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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Letitia H. Verdin, Circuit Court Judge

MICHAEL LAMAR COUCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000159

APPENDIX

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1 State of South) In the Court of General
2 Carolina) Sessions
3 County of Oconee) Indictments Nos:
4) 2011-GS-37-00391, '403, '404

5 State of South)
6 Carolina,)
7 Plaintiff,) Transcript of Record
8 -vs-) Trial
9 Michael Lamar Couch,)
10 Defendant.)

11 October 17, 18, and 19, 2011
12 Walhalla, South Carolina

13 B E F O R E:

14 The Honorable Alexander S. Macaulay, Judge; and a
15 Jury.

16
17
18 A P P E A R A N C E S:

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20 Assistant 10th Circuit Solicitor
21 Attorney for the State

22 R. Delane Rosemond, Esq.
23 Attorney for the Defendant

24
25 Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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1 EXHIBITS

2 NO. DESCRIPTION ID/EV.

3 S-1, DVD of 9-1-1 call -- NOT TRANSCRIBED 61/86
State's Exhibits 2 through 38, photographs 61

4 S-39, knife 61/197

5 S-40, voluntary statement 99/115

6 S-5, photograph 61/136

7 S-2, photograph of victim Garry McCall 61/141

8 S-6, photograph of house of Garry McCall 61/143

9 S-16, 26, and 27 photos, Garry McCall at WPD 61/146

10 S-3, 4, 7, 10, 12, 13, 14, and 15, photos 61/189

11 S-17, 18, 19, 20, 21, 22, 23, and 24, photos 61/241

12 S-29, 30, 31, 32, 33, 34, 35, 36 and 38 61/260

13

14 ** Reporter's note -- State's Exhibits Numbers 8, 9, 11,
15 25 and 28, photographs, were not received in evidence **

16

17

18 D-1, voluntary statement of Garry McCall 152/155

19 D-2, voluntary statement of Garry McCall 152/156

20 D-3, statement of Defendant 263/264

21

22 C-1, Note from jury dated October 18, 2011 166

23 C-2, jury note dated October 19, 2011 347

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1 ** Start of Requested Certified Transcript of Record **

2 (Whereupon, the trial in the matter of the State of
3 South Carolina v. Michael Lamar Couch commenced on
4 October 17, 2011, at approximately 11:24 a.m.)

5 THE COURT: Is the State ready to proceed?

6 MR. STOUDEMIRE: We are, Your Honor.

7 THE COURT: Is the Defense ready to proceed?

8 MR. ROSEMOND: Yes, Your Honor.

9 Jury Voir Dire/Selection:

10 THE COURT: Ladies and gentlemen, this is a term of
11 General Sessions Court, sometimes called criminal court.
12 Its purpose is to resolve questions of alleged criminal
13 conduct arising between the State of South Carolina and
14 the Defendant in a fashion which will ensure that
15 justice under the law is accomplished.

16 The trial of the case begins with the selection of
17 a jury. Both the State and the Defendant are entitled
18 to jurors who will approach the case with an open mind.
19 The trial jury must be as free as humanly possible from
20 bias, prejudice or sympathy for either side and free
21 from any preconceived ideas on the facts of the case or
22 the law of the case.

23 Therefore, certain questions will be asked of you,
24 the petit jury panel. The questions which will be asked
25 are designed to ensure that each side has a fair and

1 impartial jury.

2 I might note further that if anybody attempts to
3 talk to you about any case that could be pending in this
4 court this week, you are to immediately report them to
5 one of the bailiffs or one of the Deputies, because no
6 one is to interfere with your duty as jurors here in the
7 Court of General Sessions for Oconee County, and if they
8 should, I must take the appropriate action.

9 Mr. Solicitor, you may call your first case.

10 MR. STOUDEMIRE: Thank you, Your Honor, may it
11 please the Court, the State calls the State v. Michael
12 Lamar Couch on 2011-GS-37-391, 2011-GS-37-403, and
13 2011-GS-37-404.

14 THE COURT: Very good. Thank you.

15 Now, ladies and gentlemen of the jury panel, we are
16 commencing the trial of the case of the State of South
17 Carolina v. Michael Lamar Couch on three indictments.
18 The State will be represented by Mr. Stoudemire.

19 Mr. Stoudemire, if you would please stand,
20 introduce yourself and anybody that might be assisting
21 you in the trial of this case.

22 MR. STOUDEMIRE: Good morning, ladies and
23 gentlemen, my name is Blair Stoudemire. I am one of the
24 assistant prosecutors here in the Oconee County office
25 of the 10th Circuit Solicitor's Office. With me today

1 and who will be assisting me in court throughout the
2 trial is Officer Matt Patterson of the Walhalla Police
3 Department.

4 THE COURT: Very good. Thank you very much.

5 The Defendant, Mr. Michael Lamar Couch, is
6 represented by Mr. Rosemond.

7 Mr. Rosemond, if you would please stand, introduce
8 yourself and have your client stand as well.

9 MR. ROSEMOND: Good morning, ladies and gentlemen.
10 My name is Delane Rosemond. I'm a lawyer in Seneca,
11 South Carolina, and I have the pleasure of representing
12 Mr. Michael Couch this morning. This is Mr. Couch.

13 (The Defendant, Michael Couch, stood and faced the
14 jury panel.)

15 THE COURT: Very good. Thank you, gentlemen.

16 Now, ladies and gentlemen, is there any member of
17 the jury panel who is related by blood or marriage,
18 close personal friend, or business associate of the
19 Defendant, Mr. Michael Lamar Couch? If so, please
20 stand. Any member of the jury panel related by blood or
21 marriage, close personal friend, or business associate
22 of the Defendant, Michael Lamar Couch, if so, please
23 stand.

24 (Prospective juror stands.)

25 THE COURT: Yes, sir. Your name, please.

1 PROSPECTIVE JUROR: Tim Marcengill.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR MARCENGILL: I know the family.
4 I've worked with Michael's mother for 13, 14 years at
5 Covidien.

6 THE COURT: Would that in any way interfere with
7 your ability to give the State and the Defendant a fair
8 and impartial trial?

9 (There was no response.)

10 THE COURT: I'm going to excuse you on the trial of
11 this case, but do remain with us. Thank you.

12 Now, the reason I ask that question is twofold.
13 Not only are the parties entitled, the State and the
14 Defendant, entitled to a fair and impartial jury for
15 their purposes; but none of you asked to be here this
16 week. And so, therefore, I want to be sure if you are
17 drawn on a jury, that you would feel comfortable in
18 performing your duties as jurors. So I don't want to
19 put you in any sort of compromising position or in any
20 way make you feel somewhat less than comfortable in
21 performing your duties if you are drawn. So that's the
22 reason I ask.

23 And you were very candid in the sense that if you
24 have reservations, I need to know, because it makes it a
25 lot easier for jury service.

