and
14 washed cars that day --

15 Q Okay.

16 A -- if I'm not mistaken.

17 Q What time did you finish your work?

18 A Had to been around before dark, around about 8:00,
19 something like that.

20 Q Okay.

21 A It had to be.

22 Q What did you do when you got home?

23 A I was already home.

24 Q When you went inside the house, what did you do?

25 A When I went in the house I came in and, you know, just

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 dust myself off, came back out, walked to the store, and
2 grabbed me a few beers, came back to sit on the porch.

3 Q Okay. Who was with you that night?

4 A Well, Scott had came by that night. Then it was a girl
5 next door. You know, they usually come up on the porch and
6 we sit there, shoot, you know, shoot the stuff, you know.
7 sit and drink a few beers. So, he got off. He got off and
8 he walked up. He walked up that night and---

9 Q Who is he?

10 A That's my cousin, John Wayne, and he still wasn't no
11 trouble that night. I mean everything was, you know, really
12 peaceful that night.

13 Q Okay. About what time did you go to bed?

14 A I went to bed -- it had to be around about 11:00 or
15 12:00.

16 Q Okay. Did John Wayne Brannon go to bed before or after
17 you?

18 A I think I went to bed before him. I'm not for sure.

19 Q Were you drunk when you went to bed?

20 A Yeah, I felt pretty good.

21 Q Would you consider yourself an alcoholic?

22 A Yes, I am.

23 Q Okay. What time did you get up in the morning, and
24 that would be---

25 A That would be around about---

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by Solicitor Boyd

1 Q ---April 10th.

2 A ---7:30, something like that. I don't really sleep
3 that hard anyway.

4 Q Okay.

5 A So, when he, when he came in---

6 Q Mr. Brannon?

7 A Okay.

8 Q When you woke up, was the defendant there?

9 A Yes, he had came in.

10 Q Okay. What did you and he do that morning?

11 A Well, we started drinking. We had something left from
12 last night.

13 Q Okay. Did you and he get into an argument that
14 morning?

15 A Yes, we did because---

16 Q What was -- What was that argument about?

17 A The argument was about -- he brought up something that
18 happened, when I was saying from the get go, the argument
19 that me and him had got into, and I told him I didn't want
20 to hear -- I wanted to have a peaceful day. I didn't want
21 to hear none of that, you know, not today. I said, you
22 know, we feeling good, let's go ahead and finish our little
23 drinks and, you know, grab something to eat and, you know,
24 that's, you know, that's it.

25 He said well nah, he say you been on me for getting out

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1 and, and, you know, we been arguing and this, he said you
2 done wanting to fight me and all this right here, and I said
3 Wayne, you too big for me. Look how big he is, man. I say,
4 ain't no use in me trying to fight you. That's a losing
5 battle.

6 You know, I said let's just call it like this right
7 here. I said you -- let's take you a walk and we'll just
8 erase this right here, we'll talk about you leaving another
9 day, and he said well, I don't have to go nowhere. I said
10 yes, you have to go somewhere. I say you done stayed over
11 your limit, you know.

12 When the -- the last time when the police came out on
13 that, before I was, before you cut me off, they came out and
14 they wouldn't take neither one of us to jail, but they
15 remove me -- well, wouldn't remove him from the house
16 because he had put clothes inside the house. So, they said,
17 they said well, we can stay there. They got to give him 30
18 days to stay there because he had clothes in my house --

19 Q Okay.

20 A -- you know.

21 Q So, you've had prior difficulties with the defendant?

22 A Yes, before this accident.

23 Q You were trying to get him to leave your house?

24 A To leave my house.

25 Q Okay. Back to the morning of the 10th.

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by Solicitor Boyd

- 1 A Yes, sir.
- 2 Q Okay. You got into the same argument?
- 3 A Yes, over that, over that point right there.
- 4 Q Okay. Did you ask him to leave that morning?
- 5 A Yes, I did.
- 6 Q Okay. Did he leave?
- 7 A I thought he left.
- 8 Q Okay. When you thought he left, did he exit the front
9 door?
- 10 A He exited the front door.
- 11 Q Okay. What did you do after he exited the front door?
- 12 A I went and I put away the little dishes what we had ate
13 out of. I threwed them back on my microwave. When I
14 throwed them back on my microwave, I went into my little
15 refrigerator, I got a little portable refrigerator, I put a
16 little Bud or something that I had, I put it back in the
17 refrigerator.
- 18 When I turned around to come back through the kitchen
19 to go through the living room, he was standing there with
20 the brick and that's the only thing I could really remember.
21 He just -- I just seen him with the brick held up like that
22 and that was it. I couldn't remember nothing else. Only
23 thing I could remember was falling backwards and just seeing
24 him. I just seeing the look in his face like I done did
25 your girl, something, I done did something to him when I was

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by Solicitor Boyd

1 trying to help him.

2 Q Okay.

3 A You know, I mean I just seen -- that's the only thing
4 that I seen and I still see that now.

5 Q When you turned around you saw---

6 A I saw---

7 Q ---your cousin?

8 A ---my cousin with that brick in his hand coming down on
9 my face like that.

10 Q Okay.

11 A And then the only thing I can remember is falling
12 backwards.

13 Q Okay. Were you knocked unconscious?

14 A I was gone.

15 Q Okay. To your best guess, how long do you think you
16 were out?

17 A It had to be an hour or so, hour or two or whatever.
18 It had to be for a good bit.

19 Q And when you came to, did you realize you were hurt?

20 A No, not really. I didn't really -- I was just dazed.
21 I didn't really know I was really bleeding like that.

22 Q Okay. When you realized you were injured, did you try
23 to stop the bleeding?

24 A I tried to get a shirt or something just to wrap around
25 me. When I wrapped that around, I just feel like I took a

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1 little time trying, trying to get myself back together. I
2 laid back down on the floor. I just laid there cause I
3 didn't have strength to get back up, you know. I mean I
4 know it had to be with the alcohol too because I had been
5 having to drink that night and then I woke up at least and
6 finished drinking some that morning.

7 Q You, you said -- did you use a shirt wrapped around
8 your head?

9 A Yes, I used, I used a couple of things to try to stop
10 it, but when I seen it wouldn't stop, I couldn't do nothing.
11 I just laid back down.

12 Q Did you use a jacket?

13 A I used a jacket. I used a towel. I used a couple more
14 shirts. Just anything just -- and then when I, when I
15 finally laid, when I, when I finally heard somebody at the
16 door, I didn't know it was him coming back or whatever. I
17 didn't know who was at the door. I just heard somebody
18 calling my name and it was Scott, and when -- he kept
19 calling me. I was trying to get to the door. I was trying
20 to get myself together and wanted to get to the door to see
21 to anybody could get me some help. I was trying to see
22 that.

23 Q And then did Scott, did Scott come into the house?

24 A He came on. He entered the house.

25 Q Did he try to stop the bleeding too?

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by Solicitor Boyd

1 A Yeah, he got and he started wrapping stuff around it
2 and stuff, and then he asked me did, do I know how bad I'm
3 hurt, and I told him. I said no.

4 Q Did you go to the hospital with Scott?

5 A I went to the hospital with Scott because Scott say
6 probably be a little bit too late.

7 Q Did Scott call 9-1-1?

8 A He called 9-1-1.

9 Q Okay. Do you know if they were sending an ambulance?

10 A I didn't know. I didn't know nothing about that, no.
11 Like I say, I was, I was really pretty well put out.

12 Q Scott drove you to the hospital?

13 A Yes, he drove me. I remember him driving me to the
14 hospital because before we went to the hospital I could
15 remember him going -- he stayed up the street from me. I
16 remember him going to let his wife know that I was hurt real
17 bad because -- he didn't want to have it with her or
18 whatever and she just said you just get him to the hospital.
19 She says the ambulance get there or whatever, I'll try to
20 see what I can do to meet y'all at the hospital.

21 Q Okay. And then when you got to the hospital you were
22 treated by Doctor Davis?

23 A Yes, I was treated by him. Scott signed me in.

24 SOLICITOR BOYD: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

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1 (Pause.)

2 Q Mr. Brannon, I'm showing you what's been marked for
3 identification as State's Exhibit No. 16.

4 May I approach the witness, Your Honor?

5 THE COURT: You certainly may.

6 Q Mr. Brannon, I'm holding for you State's Exhibit 16.
7 Do you recognize this?

8 A (Witness nods affirmatively.)

9 Q What is this?

10 A That's one of my house towels.

11 Q Is this your towel?

12 A Yes, it is.

13 Q Okay. Is it discolored in anyway?

14 A Yes, that's my blood.

15 Q Is this a towel you used to stop the bleeding?

16 A All that, yeah. That was wrapped over my head too.

17 Q Was it layered in anyway?

18 Did you double it over?

19 A I do not know. I do not really because I did -- I was
20 just trying to stop the bleeding.

21 Q Can you show for the jury the discolorations on the
22 towel?

23 MS. JONES: I object, Your Honor. That was only for
24 identification. It's not been introduced into evidence, and
25 the chain has not been established to introduce it into

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1 evidence.

2 THE COURT: He's asking him to identify the
3 discolorations on that item. That's what the question was.

4 MS. JONES: Okay.

5 THE COURT: I'm gonna allow him to identify where the
6 discolorations are.

7 You may proceed.

8 A Yes, right here. Over there.

9 Q Would it be fair to say the brown stains --

10 A Is blood.

11 Q -- that's your blood?

12 A That's my blood.

13 Q Is this blood that you used the towel to soak from
14 the---

15 A Yes.

16 Q ---from the incident the morning of April 10th?

17 A Uh-huh. (Affirmative).

18 Q Okay. Were you at the house when Investigator Nelson
19 stopped by?

20 A Yes, to get the -- you talking about the light skinned
21 man, black man?

22 Q Yes, Investigator Nelson.

23 A Yes, I was.

24 Q Did he collect this item from you?

25 A Yes, he did.

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by Solicitor Boyd

1 Q Between the day of the incident and when he collected
2 the item, did you do anything to the towel?

3 A No, I did not. I did not touch the towel.

4 Q Okay. The last time you saw that towel was when
5 Investigator Nelson picked it up?

6 A Yeah, I know it's in -- I know -- I know it's nobody in
7 there because I didn't even go back in the house, and I
8 didn't, and I didn't even really spend the night back at the
9 house that night.

10 SOLICITOR BOYD: Your Honor, the State moves Exhibit 16
11 into evidence.

12 THE COURT: Objections?

13 MS. JONES: Your Honor, we object. The chain has not
14 been established. The evidence technician is still not been
15 here.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, I'm gonna ask you to step back to the jury room. I
18 have some matters at this time to take up with the lawyers,
19 and, as usual, don't begin any discussions until I tell you
20 to do so.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. I think your objection is to
24 the chain of custody of that item?

25 MS. JONES: It is, Your Honor, so the foundation for

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1 the admission of it has not been established. I think I---

2 THE COURT: Well, he's identified it as his towel that
3 came from his home. It's not like a drug or a glove or
4 something that's not an identifiable item. He's testifying
5 about an item that he is identified as specifically being
6 his towel from his home.

7 Do you have a case that says the chain of custody is
8 required on an item that can be identified by the witness
9 independently?

10 THE COURT: Your Honor, not specifically. It is our
11 contention that the towel was picked up by Officer Nelson,
12 turned over to the evidence custodian. The evidence
13 custodian hasn't been here to indicate whether or not he has
14 tampered or touched it in anyway.

15 THE COURT: Well, again, we're not talking about drugs
16 that you can't really tell which cocaine came from which,
17 which buy or which search. We're talking about an item
18 which this witness says was his, is his item that came from
19 his home and that's his blood. He's identified the item
20 directly without attaching it to anything. He's identified
21 it. He used it that evening to wipe up his own blood. I --
22 I'm just not aware of a case that requires a chain for that
23 type of evidence.

24 Now, if we were talking about, again, a sample of blood
25 or if we were talking about a chemical test, it is a medical

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1 test, or something like that, or if we were talking about an
2 illicit or illegal drug that they all look the same, then I
3 think the chain is required on those to prove that that
4 particular drug came from that particular search or
5 incident. But here I've got a witness who's identifying
6 this item as his own towel, that's his blood that came from
7 his home, he said yes, that's my towel.

8 State have a position on this?

9 SOLICITOR BOYD: Your Honor, it's non-fungible
10 evidence. There's testimony that this, Investigator Nelson
11 collected the item and Mr. Brannon identified it as his own,
12 and testified that it has his blood on it, Your Honor.

13 THE COURT: I don't think -- it's not a fungible item.
14 I'm gonna overrule the objection as to that particular item,
15 and, of course, we'll see if he can identify the others
16 independently without any other assistance.

17 So, overrule the objection. I'm gonna allow it in.

18 (WHEREUPON, State's Exhibit No. 16 was received into
19 evidence at this time.)

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: The record will reflect the jury has
24 returned and I have overruled the objection and admitted the
25 item into evidence.

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1 You may proceed.

2 SOLICITOR BOYD: Thank you, Your Honor.

3 THE COURT: It's admitted as, numbered the same as it
4 was marked for identification purposes.

5 CONTINUED DIRECT EXAMINATION

6 BY SOLICITOR BOYD:

7 Q Mr. Brannon, I'm also gonna show you what's been marked
8 for identification as State's Exhibit 17.

9 Do you recognize this item?

10 A Yes, that's my jacket I got from my father.

11 Q Did you have possession of this jacket on April the
12 10th?

13 A Yes.

14 Q What did you use this jacket for on April the 10th?

15 A Probably wore it.

16 Q Did you use this jacket in any way to stop bleeding?

17 A Yes, to hold around my face and all, everything, you
18 know.

19 Q This is your jacket?

20 A Yes, it is.

21 Q Is this the jacket that Investigator Nelson picked up
22 at your house?

23 A Yes, it is.

24 Q Do you see any, any discoloration---

25 A Yes.

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- 1 Q ---on that inside sleeve?
- 2 A All over that, sir, and here. So, yes, sir.
- 3 Q Is this discoloration your blood?
- 4 A Yes, it is.
- 5 Q Is this blood from the injuries you sustained?
- 6 A Yes, it is.
- 7 Q Okay. Is there blood on the inside of the sleeve?
- 8 A Yeah.
- 9 Q Is there blood on the inside back of the jacket?
- 10 A Yes.
- 11 Q Is your blood on the other sleeve?
- 12 A Yes, it is.
- 13 Q On the inside of the sleeve?
- 14 A (Witness nods affirmatively.)
- 15 Q Is there blood, your blood on the back of the jacket---
- 16 A Yes.
- 17 Q ---on the outside back of the jacket?
- 18 The last time you saw this jacket was when Investigator
- 19 Nelson took it from you?
- 20 A Yes.
- 21 Q Okay. Is this blood on the jacket the blood that you
- 22 sustained that morning?
- 23 A Yes.
- 24 Q Did you use this jacket to stop the bleeding?
- 25 A Yes, I used that jacket and I stopped, to stop the

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1 bleeding.

2 Q Okay.

3 A That's why I say that when I left the hospital I didn't
4 go back. I went and locked the house up because I didn't
5 know if he was still out there. So, I got---

6 SOLICITOR BOYD: Okay. Your Honor, State moves Exhibit
7 17 into evidence.

8 THE COURT: Any objection?

9 MS. JONES: Your Honor, we renew our objection to the
10 chain of custody, sir.

11 THE COURT: I'll make the same ruling. It will be
12 admitted as marked.

13 (WHEREUPON, State's Exhibit No. 17 was received into
14 evidence at this time.)

15 Q Mr. Brannon, I'm also gonna show you what's been marked
16 for identification as State's Exhibit 18, and ask if you
17 recognize the exhibit.

18 Mr. Brannon, do you recognize this exhibit?

19 A That brick came from the bottom of my sidewalk.

20 Q How do you know this is the brick that came from the
21 bottom of your sidewalk?

22 A Because I put it there.

23 Q When did you put it there?

24 A I put it there years ago.

25 Q Where did you get that brick from?

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1 A I got that brick from one of my friends who passed away
2 about five or six years ago, and matter of fact, we got that
3 rock when I was working with this man named Mr. Oakley in
4 Forest city, and he went off down by the bridge at -- he
5 was -- he loved rocks, and when he died I grabbed a few of
6 them because he stayed right behind me.

7 Q How was it that you're able to identify this rock to
8 the exclusion of other rocks?

9 A Because it's granite brick in design. He always loved
10 odd bricks, and I got a few more still in front of my yard
11 right there --

12 Q Okay.

13 A -- same as that one.

14 Q Was this brick placed at the corner of your sidewalk?

15 A Yes, that's it. Side of the -- that's at the bottom of
16 the sidewalk --

17 Q Okay.

18 A -- of my walkway. The sidewalk run up, and then that's
19 my sidewalk where the post run up.

20 Q And you're looking at State's Exhibit 15, the picture
21 of the corner of your sidewalk and the walkway?

22 A Uh-huh. (Affirmative).

23 Q Do you see the two rocks in the middle?

24 A Yeah.

25 Q Okay. There seems to be a patch of dirt above those

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by Solicitor Boyd

- 1 two rocks?
- 2 A Yeah, and that's where that one came from.
- 3 Q This rock came from that patch of dirt?
- 4 A Came from that patch.
- 5 Q Do you know this rock?
- 6 A Yes, I know that rock.
- 7 Q Okay. Did you see this rock---
- 8 A I seen---
- 9 Q ---on the morning of April 10th?
- 10 A Yes, coming at me not with one hand, but with two
- 11 hands. He didn't have one hand on that rock. He had two
- 12 hands on that rock.
- 13 Q whose hands were on this rock when you saw it?
- 14 A My cousin, John Wayne Brannon, hands was on that rock.
- 15 Q Was this the rock that he used to strike you in the
- 16 head?
- 17 A Yes, it was.
- 18 Q Okay. How did he have, held the rock?
- 19 A He had it up like this like I showed you earlier.
- 20 Q You have two hands above your head?
- 21 A Yeah, he had, he had two hands above his -- yeah, he
- 22 had, he had two hands above his -- yeah, he had it like that
- 23 and it just came just that was it.
- 24 Q He had it above his head with two hands?
- 25 A He had it above his head.

Ronnie Brannon - Direct examination
by Solicitor Boyd

- 1 Q Did he, did he strike you in a downward manner?
- 2 A A downward manner.
- 3 Q Okay. Where did this rock strike you?
- 4 A Right here.
- 5 Q What's the last thing you remember?
- 6 A Just going out.
- 7 Q Okay. Do you remember the defendant's face?
- 8 A Yes. Yes, I do.
- 9 Q Do you remember this rock above the defendant's face?
- 10 A Yes, I do.
- 11 Q Okay. In there any doubt in your mind?
- 12 A No doubt in my mind at all.
- 13 Q Is there possible that some other person had this rock?
- 14 A No, no, wasn't nobody in the house but me and him.
- 15 Q Okay.
- 16 A I mean I might drink and just, you know, like that, but
- 17 I am an appropriate drunk. I'm not anybody is, can not
- 18 remember a big brick like that hitting them in the head,
- 19 something is wrong with them.
- 20 Q Okay.
- 21 A I mean, you know, something got to be wrong. I see
- 22 that brick in my dreams a lot at night now, you know, just,
- 23 you know, looking like that. I know. I know.
- 24 Q Did Investigator Nelson collect this brick?
- 25 A Yes, he did.

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 Q Okay. Is this the first time you've seen the brick
2 since then?

3 A No, sir, it's not. I seen it when he had it.

4 Q When?

5 A I seen it when he hit me with that brick, and that
6 wasn't the first time I seen the brick because I put the
7 brick on my sidewalk. That was suppose to been decorated
8 coming up to my yard. That's where -- that's the first time
9 I seen that brick is when my friend, he dead and gone now,
10 God bless his soul, and that's where I got the brick at his
11 house to decorate my sidewalk with.

12 SOLICITOR BOYD: Okay. Your Honor, the State moves
13 Exhibit 18 into evidence.

14 THE COURT: Same objection?

15 MS. JONES: Yes, sir.

16 THE COURT: All right. Objection's noted, same ruling.
17 I'll admit it as marked.

18 (WHEREUPON, State's Exhibit No. 18 was received into
19 evidence at this time.)

20 Q Mr. Brannon, you testified earlier that you consider
21 yourself an alcoholic?

22 A Yes.

23 Q On average, how many drinks do you have a day?

24 A Depends on how much change I have.

25 Q Okay. On the---

Ronnie Brannon - Direct examination
by Solicitor Boyd

- 1 A The -- if I have loose money I'll buy me a beer.
- 2 Q Mr. Brannon, the night before you were struck, how much
- 3 did you have to drink?
- 4 A Well, I say about a good two 40-ounces?
- 5 Do you know what 40-ounces is?
- 6 It's a bottle.
- 7 Q Mr. Brannon?
- 8 A A bottle of beer.
- 9 Q A 40-ounce bottle of beer?
- 10 A Yeah.
- 11 Q At least two of those?
- 12 A Yeah, two, two will give me a good buzz.
- 13 Q Okay.
- 14 A Yes.
- 15 Q When you drink to excess, are you still able to
- 16 function?
- 17 A Yes.
- 18 Q To the best of your abilities?
- 19 A Yes.
- 20 Q Okay. And how long have you known your cousin?
- 21 A All my life.
- 22 Q Okay.
- 23 A He's like a big brother. He been like a big brother to
- 24 me all my life.
- 25 Q Okay.

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 A I never was around him a lot. But, you know, like when
2 he use to come around to us, you know, when we was little,
3 you know, he's about five or six years, you know, older than
4 me, and my oldest brother, he was in service for 25 years.
5 So, when he came around, we always looked up to him as a big
6 brother.

7 Q Okay.

8 A And, you know, right to today, you know, I mean I still
9 love him, but I just don't want to be around him period no
10 more.

11 Q Okay. When you mentioned earlier that you were having
12 problems with getting---

13 A Yes.

14 Q ---your cousin to leave your house, did it ever turn
15 physical?

16 A Yes, a couple of times.

17 Q Did you ever strike him?

18 A No way. I don't -- I think I be kind of crazy trying
19 to strike him.

20 Q Did you strike him that morning?

21 A No, I didn't.

22 Q Okay. Did you hear your cousin come back in the house
23 when you were in the kitchen?

24 A No, I didn't. It happened so fast. I turned around,
25 and, like I say, when I came out the kitchen and turned

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 around, the only thing I could see was that brick and him.

2 Q Okay.

3 A And the next person I seen was Scott, the one who took
4 me to the hospital.

5 Q Mr. Brannon, I'm showing you State's Exhibit 5.

6 Was that screen door on your house that morning?

7 A Yes.

8 Q Okay. Was there a main door inside that screen door?

9 A Yes.

10 Q Okay. Does that screen door make noise if you just
11 open it and shut it?

12 A Well, not really. Not no loud noise or whatever like
13 that.

14 Q Okay. Can you usually hear when people are in your
15 house?

16 A Yes, you know---

17 Q If---

18 A ---but, you know, my house is carpet all the way
19 through it.

20 Q Okay. But you didn't hear the defendant come back into
21 your house?

22 A No, I didn't.

23 Q You testified that you turned around and---

24 A I turned around. When I was coming out the kitchen I
25 turned around. When I got back two steps in the living

Ronnie Brannon - Direct examination
by Solicitor Boyd

1 room, that was him standing there and that's, that's it. He
2 hit him.

3 Q The last time you saw the brick?

4 A The brick and it hit me in my face by my cousin.

5 Q Okay. Is there any doubt in your mind that your cousin
6 struck you?

7 A No doubt in my mind whatsoever.

8 Q Okay. Please answer the questions Ms. Jones might have
9 for you.

10 THE COURT: Okay. Your witness, Ms. Jones.

11 MS. JONES: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. JONES:

14 Q You indicated that Mr. John Wayne Brannon is your
15 cousin, is that correct?

16 A Yes, ma'am.

17 Q Your first cousin?

18 A Yes, ma'am.

19 Q And Mr. John Brannon was staying with you for a while,
20 is that correct?

21 A No, it ain't then suppose to end like that, but it so
22 happened it did.

23 Q Okay. And you indicated you were married at the time?

24 A Yes.

25 Q Was your wife staying with you at all?

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 A She was staying with her brother.
- 2 Q Okay. Okay. Now, you indicated on the, the night of
- 3 April the 10th, or, I'm sorry, April the 9th, 2011, when
- 4 you came home from mowing a lawn, is that correct?
- 5 A April the 9th, yes, I always work in my yard.
- 6 Q Okay. And you came home and---
- 7 A I was already at home --
- 8 Q Okay.
- 9 A -- doing my own yard.
- 10 Q You were mowing your own lawn?
- 11 A My own yard.
- 12 Q I'm sorry.
- 13 A My own yard, yes.
- 14 Q Okay. So, you were mowing your own yard?
- 15 A Yes, ma'am.
- 16 Q Okay. You don't have a side business to, for
- 17 landscaping or anything like that?
- 18 A I do a lot of things for a lot of people in the
- 19 neighborhood, yes, I do.
- 20 Q Okay.
- 21 A I go around and do a lot of work.
- 22 Q So, you mowed your own lawn and you came inside?
- 23 A Yes.
- 24 Q Okay. Was anybody else there?
- 25 A No, not at the time.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q Not at the time?
- 2 A No, ma'am.
- 3 Q Just you?
- 4 A Yes, ma'am.
- 5 Q At what point is it your testimony that Mr. Brannon
6 came to the residence?
- 7 A It had to be later on that evening.
- 8 Q Okay.
- 9 A Cause---
- 10 Q Do you have any idea what time?
- 11 A Not exactly. Right about -- be around about 6:00 or
12 7:00 because, like I say, I think he went to work that
13 morning cause he had got some kind of job washing cars on
14 Union Street or something like that.
- 15 Q Okay. So, Mr. Brannon was working?
- 16 A Yes.
- 17 Q Okay. Did he bring anybody with him?
- 18 A No, he brought a few beers with him.
- 19 Q Okay.
- 20 A Yes.
- 21 Q So, he brought a few beers with him?
- 22 A Uh-huh. (Affirmative).
- 23 Q Did you have any beers?
- 24 A I had went to the store and I already had gotten them
25 before he got there.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. And how many beers did you get?

2 A I bought two.

3 Q Two.

4 Okay. And how long did it take you to consume those
5 two beers?

6 A I still had them in the can except half of them.

7 Q Okay. And saying throughout the night, you indicated
8 this is about 6:00 or 7:00 when Mr. Brannon came over, how
9 long did it take you to finish the beer and a half you had
10 left?

11 A Well, we got to drinking together when he came. So, I
12 say around about 10:30, 11:00. I really don't remember that
13 day. Once I get my feeling good I'm ready to lay down.

14 Q You're ready to get out?

15 A I'm ready to lay down.

16 Q Oh, lay down?

17 A Go to sleep, yes, ma'am.

18 Q Okay. So, it's your testimony then you went to bed
19 around 10:30 or 11:00?

20 A Somewhere in there.

21 Q Okay. And what time did you get up the next day?

22 A It was early. It had to be about 7:30, 8:00, somewhere
23 in there.

24 Q Okay. What's the first thing you do in the morning?

25 A What I do in the morning, it depends.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. Well, what did you do this particular morning in
2 April?

3 A That particular morning I grabbed -- I went to the
4 refrigerator and I grabbed a beer.

5 Q Okay. Where did you get that beer from?

6 You indicated that you went out and you bought your two
7 beers and you came home?

8 A Yeah, I had still had beer left over the night.

9 Q Okay. You had beer?

10 A Yeah, because he brought, he brought some with him too.

11 Q Okay.

12 A So, we still had a little bit there, and we sit there
13 and we drunk a little bit that morning.

14 Q Okay. So, it's your testimony that you and Mr. Brannon
15 started drinking beer that morning?

16 A Yes, we did.

17 Q Okay. Then what happened?

18 A Then we got, he got back to talking about something
19 that happened in the past.

20 Q What, what specifically?

21 A Like when I told, when I told you he got into that
22 accident, he got into that little falling out when I told
23 you he hit me and hit the counter too. Me and him got into
24 it. We got, he got -- he got to wanting to bring that back
25 up.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q Okay.
- 2 A I told him it's in the past. I didn't want to hear it.
- 3 I wanted to have a good day.
- 4 Q Okay. So, it's your testimony today that he brought up
- 5 some bad blood where you-all had a little fight over a
- 6 couch?
- 7 A Yeah, I brought back something, back something that was
- 8 already finished.
- 9 Q Okay. You're, and you're saying just leave it alone?
- 10 A Just leave it alone.
- 11 Q Okay. And did Mr. Brannon leave it alone?
- 12 A Yeah, for a minute.
- 13 Q Okay.
- 14 A And then he kept on bringing it back.
- 15 Q Okay.
- 16 A And then I told him I don't hear him no more. I'm
- 17 gonna have a peaceful day. I'm feeling pretty decent. I'm
- 18 feeling nice. Usually I go to church on that Sunday, but
- 19 that particular Sunday I didn't. I just chose to drink that
- 20 Sunday.
- 21 Q Okay.
- 22 A So, I wanted to just have a nice day, but he just kept
- 23 on bringing it back and he just kept messing with it.
- 24 Q Okay.
- 25 A And I just told him why don't you just go ahead and

Ronnie Brannon - Cross-examination
by Ms. Jones

1 leave and we'll talk about it some other day.

2 Q Okay.

3 A So, in that particular time I thought he just gonna go
4 on out the door and just said well, you know, I heard you,
5 and just, I do, just walked on out the door.

6 Q Okay. So, you didn't ask him to leave, he just got up
7 and---

8 A No, I told him to leave.

9 Q Okay. You said just leave?

10 A Yeah, yeah. Yes.

11 Q And your testimony today is that Mr. Brannon just got
12 up and left?

13 A Yes, I thought he was gone.

14 Q Okay. So, you saw him with your two eyes go out the
15 door?

16 A I seen him go out the door.

17 Q Okay.

18 A When he went out the door I turned around and went back
19 in the kitchen.

20 Q You went into the kitchen?

21 A Yes, ma'am.

22 Q Okay. And at that point did you hear anything?

23 A Did I hear anything?

24 Q Uh-huh. (Affirmative).

25 A No, I didn't hear anything.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay.

2 A Only thing I heard is me putting my pan on top of the
3 microwave, and then I put whatever I had left up in that
4 little refrigerator I had, and then when I turned around,
5 there he was in the living room.

6 Q Okay. He was in -- are you still in the kitchen at
7 this point?

8 A I'm coming out the kitchen.

9 Q Okay. And, so, you're---

10 A What I'm saying, when I, when I, when I, when I looked
11 up, when I turned around and looked up at the flash of my
12 eye, he was standing there with that brick --

13 Q Okay.

14 A -- and he hit me in my head.

15 Q Okay. Where is the---

16 A And I said look, that's what I'm saying to you.

17 Q Where specifically was he?

18 A He was in the middle of my living room.

19 Q He was in the middle of the living room?

20 A Cause I had to just turn around. It don't take that
21 long, over two steps in my house, cause the kitchen here,
22 the living room here. It don't take but that minute over.

23 Q Okay. So, you took two steps out and basically out of
24 the kitchen to the living room---

25 A Yeah, that's it.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q ---you looked up and there he is?
- 2 A Yeah.
- 3 Q And you saw the brick in this hand?
- 4 A In his hand.
- 5 Q Did he say anything to you?
- 6 A He didn't say anything. He just had---
- 7 Q He just hit you?
- 8 A He just had that crazy look in his eyes, a look that I
- 9 will never forget as long as I live.
- 10 Q Okay. And he -- and just say -- he just hit you?
- 11 A He just hit me.
- 12 Q Okay. And you fell to the ground?
- 13 A That was it.
- 14 Q Okay. And you fell in the living room?
- 15 Is that fair to say?
- 16 A I fell on the floor.
- 17 Q Okay. And then the next thing you remember is your
- 18 friend waking you up?
- 19 A Yes.
- 20 Q Or knocking on the door?
- 21 A Well, he was knocking on the door. I had got myself a
- 22 little bit together where I could put some cause I kept
- 23 feeling stuff running over me, and I was trying to get
- 24 myself together, but I was too weak. I kept falling and
- 25 laying back out.

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Q Okay. How, how many beers would you say you had that
2 morning before---
- 3 A Oh, that morning---
- 4 Q ---the whole night?
- 5 A That morning, we didn't have nothing but two and then
6 we had wine.
- 7 Q You had two and some wine?
- 8 A And some wine, yes.
- 9 Q Okay.
- 10 A It should be in one of them pictures.
- 11 Q Oh, the wine bottle?
- 12 A The wine bottle should be in one of those pictures --
- 13 Q Okay.
- 14 A -- if they took them in the living room.
- 15 Q Okay.
- 16 A Should be a wine bottle and a beer bottle.
- 17 Q Now, you recall talking with Investigator Mathis,
18 correct?
- 19 A Mathis?
- 20 Q Uh-huh. (Affirmative).
- 21 The officer who testified earlier today.
- 22 A Yes.
- 23 Q Okay.
- 24 A Yes.
- 25 Q He was the lead investigator and you spoke with him,

Ronnie Brannon - Cross-examination
by Ms. Jones

1 correct?

2 A Yes.

3 Q Okay. And do you recall talking with him about the
4 incident?

5 A Yes, I think I'm pretty sure, pretty clear, but I know
6 who hit me.

7 Q Okay. And do you recall telling the officer that when
8 you got home from cutting grass you had a couple of beers
9 and your cousin, Mr. Brannon, was already at the residence
10 with a friend?

11 Do you recall telling Officer Mathis that?

12 A I probably did.

13 Q Okay. So, initially, when he first interviewed you,
14 you indicated that you came home, you had a few beers,
15 Mr. Brannon was already at the residence with a friend?

16 A Well, honey, after that brick, I don't know what I
17 said. But I know who hit me with that brick.

18 Q That wasn't the question.

19 A Well---

20 Q Okay.

21 A What, what is you trying to ask me?

22 Q Do you recall telling Officer Mathis, it's shortly
23 after this incident, that you came home from cutting grass
24 and your cousin, Mr. Brannon, was already at the residence
25 with a friend and you-all started drinking beer?

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 Do you recall telling the detective---
- 2 A No, I don't recall.
- 3 Q ---officer that?
- 4 A I really don't.
- 5 Q Okay.
- 6 A I do not remember that.
- 7 Q Okay. And do you also recall that he'd been, you told
- 8 him this happened around five o'clock, this incident?
- 9 A Yes, I probably did tell him that.
- 10 Q Okay.
- 11 A Like I say, I was out.
- 12 Q Okay. And do you also recall, two days later, talking
- 13 with the officer and indicating you got in an argument over
- 14 \$20?
- 15 A Yes, I remember that.
- 16 Q Okay. And, in fact, you---
- 17 A Because Saturday when he had, when he -- I think he had
- 18 got paid or whatever, and then he came giving me \$20, and I
- 19 asked him what is \$20 gonna do for two or three months.
- 20 Yes, I remember that part. Yes, I do.
- 21 Q Okay. So, you're saying Mr. Brannon gave you \$20?
- 22 A Yes, he did give me \$20.
- 23 Q Okay. Well, do you recall in your statement you
- 24 indicated you were arguing cause he hadn't given you the---
- 25 A No, he gave me \$20.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q ---\$20?

2 A I was arguing that's all he had gave me.

3 Q Okay.

4 A You can't even get a room for \$20.

5 (WHEREUPON, a statement was marked as Defendant's
6 Exhibit No. 1 for identification purposes only at this
7 time.)

8 Q Okay. You also indicated that you wanted him out of
9 the house, correct?

10 A Yes.

11 Q Okay. So, you stated you hadn't given me or you've
12 only give me, according to your testimony today, you've only
13 given me \$20?

14 A Yes.

15 Q That's not enough. I want more. Get out of the house.

16 A No.

17 Q You didn't say that?

18 A No, that wasn't, that wasn't really the issue at all.

19 Q Okay.

20 A He could of kept that \$20 to be honest. I already had
21 a little change on me. I didn't need his money. Only thing
22 I needed him to go.

23 Q Okay.

24 A That was the whole thing from day one.

25 Q Well, let me ask you this.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Did you want him to leave cause you got into a little
2 fight about something that happened---

3 A No, that wasn't it. Because my wife have a lot of
4 things in that house, personal things. That was the main
5 reason, and that was the reason she wanted him out too.
6 That was the reason. She had her personal things in there.

7 Q Okay.

8 A And I didn't need him in there roaming around in the
9 house.

10 Q Okay. So, you wanted him out cause you had a lot of
11 things in the house and you didn't want him to steal
12 anything?

13 Is that your testimony today?

14 A No, I didn't want him in the house period.

15 Q Okay.

16 A Because me and him getting into conflicts, and I know
17 it's gonna result in something like this, and that was
18 something I was trying to stop.

19 Q Okay. Well, let's -- going back to April 10th or
20 April 9th, okay, is it your testimony that you-all had a
21 fight about \$20, and whether or not that was enough to cover
22 the rent?

23 A No.

24 Q And then you asked him to leave?

25 A No, I been had asked that man to leave for a hundred

Ronnie Brannon - Cross-examination
by Ms. Jones

1 times.

2 Q Okay. So, you're saying that that wasn't
3 specifically---

4 A He wasn't suppose to even been in my house after three
5 days. He just kept tucking in, tucking in, tucking. He
6 just kept moving a little here, a little there until he got
7 hisself situated in there. He didn't even suppose to be
8 there period.

9 Q Okay. Well, do you recall telling the officer that
10 that was the, that was your belief as to why Mr. Brannon hit
11 you is cause of this \$20 and you wanted him out of the
12 house?

13 A No, the reason why he hit me, the \$20 that he had gave
14 me, he came back wanting five of the 20 that he gave me and
15 I told him no.

16 Q Okay. So, now it's your testimony he came back into
17 the house, he's holding the brick and now---

18 A No, you're talking about another time. Don't try to
19 twist me because you not.

20 Q Okay.

21 A You know, like I say, I'm a focused drunk. Not an
22 idiot.

23 Q Okay. Well, I'm confused now.

24 When did he come back and ask for an additional \$5?

25 A That was the day before he hit me.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 Q Okay. And---

2 A And?

3 Q Okay. So, what specifically do you believe the reason
4 is he hit you in the head with the brick?

5 A Because he didn't have nowhere to go I guess.

6 Q Cause you kicked out of the house?

7 A Cause I wanted him out the house. Well, my aunt had
8 came and got half his clothes after we had -- I mean this
9 had been two weeks before. Then he kept some more clothes
10 back there that I wasn't even aware of. So, after this
11 accident I made sure that the time -- she kept on coming
12 because she wanted me to come, didn't want me to come to
13 court. She wanted me to talk to the judge for his behalf,
14 and I told her he left me to die.

15 Q Okay.

16 A He didn't call the ambulance. I felt even more better
17 if he would of just -- I could of took the lick, but I would
18 of felt better if he would of at least called the ambulance
19 instead of leaving me in that floor to die. He didn't even
20 have the remorse to call the ambulance. He just left me
21 there to die, to bleed to death.

22 Q Okay. Going back to the original -- I'm gonna hand you
23 something that's been labeled Defendant's Exhibit 1.

24 A Uh-huh. (Affirmative).

25 Q Do you recognize that?

Ronnie Brannon - Cross-examination
by Ms. Jones

1 A Yes.

2 Q Do you recognize that?

3 A Yes.

4 Q Okay. Is that the statement that you gave the
5 detective or Officer Mathis?

6 A Yes.

7 Q Okay. And at the time I'm sure Officer Mathis asked
8 you to explain what had happened, correct?

9 A Uh-huh. (Affirmative).

10 Q Okay. And at the time you told Officer Mathis that
11 you-all were at the house drinking, and he'd only given you
12 \$20, and that may or may not have been enough for the rent,
13 and you stated he had to go, correct?

14 A I had said he had to go required that -- I mean that
15 was just his \$20. That wasn't nothing about him getting out
16 my house.

17 Q But you indicated in your statement that you wanted him
18 out of the house?

19 A I been wanting him out from day one.

20 Q Okay. And, in fact, you went to the door and kind of
21 pushed him out, according to that statement, correct?

22 A According to the statement I done been hit in my head
23 with a brick and everything else. I can't remember all
24 that, ma'am.

25 Q Okay. Well, this, this was written two days after?

Ronnie Brannon - Cross-examination
by Ms. Jones

- 1 A I can remember him hitting me with that brick.
- 2 Q That wasn't my question.
- 3 This was written two days after the incident, correct?
- 4 A Yes, this right here, yes.
- 5 Q Okay. So, this memory was fresh in your mind?
- 6 A How can my memory be that fresh after a couple of days
- 7 getting hit with a big brick like that and stitches in my
- 8 head and this and that going on in my head?
- 9 Honey, no.
- 10 Q And you're saying your memory is better today than it
- 11 was two days after the incident?
- 12 A No, I still hear things, see things. I still see the
- 13 brick in my dream. I see a lot of things now. I see a lot
- 14 of things very different. It took a lot out of me. I don't
- 15 even trust people no more. Not nobody. It took my love for
- 16 people and took love from a lot of things for me. It took a
- 17 lot of myself if that's what you really want to know.
- 18 Q Okay. So, at the time you remembered pushing
- 19 Mr. Brannon out the door and shutting it and you walking
- 20 away?
- 21 A I remember---
- 22 Q Correct?
- 23 A I remember telling him to go on.
- 24 Q I say because we is not gonna argue about this on no
- 25 Sunday. I'm having a good Sunday, and I told him just go

Ronnie Brannon - Cross-examination
by Ms. Jones

1 on. When I told him to go on I meant for him to go on. I
2 left and went back in the kitchen. I done mentioned that to
3 you three times --

4 Q Okay.

5 A -- and nothing changed, you know. The only thing,
6 next, like I told you, when I was in the kitchen he done
7 came back in. I didn't know he had came back in in that
8 living room until I came out that kitchen and seen him
9 standing over me with that brick and hit me in my head and
10 that's it, and I don't have anything else other than that
11 there. I'm sorry.

12 Q Okay. So, I'm unclear.

13 Did you push him out the door or not?

14 A No, I just told him to go on.

15 Q Okay.

16 A If you call that a push, that's not a push.

17 Q Okay. So, you didn't try to push the door closed on
18 Mr. Brannon?

19 A No, didn't have to.

20 Q Okay.

21 A Not really.

22 Q Do you know why that would of been included in your
23 statement?

24 A No, not really.

25 Q Okay. Okay. So, the things you remember to do quite

Ronnie Brannon - Cross-examination
by Ms. Jones

1 aren't the same you wrote down on April 12th?

2 A No, because I done been hit, I done been hurt. I mean
3 I -- it's so much going on in my head.

4 Q Okay.

5 A So, you just can't remember, you know. Okay. But I
6 remember a good bit of it. I remember and I know a lot of
7 things.

8 Q Okay.

9 A I know the, I know the most important things. I know
10 that much.

11 Q Was it Officer Mathis who first suggested to you that
12 you might of been hit with a brick?

13 A No.

14 Q Okay.

15 A I knew I had got hit with a brick. I seen him when he
16 hit me with the brick.

17 Q In fact, though when you first went to the hospital,
18 you couldn't tell the doctor who was treating your head
19 wounds what had happened to you?

20 A I couldn't tell the doctor?

21 Q Correct.

22 A I told the doctors. I know who hit me with the brick.
23 I told the nurses who hit me with the brick.

24 Q Okay. So, it's your testimony that you told the doctor
25 who treated you for your wounds---

Ronnie Brannon - Cross-examination
by Ms. Jones

1 A I know, I know who hit me with them bricks cause I was
2 telling -- I was -- I told the people who hit me with that
3 brick.

4 Q Sir, that wasn't my question. My question to you was
5 this.

6 Is it your testimony today that you told the doctor who
7 treated your wounds that you had been hit with a brick?

8 A To be honest, I never did see that doctor. I seen
9 nothing but nurses who was working on my face.

10 Q Okay. You didn't---

11 A On my forehead. I really, I really didn't even know the
12 doctor whoever who came in here to be honest.

13 Q Never seen that man in your life?

14 A I have never noticed him in my life.

15 Q And isn't it also true that on 4/20/2011 the victims
16 assistance contacted you and you indicated to them that you
17 did not want to pursue charges against Mr. Brannon?

18 A No.

19 Q Okay.

20 A That's, that's a lie.

21 Q And she indicated to you that you had to cooperate in
22 order to continue to get---

23 A No.

24 Q ---services?

25 A I never heard anything like that.

Ronnie Brannon - Cross-examination
by Ms. Jones

1 MS. JONES: Okay. One moment.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. JONES: I have nothing further, Your Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY SOLICITOR BOYD:

8 Q Mr. Brannon, what was the original arrangements with
9 your cousin as far as your house is concerned?

10 A Well, my father died. He didn't have nowhere to put
11 his clothes, and he asked me could he put a couple of things
12 on the back porch. I told him okay.

13 Q So, it first began with you allowing him to put stuff
14 on your back porch?

15 A To put a couple of clothes. Yeah, put a couple of
16 baskets on the back porch.

17 Q It's your testimony that he progressed from that?

18 A From that into the house.

19 Q Okay.

20 A And then he wanted three days to a week and then he
21 would be out.

22 Q Did you ever want him to stay in your house?

23 A No, not at all.

24 Q How many times did you ask him to leave?

25 A Over a hundred.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q okay. why did you want him gone?

2 He's your cousin.

3 A Because my sister was telling me the problem that she
4 was having him staying with my father when my father was
5 living.

6 Q okay.

7 A Tearing up his house and doing this and doing that.

8 But I -- he would always come to me and say it wasn't
9 true---

10 Q okay.

11 A ---you know.

12 Q Did you ever ask him for money?

13 A No.

14 Q Did you ask him to pay for staying at---

15 A No.

16 Q ---at your house?

17 A No.

18 Q What was that \$20 for?

19 A He just up it. I guess he just -- I guess he just felt
20 guilty. I don't know.

21 Q okay. You testified -- you told Ms. Jones that you
22 wanted the defendant to leave---

23 A Uh-huh. (Affirmative).

24 Q ---to avoid something like this from happening?

25 A Yeah, it could of been worse.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

- 1 Q The first time you talked to Officer Mathis --
- 2 A Uh-huh. (Affirmative).
- 3 Q -- were you at the hospital?
- 4 A I'm not for sure. I think I was though, you know,
- 5 cause all them lights and --
- 6 Q Okay. Is that -- do you know if that was before or
- 7 after you were sewn up?
- 8 A I know I was laying in bed. So, you know, I know the
- 9 nurses was on because they was trying to get on me fast.
- 10 Q Was that within a few hours of you being struck?
- 11 A It was right after I was struck.
- 12 Q Okay.
- 13 A After I arrived.
- 14 Q Okay. You said that you told Ms. Jones that you didn't
- 15 remember a lot of things then, but you remember the
- 16 important things?
- 17 A I remember the important things.
- 18 Q Okay. You also said that you're a focused drunk and
- 19 not an idiot?
- 20 A Yes.
- 21 Q That's what you said, right?
- 22 A That's right.
- 23 Q Okay. The morning of the 10th when you woke up, did
- 24 you eat breakfast?
- 25 A No.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

- 1 Q You didn't reheat anything?
- 2 A I eat something after I drunk. I drunk a little bit,
- 3 then I eat something, yes.
- 4 Q Did you reheat food for yourself and your cousin?
- 5 A Yeah.
- 6 Q Do you remember what it is you reheated?
- 7 A Sloppy Joes.
- 8 Q From the night before?
- 9 A From the night before.
- 10 Q Okay. The last thing you remember that morning was the
- 11 defendant's face and the brick?
- 12 A Yeah, that was it.
- 13 Q The brick that you knew came from your yard?
- 14 A Yes.
- 15 Q Okay. Did you ever lay hands on the defendant?
- 16 A No.
- 17 Q Okay. But you asked him to leave?
- 18 A I asked him to leave.
- 19 Q The last thing you saw was him leaving the house?
- 20 A I seen him leaving out the door. I seen him when he
- 21 left off the porch.
- 22 Q You didn't hear him come back in?
- 23 A I didn't hear him come back in because I thought he was
- 24 gone. I went on in the kitchen.
- 25 Q When you put -- you said you testified you put stuff

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 away in your fridge?

2 A Yeah, I put, you know, put---

3 Q Your fridge or pan?

4 A Yeah, clean up as usual and just turned back around and
5 that was it.

6 Q Okay. Approximately how many steps is it from the
7 middle of your living room to the beginning of your kitchen?

8 WITNESS: Am I allowed to get up for a second?

9 THE COURT: If you need to, to answer the question,
10 I'll allow you to stand, stand up, yes, sir.

11 WITNESS: Okay.

12 THE COURT: You can demonstrate.

13 SOLICITOR BOYD: Mr. Brannon, come down.

14 (Witness comes down from the stand.)

15 A If you come out the kitchen right here, all you have to
16 do is take one, two, and you're in the middle of, just about
17 middle of the living room.

18 Q Okay.

19 A That door's probably here.

20 Q Okay. And when you saw your cousin with your brick in
21 his hand, how far away was he?

22 A He was right up on me.

23 Q Okay. Did you have time to react?

24 A No, I was just looking at him. He was just coming
25 down. It wasn't no -- I couldn't move nowhere.

Ronnie Brannon - Redirect examination
by Solicitor Boyd

1 Q Okay.

2 A It wasn't -- I couldn't move. I -- if you see all the
3 stuff I got in my living room you know I couldn't move.

4 SOLICITOR BOYD: Okay. No further questions, Your
5 Honor?

6 THE COURT: Recross.

7 RECROSS EXAMINATION

8 BY MS. JONES:

9 Q Mr. Brannon, isn't it true that you were just too
10 intoxicated that you really don't know what happened to you?

11 A I'm focused. I know exactly what happened to me.

12 Q And I had---

13 A If somebody hit you with a brick like that I believe
14 you would know if you was drunk. You could be flying drunk,
15 but you know somebody hit you with a brick. I would know.
16 I know exactly who hit me with it.

17 Q Okay. And---

18 A And I did -- you can give me a lie test, lie detector
19 test now and I can tell you exactly and I can pass it and I
20 can make sure that he, that was the one that hit me with the
21 brick. I'm willing to take it.

22 Q Okay. And isn't it fair to say that the State Office
23 of Victims Assistance helped you out with some of your
24 medical bills?

25 A Yes, they did.

Ronnie Brannon - Recross examination
by Ms. Jones

1 Q Okay. And, in fact, again, when you, you called
2 Victims Assistance and asked that they drop the charges and
3 they refused to?

4 A No, I didn't.

5 Q Let me finish.

6 They reminded you that you needed to cooperate with law
7 enforcement in order to continue to get assistance, isn't
8 that correct?

9 A I don't understand what you're saying.

10 Q Okay. You indicated---

11 A When I first, when I first went to, to the Solicitor's,
12 to them, I had a paper that they had me sign about they had
13 to take care of, the State would take care of my medical
14 bills. I signed that paper. Yes, I did.

15 Q Okay.

16 A I signed that in this court.

17 Q You don't recall, recall talking to E. Gosnell and
18 asking that the charges be dropped and her reminding you
19 that you needed to continue to cooperate in order to
20 continue to get victims assistance?

21 A I wasn't planning to drop no charges.

22 SOLICITOR BOYD: Objection. Relevance. Asked and
23 answered.

24 THE COURT: We've been over this a couple times.

25 MS. JONES: Nothing further.

1 THE COURT: He's denied having made that statement.

2 MS. JONES: Thank you, Your Honor.

3 THE COURT: You may step down.

4 WITNESS: Thank you, sir.

5 THE COURT: The State may call its next witness.

6 SOLICITOR BOYD: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause.)

9 SOLICITOR BOYD: Your Honor, the State rests.

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, at this point in time I'm gonna ask you to step back
12 to the jury room again, and, as always, I'll ask you not,
13 not to discuss anything else to do with this case until I've
14 advised you to do so.

15 You may retire to the jury room.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any motions at this time?

19 MS. JONES: Yes, Your Honor.

20 We would make a motion for a directed verdict on the
21 attempted murder, Your Honor. According to the evidence
22 that was presented -- well, initially I should start out by
23 indicating that attempted murder, there has to be an intent
24 to kill somebody with malice aforethought either express or
25 implied. Here, Your Honor, there has been no indication of

1 malice aforethought.

2 We heard from the, Mr. Brannon who indicated that there
3 was some type of fight, and then that fight led to some
4 altercation if we are to believe Mr. Brannon. At most, that
5 could probably be described as a mutual combat situation,
6 and perhaps a lesser charge. But certainly malice
7 aforethought is not met there, Your Honor, as well as the
8 injury.

9 The injury was stitches and lacerations. We do believe
10 that in order to sustain a attempted murder charge that the
11 injuries would have to be greater. Sort of akin to ABWIK.
12 The injuries have to be severe enough that the person could
13 have died, and if they had died, it would of been, the
14 charge would of been murder, Your Honor.

15 THE COURT: I'll hear from the State.

16 SOLICITOR BOYD: Yes, Your Honor.

17 Regarding malice aforethought, malice aforethought is
18 simply unjust doing, the doing of an unjust act without
19 excuse or good cause, Your Honor. There's testimony that he
20 struck him because he was, he struck him because he was mad
21 about having no where to go, having to leave the house. The
22 doctor testified as to the extent of the injuries,
23 specifically about, about the head traumas becoming deadly.
24 He discussed the direct impact, the extent of the injuries,
25 the depth of the injuries going down to the galeal off the

1 skin, Your Honor.

2 Furthermore, attempted murder, the intent to kill is
3 the general intent charge. The jury can infer the intent
4 they need to. It's not specific intent. There's testimony
5 of intent, the intent to commit the act, and there's
6 testimony the intent to commit the act was, was there as
7 perpetrated by the defendant. The extent of the intent is a
8 jury question and it should go to the jury.

9 THE COURT: I'll, I'll overrule motion and allow it to
10 go or deny the motion and allow it to go to the jury.

11 Any other motions?

12 MS. JONES: No, sir.

13 THE COURT: I'm going to inquire of your client
14 concerning his right to testify at this time.

15 Madam Clerk, please swear that defendant.

16 MS. JONES: Your Honor, if I may just have a, two
17 minutes---

18 THE COURT: Sure.

19 MS. JONES: ---with him, sir.

20 THE COURT: Sure.

21 MS. JONES: Thank you.

22 (Pause.)

23 THE COURT: Are you ready for me to---

24 MS. JONES: We are, sir. Thank you.

25 THE COURT: All right. Swear the defendant for me

1 please.

2 (WHEREUPON, the defendant was placed under oath at this
3 time.)

4 THE COURT: You can be seated, sir.

5 All right. Mr. Brannon, at this point in time I'm
6 going to explain certain of your Constitutional rights to
7 you. When I finish I'll give you an opportunity to ask any
8 questions you'd like to ask. So, if you don't understand
9 what my, understand my explanation, please let me know and,
10 again, I'll explain it further if that's necessary.

11 We've reached the stage of this trial where you have
12 the right to present your defense to the charges. You have
13 also the right at this time to claim the protections which
14 are given to you under the Fifth Amendment to the United
15 State Constitution. That particular amendment reads in part
16 that no person shall be compelled, in any criminal case, to
17 be a witness against himself.

18 Now, what that means is that you have the right to
19 remain silent. While you have the right to testify, you can
20 not be required to do so. You have the right to testify,
21 but no one can make you testify. The right to remain silent
22 is a personal right, and no one can give up or waive that
23 right except yourself. I will tell you that if you decide
24 to testify, your testimony would be governed by the same
25 rules that govern any other witness, and you would be, first

1 of all, examined by your attorney and then cross-examined by
2 the State's attorney on any relevant issue in the case.

3 In addition, if you have convictions
4 involving dishonesty or false statements or for crime which
5 were punishable by imprisonment for more than one year and
6 the Court determines that the probative value of admitting
7 that evidence outweighs its prejudicial effect to you, the
8 solicitor in that case would be able to attack your
9 credibility using your prior criminal record.

10 Now, I will tell you that if you decide to testify in
11 this case, that decision must be made by you freely and
12 voluntarily. It also must be made intelligently. That
13 means with knowledge of the protections given to you by the
14 Fifth Amendment to the Constitution, to the Constitution and
15 the consequences that might result from your decision to
16 testify. I will advise you that if you decide not to
17 testify that I will instruct the jury that they should not
18 give the fact that you did not testify any consideration
19 whatsoever and that there's to be absolutely no prejudice to
20 you because of the fact that you did not testify.

21 As I told you earlier, the decision as to whether or
22 not to testify is left entirely up to you. You have every
23 right to consult with anyone you would like to consult with
24 concerning your decision. Your attorney, family members, or
25 friends. But in the final analysis, the decision as to

1 whether or not to testify is yours and yours alone.

2 Now, Mr. Brannon, do you understand what I've
3 explained?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions about what I've
6 explained?

7 DEFENDANT: No, sir.

8 THE COURT: Have you had an opportunity to discuss this
9 decision with your lawyer?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you made a decision as to whether or
12 not to testify?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you intend to testify?

15 DEFENDANT: No, sir.

16 THE COURT: Thank you.

17 Now, does the defense intend to call any other
18 witnesses in the case?

19 MS. JONES: No, sir.

20 THE COURT: So, we will be going directly then to final
21 argument. I note we're at, we're at 12:00. So, what I'm
22 gonna do is I'm gonna bring the jury back. I'll call on you
23 to see if you have any witnesses, and, of course, you're
24 gonna indicate that you don't, and then I'm gonna send the
25 jury out for lunch. We'll bring them back around, a little

1 after one o'clock. We'll go directly into closing arguments
2 at that time and I'll charge on the law.