1 (A prospective juror stood.)

2 THE COURT: Yes, sir. Your Name, please?

3 PROSPECTIVE JUROR: Tim Wilburn. I studied, I'm a
4 Bible teacher with many of the students at the jail, and
5 I know Michael Couch in that way and some of his
6 history.

7 THE COURT: All right. Well, I'm going to excuse
8 you on the trial of this case, too, please. But stay
9 with us. Thank you, sir.

10 Anyone else?

11 (A prospective juror stood.)

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR: I taught him as a student in
14 elementary school.

15 THE COURT: All right. Ms. Hostetler, would that
16 in any way interfere with your ability to give both the
17 State and the Defendant a fair and impartial trial?

18 PROSPECTIVE JUROR HOSTETLER: I don't think so.

19 THE COURT: Are you certain?

20 PROSPECTIVE JUROR HOSTETLER: I would prefer not to
21 be on the jury.

22 THE COURT: Very well. I'm going to excuse you on
23 the trial of this case. Thank you, though, for telling
24 me. It's not suggesting that you couldn't do it. It's
25 just I don't want to feel that there is something that

1 you might know outside of what you might hear in this
2 courtroom today. Because whoever is drawn on a jury
3 must decide the case entirely on the testimony and
4 evidence presented in this courtroom and the law as
5 applies to the particular case and not any other
6 considerations whatsoever. But I do thank you for
7 telling the Court and advising the Court of that.

8 Was any member of the jury panel -- excuse me --
9 was any member of the jury panel a member of the grand
10 jury that returned the indictments in this case? That
11 would be the grand jury for 2011. If so, please stand.

12 (There was no response.)

13 THE COURT: I'm going to read out some names of
14 potential witnesses. Now, these are potential
15 witnesses. Not witnesses who will be called, but who
16 may be called. They do not have to be called, but could
17 be called. Again, listen carefully to their names.
18 Glenda Cantrell. Jennifer L. Clayton. Dr. Greg Cromer,
19 M.D. Officer Lilly Mae Davis. Sommer Rae Grant.
20 Officer Sherri Hollifield, Jeremy Kerr. Garry Gean
21 McCall, Nina McKee, Sergeant Patrick Merck, Officer Matt
22 Patterson, Allen Van Heusen, Melissa Skipper Wallace,
23 Captain Ronald Wilbanks.

24 These are all potential witnesses. Linda Cantrell,
25 Jennifer L. Clayton, Dr. Greg Cromer, M.D.; Officer Lily

1 Mae Davis. Sommer Rae Grant. Officer Sherri
2 Hollifield, Jeremy Kerr, Garry Gean McCall, Nina McKey,
3 Sergeant Patrick Merck, Officer Matt Patterson, Allen
4 Van Heusen. Melissa Skipper Wallace. Captain Ronald
5 Wilbanks.

6 Is any member of the jury panel related by blood or
7 marriage or -- to any of the witnesses in this case? If
8 so, please stand.

9 (There was no response.)

10 THE COURT: Has any member of the jury panel been
11 employed, in the past or present, by any City, County,
12 State or Federal law enforcement agency? If so, please
13 stand. Any member of the jury panel, either present or
14 in the past, been employed by any State, City, County,
15 or Federal law enforcement agency? If so, please stand.

16 PROSPECTIVE JUROR: Kevin Stuthridge, Reserve
17 Deputy for Anderson County.

18 THE COURT: You are a Reserve Deputy?

19 PROSPECTIVE JUROR STUTHRIDGE: Yeah. Back in '95.

20 THE COURT: Oh, you have been but you're not
21 currently?

22 PROSPECTIVE JUROR STUTHRIDGE: You said in the
23 past, right?

24 THE COURT: I did. I did. But not currently?

25 PROSPECTIVE JUROR STUTHRIDGE: Not currently.

1 THE COURT: All right. So, but that, that would
2 not disqualify you unless you feel that you could not be
3 fair and impartial to both the State and the Defendant
4 in this case.

5 PROSPECTIVE JUROR STUTHRIDGE: It would not affect
6 me, no, sir.

7 THE COURT: Very good. Thank you, sir.

8 Has any member of the jury panel, either presently
9 or in the past, ever been employed by or volunteered
10 with any City, County, State or Federal prosecutor's
11 office? If so, please stand.

12 (There was no response.)

13 THE COURT: Is any member of the panel related by
14 blood or marriage or close personal friend with any
15 person who has ever been employed by or volunteered with
16 any City, County, State or Federal victim witness
17 assistance program? If so, please stand.

18 (There was no response.)

19 THE COURT: Has any member of the jury panel ever
20 contributed to or volunteered with organizations known
21 as CAVE, Citizens Against Violence Everywhere, victim,
22 witness assistance programs, or any other similar
23 program which lobbies on behalf of victims or lobbies
24 for tougher sentences for criminal offenders? Any
25 member of the jury panel contributed to or volunteered

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1 time with CAVE, victim witness assistance programs or
2 any other similar organization which lobbies on behalf
3 of victims or lobbies for tougher sentences for criminal
4 offenders? If so, please stand.

5 (There was no response.)

6 THE COURT: Has there any member of the jury panel
7 ever contributed money to the Fraternal Order of Police
8 or South Carolina Law Enforcement Officers Association,
9 or any other law enforcement organization that supports
10 the police? If so please stand.

11 (Several potential jurors stood.)

12 THE COURT: Very good. Yes, ma'am. Your name,
13 please, for the record?

14 PROSPECTIVE JUROR: I'm Rosemary Bailes. We have
15 contributed to the Fraternal Order of Police.

16 THE COURT: All right. Would that in any way
17 interfere with your ability to give both the State and
18 the Defendant a fair and impartial trial?

19 PROSPECTIVE JUROR BAILES: No.

20 THE COURT: Very good. Thank you, ma'am.
21 Yes, sir.

22 PROSPECTIVE JUROR: My name is Robert King.

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR KING: And I have contributed.

25 THE COURT: All right. Would that in any way

1 interfere with your ability to give both the State and
2 the Defendant a fair and impartial trial?

3 PROSPECTIVE JUROR: To give them a fair and
4 impartial trial? No, sir, it wouldn't impair me at all.

5 THE COURT: All right. Very good. Thank you.

6 Yes, sir.

7 PROSPECTIVE JUROR: Eric Bost, and I have
8 contributed.

9 THE COURT: All right. Would that in any way
10 interfere with your ability to give both the State and
11 the Defendant a fair and impartial trial?

12 PROSPECTIVE JUROR BOST: No, sir.

13 THE COURT: Very good. Thank you.

14 Yes, sir.

15 PROSPECTIVE JUROR STUTHRIDGE: I'm Kevin Stuthridge
16 and I've contributed.

17 THE COURT: Would it in any way interfere with your
18 ability to give both the State and the Defendant a fair
19 and impartial trial?