3 Anything further from the State before I bring the jury
4 in?

5 SOLICITOR BOYD: Nothing further, Your Honor.

6 THE COURT: From the defense?

7 MS. JONES: No, sir.

8 THE COURT: Bring the jury back.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The record will reflect that
12 the jury has returned to the courtroom.

13 The State has rested in the case, and at this time the
14 defense has the right to call witnesses should the defendant
15 choose to do so.

16 Does the defense wish to call any witnesses?

17 MS. JONES: No, sir.

18 THE COURT: All right. That concludes then the
19 presentation of evidence in this matter. When I reached
20 this stage of the proceeding I told you that we would allow
21 the attorneys to make a closing argument or statement
22 followed by my charge concerning the law. I also note that
23 we're just a couple of minutes from 12:00. So, what I'm
24 going to do is I don't want to break that process up. So,
25 I'm going to break for lunch at this time. We'll come back

1 about one o'clock and end with those closing arguments and
2 the charge on the law.

3 I'm gonna give you the same instructions I gave you
4 when you left the court house last night. Again, don't
5 attempt to gather information outside of the court house
6 concerning this case. Don't discuss the case with anyone,
7 and do not allow anyone to discuss the case with you. Don't
8 watch, listen to, or read any media reports that might be
9 circulating concerning this case, and should anyone attempt
10 to contact you about your participation in this case, please
11 inform that Court and I'll see that the appropriate action
12 is taken.

13 I'm going to ask that you be back in the jury room at
14 one o'clock this afternoon, the one that's in use for this
15 trial. We should begin shortly thereafter. You're free to
16 go to lunch.

17 Thank you.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Defendant will remain in
21 custody and we'll begin again at one o'clock.

22 Thank you very much.

23 MS. JONES: Your Honor, I just have one small issue.
24 We -- regarding jury instructions.

25 THE COURT: Yes, ma'am.

1 MS. JONES: We would request the lesser included of
2 assault and battery second degree, which is -- a person
3 commits battery of a second degree if the person unlawfully
4 injures another and moderate bodily injury results, Your
5 Honor.

6 Moderate bodily injury includes physical injury
7 requiring treatment to the organ system other than skin,
8 muscles, and connective tissues except where there is
9 penetration of the skin, connective tissue that requires
10 surgical repair of a complex nature or when treatment of
11 injuries requires the use of regional or general anesthesia.
12 Here we heard testimony from the doctor that he did put
13 sutures and did, did a regional anesthesia, Your Honor.

14 So, we would request the lesser included of assault and
15 battery second degree, sir.

16 SOLICITOR BOYD: Your Honor, the cuts and the doctor's
17 testimony was that great bodily injury could of resulted.
18 Even the fact that there was great bodily injury that could
19 of resulted, it excludes moderate bodily injury, and,
20 therefore, we object to the assault and battery second
21 degree being charged.

22 THE COURT: All right. I'll take a look at it and let
23 you know when we return.

24 Thank you.

25 MS. JONES: Thank you, Your Honor.

1 (WHEREUPON, Court was in recess for the lunch hour.)

2 THE COURT: All right. Concerning the defense request
3 to charge on the lesser included offense, it would be the
4 Court's intention, if I charge the lesser included offense,
5 to charge both assault and battery first and assault and
6 battery second. In other words, two different stages.

7 Do you still wish for me to do that?

8 MS. JONES: I do, Your Honor.

9 THE COURT: All right. Anything further from the State
10 on that issue?

11 SOLICITOR BOYD: Your Honor, the State would object to
12 the assault and battery first and second, Your Honor. Under
13 assault and battery first, the only way it could, under the
14 statute, it could be assault and battery first is if the act
15 wasn't complete. Under Subsection B, it was offering or
16 attempting to injure. Here there's an actual injury. So,
17 assault and battery wouldn't apply under that statute.

18 Assault and battery second is only moderate bodily
19 injury, but the definition of moderate bodily injury has an
20 exception where surgery, repair of a complex nature, or
21 where treatment of injuries requires use of regional or
22 general anesthesia. Here there's testimony that there was
23 regional anesthesia used for the, for the injury, Your
24 Honor.

25 THE COURT: You're saying that's an exception?

1 SOLICITOR BOYD: Under -- as I read the definition of
2 moderate bodily injury.

3 THE COURT: Well, let me read it again.

4 (Pause.)

5 THE COURT: All right. I have a person commits the
6 offense of assault and battery in the second degree if a
7 person unlawfully injures another person or offers or
8 attempts to injure another person with the presentability to
9 do so and either moderate bodily injury to another person
10 results or moderate bodily injury to another person could of
11 resulted.

12 Now, they define moderate bodily injury as a physical
13 injury requiring treatment to an organ, system of the body,
14 other than the skin, muscles and connective tissue of the
15 body except where there is penetration of the skin, muscles,
16 and connective tissues that require surgical repair of a
17 complex nature or when treatment of the injuries requires
18 the use of regional or general anesthesia.

19 So, you're saying if regional anesthesia is required it
20 can not be A and B second?

21 SOLICITOR BOYD: Yes, Your Honor, as I read the
22 statute. It defines -- it begins by defining moderate
23 bodily injury as the actual injury, excuse me, regarding
24 treatment to an organ, system, except where there's a
25 penetration and it requires either complex surgery or the

1 anesthesia, but since---

2 THE COURT: Let me read the statute itself.

3 SOLICITOR BOYD: But as it's not that, then it doesn't,
4 moderate bodily injury doesn't apply. Therefore, assault
5 and battery second does not apply.

6 THE COURT: Does it specifically say that?

7 SOLICITOR BOYD: Well, it -- assault and battery second
8 degree only deals with moderate bodily injury under the
9 facts of this case as applied to the definition of moderate
10 bodily injury I think is excluded.

11 THE COURT: Let me read that statute. I don't think
12 I'm reading it that way.

13 (Pause.)

14 THE COURT: Yes, ma'am.

15 MS. JONES: Your Honor -- and I understand that these
16 are brand new statutes and the Supreme Court or the Appeals
17 Court hasn't gave us some---

18 THE COURT: There's no reported cases on these
19 statutes.

20 MS. JONES: That's right. So, we're going with them
21 blind.

22 Your Honor, but the way I read it, it says moderate
23 bodily injury means physical injury requiring treatment to
24 an organ of the body other than the skin, muscles, and
25 connective tissues. And, so, other -- in other words, it

1 means something other than those organs except if those
2 organs are -- except when there's a penetration of the skin,
3 muscles, and connective tissues that require surgery or a
4 regional or local anesthetic.

5 So, in other words, they're saying that if the skin,
6 muscles, and connective tissues can qualify as a moderate,
7 moderate bodily injury so long as it required the use of a
8 regional or general anesthetic or it required a complex
9 surgery is my reading.

10 THE COURT: That's the way I'm reading it, that,
11 that -- and here you've got a breaking of the skin. You had
12 some tissue underneath that that was damaged. But if you
13 just took, if you just took out the except part, it says
14 physical injury requiring treatment to an organ system of
15 the body other than the skin, muscles, and connective tissue
16 of the body. But then it says except where there is a
17 penetration of the skin, muscles, and connective tissues
18 that require surgical repair.

19 So, I think where there's surgical repair required of
20 the skin/muscles, then it would qualify as a moderate bodily
21 injury. And, so, I'm gonna, I'm gonna find that second
22 would apply. It is a lesser included.

23 Now, you want to be heard or anything else?

24 SOLICITOR BOYD: Please, Your Honor.

25 Even if moderate bodily injury does occur, that reading

1 of it, that definition does fit this case, as assault and
2 battery second degree is a lesser included of assault and
3 battery first, it still states the condition that assault
4 and battery doesn't apply?

5 THE COURT: Well, you know, the statute goes on and
6 talks about what is the lesser included.

7 Where is -- down in Subsection---

8 MS. JONES: Three, Your Honor.

9 THE COURT: D. It's (D)(3) and it says assault and
10 battery in the second degree is a lesser included offense of
11 assault and battery in the first degree as defined in
12 subsection (C)(1). Assault and battery of a high and
13 aggravated nature is defined in (B)(1) and attempted murder
14 as defined in Section 16-3-29. So, the statute specifically
15 says A and B and second degree is a lesser included of
16 attempted murder. So, the statute addresses that directly.

17 SOLICITOR BOYD: Well, as, as the testimony relates
18 itself this morning, Your Honor, all the testimony, in fact,
19 responded to great bodily injury that could of resulted
20 regardless of what actually happened to him. That the
21 injuries he sustained -- that the crux of the testimony
22 was---

23 THE COURT: Well, I think what the jury has to decide,
24 Mr. Boyd, is they've got to first decide the charge that
25 he's charged with. If they find him guilty of that, this

1 won't even be a question for them.

2 Now, if they find that he's not guilty of that, then
3 and only then can they go down and consider the lesser
4 included and I'll make that clear in the charge. So, the
5 only time they will get to this lesser included issue will
6 be if they find that the State failed to prove, beyond a
7 reasonable doubt, attempted murder.

8 SOLICITOR BOYD: Fine with that, Your Honor.

9 THE COURT: Thank you.

10 Now, so you just want second charged?

11 MS. JONES: Yes, Your Honor.

12 THE COURT: Okay. I'll do it. I'm gonna grant your
13 motion. I'll charge second.

14 MS. JONES: Thank you, sir.

15 THE COURT: Only as a lesser included if he's not found
16 guilty on the original charge.

17 MS. JONES: I understand, sir. Thank you.

18 THE COURT: Okay. All right. Now, any other issues
19 concerning the charge before we---

20 SOLICITOR BOYD: Well, Your Honor, assault and battery
21 second is gonna be charged, we respectfully request assault
22 and battery high and aggravated, high and aggravated be
23 charged as well.

24 THE COURT: Now, A and B -- assault and battery high
25 and aggravated, wasn't it done away with by the new omnibus?

1 SOLICITOR BOYD: No, Your Honor. They redefined that
2 in the statute. Assault -- ABHAN, as it is now, is
3 subsection B of subsection 600.

4 THE COURT: Well, let's take a look at it.
5 (Pause.)

6 THE COURT: What's the defense say about that?
7 So, you're wanting the statutory assault and battery
8 high and aggravated, not the common law?

9 SOLICITOR BOYD: Correct, Your Honor.

10 MS. JONES: Your Honor, while we would acknowledge that
11 the assault and battery of a high and aggravated nature is a
12 lesser included offense of the attempted murder, Your Honor,
13 that is not specifically what he was charged with. The
14 charge was attempted murder, that he acted with malice.

15 THE COURT: Well, the question is what, what lesser
16 inclusions would apply.

17 MS. JONES: I understand, Your Honor.

18 THE COURT: Or would possibly apply.

19 MS. JONES: I understand that, Your Honor, and it would
20 involve great bodily injury. Great bodily injury indicates
21 a substantial risk of death or which causes serious
22 permanent disfigurement or protracted loss or impairment of
23 a function, of a bodily of a member, of a bodily member or
24 organ, Your Honor. Here we had testimony that he didn't
25 suffer a great bodily injury. What we heard was they

1 applied a local anesthetic and they sutured him up. There
2 was no testimony---

3 THE COURT: Well, now, what the, what the doctor
4 testified to is had this been a direct blow as opposed to a
5 glancing blow, could of resulted in death.

6 Isn't that the testimony that I heard?

7 SOLICITOR BOYD: Yes, Your Honor.

8 THE COURT: Well, that's a substantial risk of death.
9 So, there's evidence in there that, that what he did could
10 of caused the death. It just happened, the way, the angle
11 at which he hit the head didn't in this case. It was a
12 glancing blow instead of a direct blow. So, the question is
13 what he intended to do, and that's for a jury to decide on
14 intent.

15 MS. JONES: Your Honor, and I think that that would
16 certainly go to the attempted murder, but the way the
17 statute is written, the act is accomplished by means of, I
18 guess, likely to produce death or great bodily injury.

19 THE COURT: Well, that's up to the -- you know, those
20 are factual questions for a jury. It's a very large rock.
21 I mean if you hit somebody in the head with that, taking it
22 back over your head, the jury has a right to consider
23 whether or not that's an action that caused direct bodily
24 injury. That's -- you know, I'm not ruling that that's what
25 it will be. I'm saying it's a possibility.

1 I'll grant the State's motion then to also charge A and
2 B, high and aggravated. In the hierarchy of things, I'm
3 gonna charge that first, the first option. And second
4 option will be the lesser included of assault and battery
5 second.

6 Let me take a look at that. It shows that assault and
7 battery second degree, that's Subsection (D)(3), is assault
8 and battery second is a lesser included of assault and
9 battery high and aggravated defined in (B)(1). So, that's
10 what I'll do. I'll charge all three. I'll grant
11 everybody's request.

12 All right. Anything further?

13 SOLICITOR BOYD: Nothing from the State, Your Honor.

14 THE COURT: All right. Now, are you going to open and
15 close?

16 Defense didn't offer any evidence. So, they're gonna
17 be going last.

18 You didn't put anything in, did you?

19 I know, know there was something, something marked as a
20 defense exhibit---

21 MS. JONES: Right.

22 THE COURT: ---and I can't remember if you put it in or
23 not. A statement I believe. It's been marked for
24 identification purposes.

25 MS. JONES: Right.

1 THE COURT: Okay. You'll be going first followed by
2 the defense.

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

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect that
7 the jury has returned to the courtroom.

8 If any juror had any difficulty in complying with my
9 instructions, I'd ask that the juror please stand.

10 (No response.)

11 THE COURT: It appears that all jurors have been able
12 to comply with the Court's instructions.

13 I told you that when we returned I would allow the
14 attorneys, at that point in time, to make their closing
15 arguments followed by my charge.

16 At this time the State may proceed.

17 Mr. Boyd.

18 SOLICITOR BOYD: Please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 SOLICITOR BOYD: Ms. Jones.

21 I told y'all earlier this morning this was a slow and
22 deliberate process. It didn't take as long as we thought,
23 but we're here nonetheless.

24 As Mr. Brannon said this morning, he doesn't remember
25 everything. He remembers the important things. I hope

1 y'all do the same.

2 This case is about blood. Plain and simple, blood.
3 Blood from family members, from cousins, and blood found on
4 his clothing, the hands of the defendant. I mentioned this
5 morning that's a question of who you believe and what you
6 believe from what you hear from people sitting in that
7 chair.

8 Since it's most important, I want to talk about what
9 Ronnie Brannon had to say. I didn't, can't recall precisely
10 exactly when he said it, but he said I'm a focused drunk,
11 not an idiot. He said I know what happened. It's not a
12 doubt in my mind that my cousin hit me with that rock.

13 When Mr. Brannon testified, he was in a situation where
14 he didn't exactly want his cousin living with him, but he
15 did what he could nonetheless. He let his cousin keep some
16 clothes on the back porch, and he testified that that grew
17 into something more, something more he didn't want. He said
18 I tried to stop it because I knew something bad was gonna
19 happen.

20 Something bad did happen. He got knocked unconscious
21 and left to bleed in his living room floor. For the Grace
22 of God Scott Cheeks came by and took care of him, took him
23 to the hospital.

24 Mr. Brannon, we all know what he is. I'm not making
25 excuses. Didn't try to hide who he is. He's an alcoholic.

1 He said so. He never said otherwise. He likes to drink.
2 He drinks at night. He drinks in the morning, and he knows
3 who his cousin is to him. He's like an older brother to him
4 he said. He knew exactly who he was, what he looks like,
5 what he's capable of, and that's why he asked him to leave.
6 He said I don't want something bad to happen.

7 That morning, you heard him. He said, yeah, woke up,
8 grabbed some, whatever drinks he had left over, and started
9 drinking. I got up and heated some leftovers from the night
10 before, and at that point he said we got into an argument
11 again. Same argument he gets in all the time with this
12 cousin about his cousin staying at his house, knowing what's
13 there. His cousin didn't leave till Ronnie asked him to
14 leave, begging him to leave. The defendant didn't like
15 that.

16 So, he gets out of the house, walks out of the house,
17 walks out this door, his front door of his own cousin's
18 house, and Ronnie says okay, he's gone. Goes back in the
19 kitchen, starts cleaning up. He said he put his pan on top
20 of his microwave, started putting stuff back in a little
21 bitty refrigerator he keeps in his kitchen. He didn't hear
22 anything, wasn't startled.

23 what he said he did, he said he turned around, and more
24 than a few steps away was his cousin back in the house. His
25 cousin had something in his hands. His cousin had gone down

1 out of that door to then to the sidewalk and he got a brick.

2 Now, it's not just any brick. This is a brick that
3 Mr. Brannon knew. It's his brick. He knew where it came
4 from and exactly how long he had it. Knew where it came
5 from. And it's not just a construction brick, a red brick
6 that you find in brick houses everywhere. This is a stone.
7 Officer Mathis testified, in his best guess, weighed
8 anywhere from ten to sixteen pounds.

9 That is what Ronnie Brannon was struck with in his
10 head. He never said he was struck by anything else, but
11 that rock. That rock, he knew exactly where it came from,
12 where he got it, and where it was. He said the last thing
13 he remembers is that man over there, this rock, two hands
14 up, over his head, coming down on him. He was out after
15 that. Knocked cold. Like I said, with the Grace of God,
16 his friend, always comes and checks on him, found him, found
17 him in the state he was in.

18 Mr. Brannon, doing what he could, tried to do whatever
19 he could to stop the bleeding. Used this towel to soak up
20 his own blood and he didn't just use the towel. He used his
21 own jacket. He said I know where the jacket came from. He
22 said this jacket belonged to my daddy, he gave it to me.

23 Now, you heard Mr. Brannon talk about his daddy. He
24 said before his daddy died the defendant was staying with
25 him. He used his own father's jacket that he gave to him to

1 soak up his own blood from an injury caused by that rock in
2 the hands of that man. He may be a drunk, but he is sure of
3 that. He never wavered on the stand. He told you exactly
4 what he told you the entire time. Whenever someone asked
5 him who did it, no matter what state he was in, he never
6 said anyone other than John Wayne Brannon cause he remembers
7 the important things.

8 Something else he said that struck me. Starting to
9 getting upset during the cross, but he said it nonetheless.
10 He said left me there to die. His words from a man who is
11 knocked cold in his living room with this rock. You all saw
12 the pictures, these pictures in evidence. You'll get them
13 back to look at with, to look at. You'll see the blood
14 stained shirt, the jacket, the blood stains on the carpet of
15 his living room. Those are pictures that Officer Mathis
16 took of the suspected, suspected blood stains from when Mr.
17 Brannon was knocked out.

18 There's bleeding on the floor. Unfortunately, as we
19 all know, Mr. Cheeks came, took him to the hospital. Said I
20 don't want to wait on the ambulance, get in the car, tell my
21 wife where we're going. We're going to the hospital. They
22 get there. They see Doctor Davis, emergency room doctor.

23 Now, of course, Mr. Brannon says I don't know who he
24 is, but this is a man that just suffered a major head trauma
25 from this rock, bleeding out. He doesn't know how long. He

1 says a couple hours. Doctor Davis is on the stand this
2 morning. You heard him testify. He said we don't normally
3 do C.T. Scans for simple lacerations. Lacerations is just a
4 fancy word for a cut. We don't normally do that, but in
5 this case, in this case we did one to make sure there was no
6 intracranial bleeding, bleeding inside the head, and said
7 that the incisions, the lacerations cut through the skin,
8 cut through the skin to what's called the galeal, which is
9 little tissue underneath the skin right above the skull.

10 Officer Mathis said yeah, when I walked in, I saw him.
11 It looked like that cut was down to the skull. Not just a
12 cut. Down to the skull. That's what Officer Mathis,
13 Officer Mathis said he saw. Something done by this rock.

14 But Doctor Davis also said, you know, based on medical
15 opinion, that something like this wouldn't occur from a
16 direct blow, a direct blow. He said it's probably an
17 indirect blow, a glancing blow, cause he said you can see
18 where it had torn a little bit. It wasn't just a cut. It
19 was -- it was pulled down. It was over.

20 Now, if you compare to what he said to what Ronnie
21 Brannon says what happened, rock above his head coming down
22 from the glancing blow. Doctor Davis said, you know, was he
23 fortunate to not to have sustained a direct blow. Of
24 course, it's always worse. It's fortunate he only suffered
25 that injury. It could of been worse.

1 Now, of course, Doctor Davis didn't know how long he
2 was out, what actually happened. He just saw the injuries
3 to the best of his ability, tried to figure out what caused
4 it, and the extent of that damage. That's why he did a C.T.
5 Scan. That's why he tried to get the most important
6 information he could from Mr. Brannon.

7 Mr. Brannon, he said presented as a poor historian,
8 which means he couldn't recall what exactly happened. He
9 gets things confused.

10 I said well, doctor, is that attributable to his being
11 intoxicated or because he suffered a massive head trauma?

12 He said I can't tell you. I don't know. Could be
13 both, could be one, could be with the other, I don't know.

14 Now, luckily the C.T. Scan didn't show anything he
15 said. So, based on what they did, they just sewed him up.
16 Defense would have you believe that it's just a matter of
17 simple stitches going across your head. Ms. Jones, on
18 cross, said well, actually it was nine stitches in the
19 front, and six stitches in the back. That's 15 stitches.
20 Luckily that's all that it was from a man who's knocked with
21 this rock, left to die, in his own words, in his own living
22 room at the hands of his own cousin living out his own
23 floor.

24 Now, the defense talked to Officer Mathis. Asked about
25 why he didn't fingerprint this, why he didn't take blood

1 swabs. To be honest, that has little or no bearing on what
2 happened. There's no doubt in Ronnie Brannon's mind that
3 what happened was his cousin hit him. He wasn't sure -- he
4 was sure that it wasn't somebody else. He didn't, he didn't
5 waver. He didn't say it was somebody else, I don't know, it
6 might have been my cousin. He said it's him and the last
7 thing I saw was his face and that rock coming down. I
8 didn't have time to react. He was close. I have, I have a
9 small house. It said it only takes a couple of steps to get
10 from the middle of the living room to my kitchen. When I
11 turned around he was there.

12 So, this isn't an issue of missing DNA, bad forensics.
13 It's a simple progression of what happened when he asked his
14 cousin to leave his house. The cousin went outside. At
15 that point the cousin, the defendant, could of left. He
16 could of walked down that street and left. Instead, what we
17 know from the testimony this morning, that didn't happen.

18 He walked out that door, made it to the sidewalk.

19 And from the sidewalk, guess what was there?

20 He decided it was a good idea to get this rock, walk
21 back inside the house, carrying this rock all the way up the
22 sidewalk, up the stairs, across the porch, into the room,
23 into the living room, opening the screen door, opening the
24 main door, or did so in a manner that Mr. Brannon didn't
25 know he was in the house.

1 And, so, he walks in, crossed the living room, and by
2 the time Ronnie Brannon turns around, according to him, it's
3 too late. He couldn't do anything. He was too close.
4 Stone over his head on top of him. That's the last thing he
5 remembers.

6 Now we're here today because of what happened on
7 April 10th. He's charged with attempted murder. Now it's
8 up to you whether you, whether you want to think that the
9 actions that were elicited in testimony, that that man, this
10 rock, over his head, coming down on his own cousin's head,
11 would be attempted murder, whether he intended to kill his
12 cousin with this rock on top of his head.

13 The testimony is that he came down with it on his head.
14 He didn't throw it at him. He didn't shout at him.
15 Mr. Brannon didn't hear a thing. Had he not turned around,
16 he didn't know what happened. But he turned around and he
17 saw his cousin with this rock. He remembers the important
18 things.

19 He may be a drunk. He knows who his cousin is. He may
20 be a drunk. He knows where he got this rock. He may be a
21 drunk, but he knew it when he made it at breakfast that
22 morning, and he says I'm not, I'm not an idiot. I'm a
23 functioning alcoholic. Just because he's drunk doesn't mean
24 he's not telling the truth.

25 Like I said before, this is about blood. People tied

1 to family with blood, cousins, first cousin, known them all
2 my life.

3 Has no where to go. You can put your stuff on my
4 porch. Mr. Brannon said it's fine. Just don't stay here
5 long. You'll be gone.

6 Because of that, Mr. Brannon's here today, luckily,
7 having recovered from these injuries after having used his
8 own clothing including the jacket that his dad gave him, his
9 jacket, to soak up his own blood. You'll have all this
10 evidence back there with you to look at it, and you take it
11 for what it's worth.

12 I want to thank y'all for listening all morning long
13 and this afternoon, and remember the important things. No
14 matter who got on that stand, what shape he was in that
15 morning, Mr. Brannon knew it was his cousin, the rock over
16 his head, coming down on him like that. Took that rock from
17 the sidewalk, up the stairs, into the living room, and on
18 top of his head, came down with it.

19 You know what Mr. Brannon said?

20 He left me there to die. Said I would of been fine if
21 he called the police, done something, as far as Mr. Brannon
22 and he didn't. Scott Cheeks came by and took him to the
23 hospital.

24 It's an attempted murder and it requires intent to
25 kill. You can infer that from what you've heard, what you

1 see, in your own common experience.

2 The question is to remember the important things, the
3 rock, Mr. Brannon, their relationship. That man blasted
4 what Mr. Brannon has in his mind that morning. It's his
5 face, that rock, coming down on him.

6 As Doctor Davis said, could of been worse. Head
7 trauma's can be deadly. Head trauma's are serious. Not
8 just simple lacerations require C.T. Scan. You got a C.T.
9 scan and luckily nothing was shown on it.

10 This is attempted murder, ladies and gentlemen,
11 attempted murder. Common experience tells us you don't take
12 something, a rock that size and take it over your head with
13 both hands, come down on someone else's head, not intending
14 to kill that person. That's what happened here.

15 Please use your common sense, slow and careful
16 deliberations, and come back with a verdict of attempted
17 murder.

18 Thank you.

19 THE COURT: For the defense, Ms. Jones.

20 MS. JONES: Thank you, Your Honor.

21 Ladies and gentlemen, you heard from the prosecution,
22 and the prosecution hammers over and over again, he may be a
23 drunk, but he sure gets the important things down. He was
24 hit with a brick. That's the only fact that you need to
25 know. That's the only fact you need to consider.

1 Mr. Brannon says he was hit with a brick.

2 Don't get lost in those details. Don't worry about
3 those inconsistencies. Don't worry about the fact he can't
4 remember whether it was five o'clock in the afternoon, in
5 the morning, or what time it was. Don't worry about that.
6 That's not important. You're missing the point. The point
7 is he said he got hit by a brick. Case closed. Come back
8 with a verdict of guilty.

9 Ladies and gentlemen, your role is more than that.
10 Unfortunately the devil is in the details. The details are
11 what separate fact from fiction. The details are what
12 separates what happened, what didn't happen, the truth from
13 fiction, and that's what we need to focus on.

14 He's a drunk. He remembers the important parts?

15 He does?

16 He doesn't even remember the doctor who treated him.
17 He denies that that doctor even laid a hand on him, and the
18 doctor's the one who sutured him up. No memory. He didn't
19 touch me. It's the nurses.

20 If he doesn't even know who sutured him up because he
21 was so out of it, how can we believe what he says?

22 Who did this to him?

23 The fact of the matter is, ladies and gentlemen, he was
24 drunk, and he doesn't know what happened, and he's at the
25 hospital and people are asking him all kind of questions,

1 what happened to you, what's going on, the police are
2 called. At least two officers are on the scene. Tell us
3 what happened. Don't know. You heard the doctor on the
4 stand. He couldn't tell us. Poor historian.

5 And they want to make a lot of hay out of the fact that
6 he needed a C.T. scan cause these injuries were so terrible.
7 You heard the, you heard the doctor. The doctor testified
8 we had to do that C.T. scan cause he couldn't tell us what
9 happened to him, and he was so drunk that we had to do that
10 because of defensive medicine. We had to exclude things
11 cause he couldn't tell us, he couldn't give us that
12 information, and that's the man, that's the story.

13 His memory is what they want you to convict this man of
14 attempted murder, malice, his story, and let's not forget
15 the police didn't even bother to corroborate his story.
16 They just said oh, he got hit with a brick. Okay. Well,
17 let's write that down. Let's arrest him.

18 They could of taken this brick and swabbed it for
19 blood. Let's -- that's called corroborating evidence,
20 ladies and gentlemen. We don't know if there's blood on
21 that brick. We have no idea. And yet they want you to
22 convict this man of attempted murder, and they don't even
23 bother to do that.

24 There's red spots in the house. They claim it's blood.
25 Do we know that for sure?

1 Again, they don't bother cause they got what they
2 needed. Details are not important. We don't care about
3 detail. What we know is the important facts, and the
4 important facts are what he said. Forget that he's drunk.
5 Oh, he's a drunk. He's just -- that's just the way he is.
6 Don't worry about that.