20 PROSPECTIVE JUROR STUTHRIDGE: No.

21 THE COURT: Very good.

22 Yes, sir. Your name, please?

23 PROSPECTIVE JUROR: McKibben, James V. No, I don't
24 think it would influence me.

25 THE COURT: You have contributed to law enforcement

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15

1 support agencies?

2 PROSPECTIVE JUROR McKIBBEN: Yes.

3 THE COURT: That would not interfere with your
4 ability to give both the State and the Defendant an
5 impartial trial?

6 PROSPECTIVE JUROR McKIBBEN: Not at all.

7 THE COURT: Very good. Thank you, sir.

8 Yes, ma'am.

9 PROSPECTIVE JUROR: Elizabeth Brock. I have
10 contributed, as well.

11 THE COURT: Would that in any way interfere with
12 your ability to give both the State and the Defendant a
13 fair and impartial trial?

14 PROSPECTIVE JUROR BROCK: No, it would not.

15 THE COURT: Very good. Thank you, ma'am.

16 Yes, sir.

17 PROSPECTIVE JUROR: Yes, sir. James Jarvis. I
18 contribute to the FOP, as well.

19 THE COURT: That would in any way interfere with
20 your ability to give both the State and the Defendant a
21 fair and impartial trial?

22 PROSPECTIVE JUROR JARVIS: No, sir.

23 THE COURT: Very good. Thank you.

24 Does the nature of a violent crime case affect any
25 member of the jury panel such that you would have

1 difficulty serving as a juror in this case? In other
2 words, if any of the indictments involve what is
3 classified as a violent crime, would that affect your
4 ability to give both the State and the Defendant a fair
5 and impartial trial in this case? If so, please stand.

6 (There was no response.)

7 THE COURT: Now, the next question is one of those
8 that requires particular attention. So I'm going to, as
9 I've done before, ask if the question applies to anyone
10 in the jury panel, if they stand and then come forward
11 so that I might speak privately with them with the
12 Clerk.

13 Has any member of the jury panel or member of their
14 immediate families or close personal friends ever been
15 the victim of or a witness to a crime involving serious
16 bodily injury or death? If anybody, any member of the
17 jury panel, or members of their close personal family or
18 close personal friend has ever been a victim or a
19 witness to a crime involving serious bodily injury or
20 death, I'm gonna ask you to stand at this time and come
21 forward and discuss it with the Court individually.

22 Any member of the jury panel or members of their
23 immediate family or close personal friends that has ever
24 been a victim of or a witness to a crime involving
25 serious bodily injury or death, please stand at this

1 time.

2 (There was no response.)

3 THE COURT: Has any member of the jury panel formed
4 or expressed an opinion about any matter that might be
5 involved in this case? If so, please stand.

6 (There was no response.)

7 THE COURT: Is any member of the panel aware of any
8 interest bias or prejudice towards either the Defendant
9 or the State of South Carolina? If so, please stand.

10 (There was no response.)

11 THE COURT: Does any member of the panel know of
12 any reason why he or she could not give both the State
13 of South Carolina and the Defendant a fair and impartial
14 trial? If so, please stand.

15 (There was no response.)

16 THE COURT: All right. Any additional questions
17 from the State?

18 MR. STOUDEMIRE: None, Your Honor.

19 THE COURT: From the Defense?

20 MR. ROSEMOND: No, Your Honor.

21 THE COURT: Ladies and gentlemen of the jury panel,
22 the way we select a jury in General Sessions Court is
23 that a list of potential jurors in this case has been
24 prepared. Now, this is a random selection. It used to
25 be we had a drum where we would put individual names in

1 capsules and put them in a drum, and we'd turn the drum,
2 and then we'd have an individual who was legally blind
3 or a child who could not read or write select the
4 capsules and then the name would be read. But now we
5 use the computer and that gives us a random list of
6 names. So your name will be called as it appears on
7 this random list in that order; and if your name is
8 called, if you would come to the front --

9 Let's see, Mr. Bibb, if you would please.

10 -- stand in the front facing towards the back of
11 the courtroom. And if you have any personal effects,
12 bring them with you at that time.

13 Thank you, Mr. Bibb.

14 At that time the Solicitor will either say present
15 the juror or excuse the juror. If he says present the
16 juror, then the defense attorney, Mr. Rosemond, will
17 either say swear the juror or excuse the juror. And in
18 that fashion we will end up with 12 jurors.

19 Now, in this particular case we have five strikes
20 for the State and ten for the Defendant.

21 Is that correct, Mr. Stoudemire?

22 MR. STOUDEMIRE: It is, Your Honor.

23 THE COURT: Mr. Rosemond?

24 MR. ROSEMOND: Yes, Your Honor.

25 THE COURT: Madam Clerk, give us a jury.

1 THE CLERK: Alternates?

2 THE COURT: Let's have at least two. And on the
3 alternates, it's one and two.

4 THE CLERK: Ladies and gentlemen, as I call your
5 name, come forward bringing your personal belongings.

6 Number 120, Vicki Rochester.

7 (Whereupon, a White female approaches.)

8 THE CLERK: What says the State?

9 MR. STOUDEMIRE: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. ROSEMOND: Please seat this juror.

12 THE CLERK: Ma'am, if you would please take a seat
13 in the jury-box.

14 Number 118, Julie Roberts.

15 (Whereupon, a White female approaches.)

16 THE CLERK: What says the State?

17 MR. STOUDEMIRE: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. ROSEMOND: Please excuse this juror.

20 THE CLERK: Ma'am you have been excused from this
21 case, you may be seated.

22 Number 113, Karen Richardson.

23 (Whereupon, a Black female approaches.)

24 THE CLERK: What says the State?

25 MR. STOUDEMIRE: Please excuse the juror on this

1 case.

2 THE CLERK: Ma'am, you have been excused from this
3 case, you may be seated.

4 Number 6, Rosemary Bailes.

5 (Whereupon, a White female approaches.)

6 THE CLERK: What says the State?

7 MR. STOUDEMIRE: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. ROSEMOND: I would move to strike the juror for
10 cause.

11 THE COURT: Approach.

12 (Discussion at sidebar.)

13 THE COURT: All right. The motion is noted for the
14 record, please.

15 All right. I think it's up to the Defense.

16 MR. ROSEMOND: Please excuse this juror.

17 THE COURT: All right. You will be excused. Thank
18 you for being with us, Ms. Bailes. Now, do remain with
19 us.

20 THE CLERK: Number 28, Edwin Bryant.

21 (Whereupon, a White male approaches.)

22 THE CLERK: What says the State?

23 MR. STOUDEMIRE: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. ROSEMOND: Please seat this juror.

1 THE CLERK: Sir, please take a seat in the
2 jury-box.

3 Number 152, Christopher Barnes.

4 (Whereupon, a White male approaches.)