7 Well, ladies and gentlemen, we need to worry about this
8 cause this man's life is on the line. They want you to
9 convict him of this evidence, and let's take a look at what
10 Mr. Brannon initially said, and how his stories just don't
11 add up.

12 He initially said and told the police that he came home
13 at five o'clock from mowing the lawn and Mr. Brannon was at
14 his house with a friend and they all started drinking. Then
15 apparently some fight erupted. From the cross-examination,
16 he's like well, maybe that didn't quite happen. I don't
17 know. I think we -- actually what had happened was I came
18 home, I got some beer, and about probably eight o'clock
19 Mr. Brannon came over, and then a little while later pretty
20 soon Mr. Brannon was with his girlfriend and his ex-wife or
21 his wife wasn't going to appreciate that and then they got
22 into some words, and then pretty soon it was well, maybe we
23 all drank, we went to bed, and then we got up the next day
24 and we just continued to drink.

25 He's just all over the place, ladies and gentlemen. He

1 can not tell a straight story, and the reason he can't tell
2 a straight story is cause he doesn't remember. He was too
3 drunk to know who was at the house, what they were arguing
4 about, and why he got hit.

5 You'll also recall he can't even remember what was the,
6 the beef between him and his cousin. He initially said
7 yeah, it was he was bringing his ex-girlfriend around or his
8 girlfriend and his wife wouldn't like it. That was kind of
9 a problem. And then pretty soon, in his statement that he
10 later denied having told the officer, was that it was over
11 \$20, and that he got \$20, but that wasn't going to be enough
12 for the rent, that he wasn't concerned about the rent money,
13 that wasn't the issue cause \$20 is just \$20.

14 But then he says, prior to this incident on the stand,
15 on direct, he says well, actually what really started this
16 fight is we were arguing about something that happened a
17 while ago involving the couch and we were arguing and I got
18 thrown over the couch and it didn't really make a lot of
19 sense and we never could really figure out what that
20 argument was about, but evidently that led to him trying to
21 kick Mr. Brannon, John Wayne Brannon, out of the house.

22 So now we've got several different versions.
23 Was it cause of the money they were fighting?
24 Was it because of a girlfriend?
25 Was it because of this other argument?

1 We don't know and then he goes into, in his statement.
2 He says he asked Mr. Brannon to leave and he shoved him out
3 the door. Shoved him out the door. But then on cross he
4 says well, no, that didn't happen. No, that didn't happen,
5 that didn't happen, but I remember the important thing, he
6 hit me with a brick.

7 The devil is in the details. It's what separates fact
8 from fiction. It's what separates what happened and what
9 didn't happen. It creates reasonable doubt.

10 If he can only remember one detail, is that enough to
11 convict, ladies and gentlemen, of attempted murder?

12 You also know and they talked a lot about this rock,
13 and this is a heavy rock. I don't think I can lift it above
14 my head and I'm not even gonna try. But they say it was a
15 glancing blow, and he got injured here.

16 Well, glancing blow is like this, right?

17 Injury here.

18 How in the world did he get injured back here then?

19 What happened?

20 There's been no explanation of that.

21 Did he fall down and they hit him again?

22 This is a heavy brick.

23 Can you imagine getting hit with this?

24 Is this just gonna require 15 stitches, a local
25 anesthetic and sutures or is this going to do some other

1 damage?

2 If I lift this up and come down on somebody like he
3 claims, would he just require some stitches?

4 Think about that, ladies and gentlemen.

5 And where is this blood, tissue?

6 You look at the injury and it's gruesome. No denying
7 that.

8 Some instrument caused that damage, wouldn't we expect
9 tissue, blood, hair on the instrument that did it?

10 Where is it?

11 The police never testified they recovered anything like
12 that. Of course, they didn't bother to check. But you can
13 look at it yourselves. It's in evidence. There's no tissue
14 on it. That's no hair on it. There's nothing. He's just
15 too drunk to remember what happened and now he's in a story,
16 and he's got to see that story to the end.

17 And when you also look at the crime scene, the alleged
18 crime scene, where's the blood spatter if there is, if this
19 is indeed blood?

20 It's just a pool.

21 If somebody's gonna strike you, doesn't it make sense
22 that there's gonna be some sort of splatter?

23 It's a pretty big blow.

24 Maybe he didn't get injured in his house?

25 If we're to believe the State's version of events,

1 they're gonna have you believe that these two men were
2 apparently drinking. What time they started, why they
3 started, we don't know cause Mr. Brannon couldn't fill in
4 those details.

5 But let's just play devil's advocate for a moment, and
6 believe Mr. Brannon for a second. They would have you
7 believe he drank two 40's. They called it a night. Got up
8 in the morning at about 7:00, 7:30, drank so much alcohol he
9 was still intoxicated by the time he left the hospital at
10 about two o'clock in the afternoon. That's a lot of
11 alcohol.

12 His friend testified he came over at the house around
13 9:00, 9:30 and found his friend there. So, he would of had
14 to of consumed this alcohol in about two hours.

15 Okay. Well, let's play devil's advocate and say he's
16 just really chugged it down, completely drunk. Apparently
17 his friend was drinking too, Mr. John Wayne Brannon.

18 Are we to believe that this man too who's probably
19 drunker or at least tipsy is gonna be able to at least pick
20 up this rock from the front, carry it, open that door?

21 As you can see it has a little thing. So, he's got to
22 maneuver this rock, all the while he's been drinking,
23 maneuver it, and then there's a second door. Now he's got
24 to open that door, come in with this rock, without even
25 being detected cause apparently drunk people are very quiet,

1 get up, and surprise Mr. Brannon, and then, after he's hit
2 him, he's on the ground, pick up that rock, again maneuver
3 to the door, open the door, open the other door, come out,
4 and drop it out here cause that's where they said they found
5 the rock.

6 Does that make any sense, ladies and gentlemen, and
7 you've just hit somebody with a rock?

8 Are you gonna come all the way back outside and drop it
9 in broad daylight on the deck?

10 Are you just gonna high tail it out of there?

11 You're gonna hit somebody and run.

12 What do you think somebody's gonna do?

13 Are they really gonna come back out and say, oh, let me
14 leave this here?

15 And, again, that's how they say that rock was found.
16 Where's the blood?

17 All these questions, ladies and gentlemen, should lead
18 you to one answer. My client didn't do this. The judge is
19 going to instruct you that my client has no burden in this
20 case. He didn't have to prove anything. He doesn't have to
21 prove his innocence. They have to prove him guilty.

22 He has pled not guilty, ladies and gentlemen. That's
23 all he needs to say. Not guilty. They can't fill in the
24 details, and while they want you to play hide and seek, and
25 say well, don't worry about those details, I implore you to

1 consider those details, and think about those details cause
2 this is a serious charge and a serious crime, and I think
3 once you do you're gonna come back with a verdict of not
4 guilty.

5 Thank you.

6 THE COURT: Ladies and gentlemen, that concludes the
7 closing arguments by counsel. I told you that once we
8 reached this stage of the proceeding it would be my
9 responsibility and obligation to charge you concerning the
10 law to be applied in this case.

11 Before I do that I want to go over with you again the
12 indictment that brought the case before this Court. I'm
13 going to read that indictment to you again. It is in Case
14 Number 11-GS-42-4694. The indictment is for the offense of
15 attempted murder.

16 The indictment states that John Wayne Brannon did, in
17 Spartanburg County, on or about April 10 of 2011, with
18 malice aforethought, intend and attempt to kill the victim,
19 Ronnie Brannon, in violation of Code Section 16-3-29 of the
20 Code of Laws of South Carolina, 1976 as amended, against the
21 peace and dignity of the State and contrary to the statute
22 in such case made and provided.

23 Now, I'll remind you the fact that a defendant has been
24 arrested, charged, and indicted in this case is not evidence
25 in this case, and can not be considered by you, the jury, as

1 evidence of guilt in this case nor do those facts create any
2 presumption of guilt. This is simply the document that
3 brings the case before the Court. Again, it informs both
4 the Court and the defendant of the charge that's been lodged
5 and the charge that's to be tried.

6 To that indictment, the defendant has pled not guilty,
7 and by that plea and under the law and the Constitution of
8 this State and the United States that plea places the burden
9 of proof upon the State. A person charged with the
10 commission of a criminal offense in South Carolina is never
11 required to prove himself innocent of that offense.

12 I charge you that it's an important rule of law that a
13 defendant in a criminal case, no matter what the seriousness
14 of the crime might be, is always presumed to be innocent of
15 the crime for which the indictment has been issued until and
16 unless guilt has been shown to you, the jury, by proof of
17 that guilt beyond a reasonable doubt. The presumption of
18 innocence does not end when you begin your deliberations.
19 It continues throughout this proceeding and into your
20 deliberations.

21 Some people describe the presumption of innocence
22 somewhat like the robe that I wear into the courtroom. That
23 presumption of innocence remains about the shoulders of the
24 defendant, it accompanies the defendant, still about his
25 shoulders, into your deliberations. It remains in that

1 position until such time as it has been stripped from him by
2 proof that satisfies you of the defendant's guilt beyond a
3 reasonable doubt.

4 Now, the presumption is not a mere legal theory, and
5 it's not just a legal phrase. It's a substantial right that
6 every defendant is entitled to until and unless you, the
7 jury, are satisfied from the evidence of the defendant's
8 guilt beyond a reasonable doubt.

9 Now, you've heard me refer to proof beyond a reasonable
10 doubt several times already and you can tell it's an
11 important concept in our criminal law. You may be asking
12 yourself well, just what is meant by a reasonable doubt or
13 what is a reasonable doubt. It's been defined in the law as
14 a reasonable doubt as that kind of doubt which would cause a
15 reasonable person to hesitate to act, and the State has the
16 burden of proving the defendant guilty beyond a reasonable
17 doubt.

18 Now, some of you may have been involved in civil cases.
19 Civil cases are where someone is seeking a monetary recovery
20 from someone. It can be for such things as breach of
21 contract, failure to pay a debt, personal injury of some
22 kind. That's where people are seeking monetary damages for
23 injuries that have been alleged to have occurred, and the
24 standard of proof in those cases is different from in
25 criminal cases. The standard of proof in a civil case is by

1 the greater weight or the preponderance of the evidence.
2 It's defined as the scales of justice tilting ever so
3 slightly one way or the other, and whichever way they tilt,
4 that's the person who would win that case.

5 Those are civil cases. That's not the standard of
6 proof in this case. The standard of proof in a criminal
7 case is more powerful than that. It is proof beyond a
8 reasonable doubt.

9 Proof beyond a reasonable doubt is that kind of proof
10 that would leave you firmly convinced of the defendant's
11 guilt. Now, I'll tell you there's very few things that go
12 on in anyone's life or in any human experience that can be
13 proven beyond any doubt whatsoever. That's not the standard
14 of proof to which the State is placed in this case. They do
15 not have to provide proof that overcomes every possible
16 doubt.

17 I'll tell you, if based on your consideration of the
18 evidence, if you are firmly convinced that the defendant is
19 guilty of the crime charged, again, beyond a reasonable
20 doubt, then you must find the defendant guilty. However, on
21 the other hand, if you think there's a real possibility that
22 the defendant is not guilty, then you must give the
23 defendant the benefit of that doubt and find him, the
24 defendant, not guilty.

25 I'll remind you that you and I have had certain duties

1 to perform in this case. We still have duties to perform as
2 we continue. As the trial judge, it's been my
3 responsibility to preside over the trial, and I've had the
4 duty of ruling on the admissibility of evidence so the
5 appropriateness of questions that are being asked, and I
6 will tell you that you have -- you should only consider the
7 evidence or the facts that were placed into the record of
8 the case.

9 So, if I ruled anything out of order, if I ruled
10 anything to be stricken from the record, you should
11 disregard those matters in their entirety. You should only
12 consider the information, the evidence that was placed into
13 the record of the case during the trial.

14 I have the additional duty of charging you concerning
15 the applicable law in the case, and I've told you, as the
16 presiding judge, I am the sole judge of the law in this
17 case. It's your responsibility to take the law as I now
18 give it to you. You should then apply it to the facts as
19 you determine those facts to be, and that should place you
20 in a position to reach a fair and a just verdict in this
21 case.

22 I told you earlier if you have an idea as to what the
23 law is or what it ought to be, leave those ideas outside of
24 the jury room. You're to take the law exactly as I give it
25 to you, and, again, apply it to the facts.

1 Now, in every case tried before a jury in this court,
2 the jury is the sole and exclusive judges of the facts in
3 this case. As a trial judge, I can not indicate in any
4 fashion that I have an opinion one way or the other as to
5 how you determine the facts in this case, and I told you
6 earlier and I'll repeat that, that the law doesn't allow me
7 an opinion concerning the facts, and, therefore, I have no
8 opinion as to how you determine the facts in this case.

9 So, you should not take from anything that I say or do
10 in the discharge of my duties, both during the trial and
11 during this charge on the law, to indicate to you that I
12 have an opinion one way or the other concerning the facts in
13 this matter. I do not have an opinion on that subject.

14 It's your duty, however, as jurors, since you are the
15 sole judges of the facts, to weigh the evidence that you've
16 heard, determine the effect and the value of the evidence
17 that you have heard, and the truth of the evidence that
18 you've heard. I've told you earlier, as the sole judges of
19 the facts, you are the sole judges of the credibility and
20 the believability of witnesses who've testified during the
21 trial. Again, credibility simply means believability. I
22 urged you earlier, and I'll tell you again, to use your own
23 good common sense in making that determination.

24 You have the right to consider whether a person has a
25 stake in the outcome of the case, a bias or prejudice one

1 way or the other, whether, whether or not the witness
2 actually had the ability to know the facts about which that
3 witness testified, and you can consider the demeanor or the
4 way in which the testimony has been delivered. You can
5 believe all of what a witness has told you, part of what a
6 witness has told you, or none of what a witness has told
7 you. You can believe one against all the others or all the
8 others against one because you are the sole judges of the
9 facts. Again, sole judges of credibility. You determine
10 the weight, the value, and the effect of the testimony that
11 you have heard during the trial.

12 Now, in weighing the evidence, I will tell you there
13 are two types of evidence that you have the right, as a
14 jury, to consider in reaching your verdict in this case, and
15 I'll explain to you what I mean by two types of evidence.
16 First of all we have what we call direct evidence.

17 Direct evidence is testimony by a witness who claims to
18 have direct knowledge of the facts about which that witness
19 testified. That means it's someone who actually experienced
20 the event. An eye witness. Someone who saw the event,
21 heard the event, felt something, smelled something, tasted
22 something. That's what we mean by direct evidence. Someone
23 who testifies about matters that they claim to have direct
24 knowledge of. That's what we mean by direct evidence.

25 The other type of evidence that you have the right, as

1 a jury to consider in reaching your verdict, is what we
2 refer to or is called circumstantial evidence. Now,
3 circumstantial evidence is proof of a chain of facts or
4 circumstances which reasonably indicate the existence of
5 another fact. Under the law it's been described as proof of
6 collateral facts from which a main fact could be reasonably
7 inferred.

8 Now, that's a -- those are some big words and I like to
9 use a very simple example of what is meant by proof of a
10 fact by, by circumstances or collateral facts. Let's say
11 last night, before you went to bed, you looked outside the
12 window at your home and the stars were shining, beautiful
13 night. You went to bed, slept well all night, didn't wake
14 up at all. The next morning you got up and you looked out
15 the same window.

16 Now, the sun might be shining, but when you looked out
17 the window you noticed there's water dripping from all the
18 trees, puddles in the driveway. The road outside your home
19 is wet.

20 Now, you didn't hear it rain, you didn't see it rain.
21 So, you didn't directly experience any of that. But from
22 the collateral facts that you know to be true, the wet tree,
23 the puddles, the wet road, you can reasonably infer that at
24 some time during the night it rained. Now, that's what we
25 mean by proof of collateral facts from which a main fact

1 could be reasonably inferred. So, circumstantial evidence
2 again is a, is proof of a chain of facts or circumstances
3 that indicate the existence of another fact.

4 Now, the law doesn't make any distinction between the
5 weight or value a jury can give to either direct or
6 circumstantial evidence nor is there a greater degree of
7 circumstantial evidence than of direct. I will tell
8 you, as a juror, you should weigh all of the evidence, both
9 direct and circumstantial, and after weighing all of the
10 evidence in the case, giving it the weight that you choose
11 to give it, if you are not convinced of the defendant's
12 guilt beyond a reasonable doubt, then you must find the
13 defendant not guilty. However, on the other hand, if you
14 are firmly convinced of the defendant's guilt beyond a
15 reasonable doubt, you must find the defendant guilty.

16 Now, in this case we had an expert witness who
17 testified, and at the time that person testified I went over
18 the fact or the, the way, the way we treat that testimony.
19 Ordinarily, under our rules of evidence, a witness is not
20 allowed to give an opinion concerning any matters. They
21 must testify concerning facts within their knowledge.

22 The exception to that rule is for someone who is deemed
23 to be an expert witness. That's somebody who, because of
24 training or profession or the work that they've done or
25 their experience, has become an expert in some field,

1 calling, or profession, and as to those witnesses we do
2 allow those witnesses to give opinions within the area of
3 their expertise.

4 They also have the right to state the reasons for those
5 opinions, and I will tell you that you have the right or you
6 should consider the testimony of the expert witness just
7 like any other witness that you've heard in this case. You
8 give it the weight that you think it deserves. If you
9 later -- if you should decide during your deliberations that
10 the opinion of an expert is not based on sufficient
11 education or sufficient experience or you conclude the
12 reasons the expert gave for that opinion are not sound or if
13 you think it's been outweighed by other testimony, you have
14 the right to disregard an expert's opinion like any other
15 witnesses, witness. You can believe all, part of, or none
16 of that testimony.

17 I'll tell you that an expert witness' testimony is not
18 to be given greater weight by you simply because the
19 person's been deemed to be an expert. In other words, you
20 should weigh that testimony like any other testimony in the
21 case. You give it the weight that you think it deserves,
22 and you are not required to accept an expert's opinion even
23 though it might not be contradicted by any other testimony
24 in the record.

25 Now, I'm going to instruct you and emphasize to you

1 that the fact that the defendant did not testify in this
2 case is not to be considered by you in anyway in your
3 deliberations, in your consideration of the question of the
4 guilt or innocence of the defendant. It must not be
5 considered by you in any manner whatsoever.

6 Under the law and the Constitution of this state, a
7 defendant has the Constitutional right to remain silent.
8 The assertion of that right by a defendant must not be
9 considered by you in your deliberations. I repeat to you,
10 that under your oath as jurors, you are to draw no
11 conclusion whatsoever from the fact that the defendant did
12 not testify. The fact that the defendant did not testify
13 should not even be discussed by you in your deliberations.
14 Again, the burden of proof is solely upon the State in this
15 case and only upon the State in this matter.

16 Now, in a few minutes I'm going to go over with you the
17 charge in this case and the statute under which that charge
18 originates, and you will hear in that charge and my reading
19 of that statute some language involving intent, and let me
20 explain to you what we mean by intent when we talk about it
21 in the criminal statute.

22 In order to establish criminal liability, criminal
23 intent is a required element. For example, that's the
24 mental state that a statute might require to be proven by
25 the State for a particular crime, and that might be purpose,

1 intent, knowledge, recklessness, or criminal negligence.

2 Now, criminal intent must be proven by the State the
3 same way as any other element of the crime, by proof beyond
4 a reasonable doubt, and criminal intent is always a matter
5 to be determined by the jury from the circumstances
6 surrounding the situation. Again, as I described earlier,
7 by circumstantial evidence.

8 The reason for that is there's no scientific way that
9 we can open up someone's head at the moment that they commit
10 a particular act and be able to calculate mathematically or
11 scientifically what they intended to do. Therefore,
12 criminal intent is always based on inference from the facts
13 and circumstances that have been shown to have existed at
14 the time that the event occurred. So, therefore, criminal
15 intent is always a matter to be proven by inference, and
16 that's how you make a determination as to whether or not an
17 element of a crime requiring intent was present.

18 So, it's not necessary to establish intent by any
19 direct evidence or positive evidence. It can be established
20 by inference the same way as any other fact taking into
21 consideration the acts of the parties and the facts and
22 circumstances that have been proven to have existed at that
23 time.

24 Now, criminal intent, I will tell you, is a mental
25 state. It's a conscious wrongdoing. It's up to you, the

1 jury, to determine what the defendant intended to do based
2 upon the circumstances which have been shown to you to have
3 existed at the time of the alleged event.

4 Now, I read to you earlier the indictment and I'll pick
5 that back up because it refers to Code Section 16-3-29 of
6 the Code of Laws. I'm going to read the pertinent portion
7 of that statute to you.

8 It says a person who, with intent to kill, attempts to
9 kill another person with malice aforethought, either
10 expressed or implied, commits the offense of attempted
11 murder. That's the relevant portion of the statute, and the
12 defendant has been charged with attempted murder. In order
13 to prove that crime, the State must prove the defendant
14 attempted to kill another person with malice aforethought
15 either expressed or implied.

16 Now, let me explain to you what we mean by malice
17 aforethought. That's a word or phrase you probably don't
18 use much in your day-to-day lives. Malice is hatred or ill
19 will or it's even hostility towards another person. It's
20 the intentional doing of a wrongful act without just cause
21 or excuse and with the intent to inflict an injury or under
22 circumstances that the law would infer an evil intent.
23 Malice aforethought does not require that the malice exist
24 for any particular length of time before the act occurs, but
25 malice must exist in the mind of the defendant just before

1 and also at the time that the act in question had been
2 committed.

3 Therefore, there must be a combination of a previous
4 ill will, no matter what the length, and the act. Malice
5 aforethought can be either expressed or inferred, and these
6 terms expressed or inferred don't talk about different kinds
7 of malice. It's the way that the malice is shown or proven.
8 That is either by direct evidence or by circumstantial or
9 evidence or by inference. That's the different ways you can
10 show malice.

11 Express malice is shown when a person speaks words
12 which express hatred or ill will for another or when a
13 person prepares beforehand to do the act which was later
14 accomplished. For example, lying in wait for another person
15 or any acts done in preparation going to show that the deed
16 was within the defendant's mind would be expressed malice.
17 Malice may also be inferred from conduct showing a total
18 disregard for human life. Inferred malice may also arise
19 when the deed is done with a deadly weapon.

20 Now, a deadly weapon is any article or instrument or
21 substance which is likely to cause death or great bodily
22 harm. Now whether an instrument or an item has been used as
23 a deadly weapon depends upon the facts and circumstances of
24 each case. The following items have been found in other
25 cases to be deadly weapons, and they include such things as

1 pistols, shotguns, rifles, dirk, daggers, knives, sling
2 shots, metal knuckles, razors, gasoline, fire bombs, lighter
3 fluid, and I will tell you that ordinary objects may become
4 deadly weapons when the facts show that they have been used
5 to inflict serious bodily injury, harm, or death. If the
6 facts are proved beyond a reasonable doubt sufficient to
7 raise an inference of malice to your satisfaction, this
8 inference is simply an evidentiary fact to be considered by
9 you, the jury, along with the other evidence in this case
10 and you can give it the weight you decide it should receive.

11 Now, intent requires intending the result which
12 actually occurred. Not some accident or involuntarily act.
13 Intent may be shown by acts and conduct of the defendant and
14 other circumstances when, from which you might naturally and
15 reasonably infer intent. Evidence of the character of the
16 assault, the character of the instrument used, the manner in
17 which it was used, the purpose to be accomplished, and the
18 resulting wounds or injuries may be considered in
19 determining the intent with which the assault was committed.
20 Intent may also be inferred when it is demonstrated that the
21 defendant voluntarily and willfully commits an act, the
22 natural tendency of which is to destroy another's life.

23 Now, that's my, that completes my charge on the law on
24 attempted murder. I will tell you that, under the law,
25 should the State have failed to prove that particular

1 offense, you, the jury, have the right then to consider what
2 we call lesser included offenses, and let me explain to you
3 what this means. It's a little bit, it's a little bit of a
4 strange concept. But under the law, where we have a greater
5 offense, quite often there are lesser offenses, that while
6 the State didn't prove everything in the greater offense,
7 they may have proved, proved lesser offenses that you have
8 the right, as the jury, to consider.

9 So, should you determine that the State has failed to
10 meet its burden of proof in respect to the offense that's
11 been charged, and you find the defendant not guilty of that
12 offense, then you must then determine if the defendant is
13 guilty of any of the lesser included offenses. In this case
14 the possible lesser included offenses are two in nature.
15 One, assault and battery of a high and aggravated nature,
16 and assault and battery in the second degree.

17 Before I start talking about the lesser included
18 offenses, let me explain to you what is meant by an assault
19 and battery cause both of these, these lesser includeds talk
20 about an assault and battery, and I want to be sure you
21 understand what those things are.

22 An assault, under the law, is when someone attempts or
23 offers to commit a violent injury upon another person and
24 has the presentability to complete the attempted injury. An
25 assault is the intentional creation of a reasonable fear of

1 immediate bodily harm.

2 Now, I'll give you a simple example of what that means.
3 If you and I were to meet in the hallway outside of this
4 courtroom and I were to walk up to you within arm's length
5 of you, didn't necessarily say a word to you, but I drew
6 back my fist as if to hit you, then that would be an assault
7 as long as I have the immediate ability to carry out the
8 assault. In other words, if we're in arm's length, if I
9 brought my arm forward and hit you, then that's an assault
10 because I would put you in fear of being injured. So, that
11 is what is meant by an assault.

12 A battery is the unlawful touching of another person
13 who is committed, by someone whose committed an assault.
14 The unlawful touching can be caused by any part of the
15 accused or anything that the accused puts in motion. A
16 battery is the completion of assault by applying or using
17 force to another person, however slight, as long as it's
18 done in a rude, angry, or resentful manner without legal
19 justification.

20 So, using my example, if I walked up outside in the
21 hallway and I got within arm's length, drew back my fist as
22 if to hit you, and then brought it forward and applied force
23 to you, no matter how slight, if I hit your person, that's
24 the battery and that completes the assault. So, an assault
25 and battery is the offering to commit the injury with the

1 ability to carry it out. The battery is applying force to
2 someone in a rude, angry, or resentful manner, no matter how
3 slight, without legal justification for having done so. So,
4 that's what we mean by assault and battery. So, when I use
5 that phrase in these lesser included offenses, that's what
6 I'm talking about.

7 Now, assault and battery of a high and aggravated
8 nature, a person commits the offense of assault and battery
9 of a high and aggravated nature if the person unlawfully
10 injures another person and, A, great bodily injury to
11 another person results or the act is accomplished by means
12 likely to produce death or great bodily injury. Great
13 bodily injury means bodily injury which causes substantial
14 risk of death or which causes serious permanent
15 disfigurement or protracted loss or impairment of the
16 function of a bodily member or organ. That's what is meant
17 by assault and battery of a high and aggravated nature.

18 Assault and battery in the second degree is the next
19 lesser included offense. A person commits the offense of
20 assault and battery in the second degree if a person
21 unlawfully injures another person or offers or attempts to
22 injure another person with the presentability to do so, and
23 either moderate bodily injury to another person results or
24 moderate bodily injury to another person could of resulted.

25 Now, moderate bodily injury means physical injury

1 requiring treatment to an organ, system of the body, other
2 than the skin, muscles and connective tissue of the body,
3 except when there is penetration of the skin, muscles, and
4 connective tissue that requires surgical repair or a, of a
5 complex nature or when treatment of the injured area
6 requires the use of a regional or general anesthesia.

7 Now, those are the possible verdicts. I will tell you
8 later on and I will give you a form, we'll go over that, and
9 what you'll do is you'll need to decide, first of all,
10 whether the State proved attempted murder. If you find that
11 the State did not prove that, and the defendant would be
12 found not guilty of that, then you must go to the next
13 lesser included offense and decide whether the State has
14 proven the offense of assault and battery of a high and
15 aggravated nature. If you find the State failed to prove
16 that charge, then you would need to consider assault and
17 battery in the second degree. So, that's the process that
18 you will go to.

19 Now, your verdict in these cases, as I told you
20 earlier, must be unanimous. Each and every one of you must
21 agree upon the verdict before it becomes the verdict of the
22 jury. That means each of you will have an equal say in the
23 outcome of the case.

24 Ms. Weathers, if you'll raise your hand please?

25 (Juror complies.)

1 THE COURT: You are going to be the foreperson of the
2 jury. That means you will be the person who will be
3 conducting the deliberations of the jury. If the jury has a
4 question during the discussion, I'm going to ask that you
5 write the question on a sheet of paper, knock on the door,
6 tell the bailiff that a question has been asked, and pass
7 the question to the bailiff. The bailiff will bring that
8 question to me, and then I'll consider what the appropriate
9 answer might be.

10 I will tell you, the jury, that I can't answer every
11 question that you might have during deliberations because,
12 as I told you, I don't get involved in your decisions
13 concerning the facts. I can respond to questions about my
14 charge on the law or the procedure that we followed and
15 certain questions about the evidence, but I'm not asking you
16 to edit any question. Whatever the question is, write it on
17 a piece of paper, give it to the bailiff, and I'll decide
18 the appropriate answer or whether I can answer it at all.