5 What says the State?

6 MR. STOUDEMIRE: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. ROSEMOND: Please present this juror.

9 THE CLERK: Sir, please take a seat in the
10 jury-box.

11 Number 63, Rusty Hayes.

12 (Whereupon, a White male approaches.)

13 THE CLERK: What says the State?

14 MR. STOUDEMIRE: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. ROSEMOND: Please seat this juror.

17 THE CLERK: Sir, if you would please take a seat in
18 the jury-box.

19 Number 47, Tony Duncan.

20 (Whereupon, a White male approaches.)

21 THE CLERK: What says the State?

22 MR. STOUDEMIRE: Please excuse the juror on this
23 case.

24 THE CLERK: Sir, you have been excused from this
25 case, you may be seated.

1 Number 114, Roger Richardson.

2 (Whereupon, a White male approaches.)

3 THE CLERK: What says the State?

4 MR. STOUDEMIRE: Please present the juror.

5 THE CLERK: What says the Defense?

6 MR. ROSEMOND: Please excuse this juror.

7 THE CLERK: Sir, you have been excused from this
8 case, you may be seated.

9 Number 25, Michael Brown.

10 (Whereupon, a White male approaches.)

11 THE CLERK: What says the State?

12 MR. STOUDEMIRE: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. ROSEMOND: Please present the juror.

15 THE CLERK: Sir, if you would please take a seat in
16 the jury box.

17 Number 133, Nancy Taylor.

18 (Whereupon, a White female approaches.)

19 THE CLERK: What says the State?

20 MR. STOUDEMIRE: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. ROSEMOND: Please excuse this juror.

23 THE CLERK: Ma'am, you have been excused from this
24 case, you may be seated.

25 Number 150, Kathy Wright.

1 (Whereupon, a Black female approaches.)

2 THE CLERK: What says the State?

3 MR. STOUDEMIRE: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. ROSEMOND: Please seat the juror.

6 THE CLERK: Ma'am, if you would please take a seat
7 in the jury-box.

8 Number 111, Jonathan Redmond.

9 (Whereupon, a White male approaches.)

10 THE CLERK: What says the State?

11 MR. STOUDEMIRE: Please present the juror.

12 THE CLERK: What says the Defense?

13 MR. ROSEMOND: Please seat this juror.

14 THE CLERK: Sir, if you would please take a seat in
15 the jury-box.

16 Number 32, Harvey Clark.

17 (Whereupon, a White male approaches.)

18 THE CLERK: What says the State?

19 MR. STOUDEMIRE: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. ROSEMOND: Please excuse the juror.

22 THE CLERK: Sir, you have been excused from this
23 case, you may be seated.

24 Number 89, Robert Martin.

25 (Whereupon, a White male approaches.)

1 THE CLERK: What says the State?

2 MR. STOUDEMIRE: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. ROSEMOND: Please excuse the juror.

5 THE CLERK: Sir, you have been excused from this
6 case, you may be seated.

7 Number 65, Cannie Head.

8 (Whereupon, a White female approaches.)

9 THE CLERK: What says the State?

10 MR. STOUDEMIRE: Please excuse the juror on this
11 case.

12 THE CLERK: Ma'am, you have been excused on this
13 case, you may be seated.

14 Number 60, Sally Gray.

15 (Whereupon, a White female approaches.)

16 THE CLERK: What says the State?

17 MR. STOUDEMIRE: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. ROSEMOND: Please excuse this juror from this
20 case.

21 THE CLERK: Ma'am, you have been excused on this
22 case, you may be seated.

23 Number 163, Charlotte Ownbey.

24 (Whereupon, a White female approaches.)

25 THE CLERK: What says the State?

1 MR. STOUDEMIRE: Please present the juror.
2 THE CLERK: What says the Defense?
3 MR. ROSEMOND: Please seat the juror.
4 THE CLERK: Ma'am, if you would please take a seat
5 in the jury-box.
6 Number 78, Robert King.
7 (Whereupon, a White male approaches.)
8 THE CLERK: What says the State?
9 MR. STOUDEMIRE: Please present the juror.
10 THE CLERK: What says the Defense?
11 MR. ROSEMOND: Please excuse the juror.
12 THE CLERK: Sir, you have been excused from this
13 case, you may be seated.
14 Number 160, James Jarvis.
15 (Whereupon, a White male approaches.)
16 THE CLERK: What says the State?
17 MR. STOUDEMIRE: Please present the juror.
18 THE CLERK: What says the Defense?
19 MR. ROSEMOND: Please seat the juror.
20 THE CLERK: Sir, if you would please take a seat in
21 the jury-box.
22 Number 66, Donnie Hightower.
23 (Whereupon, a White male approaches.)
24 THE CLERK: What says the State?
25 MR. STOUDEMIRE: Please excuse the juror on this

1 case.

2 THE CLERK: Sir, you have been excused from this
3 case, you may be seated.

4 Number 86, Judith Lovering.

5 (Whereupon, a White female approaches.)

6 THE CLERK: What says the State?

7 MR. STOUDEMIRE: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. ROSEMOND: Please excuse the juror.

10 THE CLERK: Number 17, Eric Bost.

11 (Whereupon, a White male approaches.)

12 What says the State?

13 MR. STOUDEMIRE: Please present the juror.

14 THE CLERK: What says the Defense?

15 MR. ROSEMOND: Please seat the juror.

16 THE CLERK: Sir, if you would please take a seat in
17 the jury-box.

18 Number 132, Kevin Stuthridge.

19 (Whereupon, a White male approaches.)

20 THE CLERK: What says the State?

21 MR. STOUDEMIRE: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. ROSEMOND: Please seat the juror.

24 THE CLERK: Number 62, Heather Hardy.

25 (Whereupon, a White female approaches.)

1 THE CLERK: What says the State?

2 MR. STOUDEMIRE: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. ROSEMOND: Please seat the juror.

5 THE CLERK: Ma'am, if you would please take a seat
6 in the jury-box.

7 This be for alternate number one.

8 THE COURT: One and two on alternates.

9 THE CLERK: Number 92, Ann Miller.

10 (Whereupon, a White female approaches.)

11 THE CLERK: What says the State?

12 MR. STOUDEMIRE: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. ROSEMOND: Please excuse the juror.

15 THE CLERK: Ma'am, you have been excused on this
16 case, you may be seated.

17 Number 24, Elizabeth Brock.

18 (Whereupon, a White female approaches.)

19 THE CLERK: What says the State?

20 MR. STOUDEMIRE: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. ROSEMOND: Please excuse the juror.

23 THE CLERK: Ma'am, you have been excused on this
24 case, you may be seated.

25 Number 61, Linda Hamilton.

1 (Whereupon, a White female approaches.)