19 Also, it will be your responsibility, once a verdict
20 has been reached, to record the verdict on the form that I'm
21 going to give you, and, again, knock on the door, inform the
22 bailiff that a verdict's been reached. We'll return you to
23 the courtroom then to receive the verdict.

24 Now, ladies and gentlemen, I've gone over a lot of
25 things with you in my charge, and I want to be sure I

1 haven't misspoken, and I also want to be sure we get the
2 evidence that's been admitted and only that evidence
3 together for you to take back to the jury room with you.
4 So, one more time, I'm going to ask you to retire to the
5 jury room and don't begin your discussions at this time.

6 Madam Forelady, don't let any discussions begin. I'll
7 bring you back into the courtroom one more time and give you
8 final instructions. You may retire to the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Objections to the charge from the State?

12 SOLICITOR BOYD: None from the State, Your Honor.

13 THE COURT: Defense?

14 MS. JONES: Your Honor, we would just renew our
15 objection for the assault and battery of a high and
16 aggravated nature for the reasons already stated.

17 THE COURT: I understand and I would make the same
18 ruling. I'll leave the charge in place.

19 I'll ask you to come forward. Let's segregate the
20 evidence that's been admitted so the jury can have that back
21 in the jury room, reach an agreement on what goes back.

22 (Pause.)

23 THE COURT: Do we have any rubber gloves we can give to
24 them in case they decide to get into those biohazardous
25 materials?

1 All right. The verdict form, if you'll take a look at
2 that and let me know if there's any objections.

3 All right. Without objection we'll submit the forms to
4 the jury.

5 All right. Let's bring the jury back.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: Mr. Hayes, if you'll stay up here for just
9 a second. I've got to hand some things to them.

10 BAILIFF: Okay.

11 THE COURT: Thank you, sir.

12 All right. Ms. Weathers, I'm going to hand to you a
13 verdict form, and let me go over it with you so that we have
14 an, have an understanding on that. At the top you'll see it
15 indicates the state and county and the court that we're,
16 we're in, and below that is the caption, the State against
17 Mr. Brannon. It states that it is the verdict.

18 The first question that you're to answer under that has
19 to do with the charge under which he was indicted, which is
20 for attempted murder. There are two choices under that,
21 either guilty or not guilty, and I want you to put an X or a
22 check on the line adjacent to the correct verdict once that
23 jury reaches a unanimous verdict.

24 Now, you'll see below that it says should you find him
25 not guilty of that charge, then you must ask, answer the

1 same questions concerning assault and battery of a high and
2 aggravated nature. Again, either guilty or not guilty. If
3 you find him not guilty on that charge, then you would need
4 to answer the same questions for assault and battery in the
5 second degree, same choices, guilty or not guilty. You'll
6 only answer those two lesser includeds if you find him not
7 guilty of the first charge. Now, once that's been
8 completed, you'll sign it and again indicate a verdict has
9 been reached.

10 I will send the indictment back with you to the, to the
11 jury room. We're going to give you the exhibits that have
12 been placed into evidence. We've put some plastic gloves
13 with that in case you decide you want to take out those
14 items that may have some biohazard and be sure you wear
15 those gloves if you decide to take those items out. But how
16 you view the evidence is up to the jury. You decide how you
17 wish to do that.

18 So, at this time I'm going to ask you to step back to
19 the jury room to begin your deliberations. Again, we'll
20 send the exhibits back along with the indictment.

21 You may retire. Thank you very much.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Any objections to my final instructions by
25 the State?

1 SOLICITOR BOYD: No objections, Your Honor.

2 THE COURT: Any from the defense?

3 MS. JONES: No, sir.

4 THE COURT: All right. The defendant will remain in
5 custody.

6 Court is in recess until a verdict is reached.

7 Thank you very much.

8 (WHEREUPON, the jury began deliberations at 2:26 and
9 returned with a question at 3:19.)

10 THE COURT: Ask the attorneys to approach briefly.

11 (WHEREUPON, a bench conference was held at this time.)

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

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect that
16 the jury has returned to the courtroom.

17 I've received an inquiry from the foreperson. Please
18 explain the difference between assault and battery of a high
19 and aggravated nature and assault and battery in the second
20 degree.

21 Ladies and gentlemen of the jury, I'm going to give you
22 the charge that I gave earlier. I realize that it can be
23 confusing, especially in light of the other charges. So,
24 I'm just gonna recharge you again, and you can listen for
25 the differences in the, the two charges.

1 Assault and battery of a high and aggravated nature,
2 that's when a person commits the offense of assault and
3 battery, excuse me, a person commits the offense of assault
4 and battery of a high and aggravated nature if the person
5 unlawfully injures another person and great bodily injury to
6 another person results or the act is accomplished by means
7 likely to produce death or great bodily injury.

8 Now, great bodily injury is defined -- it means bodily
9 injury which causes a substantial risk of death or which
10 causes serious permanent disfigurement or protracted loss or
11 impairment of the function of a bodily member or organ.
12 That's the offense of assault and battery of a high and
13 aggravated nature.

14 The offense of assault and battery in the second
15 degree, a person commits the offense of assault and battery
16 in the second degree if the person unlawfully injures
17 another person or offers or attempts to injure another
18 person with the presentability to do so and either moderate
19 bodily injury to another person results or moderate bodily
20 injury to another person could of resulted from the act.

21 Now, moderate bodily injury means physical injury
22 requiring treatment to an organ, an organ system of the body
23 other than the skin, muscles, and connective tissues of the
24 body except when there is penetration of the skin, muscles,
25 and connective tissues that requires surgical repair of a

1 complex nature or when treatment of the injury requires the
2 use of a regional or general anesthesia.

3 So, that's the definition of the two offenses.

4 Does that answer the questions that you had?

5 FORELADY: It does.

6 THE COURT: All right. Thank you very much. I'll ask
7 you to return to your deliberations.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: And objection to my response to the
11 question from the State?

12 SOLICITOR BOYD: Not from the State, Your Honor.

13 THE COURT: Any from the defense?

14 MS. JONES: No, sir.

15 THE COURT: All right. The question will be made an
16 exhibit and placed into the record.

17 (WHEREUPON, the note from the jury was marked as
18 Court's Exhibit No. 1 for identification purposes only at
19 this time.)

20 THE COURT: We'll be in recess in this case until such
21 time as a verdict is reached.

22 (WHEREUPON, the jury began deliberations again at 3:23
23 and returned with a verdict at 4:12.)

24 THE COURT: I have been informed by the bailiff that a
25 verdict has been reached.

1 Is the State ready to receive the verdict?

2 SOLICITOR BOYD: State's ready, Your Honor.

3 THE COURT: Defense ready?

4 MS. JONES: Yes, sir.

5 THE COURT: Bring the jury in.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. Madam Forelady, I've been
9 informed by the bailiff a verdict has been reached.

10 Is that true?

11 FORELADY: Yes, it is.

12 THE COURT: Pass the form to the bailiff, please.

13 (Forelady complies.)

14 THE COURT: Thank you, ma'am.

15 All right. Madam Clerk, I will allow you to publish
16 the verdict.

17 CLERK: In the Court of General Sessions, Case Number
18 2011-GS-42-4694, State versus John Wayne Brannon, as to the
19 Indictment Number 2011-GS-42-4694 for the offense or
20 attempted murder, of attempted murder, we, the jury, find
21 unanimously, find the defendant, John Wayne Brannon, not
22 guilty.

23 How do you find the defendant, John Wayne Brannon, with
24 regards to the lesser included offense of assault and
25 battery of a high and aggravated nature, guilty.

1 This is signed by the foreperson and dated today's
2 date.

3 Ladies and gentlemen of the jury, if this is your
4 verdict and still your verdict, please raise your right
5 hand.

6 (WHEREUPON, all jurors raise their hands at this time.)

7 THE COURT: Anything further from the State before I
8 release the jury?

9 SOLICITOR BOYD: Nothing further, Your Honor.

10 THE COURT: Anything further from the defense?

11 MS. JONES: We request polling of the jury, Your Honor.

12 THE COURT: All right. I'll grant the polling.

13 Ladies and gentlemen of the jury, I'm going to have the
14 clerk call your name. She will be asking each of you or
15 will ask the same question, if this is your verdict and
16 still your verdict. When your name is called, if you will
17 please stand and answer the question as to whether this is,
18 this is your verdict and is still your verdict.

19 Madam Clerk, you may poll the verdict.

20 (WHEREUPON, all jurors were asked if this is their
21 verdict and still their verdict and all jurors responded in
22 the affirmative.)

23 THE COURT: Anything further from the defense before I
24 release the jury?

25 MS. JONES: No, sir.

1 (WHEREUPON, the jury panel was dismissed from the
2 courtroom at this time.)

3 THE COURT: All right. You want to get a sentencing
4 sheet ready for this?

5 SOLICITOR BOYD: We're ready.

6 MS. JONES: And, Your Honor, prior to sentencing I
7 would request to make my normal motions.

8 THE COURT: You may do so at this time.

9 MS. JONES: Okay. Your Honor, we request a motion for
10 a new trial based upon the items we brought up in the
11 directed verdict, that there was not substantial evidence
12 produced to go forward on the attempted murder and the
13 malice, and I'll just reference back to where you indicated
14 that, Your Honor, as well as our renewed objection to the
15 ABHAN, the lesser included charge, as well as that jury
16 instruction, sir.

17 Thank you.

18 THE COURT: All right. The motion is noted and the
19 motions are denied.

20 Are you ready to go forward?

21 SOLICITOR BOYD: We are, Your Honor.

22 THE COURT: If you'll approach the bar please.

23 Mr. Brannon, come forward.

24 (Parties comply.)

25 THE COURT: Mr. Brannon, if you'll step around here in

1 front of the microphone for me please, sir.

2 Yes, sir, Mr. Boyd.

3 SOLICITOR BOYD: Your Honor, if we could have a moment
4 to allow the court reporter to make an exhibit.

5 THE COURT: That will be fine.

6 (WHEREUPON, an affidavit was marked as Court's Exhibit
7 No. 2. The notice of life sentence was marked as Court's
8 Exhibit No. 3. The certified copies of convictions were
9 marked as Court's Exhibit No. 4. All of the above exhibits
10 were received into evidence at this time.)

11 SOLICITOR BOYD: May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 SOLICITOR BOYD: Your Honor, this is John Brannon,
14 Indictment 2011-GS-42-4694. He was convicted by a jury of
15 assault and battery high, high and aggravated nature off of
16 an indictment for attempted murder. True bill was issued.
17 Also handing up a proposed restitution order to the victim,
18 actually to the victim, State Office of Victim Assistance.
19 The money rendered in his treatment is \$3,000 -- \$3,095.63,
20 Your Honor.

21 Previously the defendant and his attorney were served
22 notice of a life sentence under the two, three strike law,
23 Your Honor. I have marked for a Court's Exhibit, Court
24 Exhibit No. 2 -- Your Honor, Court Exhibit 2 would be the
25 Solicitor's affidavit of service on both Tanya Jones. It

1 was delivered to her office on August 7th, August 17th,
2 2011, by an investigator with our office. That notice was
3 also served on the defendant personally at California
4 Avenue two days later on August 19th, 2011, Your Honor.
5 That's Court Exhibit No. 2.

6 Court Exhibit No. 3 is the actual notice of life
7 sentence pursuant to Section 17-25-45(a) informing him that
8 if he's convicted of attempted murder on the above mentioned
9 indictment, mandatory sentence is based on prior convictions
10 for armed robbery, a most serious offense, on July 31st,
11 1980, and/or any prior convictions for attempted armed
12 robbery, a most serious offense on January 31st, 1980,
13 and/or conviction for armed robbery, a most serious offense,
14 on February 14th, 1994, Your Honor.

15 Court Exhibit No. 4, which was provided to the
16 defendant with service of the notice of the life sentence,
17 are certified copies of his prior convictions for the
18 enumerated offenses, Your Honor, of attempted armed robbery,
19 armed robbery, and armed robbery. That's Court Exhibit No.
20 4. They are notarized by the Clerk of Court.

21 May I pass them up, Your Honor?

22 THE COURT: You may.

23 Ms. Jones, does the defendant challenge any of the
24 information that's been submitted to this Court in Court's
25 Exhibits I believe it's 1, 2, and 3.

1 MS. JONES: Yes, sir.

2 THE COURT: Okay. I'll be happy to hear from you.

3 MS. JONES: In accordance with the notice of life
4 sentence pursuant to Section 25 or 17-25-45(a), it indicates
5 that the defendant will receive a life sentence if he is
6 convicted of attempted murder on the above indictment. We
7 did not, according to the statute, you need ten days notice
8 by the solicitor to the defendant seeking life without
9 parole, Your Honor.

10 He was not convicted of attempted murder. This is a
11 lesser included offense. This is ABHAN. Therefore, we were
12 not given proper notice of the lesser included offense, and
13 the statute was amended now to require that ten day notice.
14 We weren't given notice. Also, attempted murder is a most
15 serious, and ABHAN is serious. So, we would -- it is our
16 contention that if they wanted to seek life on the ABHAN, we
17 would of needed specific notice ten days prior to trial on
18 that lesser included offense. We were not given that. We
19 did not receive that, and, therefore, we do not believe that
20 he is eligible for an L.W.O.P. sentence today.

21 THE COURT: All right. I'll hear from the State.

22 SOLICITOR BOYD: Yes, Your Honor. ABHAN, excuse me,
23 attempted battery, excuse me, ABHAN is a, a lesser included
24 offense statutorily of attempted murder and is included in
25 Section 25, section 17-25-45 of, of the South Carolina Code

1 of Laws. Notice was given of it, of, of a conviction of a
2 serious or most serious offense that we would be seeking
3 life without parole, Your Honor.

4 The defendant is aware that ABHAN is a lesser included
5 of attempted murder. The facts didn't change. It's still a
6 third strike under our law, and we provided notice of the
7 three prior convictions out of an abundance of caution to
8 allow it to go forward, Your Honor.

9 THE COURT: All right. Anything further, Ms. Jones?

10 MS. JONES: Your Honor, we would just indicate that he
11 could of put attempted murder or any lesser included, and we
12 would remind the Court that the State wasn't even seeking
13 any lesser included until we came up with assault and
14 battery second degree. And they didn't even want that.
15 They objected, they objected, they objected, and at the last
16 minute they received the ABHAN charge really late in trial.

17 Your Honor, again, we would, we would argue that this
18 is not sufficient notice. The Legislature is clear that if
19 you want to seek life, you have to specifically say what
20 you're seeking life for. Therefore, it's deficient under
21 the statutory scheme and we contend that you should be
22 sentencing him under the zero to 20 under your own
23 discretion rather than imposing the mandatory life sentence.

24 THE COURT: All right. Well, I'm gonna -- so, this is
25 a fairly novel issue. I'm gonna take it under advisement.

1 I'll defer sentencing. Defendant remains in custody until
2 such time as he's sentenced.

3 Thank you very much.

4 MS. JONES: Thank you, Your Honor.

5 THE COURT: I'll ask from a brief from both sides by
6 five o'clock tomorrow afternoon.

7 SOLICITOR BOYD: Thank you, Your Honor.

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9 (WHEREUPON, this case was in recess at this time.)

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1 Thursday, December 15th, 2011

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3 THE COURT: All right. We're on the record in the case
4 of The State versus John Wayne Brannon.

5 I have received briefs from the attorneys concerning
6 the imposition of a life sentence. The issue raised by the
7 defendant was that the notice given to the defendant by the
8 state did not or actually was notice -- I've got it here.
9 Let me get it. Stating that the defendant will receive a
10 sentence if he's convicted of attempted murder on the above
11 lifted, listed indictment, which was an indictment for the
12 offense of attempted murder.

13 The defendant was convicted in trial this week of
14 assault and battery of a high and aggravated nature. I have
15 received the briefs. The motion was by the defendant.

16 Does the defendant wish to make any oral argument on
17 the motion?

18 MS. JONES: No, sir.

19 THE COURT: State wish to make any oral, oral argument
20 on the motion?

21 SOLICITOR BOYD: No, sir, Your Honor.

22 THE COURT: I have reviewed the briefs, and based,
23 based upon my review of the briefs, I find that the notice
24 given by the State would trigger the recidivist statute.
25 Specifically, I have reviewed the cases of State versus

1 Burdette, which seems to be closer to the facts in this case
2 than others. I quote from that case that says "specifically
3 listing the triggering charge from the current case is
4 unnecessary because the defendant had been fully informed of
5 the charges against him in the indictment and he has been
6 informed that the state will apply the recidivist statute."

7 In this particular case he was indicted for attempted
8 murder. I note that the statute has recently changed in
9 that, in, as far as the recidivist statute and the statute
10 which now provides for assault and battery of a high and
11 aggravated nature, which is a, a statutory crime. I do note
12 in the statute that provides for the assault, for assault
13 and battery several different levels including assault and
14 battery of a high and aggravated nature, which is a
15 statutory crime. That's Code Section 16-3-600(b)(b)
16 specifically states that assault and battery of a high and
17 aggravated nature is a lesser included offense of the
18 offense of attempted murder.

19 Based upon the cases that I've reviewed in the
20 memorandum and the fact that the statute concerning assault
21 and battery of a high and aggravated nature specifically
22 refers to it being a lesser included offense of attempted
23 murder, I find that the notice was sufficient to place him
24 on notice of the State's intention to seek the sentence
25 under the recidivist statute, and that he would of been on

1 notice of not only the original charge, but the lesser
2 included charges as well. So, therefore, the motion in this
3 case is denied.

4 Now, I have received from the State several exhibits.
5 I'll pass those down to the State's attorney, allow him to
6 place those on the record again in this matter. I
7 believe -- does the clerk have the sentencing sheet in this
8 case?

9 I believe I, I believe I returned it to you the other
10 day.

11 Thank you.

12 All right. Mr. Boyd.

13 SOLICITOR BOYD: May it please the Court, Your Honor.

14 Court Exhibit No. 2 is two affidavits of service by our
15 office. The first page is serving the defense attorney,
16 Tanya Jones, by serving the notice of life sentence on her
17 office on, delivering personally to C. John Luper. That was
18 served on August 19th, 2011, Your Honor.

19 A second page of Court Exhibit No. 2 is the affidavit
20 of service on the defendant himself, Mr. John Wayne Brannon.
21 He was served personally on August 17th, 2011, at
22 California Avenue, Your Honor. That is Court Exhibit No. 2.

23 Court Exhibit No. 3 is the actual notice of life
24 sentence served on the defendant and defense attorney by the
25 State, Your Honor, and that was filed with the Clerk of

1 Court on August the 16th, 2011. That states the defendant
2 and his attorney, Tanya Jones, you will please take notice
3 that pursuant to Section 17-25-45(a) and (h) the South
4 Carolina Code of Laws, 1976 as amended, the defendant will
5 receive a life sentence if he's convicted of attempted
6 murder on the above listed indictment.

7 This mandatory sentence is based on our prior
8 conviction for armed robbery, a most serious offense,
9 on January 31st, 1980, and/or prior conviction for attempted
10 armed robbery, a most serious offense, on January 31st,
11 1980, and/or a prior conviction for armed robbery, a most
12 serious offense, on February 14th, 1994.

13 Your Honor, the last and Court Exhibit No. 4 are three
14 separate notarized copies of defendant's prior indictments.
15 The first being an indictment for armed robbery on
16 January 14th, 1994, Your Honor. That is Indictment
17 94-0012. The second indictment, Your Honor, is the
18 indictment against Mr. Brannon for attempted armed robbery.
19 That was 1980-GS-42-57. The last copy of an indictment,
20 Your Honor, is 1980-GS-42-38. That is also an indictment
21 for armed robbery against the defendant, Mr. John Wayne
22 Brannon, Your Honor.

23 If I could pass these three exhibits up to the Court at
24 this time?

25 THE COURT: Thank you very much.

1 All right. Other than the motion previously made which
2 I have now ruled upon, Ms. Jones, any other issues with the
3 documents that have been submitted as exhibits?

4 MS. JONES: No, sir.

5 THE COURT: Anything you'd like to tell the Court
6 before I pass sentence in the case?

7 MS. JONES: No, sir.

8 THE COURT: All right. Mr. Brannon, having been found
9 guilty of a, by a jury of your peers of the offense of
10 assault and battery of a high and aggravated nature, it is
11 the sentence of this Court that you be confined in the State
12 Department of Corrections for the period of your life
13 without parole.

14 Good luck to you, sir.

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 12th, 13th, and 15th day of December, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 15th, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

John Wayne Brannon #209650
Full name and prison number (if any) of Applicant.

V.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- for the County in which the applicant was convicted. ME Cormick Corr. Inst. 386 Redemption
1. Place of detention Way ME Cormick, S C 29899
2. Name and location of Court which imposed sentence General Sessions
Spartanburg
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-B-5-4204694/Assault and Battery of a High and
Aggravated Nature
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) 12/15/11 - Life without parole
(b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept 1, 2013 - filed Oct 2, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No # 2013 - UP-362
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- | | |
|-----|----------|
| (a) | <u>N</u> |
| (b) | |
| (c) | <u>A</u> |
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of trial counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE attached sheets 194 - 494
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Appeal
- ii. Appeal - pro-se brief
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. S.C. Court of Appeals
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Dismissed
- ii. Dismissed
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. Sept 1, 2013 - Filed Oct 2, 2013
- ii. Sept 1, 2013 - Filed Oct 2, 2013
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. No 2013-UP-362
- ii. No 2013-UP-362
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- | | |
|------|-----------|
| i. | <u>NI</u> |
| ii. | |
| iii. | <u>A</u> |
- (b) the proceedings in which each ground was raised:
- | | |
|------|-----------|
| i. | <u>NI</u> |
| ii. | |
| iii. | <u>A</u> |
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) See 10 (a) Applicant first time presenting ground
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Tanya Jones - Spartanburg P.D. Office
- ii. Kathrine Haggard Hudgins - Div. of Appellate Defense
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
New trial and any other relief that I may be entitled to, and
the court deems just and fair
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of)

McCormick)

VERIFICATION

John Brannon

, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John W. Brannon

SWORN to and subscribed before me this 02day of Dec, 2013.

J. C. Franklin (L.S.)
Notary Public

My Commission Expires:

12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 DEC -5 AM 10:06
J. J. DEANLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

John Brannan

I, John Brannan, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John W. Brannan
Applicant

SWORN or affirmed to and subscribed before me this

02 day of December, 2013.

Jeff Rankin
Notary Public

My Commission Expires: 12-16-2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 DEC -5 AM 10:06
L. J. C. CLARKLEY

11(2). INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

(1) Per the Bill of Rights to the Federal Constitution I was denied the right to effective assistance of counsel. Thereby, my conviction and sentence violates the Constitutions and laws of the United States, as guaranteed by the 6th and 14th Amend. Also per the S.C. Const. Article I Sec 3 and Sec 14 Further see Strickland v Washington 104 S.Ct. 2052.

I will clearly show prejudice,
There is a reasonable probability that but for counsel Tanya Jones unprofessional errors, the result

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CLERK OF COURT
SPARTANBURG COUNTY
2019 DEC -5 AM 10:06

of my trial and appeal would have been different SEE: Porter v State 629 SE2d 356.

Where Ms. Jones undermined the confidence in the outcome of my trial and appeal SEE: Cherry v State 386 SE2d 624; Johnson v State 480 SE2d 733 and Butler v State 334 SE2d 813.

Here, Ms. Jones acts and or omits including but not limited to - failure to properly research and investigate facts and laws surrounding the entitlement of my whole case prejudiced me SEE: Ard v Catoe 642

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SPARTANBURG COUNTY
2003 DEC -5 AM 10:06
J. L. MULLIN

SEzd 590; Pelzer v State 672 SEzd 790;

Ray v State 401 SEzd 151

Nor did counsel hire an investigator
and a DR to aid in my defense.

Which I will prove by the preponderance
of the evidence SEE: Fraser v State
570 SEzd 172, alone with the aid of PCR
counsel SEE: S.C.R. Civil P. Rule 71.1 (d)
and Rule 407 - Rules of Professional conduct

I further argue that the grounds)
set out in this - my original P. R. R.
application, expressly or not argued, is
Subject to amendments per S.C. Code
Ann § 17-27-90 Also see S.C.R. Civil

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 DEC -5 AM 10:06
J. J. - DECKLE

P. Rule 71.1(d) Thus I am entitled
to a FULL and FAIR evidentiary
hearing to prove my case. SEE: Sharper
v State 305 SE2d 247; Odom v State
523 SE2d 753

Moreover, I would like to bring to
the court, opposing counsel and my
appointed PCR counsel's attention,
that I am also entitled to a
ruling upon "all" issues SEE: S.C.
Code Ann § 17-27-80; Wardar
State 653 SE2d 266; Bostick v
Stevenson. 589 F3d 164.

Date: 12/2/13

Respectfully submitted

John W. Brannon

494

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 DEC -5 AM 10:06
J. W. BRANNON

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 John Wayne Brannon #209650

vs Applicant

The State

IN THE COURT OF COMMON PLEAS

PCR[#]

NOTICE AND MOTION
 FOR COSTS / FEES

NOW COMES the above named Applicant who moves
 this Hon. Court in the above entitled matter
 per S.C. Code Ann § 17-3-50 and 17-3-
 60 for an investigator to aid Applicant's
 appointed counsel to locate and find
 Applicant's witnesses SEE: Glover v State
 458 SE2d 538; Bannister v State 509 S
 807. And a qualified medical doctor.

Respectfully Submitted

John W. Brannon

Date: 12/2/13

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 DEC -5 AM 10:00
 J. W. BRANNON

The Hon. Spartanburg
 Clerk of Ct. W. Hope Blackdog
 180 Magnolia St.
 P.O. Box 3483
 Spartanburg, SC 29304-3483

Date: Dec 2 13

Dear Hon. Clerk of Ct.

Please find enclosed for filing my notice of
 motion for costs/fees and my application for PCE

Would you be so kind as to forward the
 Atty Gen's Office a filed copy and me one
 back for my own record.

Thanking you in advance I am

cc: Personal file

Sincerely,
 John W. Brannon

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 DEC 5 AM 10:05
 J. W. BRANNON

PROOF OF SERVICE

I, John M. Brannon certify that I have served my notice/motion for costs/fees, and my application for P.C.R. upon the below Hon.

Clerk of Ct. By placing the above said into the Meigs Corr. Inst. mail room on this 2nd day of Dec. 13 to be placed in the U.S. mail with postage prepaid

The Hon. Clerk of Ct.
 M. Hope Blackley
 180 Magnolia St
 P.O. Box 3483
 Spartanburg - SC 29304-3483

SWORN to before me
 this 02 day of DEC 2013
John M. Brannon
 Notary Public

John M. Brannon

My Commission Expires
 12-16-2019

FILED

CLERK OF COURT
 SPARTANBURG, SC

2013 DEC -5 AM 10:05

1.11.13 - 10:05 AM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-4797
John Wayne Brannon, #209650,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed December 5, 2013, but received by Respondent on April 28, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the July 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-4694). The Applicant was represented by Tanya Jones, Esquire. On December 15, 2011, the Applicant proceeded to trial where he was acquitted by a jury of attempted murder, but found guilty of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Roger L. Couch sentenced Applicant to life without parole pursuant to S.C. Code Ann. §17-25-45.

A timely Notice of Appeal and brief pursuant to Anders v. California¹ were filed on Applicant's behalf. The Applicant filed a *pro se* brief on his own behalf. The South Carolina Court

¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).

of Appeals affirmed the Applicant's conviction and sentence. State v. Brannon, Op. No. 2013-UP-362 (filed October 2, 2013). The Remittitur was returned on November 5, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to properly research and investigate the facts and laws surrounding the entitlement of [the] whole case prejudiced Applicant,
 - b. Counsel failed to hire an investigator or expert witness to assist in defense,

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

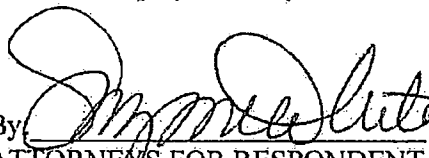
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

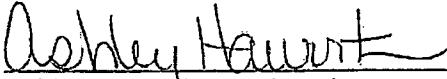
August 18, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-4797
JOHN WAYNE BRANNON, #209650	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of August, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 John W. Brannon,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2013-CP-42-4797
7 The State.) June 17, 2016
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE R. FERRELL COTHRAN, JR., JUDGE
13
14

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

16 J. BRANDT RUCKER, ESQUIRE
17 Attorney for the State

18 ALICIA OLIVE, ESQUIRE
19 Attorney for the Defendant
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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No exhibits entered into evidence.

1 MS. OLIVE: May it please the Court, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. OLIVE: I'll give the Court a brief procedural
4 history, and then I will get Ms. Jones on the phone.

5 Your Honor, this is John Wayne Brannon, case
6 No. 2013-CP-42-4797.

7 Mr. Brannon was indicted for attempted murder in the
8 July of 2011 term of the Spartanburg Grand Jury. He was
9 represented by Tanya Jones on that charge.

10 On December 15th of 2011 he proceeded to trial where
11 he was found guilty. He was acquitted -- well, he was
12 found guilty of the lesser included offense of assault and
13 battery of a high and aggravated nature.

14 Judge Roger Couch sentenced him to life without parole
15 pursuant to South Carolina Code 17-25-45.

16 Timely notice of appeal and brief pursuant to Anders
17 vs. California were filed on his behalf. He also filed a
18 pro se brief on his own behalf.

19 The South Carolina Court of Appeals affirmed his
20 conviction and sentence, and the remittitur was returned on
21 November 5th of 2013.

22 He filed this application for post conviction relief
23 on December 5th of 2013, but it was not received by
24 respondent until April 28th of 2014.

25 Your Honor, Mr. Brannon is present in the courtroom

1 today and represented by Brandt Rucker.

2 His trial counsel is now residing and practicing in
3 Oklahoma City. I'm going to call her and present her
4 telephone testimony in lieu of her live testimony. With
5 the Court's permission, I will get her on the phone if
6 there is no objection.

7 MR RUCKER: No objection.

8 THE COURT: Okay.

9 (The following takes place during a cell phone
10 conversation.)

11 MS. JONES: Tanya Jones speaking.

12 MS. OLIVE: Ms. Jones, this is Alicia Olive calling
13 from the South Carolina Attorney General's Office. We are
14 in the courtroom. I'm going to leave you on speaker phone
15 while we -- while Mr. Brannon testifies.

16 (Pause for cell phone static.)

17 MS. OLIVE: I'll just leave that unplugged for now
18 since it's giving feedback.

19 MS. JONES: I'll turn it to Mr. Rucker at this time.

20 MR RUCKER: Your Honor, may it please the Court. I
21 call my client John Wayne Brannon to the stand.

22 THE COURT: All right. Come around, please, sir.

23

24

25

John Wayne Brannon
Direct examination by Mr. Rucker

1 JOHN WAYNE BRANNON, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. RUCKER

4 Q Mr. Brannon, what's your current sentence?

5 A Life without parole.

6 Q Okay. And just to make sure we're on the same page
7 with what the attorney general announced, what were you
8 convicted of at trial?

9 A Attempted murder.

10 Q Were you convicted of attempted murder or ABHAN?

11 A I was convicted of ABHAN. I was sentenced under
12 ABHAN, but I was charged with attempted murder.

13 Q And why did you get the life-without-parole?

14 A For a lesser included offense.

15 Q Okay. Just to go back, who was your attorney at
16 trial?

17 A Tanya Jones.

18 Q How -- how long had she been your attorney before
19 y'all went to trial?

20 A About eight or nine months.

21 Q How many times did you meet with her during that time?

22 A Twice.

23 Q And each of those meetings, how long did they last?

24 A Ten minutes.

25 Q Did you ever get a chance to go over the discovery

John Wayne Brannon
Direct examination by Mr. Rucker

1 with her?

2 A No, sir.

3 Q Okay. What was your criminal-conviction background
4 before this trial? Had you been convicted or pled guilty
5 to other crimes before?

6 A Yes, yes.

7 Q And what were those?

8 A Assault and battery, armed robbery.

9 Q Okay. And -- and how many armed robberies had you
10 been convicted of?

11 A Two.

12 Q At some point were you served with notice of life
13 without -- the state was seeking life without parole?

14 A Yes.

15 Q And do you recall when -- when you received that?

16 A I can't remember the exact date.

17 Q Were you -- was it near -- near in time to trial, or
18 was it some months beforehand?

19 A It was some months before the trial.

20 Q Okay.

21 A Like, maybe a month or two after the little incident.

22 Q All right. Were you yourself served with the notice
23 or was your attorney served with the notice?

24 A I myself was served.

25 Q And did you inform your attorney that you had been

John Wayne Brannon
Direct examination by Mr. Rucker

1 served with a life-without-parole notice?

2 A Yes. I think so after I went and seen her the first
3 time.

4 Q Okay. Did Ms. Jones tell you you could be eligible
5 for life without parole because of that notice in your
6 background?

7 A Yes.

8 Q Did that go into your decision to go forward to trial
9 or plead?

10 A Yes, sir.

11 Q All right. Were you offered -- were you given a plea
12 offer in this case?

13 A Yeah. I was offered 30 years one time and, again, 20
14 years. And she came back again and offered me a
15 three-to-five.

16 Q Okay. When were you given that three-to-five offer?

17 A Maybe a month before I went to court.

18 Q Okay. Now, let's go back through the plea offers.

19 Were these -- or what were the -- what would you plead

20 guilty to? What would be the charge that you would plead

21 guilty to for the 30 years, for example?

22 A Attempted murder.

23 Q All right. And then the 20, was that also attempted
24 murder?

25 A Yes, sir.

John Wayne Brannon
Direct examination by Mr. Rucker

1 Q And then the three-to-five, what was that?

2 A I guess for the same charge. Attempted murder.

3 Q Why did you not take the three to five years?

4 A She never got back with me with it, on it.

5 Q So how did you even know that you had that offer?

6 A I had went to see her that previous month. We talked
7 about it. I tried to give her a statement pertaining to
8 how the incident happened. And she said, well, 20 years is
9 a little too harsh, say would you take three to five. I
10 said yes. So she said she'd get back with me. And the
11 next time she got back with me I was going to court.

12 Q To your knowledge did the state ever actually offer
13 three to five though?

14 A I didn't know that they ever offered because she never
15 got back with me.

16 Q Okay. And when you said you went to see her, were you
17 out on bond during those --

18 A Yes, sir.

19 Q Okay. She scheduled two appointments with you during
20 that time.

21 A Yes.

22 Q Did she tell you why she wasn't going over your
23 discovery with you?

24 A No.

25 Q Okay. What was your theory? What were y'all doing in

John Wayne Brannon
Direct examination by Mr. Rucker

1 preparation for the case?

2 A Nothing really, you know. She just enlightened me on
3 different things like how -- how -- how the indictment work
4 and stuff like that, yes, sir.

5 Q Okay. Did you talk to her about the incident and what
6 happened?

7 A I tried to talk to her one time about it. You know,
8 she scribbled something down, but she never just actually
9 really just took a statement from me.

10 Q Did you tell her you believed you were acting in
11 self-defense?

12 A Not at the time, not until I -- I got this sentence,
13 this life sentence, and I started studying my case a little
14 bit. And I came to the conclusion that it could have been
15 a self-defense, it could have been -- well, she could have
16 instructed the jury of a self-defense.

17 Q Do you believe there was evidence to show self-defense
18 in this case?

19 A Yes, I do.

20 Q Okay. Did y'all talk about a self-defense argument at
21 all before you went to trial?

22 A No, sir. I -- we had the evidence that I was going to
23 present in court, and which was a dagger, and I asked her
24 about the dagger. She said, well, we didn't need the
25 dagger. But all on the same note she had me to call my

John Wayne Brannon
Direct examination by Mr. Rucker

1 parents, my mother, and had a dagger sent up there, but she
2 never used it.

3 Q All right. Was the dagger -- first of all just to
4 give some context to the Court, how did the dagger figure
5 into this case?

6 A Well, after the incident I hit -- I hit the -- the
7 victim in the head with a chair. He dropped the dagger. I
8 kicked it aside and picked it up and put me it in my
9 waistband. He cussed me all the way out the door with the
10 dagger, and I went to my sister's house. And that's where
11 I left the dagger at until I went to court.

12 Q So the dagger was in the possession of the victim in
13 this case first.

14 A Yeah, at first.

15 Q All right. And then y'all still had that and it
16 was -- Ms. Jones could have received that if she would have
17 reached out for it, is that right?

18 A Yeah. She had it.

19 Q Okay. She actually got the dagger back from --

20 A Yeah. They brung the dagger up.

21 Q Did she talk to you about the importance of the
22 dagger?

23 A No.

24 Q We're going to -- did y'all ever talk about the --
25 whether you should testify in this trial or not?

John Wayne Brannon
Direct examination by Mr. Rucker

1 A Yeah. She -- she advised me not to take the stand.

2 Q Did she tell you why you should not take the stand?

3 A Said I would incriminate myself and I was sure to get
4 a life sentence.

5 Q Did she talk about your criminal record as well being
6 used against you?

7 A Yes, yes.

8 Q Do you remember -- and I know this is awhile back --
9 but do you remember specifically what she said in your
10 criminal record could be used against you?

11 A She just said my -- my criminal record was pretty bad,
12 you know. She said that would be like killing myself, or
13 so to speak.

14 Q Did she tell you that the jury could use that, those
15 criminal convictions, against you?

16 A Yes, yes.

17 Q Was that as to your credibility or that they could
18 just take that in the fact to see if you actually did this?

19 A I think they said like they could actually, you know,
20 do this or whatever.

21 Q And what I mean by that is did she tell you they could
22 see that you had been a bad guy in the past so you probably
23 did this at this time?

24 A Yes, sir.

25 Q And you went over it earlier, but you had some armed

John Wayne Brannon
Direct examination by Mr. Rucker

1 robbery convictions. Did you have any other violent crimes
2 as part of your history?

3 A No, just little simple assault charges.

4 Q Okay. And did you have drug charges or any --

5 A I had a paraphernalia, one paraphernalia.

6 Q Okay. How far back -- I'm sorry. Go ahead.

7 A I had one empty beer can and a crack pipe that was in
8 the car.

9 Q Let's go back to the beginning. Who was the alleged
10 victim in this case?

11 A My first cousin, Ronnie Brannon.

12 Q And were y'all close? Were y'all --

13 A Like brothers -- like brothers.

14 Q And did this start as just some heated argument?

15 A Yes, sir. It all started with a dagger. I was
16 telling him to stop drawing the dagger on me and
17 threatening me with the dagger. And this happened on four
18 or five occasions.

19 Q Was he drinking that day that this happened?

20 A Yes, sir. I had just -- if you allow me to.

21 Q Sorry.

22 A Well, this thing happened on four or five occasions.
23 And the last time it happened I hid the dagger from him,
24 and a week later he came back. He bugged me about the
25 dagger and told him I had the dagger. I told him I didn't

John Wayne Brannon
Direct examination by Mr. Rucker

1 have the dagger, but I had tooke and hid it.

2 He kept going on about the dagger. So I told him, I
3 said, well, man, I got your dagger, you know. I said I
4 give it back to you under one -- one assumption. He said
5 what. I said promise me you won't draw it on me or
6 threaten me with it no more. So he promised. And I give
7 it back to him.

8 And two weeks later I had came by the house, and he
9 was walking up and down in the living room. And I asked
10 him, I said, what's the matter. He said, man, I'm -- I
11 need a drink. So I -- he asked me did I have money. I
12 said yeah. I had give him some money the night before. So
13 he said you got any more money. I said, yeah, man, I said
14 the little money I got, said I'm going to use for my lunch
15 money. So he kept bugging me about it.

16 So we went to a liquor house, and I bought two beers
17 or a pint of wine and a pint of liquor. We went back to
18 the house, and he drunk practically all of the liquor. I
19 was just drinking beer at the time and taking little sips
20 of wine.

21 And about -- I guess about 30 minutes into that he got
22 up and went to the bedroom and came back. He had the
23 dagger. And I remind you I had give it back to him under
24 promissory note that he wouldn't draw it on me or threaten
25 me with it any more. And he came back and stood in front

John Wayne Brannon
Direct examination by Mr. Rucker

1 of me with the dagger.

2 I stood up on the other side of the coffee table from
3 the couch and told him. I said, man, you promised me you
4 wouldn't -- you wouldn't draw the dagger on me or threaten
5 me with it no more, there it is back in my face again.

6 So I walked this end of the couch to come out, but he
7 had a lounge -- a La-Z-Boy recliner there. So I couldn't
8 get out on that end there. So I walked back to the other
9 side. He come to that side there and blocked me in.

10 And we was talking. I was looking him in the face and
11 all of the while, motion. I just grabbed a little kid
12 aluminum chair and hit him in the head one time, just
13 peeled the skin down on his forehead and not through or
14 nothing. The whole thing, the whole injury, took 12
15 stitches.

16 And he asked me, told me, say I need to go to the
17 emergency room. I say, well, you go on to the emergency
18 room. I had put the dagger in my waistband. I got a
19 couple of pair of pants and some shirts and socks, and I
20 left. He cussed me all the way out the door. And I went
21 out to my sister's house told her what had happened.

22 Then the next thing I know about a month or a month
23 and a half later I received a -- police came on my job with
24 warrants and arrested me. I was picked up first for
25 assault. When I got to the jailhouse the officer got on

John Wayne Brannon
Direct examination by Mr. Rucker

1 the phone and got off the phone and referred to me that
2 they had upgraded it to attempted murder.

3 So I went before the bond judge. She said how did it
4 go from assault to attempted murder. I said I tried to get
5 a little insight from the officer out there. I said me and
6 her got to arguing and they stuck me in the holding cell.
7 She say something ain't right about this. She say I had
8 set your bond at \$30,000. She said I'm going to lower your
9 bond to \$10,000 and asked me could I get out. I said yes.
10 So she lowered by bond to \$10,000 and told me to get a
11 lawyer.

12 So two days after that I got out on bond and I
13 never -- I never got a lawyer. I just got a public
14 defender, which she asked me twice. She said I'm going to
15 hold you to this, get you a lawyer.

16 Q Did you -- did you hear the testimony about the extent
17 of his injuries during the trial?

18 A Yeah. They basically was fabricated. It wasn't -- it
19 wasn't like that. They wasn't life threatening or nothing
20 like that.

21 Q And did you hear the testimony about the big rock and
22 all of that?

23 A Yes, sir.

24 Q Do you know anything about the rock?

25 A The rock wasn't even involved. I never -- the

John Wayne Brannon
Direct examination by Mr. Rucker

1 incident took place in the house. That's where it ended
2 at, in the house.

3 Q How do you think he got those injuries if you said
4 just hit him with the chair, or such extensive injuries?

5 A The only injuries he had when I left him, from what I
6 hit him with the chair.

7 Q Did you tell Ms. Jones about that and what actually
8 happened?

9 A I tried to explain that to her, but it was like, you
10 know, she didn't -- she didn't really believe me or
11 whatever, you know. So she, like I say, she never took a
12 statement from me pertaining to my statement of the
13 situation.

14 Q Okay. You're claiming that she failed with the
15 self-defense and all; you're claiming that she failed to
16 thoroughly investigate. Have we gone over all of the
17 things that she didn't investigate, or are there other
18 issues to put forth?

19 A She could have investigated, reviewed, 17-25-45,
20 statute of ABHAN, assault and battery of a high and
21 aggravated nature. If she had of, she'd have seen that it
22 went back to the original form and it was statutory. She
23 never did that. She just threw it out, you know.

24 Q If you would have known you were really actually
25 eligible for life without parole would you have gone

John Wayne Brannon
Direct examination by Mr. Rucker

1 forward with the 20-year plea?

2 A If I felt his injuries was life threatening, I could
3 have actually just killed him or something. Yes. I
4 probably would have.

5 Q And why did you not take the 20-year plea?

6 A Because I felt it's -- it's -- it's my first cousin.
7 He's like my brother, you know.

8 He got on the stand and testified, which I feel the --
9 he was coerced into doing that, because the whole time he
10 testified the dagger never came up. My lawyer never asked
11 him about the dagger or the prosecutor never said anything
12 about the dagger or anything. All they talked about was
13 that -- was the rock, the rock. So I kind of felt like,
14 you know, I was thrown under the bus, so to speak.

15 Q Do you feel like if Ms. -- did you talk to Ms. Jones
16 about how y'all could get that dagger in if you did not
17 testify?

18 A Did I talk to her about what, now?

19 Q About how to get the dagger evidence introduced before
20 the jury.

21 A No, sir.

22 Q Did you talk to her -- talk about your mother perhaps
23 testifying that she received it or at least through
24 cross-examination of the alleged victim?

25 A No, sir.

John Wayne Brannon
Direct examination by Mr. Rucker

1 Q Do you think if that dagger would have been introduced
2 it would have improved your chances of winning?

3 A Yes, yes, sir, of course.

4 Q And what was -- did she tell you what your strategy
5 was going into the case, whether she was trying to get an
6 acquittal or a lesser charge?

7 A No. She didn't actually tell me. She just told me
8 she had. You know, she said she got him, so I assumed she
9 was speaking of that she -- she knew she had won the -- the
10 attempted murder thing, case, side, the charge of it. But
11 what -- where I think went wrong at is when she opened the
12 door for the lesser included offense. That's what threw
13 me, because she gave them the option to seek verdict
14 elsewhere, you know, so.

15 Q Is it your view though that she didn't understand that
16 even if you were convicted of ABHAN you would still be
17 eligible for life without parole based on the notice and
18 based on the way the statute is?

19 A No. I think she knew that -- I think she knew that.
20 Like I said, I think I was throwed under the bus.

21 Q Did she object to the jury charge for ABHAN?

22 A No, no. She asked for it. No, no. She asked for
23 second degree assault of ABHAN, so.

24 Q Do you -- are there any other issues you want to put
25 in front of the Court? I think we've covered it.

John Wayne Brannon
Direct examination by Mr. Rucker

1 A I think she -- I think her -- her performance wasn't
2 like -- it wasn't -- it wasn't like I would think a lawyer
3 would be, you know. She could have -- I think she could
4 have -- she could've been much better and -- and more
5 helpful to me in -- in other areas and...

6 Q Okay. In those other areas, what could she have done
7 specifically so the judge --

8 A She could've had -- got a doctor there to -- expert
9 there to back up her story of life not being -- the guy's
10 life not being life threatening or things like that.

11 Q Did she tell you that they could try to get the funds
12 together or get a -- move the Court to pay for costs to get
13 a doctor to testify?

14 A No. Never told me any of that.

15 Q Did you know that was a possibility before trial?

16 A No, sir.

17 Q Okay. Do you, in fact, think he had life-threatening
18 injuries?

19 A No, sir, because he was -- two hours he was back out
20 drinking liquor again, you know. So, if it was life
21 threatening, I think the hospital down there, they'd have
22 kept him overnight.

23 If you read the transcript, you know, they done a CT
24 scan on him. They found no fractured bone, no bleeding
25 under the skull, none of that.

John Wayne Brannon
Cross-examination by Ms. Olive

1 Q All right. And are there anything -- any other issues
2 with her performance in those other areas that you're
3 talking about?

4 A Not none that I can think of right now.

5 MR RUCKER: No further questions, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. OLIVE

8 Q Good morning, Mr. Brannon.

9 A Good morning.

10 Q Do you -- there's no expert here today, is there?

11 A No more than the lawyers and judges and things.

12 Q Thank you for that.

13 But do you really know whether a doctor would have
14 been able to testify that the victim's injuries were not
15 life threatening?

16 A I don't know that for sure, but I believe if I'd have
17 had -- it'd have been more clarified to me if -- if we had
18 had a doctor also, expert.

19 Q But you really don't know what he would be able to
20 testify to, do you?

21 A No.

22 Q And your -- your attorney, Ms. Jones, she did actually
23 object to the ABHAN instruction, did she not?

24 A Not that I remember. I mean, after the -- after the
25 judge had -- had sentenced me she kind of acted like she

John Wayne Brannon
Cross-examination by Ms. Olive

1 went ballistics or whatever. But during the trial, like I
2 said, she had of reviewed or investigated the -- the 17-25
3 statute of seven -- of ABHAN she'd have seen that it went
4 back to its original form. She never did that.

5 Q She'd have seen -- I'm sorry? I didn't hear the last
6 thing you said.

7 A If she had reviewed the statute 17-25-45 she'd have
8 seen that assault and battery, ABHAN, assault and battery
9 of a high and aggravated nature had went back to its
10 original form. You know, put with the statutory on it.

11 Q Okay. But your attorney didn't ask for the ABHAN
12 charge, correct?

13 A She asked for a second degree assault, but she allowed
14 the -- the prosecutor.

15 Q So she asked for --

16 A Second degree assault.

17 Q And assault and battery first, right?

18 A Yeah.

19 Q And she objected when the state requested the ABHAN
20 charge, right?

21 A Well -- well, to be honest, the judge refused her
22 offer, her request, at first. Twice, as a matter of fact.

23 Q Well, the judge here today has the transcript in front
24 of him, so he -- he can see --

25 A Yeah.

John Wayne Brannon
Cross-examination by Ms. Olive

1 Q -- everything that --

2 A Even in her argument she said it. She said it, that
3 she was the one that opened the door up for the lesser
4 included offense. She said that out of her own mouth.

5 Q Well, she argued that --

6 A It was me who opened the door up for the lesser
7 included offense in the first place.

8 Q Well, did those words actually come out of her mouth?

9 A Yes, they did.

10 Q Didn't she actually argue you that the solicitor had
11 no intent of charging the lesser included ABHAN until she
12 requested the lesser included of assault and battery first
13 and second and that was her argument to the judge?

14 A Well, yeah. That's -- all of that went in with that.

15 Q Okay. So she tried to -- tried to keep the judge from
16 charging the jury on ABHAN, correct?

17 A No, no, uh-uh. She, like I said, she opened the door
18 up for it, because after the judge granted her her second
19 degree assault, yeah, the prosecutor, Wes Boyd, is there
20 anything I can do for you. He said, well, since you
21 granted her a second degree assault just go -- go ahead and
22 give me ABHAN of assault and battery of a high and
23 aggravated nature. He said do you want the common law or
24 the statutory. The prosecutor say statutory.

25 Q So it's your testimony today that your lawyer did not

John Wayne Brannon
Cross-examination by Ms. Olive

1 object to that.

2 A Yeah. After -- after she seen she done slipped up,
3 yes.

4 Q So you -- okay. And you did receive notice of life
5 without parole, correct?

6 A Yes.

7 Q Now, this three-to-five-year plea offer that you
8 talked about, she just told you that she would ask about
9 that, right?

10 A She asked me would I take a three-to-five.

11 Q But there wasn't actually an offer made by the
12 solicitor's office.

13 A No. She never got back with me. I never knew because
14 she never got back with me. When I seen her again we was
15 going to trial. They was picking my jury.

16 Q Right. But she never came to you and said the state
17 is offering three to five years, right?

18 A No, no. She never said that, but she asked me would I
19 take three to five as if she could go get it, you know, so.

20 Q Because you refused the 20-year offer?

21 A I don't know whether it's because I refused it or not.

22 Q But you did refuse it, right?

23 A Yeah, I refused it, but I don't know, but that -- I
24 don't know she trying to pacify me or what, you know.

25 Q And do you recall? Was that -- was that close to

John Wayne Brannon
Cross-examination by Ms. Olive

1 trial when she told you she was going to try to get that?

2 A Yeah, like actually three weeks to a month.

3 Q And is she the one that said three to five, or did you
4 ask her?

5 A She said it to me.

6 Q This story that you told us today about the incident,
7 did you communicate that to Ms. Jones?

8 A I tried to with our second visit, or first visit
9 rather.

10 Q Did you tell her or did you not --

11 A I tried to. I tried to explain to her. I tried to
12 give her a little statement, and she just scribbled a
13 little something down and got away from me, so told me that
14 she would be in contact with me again soon. And, like I
15 say, the second time I seen her we talked about the 20-year
16 deal.

17 Then she said, well, would you take a three-to-five,
18 you know. I said, well, yeah, I'll take a three-to-five
19 because I did cause the injury to him. So, like I said,
20 the next time I seen her we was going to court.

21 Q And you said she never took a statement from you.
22 what -- what do you think she would have been able to do
23 with that statement?

24 A Well, she could've -- she could've tied it all in,
25 like I say, with a self-defense claim.

John Wayne Brannon
Cross-examination by Ms. Olive

1 Q Are you saying she could have introduced your
2 statement at trial?

3 A Yes, yes.

4 Q How would she have done that if you didn't take the
5 stand?

6 A If I'd a got on the stand. If she took my statement
7 and I got on the stand I could've -- I could've verbally
8 explained it just like I explained in here.

9 I know with the dagger being present the judge would
10 want to know why was the dagger there or the jury want to
11 know why was the dagger there. I'm sure of that. But the
12 dagger never was entered in, so.

13 Q Did you tell her the same story that you told us
14 today?

15 A Not in full detail because I never got a chance to
16 fish -- finish it. Like I say, she just scribbled
17 something down and brushed it off and, you know, told me
18 she would get back in touch with me on the next term.

19 Like I said, the next time I got back with her, she
20 had offered me 20 -- 20-year deal. She said they turn it
21 down and asked me would I take a three-to-five. And, like
22 I say, next time I seen Ms. Jones we were going to court.
23 They were picking my jury.

24 Q Okay. But you understand that once you rejected that
25 20-year offer, it was no longer on the table, right?

John Wayne Brannon
Cross-examination by Ms. Olive

1 A I didn't know that. She never told me that. You
2 know, I mean, like I say, she just offered that, so, I
3 mean, it wasn't like it was a stranger I hit in the head.
4 It was my first cousin. I only hit him because defending
5 myself.

6 Q Could you have run away from him?

7 A I've done that two or three times.

8 Q So it was possible.

9 A No. I couldn't have run this time here because, like
10 I say, I go probably one end of the couch. He'd block me
11 in there. And I walk to the other end of the couch, he
12 block me in. So the next thing I know, outta one motion, I
13 just grabbed the chair and just hit him in the head one
14 time. It wasn't like I just beat him down with the chair.

15 Q And yet he was cut to his skull?

16 A He wasn't cut to the skull. It was just peeled back,
17 peeled from his -- from his forehead.

18 Q Didn't the doctor testify at trial that you could see
19 part of his skull or --

20 A No. I mean, I'm talking about he said he got down to
21 gerleg [sic], whatever that is. That's -- that's -- it --
22 it wasn't what you call no deep laceration or whatever. It
23 was just skin pulled down on his forehead.

24 He got -- he took eight stitches around here because
25 it looked like upside-down smile and one -- one right there

John Wayne Brannon
Cross-examination by Ms. Olive

1 and one in the middle of the head -- one stitch. The
2 whole -- whole stitching process was 10 or 12 stitches. He
3 stayed up there two hours and then was released and was
4 back drinking liquor again.

5 Q Okay. Didn't your attorney also argue all of that at
6 your trial?

7 A Argue what?

8 Q Didn't she argue all of that at your trial in support
9 of her argument that --

10 A Yeah, well, I mean, she -- yeah. She questioned him.
11 She argued. She argued with him about it. But I feel like
12 she could have went. She could have went a little harder
13 with it.

14 Q But she argued to the judge that there was no great
15 bodily injury.

16 A Yeah, she argued that.

17 Q Okay.

18 A She argued that.

19 Q Okay. And the judge advised you of your right to
20 testify.

21 A Yes. And I chose not to under her advisement, not to
22 do it, but I wish I had of. I wanted to, but the way she
23 explained to me, it kind of scared me because I wasn't
24 really wanting no life without.

25 Q Because she thought you would incriminate yourself?

Tanya R. Jones
Direct examination by Ms. Olive

1 A Yes.

2 Q And the victim in this case was also -- he also had an
3 injury to the back of his head, correct?

4 A Not to the back of the head. It was no injury to the
5 back of the head. There was just two little spots in the
6 top of the head where the chair, the legs of the chair,
7 because when I hit him the legs folded.

8 Q Thank you, Mr. Brannon.

9 MS. OLIVE: That's all the questions I have.

10 MR RUCKER: No further questions.

11 THE COURT: Thank you, sir. You can step down.

12 MR RUCKER: We have no other witnesses, Your Honor.

13 THE COURT: Okay.

14 MS. OLIVE: Your Honor, the state would call Tanya
15 Jones who is testifying by phone today.

16 THE COURT: Okay.

17 THE WITNESS: I'm here.

18 MS. OLIVE: Do you want to swear her, Judge?

19 TANYA R. JONES, having been
20 first duly sworn, testified as follows:

21 MS. OLIVE: Can everyone hear Ms. Jones or do I need
22 to try to plug the speakers back up?

23 MR RUCKER: I can hear her.

24 THE WITNESS: Sorry. You cut out on me.

25 THE COURT: I can hear her.

Tanya R. Jones
Direct examination by Ms. Olive

1 DIRECT EXAMINATION BY MS. OLIVE

2 Q Ms. Jones, can you hear me?

3 A Yes, I can.

4 MR RUCKER: Would you mind cutting up just a little
5 bit? My client can't hear.

6 MS. OLIVE: Yes. I'm going to try these speakers
7 again. They were giving some feedback earlier. We'll hope
8 they work this time.

9 (Pause.)