2 THE CLERK: What says the State?

3 MR. STOUDEMIRE: Please present the juror.

4 THE CLERK: What says the Defense for cause?

5 MR. ROSEMOND: Please seat the juror.

6 THE CLERK: Ma'am, if you would please take a seat
7 in the jury-box.

8 This is for alternate number two. Number 29,
9 Jerrie Butts.

10 (Whereupon, a White male approached.)

11 THE CLERK: What says the State?

12 MR. STOUDEMIRE: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. ROSEMOND: Please seat the juror.

15 THE CLERK: Sir, if you would please take a seat in
16 the jury-box.

17 Judge?

18 THE COURT: Is there any reason this jury cannot be
19 drawn for the trial of this case from the State?

20 MR. STOUDEMIRE: Nothing, Your Honor.

21 THE COURT: From the Defense?

22 MR. ROSEMOND: May we approach?

23 THE COURT: Yes, sir.

24 (Discussion at sidebar.)

25 THE COURT: Madam Clerk, we're gonna draw one more

1 alternate so there will still be one and two. This will
2 be the first.

3 THE CLERK: Number 31, Donnie Chaves.

4 (Whereupon, a White male approaches.)

5 THE CLERK: What says the State?

6 MR. STOUDEMIRE: Please excuse the juror.

7 THE CLERK: Sir, you have been excused from this
8 case, you may be seated.

9 Number 149, Christopher Worley.

10 (Whereupon, a White male approaches.)

11 THE CLERK: What says the State for cause?

12 MR. STOUDEMIRE: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. ROSEMOND: Please present the juror.

15 THE CLERK: Sir, if you would please take a seat in
16 the jury-box.

17 THE COURT: All right. Mr. Bost, I'm gonna ask you
18 to serve as foreperson in this jury, so when we come
19 back out, I'll ask you to sit on the front row, first
20 seat. The alternates will always sit on the last seats
21 in the back row. Everybody else can sit wherever they
22 want to in the jury-box, except for that first chair.
23 The reason I don't use that first chair, that's awfully
24 close to the State's table and I'd just as soon not be
25 concerned about what's going on there so we want to keep

1 your attention to this part of the courtroom where the
2 witness will be sitting and all that.

3 At this time I'm going to excuse you for a few
4 minutes. I need to take something up with the lawyers
5 and the balance of the jury panel. I'm going to ask you
6 to go with the bailiff and he will show you the jury
7 room that you will be using during the trial of this
8 case. So, if you will go with Mr. Bibb at this time.

9 Now, my instruction throughout the trial of this
10 case is going to be that you are not to undertake
11 discussion among yourselves in any way. That means even
12 personalities or anything else. The reason for that, of
13 course, is a trial follows a certain sequence and you
14 never know what's going to be the most important part of
15 the trial. It could be the opening statements by the
16 attorneys the first or last witness, the closing
17 arguments or the charge on the law. So you need to keep
18 an open mind throughout the trial of this case. So, do
19 not permit anyone to discuss the case with you or
20 undertake discussion of the case even among yourselves.
21 So, if you would go with Mr. Bibb at this time.

22 (Whereupon, the Jury left the courtroom at
23 approximately 12:06 p.m. and the Court considered
24 another matter, after which the following occurred
25 at approximately 12:08 p.m.)

1 THE COURT: All right. Do we have a bailiff?
2 Mr. Bibb is with the jury. I need to see Mr. Bryant,
3 Number 28.

4 THE CLERK: I'll get him.

5 THE COURT: All right. Gentlemen, I'm going to
6 call the juror that we discussed out and just tell him
7 he's been excused from the trial of this case without
8 further explanation.

9 Is that okay with the State?

10 MR. STOUDEMIRE: Yes, Your Honor.

11 THE COURT: Defense?

12 MR. ROSEMOND: Yes, sir.

13 THE COURT: And then we're gonna seat the alternate
14 juror, so that will give us still two alternates.

15 (Whereupon, Juror Number 28, Mr. Bryant, entered
16 the courtroom.)

17 THE COURT: Something has come up and I'll have to
18 excuse you from the trial of this case. This does not
19 have to do with anything else. Just as an overabundance
20 of caution. So, also I'm going to have to ask you to
21 come back at 1:30 for the next selection. Very good.
22 Be back at 1:30.

23 JUROR BRYANT: Okay.

24 (Juror Number 28, Mr. Bryant, was excused from this
25 case.)

1 THE COURT: All right. So be back at 1:30.

2 Let me have the jury now.

3 (The Jury entered the courtroom at approximately
4 12:12 p.m.)

5 THE COURT: All right. I've had to excuse one of
6 your jurors. It has nothing to do with you or even with
7 that juror. It was just something that came up that the
8 Court needed to address.

9 Now I'm going to -- let's see -- the first
10 alternate was...

11 A JUROR: Me.

12 THE COURT: I'll ask you to move down. And that
13 would mean that -- is there an empty place -- that will
14 be good. Or you can all move down. The fact is you
15 will now be a part of the jury and then the two
16 alternates will be those two that are left.

17 All right. So, let's see. There's something
18 wrong. Two, four, six -- no, that's all right.

19 THE CLERK: We drew three alternates.

20 THE COURT: All right. Can we go forward with two
21 or do you want to draw another alternate?

22 MR. STOUDEMIRE: We can go forward with two, Your
23 Honor.

24 MR. ROSEMOND: We'll go with two.

25 THE COURT: All right. That will take care of

1 that. Now, as I said earlier, I'm going to excuse you
2 for the day. But we're not gonna start this trial until
3 tomorrow morning. The reason for that, of course, is
4 I've got to take up some matters with the attorneys, and
5 what we hope to do is have all of the technical issues
6 or legal issues, whichever you want to say, out of the
7 way so we can begin the trial of this case in the
8 morning.

9 Now, Mr. Foreman, this is gonna be your first
10 responsibility, if you would. Consult with your jurors
11 and find out what time they would like to start. I
12 would say 9:30, 10:00. I say 9:30 because usually we
13 have to do things before we can start the case. But
14 just ask your jury what time they would like to start:
15 9:30 or 10:00 in the morning. By the way, this is not a
16 unanimous verdict, it's a consensus.

17 THE FOREMAN: Everybody okay with 9:30?

18 JURORS: Yes.

19 THE FOREMAN: 9:30.

20 THE COURT: Very good. So we'll start at 9:30.

21 Now, Mr. Foreman, ladies and gentlemen of the jury,
22 I tell jurors this is the most difficult part of the
23 case that you will have during the whole time of the
24 trial of this case. The reason for that is, when you go
25 home, somebody is gonna ask, What are you doing?

1 And then you can tell them that you have been drawn
2 on a trial of a case.

3 But then they'll ask, Well, what's it about?

4 First of all, you don't know what it's about.

5 But the second thing is, you're gonna have to tell
6 them that you can't discuss it, even if you did know
7 anything about it, and that would be if this goes more
8 than one or two days. Until this case is finally given
9 to you for your deliberations and you do reach a
10 verdict, you cannot discuss anything about this case
11 with anybody, and as I say, even among yourselves.