10 Q Ms. Jones, can you hear us?

11 A I can.

12 MS. OLIVE: I'm sorry. Now we're having some
13 technical difficulties.

14 Q Ms. Jones, where do you reside now?

15 A Oklahoma City, Oklahoma.

16 (Pause.)

17 Q Ms. Jones, do you still practice law in South
18 Carolina?

19 A Oklahoma, yeah. I'm a public defender for Oklahoma
20 County.

21 Q Okay. Did you represent Mr. Brannon on these charges?

22 A I did.

23 Q And were you appointed or retained?

24 A Appointed.

25 Q Was that through the public defender's office?

Tanya R. Jones
Direct examination by Ms. Olive

1 A Yes.

2 Q And, Ms. Jones, how long have you been practicing law?

3 A I think 15 years. I was in licensed in 2001.

4 Q And what portion of that has been criminal?

5 A Since 2006, off and on. I worked in Georgia, South
6 Carolina and Oklahoma.

7 Q Do you recall how many times you met with Mr. Brannon?

8 A Looking at my notes it looks like at least, I spoke to
9 him at least, four times. But, again, I don't always make
10 notes when I speak with him.

11 He was out of custody, so it was easier for me to
12 communicate. And sometimes if I talk to somebody on the
13 phone, sometimes didn't make it into defender data. But I
14 recall him coming into the office at least twice.

15 Q But you also might have spoken on -- spoken to him on
16 the phone a number of times?

17 A Yeah. I -- oftentimes my out-of-custody clients would
18 call me, and sometimes if I got a lot of calls or you get
19 distracted, it didn't get into the computer system to keep
20 track of that. But he was out of custody, and I remember
21 him calling.

22 Q Did Mr. Brannon cooperate with you in his defense?

23 A He did.

24 Q You -- did you hear his testimony earlier regarding
25 his version of the events?

Tanya R. Jones
Direct examination by Ms. Olive

1 A In what way?

2 Q His statement with regards to what happened that day
3 when -- the events that gave rise to the charges he was
4 facing.

5 A Yeah. I heard. It was very, very similar. I think
6 Mr. Brannon indicated to me that he had been drinking and
7 that there was this dagger, there was a fight. He
8 indicated he just hit him once with a chair, but the state
9 was alleging a brick. But no real blood was ever recovered
10 from the scene.

11 And then at one point he indicated that he, the
12 victim, had swung this dagger at him, he took it away and
13 then he grabbed a chair and hit him twice. So there was
14 minor inconsistencies and there were some inconsistencies
15 that caused me concern about whether to put him on the
16 stand or not.

17 Q Did you discuss that with him?

18 A I did. Initially, when I first met with him it was
19 prior to -- it must have been second appearances, I think,
20 is when we get the offer, and the offer was that they would
21 reduce it to ABHAN, which was not common law. It's the
22 statutory one. And you could plea basically a blind plea
23 for zero to 20 and the state would take the LWOP off the
24 table.

25 My notes indicated that I met him with on 8/18/11 and

Tanya R. Jones
Direct examination by Ms. Olive

1 he rejected that offer. He understood that LWOP was on the
2 table, but he just wasn't -- didn't want to go back to
3 prison for obvious reasons. And he had quite a lengthy
4 record, so obviously we talked about, you know, judge
5 potentially could give him 20. We can certainly offer
6 mitigation, but, you know, given his record he's more than
7 likely going back to prison.

8 I do note that I have an e-mail in front me that the
9 offer expired at the conclusion of second appearances on
10 September 1st. So at that docket I obviously would have
11 said trial.

12 Q Do you recall telling Mr. Brannon that you would seek
13 a three-to-five-year plea offer?

14 A That was never on the table.

15 The prosecutor in this case was Wesley Boyd, and he
16 was very, very gung-ho about this case for whatever reason.

17 In fact, I was trying to work with Wesley to put even
18 first or second degree assault and battery on the table.
19 Wesley Boyd absolutely refused. I tried to convince my
20 client that maybe a blind plea was in his best interest.
21 He refused.

22 And then at trial actually I think we only -- it was
23 our first call docket, and we actually made it to trial,
24 which is quite unusual. And my client was at the table,
25 and he looked at me and he said, "I don't want to go

Tanya R. Jones
Direct examination by Ms. Olive

1 through with this," to which I then went to Wesley and I
2 asked him again if we could plead to one or two. He said
3 no. He then said I could plead to attempted murder, and I
4 said, "Well, will you take away the LWOP," and he said no.
5 And I said, well, then now he's getting LWOP'd, and he goes
6 absolutely.

7 So he was -- I was shocked by that behavior from a
8 prosecutor. I'd never experienced that and I haven't
9 since. Generally speaking, they always seem to negotiate
10 up to trial. He was just really -- dug in his heels at
11 this point. And so at that point I was forced to go to
12 trial.

13 Q Did -- and you stated that Mr. Brannon understood that
14 life without parole was on the table.

15 A He did. And I explained that to him, but a lot of
16 times, you know, the reality of several years in prison
17 doesn't hit clients until, you know, a month or two months
18 in.

19 That's why it's not uncommon even though it says the
20 plea is rejected. We usually plea in three or four months
21 in Spartanburg. That was never an issue. And to this day
22 I don't know what -- what was wrong with Mr. Boyd and why
23 he got so ornery about this case.

24 Additionally, the state had some problems. They
25 couldn't -- they couldn't locate the victim. And we also

Tanya R. Jones
Direct examination by Ms. Olive

1 tried to locate him. But they did find him prior to trial.
2 And I -- I think they found him -- they produced him like
3 the day of trial. I tried to interview him prior to trial
4 and he refused to speak with me, is my -- is my memory.

5 Q I'm going to jump back for a second.

6 Did you -- did you file a discovery motion in this
7 case?

8 A We -- we probably would have. Again, we never had any
9 issues with discovery. It was always provided to us.

10 Q Did you review that discovery with Mr. Brannon?

11 A I would have, yes.

12 Q Did you go over him -- excuse me -- go over with him
13 the -- the elements of the charge and what the state would
14 have to prove at trial?

15 A I would have, and I probably would have relayed to him
16 that I felt that attempted murder was -- it was overcharge,
17 was overkill, because that's exactly what I -- how I felt.
18 And I talked with Wesley about that, and perhaps that's why
19 he offered me the ABHAN, statutory one.

20 You know, in all of these -- this is right around the
21 time too when all of these statutes were -- replaced the
22 old ABHAN and shooting wasn't -- no. I can't remember what
23 the zero to 21 was, but all of those common laws, and then
24 we got these any statutory ABHAN, assault and battery in
25 the first, second and third degree. So were all sort of

Tanya R. Jones
Direct examination by Ms. Olive

1 just kind of new to us.

2 So in looking at that and knowing that these folks
3 were cousins, I indicated to him I'd try to get a better
4 offer on the table. And for whatever reason the state and
5 Mr. Brannon were at a -- a standstill. No one was budging,
6 and ultimately the state forced our hand then and wouldn't
7 budge when we conceded.

8 Q Did you discuss possible defenses with Mr. Brannon?

9 A We did. Obviously, there was a self-defense claim.
10 However, he, one, would have to take the stand in order to
11 do that, or, conversely, I could confront the complaining
12 witness, Ronnie Brannon, and see if he would acknowledge
13 having that dagger or confronting Mr. Brannon with it. You
14 know, sometimes I've had some success with that. And we
15 had the dagger at the trial.

16 But Ronnie Brannon was a terrible witness, just awful.
17 And I don't know if it comes across in the transcript, but
18 he just had poor demeanor. He didn't speak real well. He
19 was very, very inconsistent. He kept calling me honey.

20 And so then I thought, well, maybe we could just go
21 with the defense of he-doesn't-know-what-happened-
22 or-who-hit-him.

23 Additionally, I got cold feet in getting that dagger
24 and putting it in front of him, because it was such a nice
25 dagger. I was worried, because I hadn't spoken with him,

Tanya R. Jones
Direct examination by Ms. Olive

1 that I was opening the door or Pandora's box to something
2 that was going, you know, to be awful, that, oh, yeah, my
3 client stole this from me, it was my father's. I don't
4 know. I just had a real bad vibe. They normally if I
5 get -- and we're going to get those bad vibes, I got it,
6 and so I just decided not to do that.

7 Q Did -- what kind of investigation did you do in this
8 case?

9 A Well, obviously, I went over all of the police
10 reports, all of the pictures. I went out to the crime
11 scene. I spoke with his mom. She talked. She had the
12 dagger. She didn't really know much about it other than
13 John Wayne Brannon had given it to her. I tried and
14 attempted to track down Ronnie Brannon. I spoke with an
15 aunt. I spoke with the mom. I finally got a phone number.
16 The phone number was disconnected.

17 I went out to the house where this incident took
18 place. The house was then condemned. Obviously, no one
19 was living there. I asked Wesley Boyd for a new address.
20 He didn't have one for me.

21 So, I mean, I really wanted to speak with Ronnie
22 Brannon because they were cousins, because sometimes if you
23 talk with the victim and get their feel and what they feel
24 is just, you know, you can kind of bring that again to the
25 attention of the prosecutor. And, certainly, I don't think

Tanya R. Jones
Direct examination by Ms. Olive

1 wes Boyd ever talked with him.

2 And, in fact, later on Ronnie didn't want to testify
3 against John Wayne Brannon but then was reminded through
4 SOBA that -- or SOVA he had to cooperate because he had
5 gotten money. And I had a letter regarding that, and I
6 cross-examined on that as well.

7 So I think if we would have been able to find him
8 earlier we could have maybe avoided an LWOP sentence. I
9 mean, I feel really bad about it. But, again, we couldn't
10 find him -- and the state. When they did find him, they
11 were absolutely adamant that they weren't going to offer me
12 anything.

13 Q Do you feel that you had ample time to prepare for
14 trial?

15 A I did -- I did. I would have liked the chance to
16 maybe speak with Mr. Brannon, but, again, he refused. And
17 that probably wasn't going to get better over the course of
18 time. I think he just wanted it over with.

19 Q And when you're saying since the victim's name is
20 Brannon as well you're referring to --

21 A Yes. I'm sorry. Ronnie -- Ronnie Brannon.

22 Q Okay. And we've already touched on this, but did you
23 have an overall trial strategy or theory in this case?

24 A Yeah. We were essentially going with more of a
25 self-defense.

Tanya R. Jones
Direct examination by Ms. Olive

1 I really didn't have anything else other than some
2 inconsistent statements in the police report, I think, as
3 well as the medical records.

4 But, again, he had a real hard time even at the trial
5 of keeping a straight story. So at that point -- and that
6 happens often in trial when you don't really have a lot to
7 work with that you're kind of forced into trial. You kind
8 of have to be fluid in terms of managing your defense and
9 being able to shift.

10 Q And when you say -- I'm sorry. When you say he had a
11 problem keeping a straight story, was that the victim?

12 A I'm sorry. Ronnie Lee Brannon.

13 Q Okay. Thank you.

14 Do you recall whether you objected to the state
15 seeking the lesser included charge of ABHAN at the trial?

16 A I did object to that.

17 MS. OLIVE: Beg the Court's indulgence a moment.

18 (Pause.)

19 Q Thank you, Ms. Jones. That's all the questions I
20 have. Please answer any questions of Mr. Rucker.

21 A Okay.

22 MR RUCKER: May it please the Court.

23 THE COURT: Yes, sir.

24

25

Tanya R. Jones
Cross-examination by Mr. Rucker

1 CROSS-EXAMINATION

2 BY MR RUCKER

3 Q Ms. Jones, I'm Brandt Rucker for John Wayne Brannon.

4 A Yes.

5 Q In listening to your testimony, do you recall -- you
6 don't specifically recall how many times you met with my
7 client?

8 A I'm sorry. Say that again.

9 Q I'm sorry. I'll get closer.

10 A Thank you.

11 Q You don't specifically remember how many times you met
12 with my client?

13 A I have in defender data the notes that were sent to
14 me. Looks like four times. But I recall him calling in as
15 well, and I do know one of them with -- he called. But I
16 had frequent contact with him.

17 Q Do you --

18 A Just to see how is the case going.

19 Q But also do you -- you don't specifically recall going
20 over the discovery with him though, do you?

21 A I don't have an independent recollection of that, but
22 I wouldn't have just called him into my office and just
23 given him an offer and sent him on his way.

24 As the public defender or even a criminal defense
25 lawyer, you have to sit down. You have to show them what

Tanya R. Jones
Cross-examination by Mr. Rucker

1 the charge is and kind of go over what the state's alleging
2 and, you know, their response to it. I mean, I can't
3 imagine I didn't do that, because, otherwise, why would he
4 have told me his theory of what happened and the chair?

5 So we, obviously, talked about it. At that point he
6 didn't want the zero-to-20 offer, blind plea, because he
7 really didn't feel it was self-defense.

8 Q Do you recall --

9 A And he thought that was too much time.

10 Q Do you recall what happened to the chair that he said
11 was used in this?

12 A I don't. I recall pictures of the chair.

13 Q Well, was the chair --

14 A And I have no idea. There were pictures of the chair
15 that were taken. This house was later condemned. You
16 couldn't even go in it. So I have no idea what happened to
17 that chair.

18 Q It was not -- obviously, it wasn't introduced into
19 evidence, right?

20 A It wasn't, no.

21 Q Were the pictures of the chair introduced into
22 evidence?

23 A I don't believe so, no. I think I asked him whether
24 he was hit with a chair. He kept saying he was hit with a
25 brick at trial, and there was no brick. It was actually a

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1 rock that they did introduce evidence of. But, again,
2 there was no D.N.A. or blood that was introduced by the
3 state to tie this to him.

4 Q where was the rock -- what part of the property was
5 the rock recovered from? Was it within the house?

6 A No. It was outside. There was kind of a porch or a
7 stoop, and right next to where the concrete ended, it was
8 there.

9 Q Did you attempt to use the pictures to ask Mr. Ronnie
10 Brannon if that was a chair used in this altercation?

11 A No, I didn't.

12 Q Was the chair version of events ever introduced in
13 front of the jury? Did they even know about it?

14 A I don't believe I ever put the chair theory out there,
15 no.

16 Q Okay. You --

17 A Again, he was just so inconsistent in talking about --
18 he couldn't even remember the doctor who treated him. So I
19 kind of started to shift and basically go for, you know, he
20 doesn't remember anything, so how can we convict on this.

21 Q Did you have evidence sufficient to go forward and
22 request a self-defense charge?

23 A I did not.

24 Q Do you think that if you would have introduced that
25 information he would have admitted a chair was used and

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1 changed his story that that would have been enough to get
2 the self-defense charge?

3 A Maybe, but maybe not. If Judge Couch, even though the
4 standard is however scant, maybe, but, again, given his
5 demeanor I doubt he would have admitted it, which is,
6 again, why I didn't go with the dagger either.

7 He was giving me a hard time. He was very combative
8 in a way with me, so I just started backing away from that
9 and then going with the, you know, he doesn't remember
10 anything so how can we believe him, we don't even know if
11 this was, you know, his cousin that did this basically.

12 Q Did you discuss with John Wayne Brannon, my client,
13 your former client, the situation with the dagger?

14 A What do you mean?

15 Q What I mean is the background of the dagger -- where
16 it came from, who possessed it beforehand, whose -- who
17 properly owned it at this point.

18 A I did not other than the fact that it was -- it was
19 Ronnie Brannon's dagger.

20 He liked to, you know, threaten my client with it and
21 just different things like that. We talked about it, and I
22 didn't really get into the scope of where it came from or
23 any of that.

24 Q You testified previously your fear was that if you
25 introduced the evidence with the dagger he would go into

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1 some story about where he got it from, is that right?

2 A Or just -- I don't know. Opening Pandora's box. You
3 know, there's that theory out there that sometimes you
4 don't ask the question that you don't know the answer to.
5 And he, again, was more combative on the stand in terms of
6 what I've seen.

7 I just got cold feet. That's just a trial strategy.
8 It's -- what to do in trial sometimes. You decide
9 strategic things, and I just decided at that point that
10 this might open something, it might open a can of worms.

11 It may not have. You know, I guess that's for the
12 judge to determine. But I was worried about opening a box
13 that I didn't know where I was going, what road that would
14 lead to.

15 Q Did you talk to John Wayne Brannon's mother about
16 where the dagger came from and the past history of the
17 dagger?

18 A I did not. We briefly spoke about the dagger. She
19 indicated to me that John Wayne Brannon had given it to
20 her. And my recollection is she didn't really know much
21 about it for me to really ask.

22 I think -- you know, the way she gave it to me, I just
23 had to feel like she didn't really know much about it. I
24 don't know if I'm wording this right, but it was something
25 along the lines of here's the dagger that John Wayne

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1 Brannon gave me, something along those lines.

2 Q Did she tell you when he gave her that dagger?

3 A I don't recall that, but, again, Mr. Brannon told me
4 it was shortly after the incident. So I had no reason to
5 doubt that, but I didn't ask her.

6 Q Well, she could have actually corroborated that he
7 immediately came over and brought the dagger to her, right?

8 A She could have, yes.

9 Q Did you ever ask her when exactly did you get it that
10 day?

11 A No. She just brought the dagger over.

12 Q Did she tell you the demeanor of my client when he
13 brought the dagger over?

14 A I didn't ask that question.

15 Q Did you ask her if he was intoxicated when he brought
16 the dagger over?

17 A I didn't ask that question.

18 Q Did you ask her if he told what had just happened?

19 A I didn't ask her that, no.

20 Q All right. Now, when you decided not to have him
21 testify or when you -- you -- I should say told him he
22 shouldn't testify, did you consider his prior record as
23 part of that decision?

24 A I did, and I never told him he shouldn't testify. I
25 don't tell people that. I -- I outline the pros and cons

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1 of testifying. It is their choice; it is their
2 constitutional right. If they want to get on that stand,
3 they may.

4 But I did speak with him in terms of he had a very
5 poor record. And this was basically an assault case. He
6 had, I think, a robbery on his case. I mean, robbery,
7 forgeries, burglaries, lots of different things.

8 And so I indicated that the state would get to
9 cross-examine him on that and they would cross-examine on
10 his story and, you know, and some of the inconsistencies of
11 that story that he was even telling me because it sounded
12 like -- I mean, he gave me a version where he took the
13 dagger and then hit him, and another one of, you know,
14 he -- Mr. Ronnie Brannon produced the dagger, he hit him
15 with the chair and then took it and ran.

16 Those are all things that were going to come out, and
17 my memory is they were all drinking that night. And
18 Mr. John Wayne's Brannon memory of it wasn't the best
19 either. So I have to explain all of that to them, and I
20 did, and he ultimately chose not to testify.

21 Q Is it fair to say you advised him not to testify?

22 A I said it's probably not in your best interest to
23 testify, but, again, it's the only way you're going to get
24 in your self-defense claim.

25 Q Now, regarding prior convictions, did Ronnie Brannon

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1 have any prior convictions to your knowledge?

2 A To my knowledge, no.

3 Q Did you investigate -- obviously, he testified. Did
4 you investigate to see if he had felony convictions?

5 A They would have given me his incident or his N.C.I.C.
6 report.

7 Q And do you recall -- in your notes do you show where
8 you reviewed his N.C.I.C. report to determine if he had any
9 impeachable offenses?

10 A I don't take notes of that. I -- I would have looked
11 at his N.C.I.C. report.

12 Q If he had impeachable offenses and you did not bring
13 them up during the trial, that probably hurt John Wayne
14 Brannon's case, correct?

15 A Depends upon what impeachable offenses they were.
16 Sometimes juries don't care necessarily about the
17 forgeries --

18 Q Well, if you're --

19 A -- or nonviolent offenses.

20 Q If you're concerned --

21 A I -- I just don't recall. I mean, if you want to tell
22 me what impeachable offenses he had that I missed, you're
23 more than welcome to.

24 Q Well, I'm just trying to determine what you actually
25 reviewed in preparing for your cross-examination.

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1 A Well, I reviewed the police reports; I reviewed the
2 pictures; I reviewed the medical reports. I would have
3 reviewed the N.C.I.C. I just -- and then I prepared from
4 there.

5 Q When -- and really where I'm getting is if there were
6 criminal convictions you could use against Ronnie Brannon
7 would that not muddied up the water when it came to
8 criminal convictions of my client when he testified,
9 meaning wouldn't the jury see that as these are just two
10 family members who both have records in an altercation?

11 A Potentially. I mean, potentially. You know, the
12 problem was that he did have, you know, injury to his head
13 and he was left there bleeding. I was very concerned about
14 that. And had that passerby not come by we might have had,
15 you know, murder on our hands.

16 Q Did anybody testify -- did an expert testify that
17 the -- Ronnie Brannon was near death when he was treated?

18 A No. He had lost a lot of blood, and I think he
19 required -- I don't know -- 23 or something like that
20 sutures or stitches. They indicated the wound was down to
21 his scalp. We tried to say it wasn't a very serious
22 injury, you know, but, obviously, the jury thought
23 otherwise.

24 Q Did John Wayne Brannon, my client, your former client,
25 indicate to you that he left the scene because of the --

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1 the fight?

2 A He -- he did. He indicated that after he hit him he
3 took the dagger and he left.

4 Q Did he tell you --

5 A He never called 9-1-1.

6 Q Did he tell you that Ronnie Brannon was knocked out by
7 this?

8 A That I don't remember. I'm sure he did. And I just
9 don't have any independent recollection of that any more.

10 Q Ronnie Brannon's testimony was fuzzy, and what he
11 specifically could recall was being hit. But he didn't
12 know if he went out of consciousness or not, right?

13 A Yeah, that would be. He was definitely woozy when his
14 friend got there and took him to the emergency room. He
15 really didn't have any -- couldn't write a statement he was
16 so drunk at the hospital and he really didn't give a lot of
17 good information so that they had to reinterview him a
18 couple of days after the incident. Again, he gave some
19 inconsistent statements as to what he initially said.

20 So I -- I think it's very fuzzy and I think it's still
21 probably unclear as to whether or not he was actually
22 knocked out or not. But just given -- I remember the
23 bloodstains on the floor. He had to have laid there for --
24 for a while.

25 Q To your knowledge did John Wayne Brannon know the

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1 extent of the injuries to him though at the point that he
2 left?

3 A I don't believe so because I believe John Wayne
4 Brannon was drunk.

5 Q But was there any evidence showing that he knew or
6 should have known how extensive the damage was?

7 A That's hard, hard to say because I wasn't there. I
8 don't necessarily know what -- what transpired here other
9 than Mr. Ronnie Brannon got a significant head injury. It
10 looks like he fell over or something happened because there
11 was a big puddle of blood soaked into the carpet.

12 I think that if you hit somebody you have an immediate
13 duty to ascertain exactly -- especially if it's your
14 cousin, your friend -- whether or not that person needs
15 medical attention. But I don't think Mr. Brannon -- he --
16 you know, according to him he -- he left immediately.

17 Q well, did he have some fear because the dagger had
18 been involved and that Ronnie Brannon was coming to him?
19 Did he communicate that to you?

20 A He indicated to me that -- I mean, one or two
21 versions, you know, either it was that Ronnie picked up a
22 dagger and was menacing him with it and he picked up a
23 chair and hit him, or the other story is that he stoutly
24 took the dagger away from him, then hit him in the head
25 twice and took the dagger and left.

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1 His story is consistent in the sense of he always had
2 that dagger when he left. So I think the -- the fear at
3 that point would have been extinguished because he's the
4 one, in fact, who had that dagger.

5 Q But you don't -- if John Wayne Brannon did not tell
6 you he knew what condition he was in, that would affect the
7 decision whether he should flee or not, correct?

8 A I'm sorry? Come again.

9 Q I'll rephrase it.

10 There's no evidence that John Wayne Brannon knew that
11 Ronnie Brannon was no longer a threat to him, is that
12 right?

13 A I -- I guess not. I mean, I think it can be inferred
14 if he's got the weapon that he says Ronnie Lee Brannon, you
15 know, brandished, yeah, I think the threat is over.

16 Q But he didn't know if there were any other weapons
17 within that home, correct?

18 A No, and my client never brought up that there was any
19 other weapon in the home. That's not a question I asked
20 based on what he kept telling me in our meetings.

21 Q All right. And you believe you had two face to face
22 meetings to go over the evidence?

23 A That's what my notes indicate. I'm certain when he
24 had court and he did, he would have had an initial and a
25 second appearance. I would have spoken with him then.

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1 Q You --

2 A And, again, if they called me on the phone I'd speak
3 with them.

4 Q You've testified that he kept changing his story. But
5 there's a chance you only met twice. So is that fair?

6 A No, because we -- we spoke on the phone. Now, I have
7 it noted as well. And they were trying to locate his
8 cousin, so he spoke about that. And, again, we spoke about
9 it again at trial.

10 Certainly, you know, I'm speaking with him, because he
11 was out of custody at that point. I think he was taken
12 into custody that night. But, you know, I'm speaking to my
13 client; I'm communicating with my client throughout the
14 trial. So, I mean, I had ample time to hear his side of
15 the story.

16 Q All right. I want to go back to the question of
17 whether John Wayne Brannon knew the extent of the injuries.

18 Do you recall the emergency room doctor testifying in
19 this case?

20 A I do.

21 Q Do you recall his name?

22 A I do not. I looked at the transcript a couple of days
23 ago. However, he was a good witness.

24 Q That's fair.

25 Was it Dr. Bradley Davis? Does that sound right?

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1 A That sounds correct, yes.

2 Q Okay. Do you recall him testifying that it wasn't
3 obvious to them at first what the extent of the injuries
4 were?

5 A Not independently, but if that's what the transcript
6 says, I have no qualm with that.

7 Q Okay. Is it fair to say if a medical expert can't
8 decide that -- initially by looking at Ronnie Brannon that
9 these are extensive injuries, it's fair to say John Wayne
10 Brannon would be in a worse situation, would be able to
11 evaluate Ronnie Brannon?

12 A Sure, potentially. I also recall that the doctor
13 testified that he reported his story at the end. He
14 couldn't -- they couldn't really figure out what was wrong
15 with him because he couldn't communicate with them because
16 he was so drunk, and perhaps because of the head injury,
17 that they actually went above and beyond what they normally
18 do like giving a CT scan because they were concerned that
19 they might be missing something.

20 Q Do you recall him -- well, first of all, the obvious.
21 Do you recall him testifying to the extent of the injuries
22 once they discovered what they were?

23 A I -- I do.

24 Q And did his testimony -- did he stray outside of
25 medical testimony in determining what actually caused the

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1 injury?

2 A Do you mean did he testify to what caused the injury?

3 Q Yeah. Did --

4 A Yeah.

5 Q Was he allowed to spec --

6 A No. I don't believe he did.

7 Q Was he allowed to speculate on what kind of blunt
8 force trauma it was?

9 A I don't recall that.

10 Q And you testified you thought Dr. Davis was a good
11 witness. Was that a witness for y'all?

12 A No. I just mean that he was -- he was very neutral.

13 Q Did you get --

14 A And you don't -- sometimes you don't see that.

15 Q Did you get access to the medical reports as part of
16 the discovery?

17 A Yes.

18 Q Did you talk to Dr. Davis before the trial?

19 A I did not.

20 Q Did you talk to any other experts to compare their
21 view to Dr. Davis' view?

22 A I didn't see a need to, no.

23 Q And, again, you didn't bring up anything about the
24 chair to Dr. Davis, did you?

25 A I did not. A lot of times doctors can't speculate in

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1 terms of what they think caused the injury. I mean, they
2 can say it's blunt force trauma, but what actually caused
3 it, generally speaking, that's outside the realm of their
4 profession.

5 Q Well, if he was asked is this injury consistent with
6 being hit by a rock, would you consider that speculation?

7 A I think he did testify that it might have been a
8 dagged [sic] something if memory serves me correctly.

9 I don't know if he necessarily said it came as a rock.
10 I'd have to review that in terms of how it came out. But,
11 generally speaking, you try to limit doctors in testifying
12 about that stuff. But he did have a bunch of sutures, and
13 I think that the -- the injuries to his head were probably
14 inconsistent with a chair.

15 Q But you don't recall that being true. You didn't have
16 an expert to evaluate that claim, did you?

17 A No, no. And it was an aluminum folding chair, I
18 believe. Either that or one of those lawn chairs.

19 Q But the chairs -- the chair version of events would
20 fit more into self-defense, is that right, within the home?

21 A Depending on, you know, if -- it -- it just really all
22 depends if Mr. Ronnie Brannon was advancing and the only
23 thing he could do is hit him in the head.

24 Now, in South Carolina you have a duty to retreat, and
25 so he could have maybe ran out the door, I mean. And then

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1 the other version gets it away and still hits him in the
2 head. It's hard to say.

3 Q But my client, John Wayne Brannon, told you that they
4 were inside the home and he could not get away, is that
5 right?

6 A He did, but the positioning of where the blood was
7 found, and even the chair were found, they were found in
8 the front room, the living room. The door was right there
9 maybe a few feet away.

10 Q Did -- was there any testimony about the chair being
11 moved afterwards?

12 A No.

13 Q Did you ask Ronnie Brannon anything about the chair at
14 all?

15 A I did not.

16 Q Was there any witness at all that testified about the
17 version of events that Mr. John Wayne Brannon told you
18 about?

19 A No.

20 Q You said there were inconsistent statements in the
21 police reports and medical reports. What were the
22 inconsistent statements in the police reports?

23 A Well, I would have brought all of this out in the
24 transcript. I think the transcript speaks for itself. I
25 don't have a necessarily independent recollection on all of

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1 that. But I can tell you just off the top of my head. I
2 know he indicated it was a brick, and then it was maybe a
3 rock.

4 He went in to make a sandwich, and then he said, later
5 said, he went in to make -- put something in the microwave
6 or clean out the microwave. He indicated that there was a
7 fight over the couch, and then pretty soon that was the
8 other day before. There were just a lot of different
9 things that I think we brought out.

10 He also indicated that he was -- the fight occurred
11 because of money. Then he changed the story and said it
12 was about him staying there and his girlfriend didn't like
13 it.

14 Then there was this -- there was a third version that
15 he gave as well, and I don't recall what that was. But
16 there were certainly a lot of inconsistencies in his story.

17 He even acknowledged on the stand that he didn't think
18 he was treated by a doctor, and he flat out refused to say
19 that he was treated by a doctor when clearly he was. So
20 that's what I'm saying, why his story or his testimony was
21 in my opinion poor.

22 Q Do you recall the inconsistencies in the medical
23 reports from your notes?

24 A Again, I don't recall. I think I asked him some
25 questions about that. I'd have to go through them. But in

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1 general there were inconsistencies. And to the best of my
2 ability I think I brought them all out, mostly out.

3 Q I'm going to switch gears here and go back to the
4 life-without-parole notice.

5 Do you recall when he was served with the
6 life-without-parole, the notice for life without -- seeking
7 life without parole?

8 A I do not, and I wasn't provided a copy from my office
9 with that information. But I do know I would have been
10 served at my office. And I believe I was.

11 Q But-and really what I'm asking, you weren't served
12 with this notice on the eve of trial. It was sometime
13 before, months before the trial, is that right?

14 A Yes. It was -- it was months before. I mean,
15 obviously, I think it was even served prior to the second
16 appearance because he indicates the state will not seek a
17 life sentence. So that only makes me think that maybe
18 Wesley Boyd filed this prior, but I could be wrong. But
19 it's definitely got enough notice on it.

20 Q Did you research -- I'm sorry.

21 A Even on my notes I put "L", you know, this offer is
22 rejected even though the client understands LWOP's on the
23 table.

24 Q Did you research the LWOP statute and its application
25 to lesser included charges before the trial?

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Cross-examination by Mr. Rucker

1 A I did note that, you know, because of the robbery it
2 was a most serious. This is also a most serious that, you
3 know, any kind of conviction for a serious or most serious
4 would probably be a problem.

5 Q Do you -- and on the robberies, do you have his, John
6 Wayne Brannon's, N.C.I.C. report with you or do you have
7 notes indicating what his prior record was?

8 A I do have his N.C.I.C. report with me, but I don't
9 really have it marked up. But, again, there's a lot on
10 here.

11 Q Well, I'm specifically asking about any serious or
12 most series offenses. Were those just the armed robberies
13 or the armed robbery?

14 A Yes. The -- if my memory serves me right -- and,
15 again -- I don't have a copy of the notice. It's just --
16 it was before the armed robbery.

17 Q Okay. And did he have one previous armed robbery at
18 the time of trial?

19 A He had two actually.

20 Q Were they at the same time, or was it over a different
21 time period, or did it happen on different days?

22 A Different days. And I think they used the one from --
23 he had one from 1979, I think is the one they used, and
24 then he had another one in 1994. But they only alleged
25 one.

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Cross-examination by Mr. Rucker

1 Q Did you review the -- what information did you have
2 about that conviction from 1979? Did you research that at
3 all?

4 A They gave me the -- I have it right here. The
5 indictment.

6 Q And I doubt that the armed robbery charge has changed
7 much, but is it -- was that 1979 armed robbery considered
8 the same kind of armed robbery as we treat them now?

9 A That I didn't look up, but I'm fairly certain that --
10 I mean, this armed robbery thing is considered a most
11 serious offense in every state that I practice in. So I
12 can't imagine it wasn't treated like that back in 1979.
13 But, no, I did not research that.

14 Q Did he actually plead guilty or was found guilty of
15 armed robbery and not a lesser included offense at that
16 time?

17 A I think he was found guilty of the armed robbery, the
18 robbery.

19 Q But do you know for sure if it was an armed robbery,
20 or could it possibly have been common law or strong arm?

21 A I would have looked at his N.C.I.C. I think it was
22 armed robbery.

23 Q Okay. Did you say that you have that N.C.I.C. report
24 with you right now? Or a copy, I should say.

25 A I -- I do. I'm looking at it right now. This says,

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Cross-examination by Mr. Rucker

1 you know, 7/15/74 arrest. I'm sorry. Wrong one.

2 9/20/1979 armed robbery, unlawful weapon, multiple charges,
3 one disposition, ten years.

4 Q Does it indicate what the exact disposition was?

5 A It just says Court disposition, multiple charges, one
6 disposition, ten years.

7 Q All right. Did you check to see if he actually was
8 convicted of armed robbery and that wasn't one that was
9 dismissed?

10 A I -- I did not. I think I had the indictment and I
11 probably had the sentence.

12 Q Well, to make this --

13 A Yeah. And it says there. I mean, it says, "I, John
14 Wayne Brannon, hereby," guilty, armed robbery, armed
15 robbery, dated, ten years. This one is dated 1/31/1980.

16 Q All right. Did you actually go to the clerk's office
17 to see if they had that, or is this just something that was
18 supplied to you by the solicitor's office?

19 A This is something provided to me by the solicitor's
20 office, and I'm almost certain it was a certified copy.

21 Q Okay. Did you challenge any of these previous armed
22 robberies as being eligible to enhance this sentence here?

23 A At that, no, I did not.

24 Q Were you surprised -- well, I shouldn't say surprised.
25 Do you think this, the lesser included ABHAN, should have

Tanya R. Jones
Redirect examination by Ms. Olive

1 been used as a trigger for life without parole in this
2 case?

3 A I do not, but I fought to keep it out.

4 Q You challenged it based on his actual conviction, not
5 what he was initially charged with, is that right?

6 A I don't think I follow that. I'm sorry.

7 Q What was your -- what was your basis for the objection
8 to him getting a LWOP sentence, life without parole?

9 A Basically, that we weren't put on notice that the
10 lesser included, that they were going to seek on the ABHAN
11 an LWOP sentence.

12 Q One second, please.

13 (Pause.)

14 MR RUCKER: No further questions, Your Honor.

15 THE COURT: Okay.

16 MS. OLIVE: Your Honor, I have brief redirect.

17 REDIRECT EXAMINATION

18 BY MS. OLIVE

19 Q Ms. Jones --

20 A Yes.

21 Q -- do you recall whether the -- whether Mr. Brannon's
22 certified convictions were given to the Court after his
23 trial?

24 A I would assume they were. I don't have a specific
25 independent recollection, but it was Judge Couch, so he

Tanya R. Jones
Redirect examination by Ms. Olive

1 obviously knows protocol. I'm assuming. I -- I checked
2 the transcript and didn't read the sentencing portion, but
3 I'm assuming.

4 Q Okay. And I -- I misspoke. I meant certified copies
5 of the prior convictions.

6 A Again, I am almost positive I received certified
7 copies, because I generally do. So I don't know why Wes
8 wouldn't have introduced it.

9 Q Do you recall --

10 A But I don't have an independent recollection of that.

11 Q Do you recall whether they introduced -- do you recall
12 how many prior convictions of his that they introduced in
13 regards -- I'm sorry -- in regards to the sentencing?

14 A I think just one, but I know he had two. They might
15 have put the second one on. I requested all of the
16 documentation from the public defender's office, and for
17 whatever reasons that wasn't included, and I can't pull
18 them up on line here.

19 Q Regarding the self-defense claim --

20 A Uh-huh.

21 Q -- you saw a photograph of this chair.

22 A I did.

23 Q Did you make an assessment about whether the jury
24 would think that that chair caused the injuries to the
25 victim?

Tanya R. Jones
Redirect examination by Ms. Olive

1 A We would have -- it was either -- it was a flimsy
2 chair at best. It was either one of those aluminum ones or
3 those lawn chairs with the fabric in between that does have
4 the aluminum sides.

5 Yeah, I was concerned, but ultimately, you know, for
6 that to come in I'd have to get my client on the stand. I
7 could certainly have asked Mr. Ronnie Brannon about the
8 chair.

9 Given his demeanor towards me, I'm sure he would have
10 just said no, I don't know anything about a chair. But,
11 you know, I guess that's up to the judge to decide if I
12 should have asked that.

13 You know, this is a case that I really fell awful
14 about. It should have pled and we were willing to plea,
15 and the state just dug in their heels and forced my hand at
16 trial. I wish it wouldn't have come to that. I wish that,
17 you know, he would have taken the offer on the zero to 20
18 on a blind plea. And, unfortunately, that didn't happen.

19 Q And then back to the chair. There were photographs.
20 Were there photographs of the victim's injuries shown to
21 the jury?

22 A Yes.

23 Q Okay. And you attempted to exclude those, correct?
24 Or excuse me. Did you attempt to exclude --

25 A Yes. The state tried to introduce a lot of various

Tanya R. Jones
Redirect examination by Ms. Olive

1 angles of the injury. So we were able to keep some of
2 those out.

3 Q What about the -- how similar in size was the
4 defendant to the victim?

5 A That I don't recall. So I'm going to say they were
6 very similarly sized. That's something I would have noted
7 if there was a big size difference, I think.

8 Q Okay. And, again, had you tried to speak with the
9 victim prior to trial?

10 A I did. We were trying to locate him all of that fall.
11 We just couldn't seem to find him.

12 Q So did you know how he was going to respond to your
13 questions when he testified?

14 A No, I -- I did not. It was just obvious he wasn't
15 happy to be there, and I think that's the bottom line. I
16 mean, I don't remember him being, you know, real sweet and
17 nice to the solicitor either. He just wanted to get in and
18 get out, for lack of a better word.

19 And by that time it probably would have been too late
20 because even if he said, you know, I don't want my cousin
21 to go away to prison for life. I think at that point the
22 solicitor wouldn't have cared, because he didn't care. He
23 was -- because wanted his trial. He wanted his LWOP. He
24 wanted to prove something. I don't know what that was.

25 Q Is it your understanding that Mr. Brannon was eligible

Tanya R. Jones
Redirect examination by Ms. Olive

1 for LWOP?

2 A It was, and there was a conversation, you know, we
3 had. But, again, this is -- I was really caught out of --
4 in left field on this one, because I've never had an issue
5 with the prosecutors in terms of these. I'd been served
6 these before, and we've always worked them out. Always.

7 This was the first one where we couldn't work it out.
8 And even when we conceded and it would be the attempted
9 murder, which was zero to 30 on a blind plea, the solicitor
10 dug in their heels. I never had that experience in
11 Spartanburg with any other D.A. And I can't tell you why
12 this happened, and I was just really caught off guard on
13 that. And I kind of -- I mean, it was just a really sad
14 situation because I knew what could potentially happen at
15 trial. So I did my best to try to keep it as clean as
16 possible so that they wouldn't find him guilty of attempted
17 murder.

18 Again, I just don't know why the D.A. was being so
19 unreasonable in this particular case because it really
20 didn't deserve LWOP.

21 Q Did you make an assessment about whether you should
22 offer Mr. Brannon's mother as a witness?

23 A You know, I never even thought about that to be quite
24 frank.

25 Q So at the time did you think that her testimony would

Tanya R. Jones
Redirect examination by Ms. Olive

1 have been helpful to him?

2 A No. I -- I didn't even think about it.

3 Q Was she there?

4 A She was not there. She did not witness, you know,
5 anything, for the fact that he gave her the dagger. And
6 it's his mother. Juries are often -- what's the word I'm
7 looking for -- suspect of family members testifying. I
8 haven't had a lot of luck with family members or
9 girlfriends testifying or offering, you know, parts of a
10 defense.

11 Q Would she also have been related to the victim?

12 A I think she would have been. I think, yeah, I think
13 she would have been. And there were some hostilities in
14 the family. I know that one of the aunts I tried to
15 contact really didn't like my client. You know, maybe his
16 mom had some feelings about Ronnie. I mean, there was some
17 disconnect in this family, as all families do have. So,
18 you know, you can run into those issues. But I have notes
19 of -- it's not like any people or things that I was
20 tracking down or trying to track down Mr. Ronnie Brannon.

21 Q Thank you, Ms. Jones.

22 MS. OLIVE: That's all the questions I have.

23 MR RUCKER: Nothing further, Your Honor.

24 THE COURT: Okay. Anything from the state?

25 MS. OLIVE: Nothing further from the state, Your

1 Honor.

2 THE COURT: Okay. Thank you, Ms. Jones.

3 THE WITNESS: Thank you.

4 MS. OLIVE: Thank you, Ms. Jones.

5 THE COURT: All right. I will let y'all know.

6 MR RUCKER: Thank you, Your Honor.

7 MS. OLIVE: Thank you, Judge.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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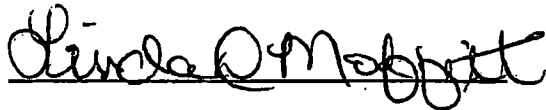
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 17th day of June 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 31, 2017

A handwritten signature in cursive script that reads "Linda D. Moffitt". The signature is written in dark ink and is positioned above the printed name and title.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

John Wayne Brannon, #209650,)

Case No. 2013-CP-42-4797

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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M. HOPE ELACHEY

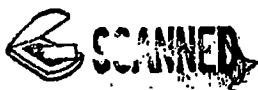
This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 5, 2013. Respondent made a Return on or about August 18, 2014. The Court convened an evidentiary hearing into the matter on June 17, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Tanya Jones, Esquire, also testified.¹ The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In July 2011, the

¹ With consent of the parties, Counsel, who was then residing outside of the state, testified by telephone at the evidentiary hearing.



Spartanburg County Grand Jury indicted Applicant for attempted murder (2011-GS-42-4694). Tanya Jones, Esquire, represented Applicant. On December 13-15, 2011, Applicant was tried before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty of the lesser-included-offense of assault and battery of a high and aggravated nature. Judge Couch sentenced Applicant to life without parole pursuant to S.C. Code Ann. § 17-25-45.

A timely Notice of Appeal and Anders² were filed on Applicant's behalf. Applicant also filed a *pro se* brief. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Brannon, Op. No. 2013-UP-362 (Ct. App. filed October 2, 2013). The Remittitur was returned on November 5, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to properly research and investigate the law and facts pertaining to Applicant's case,
 - b. Counsel failed to hire an investigator or expert witness to assist in defense,

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J. HOFF BLANCHET

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. As a matter of general impression, this Court finds Applicant's testimony was not credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

² 386 U.S. 738 (1967).

A. Summary of Testimony

Applicant testified he only met with Counsel two or three times and that she did not discuss the self-defense theory with him. He testified that Counsel advised him not to take the stand because she thought he would incriminate himself. He testified that she advised him that the State could use his prior convictions against him. Applicant also acknowledged that Counsel advised him of his right to testify. Applicant testified that the victim had attacked him with a dagger on four or five occasions. He testified that he hit the victim over the head with a chair.

Counsel testified she has been practicing law since 2006. She testified she had frequent contact with Applicant and met with him at least four times prior to trial and also spoke with him over the phone. Counsel testified she would have filed discovery motions and would have reviewed the discovery material with Applicant. She discussed with him the elements of attempted murder. Counsel further testified she discussed possible defenses with Applicant, in particular, self-defense. Applicant told Counsel that the victim had a dagger, which he took from the victim the night of the incident. Counsel testified she informed Applicant of his right to testify and of the significance of his testimony in the context of the self-defense claim. She also testified that, at the time, she felt it was likely not in his best interest to testify.

Counsel testified that in investigating Applicant's case in preparation for trial, she went over the police reports, went to the crime scene (though the house had been condemned), and spoke to Applicant's mother because Applicant indicated he had given the dagger to her following the incident. Applicant's mother did not know much about the dagger. Counsel testified that she was unable to get the victim to cooperate with her investigation and that she tried to track the victim down but his phone number was disconnected and she was unable to obtain an address for him.

Counsel testified essentially they were going forward on the theory that Applicant was acting in self-defense. Counsel stated her trial strategy was to discredit the victim's recollection of the events by showing—through his inconsistent statements and the medical record—that the victim could not keep his story straight and did not really know what happened that night. Counsel testified she obtained the dagger, but ultimately did not introduce the dagger at trial because she had a bad feeling at the time. She testified the dagger belonged to the victim and she feared that the victim would "go into a story" about it and she did not know what he would say. Counsel said she did not want to ask a question she did not know the answer to. She further testified that the victim was a terrible witness, had a poor demeanor, and was combative.

Counsel testified the State offered to reduce attempted murder and allow Applicant to plead to assault and battery of a high and aggravated nature without an agreed sentence. She testified she presented Applicant with this offer on August 18, 2011, and he rejected it. Applicant acknowledged he rejected this offer.

B. Ineffective Assistance of Trial Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687;

Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Failure to Investigate

Applicant alleged counsel failed to conduct a proper investigation. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 145 (2014) (citing Strickland, 466 U.S. at 691). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

In this case, Counsel's investigation was reasonable. In preparing Applicant's case for trial, Counsel had frequent contact with Applicant and met with him at least four times prior to trial and spoke with him over the phone several times. Counsel reviewed the discovery material

with Applicant. She also discussed with him his version of the facts and any possible defenses he may have, including the defense of self-defense. Counsel testified she reviewed the police reports contained in discovery, went to the crime scene (though the house had been condemned), and spoke to Applicant's mother about the dagger Applicant alleged the Victim threatened him with, though Applicant's mother was of little help in that regard. Counsel testified that she was unable to get the victim to cooperate with her investigation and that she tried to track the victim down but his phone number was disconnected and she was unable to obtain an address for him. Counsel contacted or attempted to contact all potential fact witnesses. To the extent there were inconsistencies between witness statements contained in discovery and the witness's testimony presented at trial, Counsel brought those inconsistencies to light during her cross-examination of those witnesses. This Court finds Counsel conducted a reasonable and proper investigation, adequately conferred with Applicant, and was thoroughly competent in her representation. Therefore, Applicant has failed to satisfy his burden of proving Counsel failed to conduct a proper investigation.

Likewise, Applicant has failed to show prejudice and this Court can only speculate as to what additional investigation Counsel could have done and what evidence that investigation would have uncovered. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding no prejudice where applicant "failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Applicant testified on his own behalf but presented no other witnesses and produced no evidence of what Counsel might have uncovered had he conducted any additional investigation. Therefore, Applicant has failed to demonstrate any alleged deficiency prejudiced him. See Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995)

("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Accordingly, this Court finds Applicant has failed to demonstrate either deficiency or prejudice with respect to this allegation.

Failure to Present an Expert Witness

Applicant also alleged counsel was ineffective for failing to call an expert witness. Counsel stated that Dr. Bradley Davis, the emergency room physician testified the victim was a "poor historian" and that he was a good witness because he was a neutral witness. Dr. Davis testified at trial that the victim was "clinically intoxicated and thus a poor medical historian. He could not describe symptoms." (Tr. p. 83, lines 9-11). The doctor testified that a C.T. scan was performed on the victim because of his inability to accurately describe his symptoms. (Tr. p. 83) He also testified generally that head traumas can be considered deadly. (Tr. p. 85, lines 23-25). Furthermore, the victim himself testified concerning his injuries and the extent of those injuries. (Tr. p. 107-09). Based on these facts, Counsel's decision not to hire or produce an expert witness to challenge Dr. Davis's testimony was reasonable. See Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (holding the Court must evaluate performance by its reasonableness under prevailing professional norms). Further, Counsel also provided a valid strategic reason for not presenting an expert to challenge Dr. Davis. See Stokes v. State, 308 S.C. 546, 548, 416 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). The doctor's testimony that the victim was intoxicated and was a poor medical historian was consistent with Counsel's trial strategy of discrediting the victim. Therefore, Applicant has failed to demonstrate any deficiency with respect to this allegation.

In addition, Applicant presented no witness at the evidentiary hearing and offered no testimony or evidence concerning what, if anything, such a witness could have contributed at trial. Therefore, Applicant has also failed to establish prejudice. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))); see also Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial"). Accordingly, this Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice with respect to this allegation.

Advice Not to Testify

Applicant presented testimony at the evidentiary hearing that Counsel advised him against testifying in his defense at trial.³ A defendant's decision to testify or not must be made with knowledge of the consequences of either choice. Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (citing State v. Orr, 304 S.C. 185, 403 S.E.2d 623 (1991), overruled in part on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)). Counsel has a duty "to inform a client of his Fifth Amendment rights and the consequences of exercise and waiver of those rights." Brown v. State, 340 S.C. 590, 595, 533 S.E.2d 308, 310 (2000).

Applicant testified that Counsel informed him of his right to testify but advised him not

³ Though this was not raised as an allegation in Applicant's application and Applicant's PCR counsel did not ask to amend the application to conform to the pleadings, out of an abundance of caution, this Court nevertheless addresses this as if it were presented as an allegation.

to testify because she thought he would incriminate himself. Likewise, Counsel testified that she discussed with Applicant his right to testify and that she advised him against testifying because she did not feel it was in his best interest. Therefore, Counsel gave a valid strategic reason for advising Applicant against testifying. See, e.g., Jackson v. State, 329 S.C. 345, 352, 495 S.E.2d 768, 772 (1998) (finding Counsel's advice not to testify was valid strategy where applicant had prior convictions that could have been used for impeachment). Furthermore, Applicant waived his right to testify on the record at trial, Applicant admitted at the evidentiary hearing he was advised of his right to testify, and Counsel advised Applicant of his right to testify and of the consequences of not testifying—i.e., the impact on the defense of self-defense. Cf. Brown v. State, 340 S.C. 590, 595, 533 S.E.2d 308, 310 (2000) (finding where there was no on-the-record waiver of the applicant's right to testify, counsel's failure to inform him of his Fifth Amendment rights and the consequences of exercise and waiver of those rights falls below an objectives standard of reasonableness). Applicant was advised of his right to testify by the court and by Counsel. Applicant was informed of the risks and advantages of testifying, and Counsel advised him against testifying because of the concern that he would incriminate himself. Ultimately, Applicant chose not to testify. Therefore, Counsel was not deficient for advising Applicant not to testify.

Applicant also failed to show that there is a reasonable probability that but for Counsel's alleged deficient advice not to testify, there is a reasonable probability the result of trial would have been different. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Furthermore, when a defendant's conviction is challenged, the question is whether there is a reasonable probability that, absent the errors, the fact finder would

have had a reasonable doubt respecting guilt." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland v. Washington, 466 U.S. at 695).

At trial, the victim testified Applicant had been staying with him for a couple of weeks and that he wanted Applicant to leave but was having problems getting him to leave. (Tr. p. 124; p. 141). He testified that it became "physical . . . a couple of times" but denied ever striking Applicant because he would have been "kind of crazy trying to strike [Applicant]." (Tr. p. 124). The victim also testified that he told Applicant that Applicant was "too big" for him to fight. (Tr. p. 106). He testified that on this occasion, they started arguing and he asked Applicant to leave. (Tr. p. 107). The victim testified that Applicant then left, exiting through the front door. (Tr. p. 107). He walked into the kitchen because he thought Applicant was gone, but moments later, Applicant came back into the house and struck him in the head with a rock that Applicant had taken from the sidewalk outside. (Tr. p. 120; p. 125-26).

At trial, Brendall Mathis testified he met the victim at the hospital while the physician was examining him. (Tr. p. 61). He testified he could see the victim's skull. (Tr. pp. 61-62). He testified that the area outside of the house where the rock appeared to come from was approximately twenty or thirty feet from the living room. (Tr. p. 69).

At the evidentiary hearing, Applicant provided testimony consistent with what he would have testified to had he chosen to testify at trial. He testified that the victim had threatened him with a "dagger" and that he hit the victim over the head with an aluminum chair. He also testified that in a previous altercation he had disarmed the victim. He testified that on this occasion, he could not get out of the house because the victim was blocking the door.

This Court finds there is no reasonable probability that but for Counsel's advice not to testify, the jury would have had a reasonable doubt respecting Applicant's guilt. Applicant has

failed to establish the necessary prejudice required to grant post-conviction relief. Applicant's allegation that Counsel was deficient for advising him not to testify is based on his contention that had he testified, he would have been able to provide testimony to show that he was acting in self-defense when he struck the victim in the head. A jury instruction is appropriate where evidence is presented as to the following four elements:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Assuming arguendo that had Applicant testified at trial consistently with the testimony he provided in the evidentiary hearing, a self-defense instruction would not have been warranted because he failed to present evidence as to each of the elements. In addition, this Court finds that Applicant's testimony regarding his version of the facts is incredible and not supported by the evidence. Specifically, this Court finds incredible Applicant's contentions that he was without fault in bringing on the difficulty and that he actually believed he was in imminent danger of losing his life or sustaining serious bodily harm. The victim indicated at trial that Applicant was significantly larger than him, and Applicant even testified that he had previously disarmed the victim by taking the dagger from him. In addition, the victim testified that the place where the rock was removed was twenty to thirty feet from his living room. This Court finds there is no reasonable probability that the jury would have had a reasonable doubt respecting Applicant's

guilt but for Counsel's advice not to testify. Accordingly, Applicant failed to satisfy his burden of proving ineffective assistance of counsel as to this allegation.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

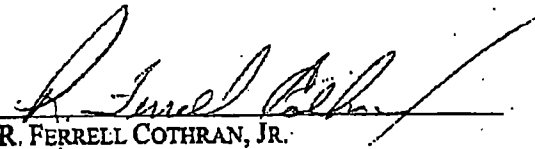
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

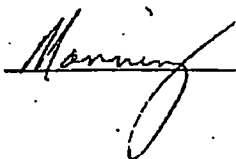
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED** with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of Feb., 2017.


R. FERRELL COTHAN, JR.
Presiding Judge
Seventh Judicial Circuit

, South Carolina

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M. HOPE BLACKLEY

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

John Wayne Brannon, Appellant.

Appellate Case No. 2012-206386

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2013-UP-362
Submitted September 1, 2013 – Filed October 2, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia; and John Wayne Brannon, pro se, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, GEATHERS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

SPARTANBURG CITY POLICE

1. SENTENCE MADE

2. RETURNED

3. CASE FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. T753384 LAYDOWN COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty of Assault and
Battery of a High &
Aggravated Nature
Jessica Weathers

Foreperson of Petit Jury

Date: 12-13-2011

DOCKET NO.

11-GS-42-4694

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
VS.

JOHN WAYNE BRANNON

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-0029
CDR Code: 3410
Class FEL-A

FILED

CLERK OF COURT
SPARTANBURG COUNTY

2011 JUL 26 AM 9:23

H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 22 2011 the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That John Wayne Brannon did in Spartanburg County on or about April 10, 2011,
with malice aforethought, intend and attempt to kill the victim, Ronnie Brannon, in
violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as
amended).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

John Wayne Brannon

AKA:

Race: BLACK Sex: M Age: 55

DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault/Assault and Battery of a High and Aggravated Nature

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 w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BOYD, WISE

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 Life w/ without parole 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL	\$	\$ 643.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

335

INDICTMENT/CASE#: 2011GS4204694

A/W#: M753391

Date of Offense: 4/10/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

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 w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

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Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL	\$	\$ 643.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2135

Sentence Date: 12/15/11

ARREST WARRANT

M-753391

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

against

John Wayne Brannon

Address:

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 9 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420100

Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Brendall K Mathis - 0281

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

JOHN WAYNE BRANNON

4/23/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Brendall K Mathis whobeing duly sworn deposes and says that defendant John Wayne Brannondid within this county and state on or about 04/10/2011 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted MurderI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on April 10, 2011 in the city/county of Spartanburg, the defendant did knowingly and intentionally attempt to commit murder
upon the victim, being Ronnie Brannon, by striking the victim on the top of the head with a rock causing severe injury.

AFFIANTS BELIEF BASED ON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad StreetSpartanburg 29306-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds

on or about 4/10/2011 defendant John Wayne Brannon

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg as set forth below:DESCRIPTION OF OFFENSE: Murder / Attempted MurderHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as
soon thereafter as is practicable
Sworn to and subscribed before meon 04/12/2011Judge's Address Spartanburg County Judicial CenterSpartanburg, SC 29306-Judge's Telephone (864)596-2564Issuing Court: ☒ Magistrate ☐ Municipal ☐ CircuitJudge Code: 7151FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 26 PM 2:26
THOMAS BLACKLEY

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