12 The reason for that, of course, is you must make
13 your decision based on the testimony and the evidence
14 from this witness stand and what is introduced as
15 exhibits in this courtroom. No one who is not sitting
16 where you will be sitting during the trial of this case
17 can help you because they will not have heard the
18 testimony and evidence and not seen the first exhibit.
19 So, they cannot know anything about the case. They can
20 only interfere with the proper resolution of this case.
21 And so, for that reason, you must tell them that you
22 cannot discuss it with them.

23 Now, if they insist, I'll be here at 8:30 in the
24 morning and I'll be glad to explain it to them. But I
25 think you know this is an important case and it needs to

1 be resolved in a proper fashion. With that I'll excuse
2 you for the balance of the day and see you at 9:30.
3 Just come back to the jury room that you were in this
4 afternoon and we'll start the case at 9:30. Very good.

5 Everybody else remain seated while the jury retires
6 from the courtroom.

7 (Whereupon, the Jury was excused for the day at
8 approximately 12:17 p.m.)

9 THE COURT: We'll take up the motions this
10 afternoon. What time do you want to start? We'll draw
11 the other jury at 1:30. So, let's plan on 2:00,
12 hopefully, and it might take longer. So, I'll see you
13 at 2:00.

14 (Whereupon, the Court recessed in this case and
15 heard unrelated matters.)

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1 AFTERNOON PROCEEDINGS

2 2:23 p.m.

3 (Whereupon, the Court recessed for lunch and then
4 considered other matters, after which the following
5 occurred:)

6 THE COURT: All right. Now we're back to the --
7 and this was the first one up tomorrow, right, this
8 case?

9 MR. STOUDEMIRE: That is correct, Your Honor.

10 THE COURT: All right. We're back on the case of
11 the State of South Carolina versus Michael Wayne Couch.
12 I notice, Mr. Rosemond, in your -- that's
13 Mr. Stoudemire's witness list that has Michael Wayne and
14 I notice in your motion it's Michael Lamar Couch.

15 MR. ROSEMOND: Michael Lamar Couch.

16 MR. STOUDEMIRE: My apologies, Your Honor.

17 THE COURT: All right. The State versus Michael
18 Lamar Couch. And it is my understanding we are
19 proceeding on Indictments Number 2011-GS-37-391,
20 2011-GS-37-403 and 2011-GS-37-404. And this is a notice
21 of motion and motion to sever the cases.

22 All right. Mr. Rosemond?

23 Motion to Sever on behalf of Defendant:

24 MR. ROSEMOND: Your Honor, may it please the Court,
25 Mr. Couch is charged with attempted murder under a

1 direct indictment. He's also charged with criminal
2 domestic violence of a high and aggravated nature and a
3 possession of a weapon during the commission of a
4 violent crime.

5 THE COURT: Now, which ones, is it '403, the
6 criminal domestic violence?

7 MR. STOUDEMIRE: I believe so, Your Honor.

8 THE COURT: And then the possession is the '404?

9 MR. STOUDEMIRE: That's correct, Your Honor.

10 THE COURT: I'm sorry. I just need to have that.
11 I've given the indictments back to the Clerk.

12 All right. You may proceed.

13 MR. ROSEMOND: The attempted murder has a victim in
14 it by the name of Mr. McCall. The criminal domestic
15 violence of a high and aggravated nature has a victim in
16 it by the name of Sommer Grant. And the possession of a
17 weapon during the commission of a violent crime has a
18 victim in it of...

19 THE COURT: Let me see. Do you have the
20 indictments still?

21 THE CLERK: I do, yes, sir.

22 THE COURT: Look at the...

23 MR. ROSEMOND: Of Sommer Grant, Your Honor.

24 So, we had attempted murder --

25 THE COURT: All right. Just a minute. So, you

1 have the attempted murder, which is the direct
2 indictment, 2011-GS-37-391, and that's against Garry
3 McCall, Junior. And you have Indictment 2011-GS-37-403,
4 criminal domestic violence of a high and aggravated
5 nature, against Sommer Grant. And then you have a
6 possession of a weapon during a violent crime,
7 2011-GS-37-404, which references the crime of criminal
8 domestic violence of a high and aggravated nature and
9 that would be the one against Sommer Grant.

10 MR. ROSEMOND: Which would be the one against
11 Sommer Grant, Your Honor.

12 THE COURT: All right, very good.

13 MR. ROSEMOND: Now, Mr. Couch has a defense for the
14 attempted murder charge. As we set out in our
15 memorandum and motion, it would be self-defense, Your
16 Honor. And certainly, once we start the trial, Your
17 Honor, what we are afraid of is that the facts and
18 circumstances leading up to the murder trial, attempted
19 murder trial, and the facts leading up to the CDV charge
20 as well as the possession of a weapon charge will
21 confuse the jury.

22 And certainly, Your Honor, when you start talking
23 about what's the test, you look to see whether or not
24 this was a single chain of events, whether or not the
25 particular crime was related closely in time; and

1 ultimately, Your Honor, whether or not the Defendant's
2 substantive rights would be prejudiced if he's tried
3 together for both of these victims.

4 I would submit to you that should we go forward
5 with the CDV charge as well as the possession of a
6 weapons charge, the facts that would come out would
7 prejudice Mr. Couch in that, number one, the evidence
8 that we would submit for the self-defense charge may
9 very well lead to a not guilty verdict, but certainly
10 the evidence that comes out in regards to the other two
11 charges may lead over to the jury convicting Mr. Couch
12 on those two charges.

13 And because of that, Your Honor, we believe it
14 would be necessary to sever this case and try Mr. Couch
15 either on the attempted murder charge solely or
16 Ms. Grant on the other two charges. And that's why
17 we're asking the Court to sever these two particular
18 cases.

19 THE COURT: Let me ask you. Is the knife the same
20 knife that was involved in both instances?

21 MR. ROSEMOND: It is the same knife.

22 THE COURT: Was it the same, was it the same
23 occurrence?

24 MR. ROSEMOND: It was shortly thereafter, Your
25 Honor.

1 THE COURT: Well, explain that to me. Because as
2 little I understand about these sort of things, that you
3 are right, that if it's a connected transaction closely
4 related in time, place and character, then it has a sort
5 of general nature involving matters that might be tried
6 together. I'm asking. I'm curious about the evidence.

7 MR. ROSEMOND: I think the evidence will show that
8 the incident between Mr. Couch and Ms. Grant took place
9 first, and then Mr. McCall somehow then tried to
10 intervene on that particular altercation, and that is
11 when Mr. McCall sustained a laceration to his face.

12 THE COURT: Well, this is not the usual what we
13 might say is the severance type of motion which is based
14 on we've got codefendants. What we've got here is --
15 I've never seen the term, I'm sure it's out there
16 somewhere -- co-victims. Would that be a fair analogy?

17 MR. ROSEMOND: That would be a fair analogy, Your
18 Honor.

19 THE COURT: All right. What you are saying is that
20 although we have co-victims, that they are victims of
21 different crimes.

22 MR. ROSEMOND: They are victims of a distinct
23 crime, Your Honor.

24 THE COURT: Well, not only distinct crimes, but
25 different crimes.

1 MR. ROSEMOND: Different crimes, Your Honor. And
2 certainly one of the crimes is a half step away from
3 murder, and certainly that kind of heightens the jurors'
4 sensitivity to this case. And certainly I can see it
5 going over to Mrs. Grant's case.

6 THE COURT: Well, Mrs. Grant's first, right?

7 MR. ROSEMOND: I think you would do the McCall case
8 first.

9 THE COURT: If somebody would tell me what were the
10 circumstances leading to these indictments?

11 MR. STOUDEMIRE: Judge, if I may, the circumstances
12 as I understand it that led to these indictments is that
13 Mister -- and I think the evidence that would come out
14 would show that Mr. Couch was over at Mr. McCall's
15 house. That Sommer Grant came to the house at some
16 later time after Mr. Couch and Mr. McCall had been at
17 the house for some period of time.

18 After she arrived there, Mr. Couch fell asleep.
19 Ms. McCall fell asleep -- excuse me -- Ms. Grant fell
20 asleep and Ms. Grant woke up, put pajamas on, came back
21 into the room, at which time Mr. Couch awoke, at that
22 point accused Ms. Grant of sleeping with or being
23 romantically involved with Mr. McCall.

24 An argument ensued. That argument became physical.
25 Ms. Grant was hit, pushed to the floor, physically

1 assaulted. During that physical assault Mr. Couch
2 somehow came in possession of the knife and turned his
3 attention to Mr. McCall.

4 And I think the evidence that would be presented on
5 our part would be that Ms. Grant tried to make her way
6 towards the front door to get out of there, was grabbed
7 by Mr. Couch, and then saw that Mr. McCall had been cut
8 on the face. And she proceeded to get assaulted again
9 after that slash of the face took place, at which time
10 Mr. McCall exited the residence and shortly thereafter
11 police arrived.

12 THE COURT: All right. I think I understand. Do
13 you agree with that scenario?

14 MR. ROSEMOND: Yeah, I mean, that's the basic facts
15 of the case, Your Honor, yes.

16 THE COURT: It all occurred in the McCall
17 residence, both the Defendant and Ms. Sommers [sic] were
18 guests in the residence, or invitees. In other words,
19 they had a right to be there, in essence?

20 MR. STOUDEMIRE: Yes, sir.

21 THE COURT: And you have this little fit, I guess
22 you would call it, where certain things took place, and
23 but they were all a part of a continuing -- in other
24 words, Mr. Couch -- this is the position of the State,
25 that Mr. Couch wouldn't have reacted if Mr. McCall and

1 Ms. Sommers [sic] had not been in the vicinity
2 together -- just in the vicinity. He puts them together
3 in his mind. Is that your theory?

4 MR. STOUDEMIRE: Yes, sir. Our theory is basically
5 the rule as I understand it, the general rule on joinder
6 comes from *State v. Simmons* which says that joinder is
7 proper if, one, the crimes are of the same general
8 nature or character and spring from the same series of
9 transactions; are committed by the same offender; and,
10 three, require the same or similar proof.

11 I think that if you separated these trials, every
12 witness that I would call in at the time of trial
13 involving Ms. Grant as the victim would be the same
14 witnesses that I would be calling in the trial with
15 Mr. McCall as the victim right down to the physician at
16 the emergency room that treated them.

17 They were treated by the same physician at the
18 emergency room following this incident. The same 9-1-1
19 tape would be played, the same physical evidence would
20 be brought forward, the same testimony from witnesses
21 and officers would be there.

22 MR. ROSEMOND: Except for, Your Honor, the
23 introduction that my client was found guilty or may be
24 found guilty of attempted murder. They couldn't
25 introduce that particular evidence at that second trial

1 because it would go against *State v. Lyle* and that's the
2 prejudicial effect that is facing Mr. Couch right this
3 minute. If you separate those trials, they can't use
4 any of the attempted murder convictions at that
5 particular trial because *State v. Lyle* would prevent
6 that particular murder conviction from coming in.

7 THE COURT: So, you are saying you are raising a
8 404(b) objection?

9 MR. ROSEMOND: At that particular time, Your Honor,
10 we would be raising that objection. And I think *State*
11 *v. Smith* adequately described the problems that we would
12 run into in that case. And this was a case where a
13 gentleman, Smith, was charged with assault and battery
14 of a high and aggravated nature as well as homicide by
15 child abuse.

16 And the Supreme Court reversed this particular case
17 and said that this particular case should not have been
18 joined together because of, number one, the ABHAN
19 conviction would not have been admissible in the trial
20 for the trial on the homicide charge because of *State v.*
21 *Lyle*. And that's the prejudicial effect that Mr. Couch
22 would be going over.

23 THE COURT: Have you read *State v. Terry Smith*?

24 MR. STOUDEMIRE: Yes, Your Honor, I read it.

25 THE COURT: What's your observation on it?

1 MR. STOUDEMIRE: Judge, I would still go with State
2 *v. Simmons*, a 2002 case, which is a burglary case. And
3 there's a part of that case that talks about *res gestae*
4 and that part of the Defendant's argument there was that
5 he was prejudiced because of all these different things
6 being entered into evidence.

7 And the Court in that essentially said that it's a
8 question of fragmentation, so to speak. Let me find the
9 language I'm looking for.

10 It states that (reading):

11 One of the accepted bases for the admissibility of
12 evidence of other crimes arises when evidence furnishes
13 a part of the context of the crime or is necessary for a
14 full presentation of the case, or is so intimately
15 connected with and explanatory of the crime charged
16 against the Defendant and is so much a part of the
17 setting in the case and its environment that its proof
18 is appropriate in order to complete the story of the
19 crime on trial by proving its ultimate context. Or that
20 the uncharged offense is so linked together in time with
21 the circumstances with the crime charged that one cannot
22 be fully shown without proving the other.

23 Judge, what you've got in this particular case is
24 you've got a 9-1-1 tape where a lot of this assault and
25 a lot of this incident occurs, and you hear various

1 voices on there. If you go forward on one without going
2 forward on the other, I think that that's, that may
3 serve to confuse the jury as well as to who were these
4 other parties there, what was going on with them, what
5 happened with all that.

6 Because part of the evidence that would be
7 presented in the CDV high and aggravated --

8 THE COURT: Let me ask you something. In the --
9 well, first of all, do you agree that the attempted
10 murder charge would include assault and battery of a
11 high and aggravated nature?

12 MR. STOUDEMIRE: I think that the statute
13 specifically says that. Yes, sir, I agree with that
14 completely.

15 THE COURT: All right. So both could be charged
16 with assault and battery of a high and aggravated
17 nature, one under the CDV high and aggravated nature,
18 one under the -- if you didn't go with the attempted
19 murder, you could proceed on an assault and battery of a
20 high and aggravated nature or assault and battery with
21 intent to kill?

22 MR. STOUDEMIRE: Correct.

23 THE COURT: All right. The weapon in both cases is
24 the same?

25 MR. STOUDEMIRE: Yes, sir.

1 THE COURT: Now, what --

2 MR. STOUDEMIRE: At least in part the weapon is the
3 same. There is also, from the CDVHAN case there is also
4 in the victim's statement a portion where she says she
5 was hit with a coffee pot, a glass coffee pot.

6 Now, her testimony would be that she was holding
7 the coffee pot in self-defense because Mr. Couch had a
8 knife on her at the time, which would be that weapon,
9 and when he told her to put that down, she ended up
10 getting hit with the coffee pot. So that actually, I
11 think I would argue that there were actually two weapons
12 really in the --

13 THE COURT: But one common weapon to both?

14 MR. STOUDEMIRE: But one common weapon to both,
15 yes, sir.

16 THE COURT: How about witnesses?

17 MR. STOUDEMIRE: The witnesses would be the same in
18 both trials.

19 THE COURT: So, it's not as if one occurred at one
20 place and another occurred at another place different?

21 MR. STOUDEMIRE: No, sir. We're literally talking
22 within the same room within seconds of each other.

23 THE COURT: So, when I use the word "theater," I'm
24 talking about a venue or place where things occurred?

25 MR. STOUDEMIRE: Correct, yes, sir.

1 THE COURT: What do you say about that,
2 Mr. Rosemond?

3 MR. ROSEMOND: Your Honor, I would submit to you
4 that the only weapon in the Grant case would be the
5 coffee pot. I don't recall anywhere where she has
6 alleged to being cut by the knife in this particular
7 case, as Mr. McCall.

8 And certainly because the laceration that she
9 suffered was due to the coffee pot, it certainly wasn't
10 due to the knife that either Mr. Couch had or Mr. McCall
11 had. I think the *Smith* case is very instructive because
12 it does quote the same language, and that's where the
13 offenses charged under separate indictments of the same
14 general nature involved the connected transactions.

15 THE COURT: Well, in *Smith*, it was not of general
16 nature because one child was beaten about the head and
17 neck and the other one, there was no -- apparently he
18 admitted he had whipped Gabriel with a belt or switch
19 and it was confined to his torso, buttocks and arms; he
20 had no bruises on his face or scalp. Delesia (phonetic)
21 was killed by fatal blows to the head and neck with a
22 blunt instrument or fist. So, it's entirely different
23 injuries or infliction of...

24 Now, are you saying that the knife was not involved
25 at all in -- wait a minute. Let me ask you.

1 Mr. Stoudemire is the one that's got to prove all this.
2 Are you saying the knife was not involved in the assault
3 on Ms. Sommer?

4 MR. STOUDEMIRE: I'm not saying that at all, Judge.
5 I think that just because you don't get cut by a deadly
6 weapon does not mean there was not a threat of violence
7 or serious bodily harm with a deadly weapon.

8 THE COURT: I'm sorry. That's gonna be his case.
9 Wait a minute, Mr. Rosemond. I am. I am concerned
10 about, you've got a good case here, but I'm not sure if
11 it's -- not appropriate, but -- and, of course, the
12 other evidence was that there was no -- in the case of
13 common scheme or plan under *Lyle*, a closer degree of
14 similarity or connection between the prior bad act and
15 the crime is necessary.

16 And here -- and by "here" I'm talking about
17 *Smith* -- apparently there was no testimony that he had
18 ever, or that the Defendant had ever touched the female
19 victim.

20 MR. ROSEMOND: The children in that case.

21 THE COURT: All right. That would be the female.
22 Gabriel I would trust was a male and Delesia was the
23 female.

24 MR. ROSEMOND: And in that case, Your Honor,
25 Gabriel was the young girl --

1 THE COURT: Oh, Gabriel was a lady?

2 MR. ROSEMOND: Well, Gabriel was a young girl that
3 had the ABHAN against her, and Delesia was the one that
4 had the homicide by child abuse against her. And
5 certainly that case seems to be akin to that one in that
6 Ms. Grant had the CDV against her and Mr. McCall has the
7 attempted murder against him.

8 And there are some cases when you put them together
9 that are so prejudicial to the Defendant that it would,
10 it's in the Judge's discretion as to when does he
11 separate cases such as these. And we believe that the
12 prejudicial effect towards Mr. Couch would outweigh any
13 probative value that it would serve to have these two
14 cases tried together.

15 THE COURT: And what you are saying is that if you
16 tried them together, it would prejudice the Defendant's
17 defense of self-defense?

18 MR. ROSEMOND: It would, Your Honor. I mean, he
19 has a culpable defense against Mr. McCall. You know,
20 I...

21 THE COURT: I notice somewhere in one of your
22 pleadings or whatever you mention there's some question
23 as to who the knife belonged to; is that correct?

24 MR. ROSEMOND: There is some question as to who the
25 knife not only belonged to and who had the knife first.

1 MR. STOUDEMIRE: I don't think there's any question
2 as to who the knife belonged to. I think Mr. McCall
3 would testify that the knife was his knife, that it was
4 usually kept out at his house and it was --

5 THE COURT: What kind of knife was it? I mean,
6 what I'm thinking, is it a kitchen knife, is it a
7 hunting knife, is it a --

8 MR. STOUDEMIRE: The closest thing I could make it
9 akin to --

10 THE COURT: Do you have it?

11 MR. STOUDEMIRE: Yes, sir, we do have the knife.
12 If you want to see pictures, I think we have some
13 pictures.

14 THE COURT: Well, I'm just curious. Can you
15 identify it in any fashion --

16 MR. STOUDEMIRE: Yes, sir.

17 THE COURT: -- that would suggest that it's
18 something that would be out open, not on display, but
19 just would be available?

20 MR. STOUDEMIRE: Yes, sir. It's a knife. The
21 closest thing I think would be a hunting knife, although
22 the blade is shorter. But it's a knife with a black
23 handle, it's got a little bit of a hilt on it and then a
24 blade about I'd say four inches or so in length, three
25 or four inches in length. But it's not a closing lock

1 blade knife.

2 THE COURT: Do you know what a skeen dhu is?

3 MR. STOUDEMIRE: I'm not familiar with it, Your
4 Honor.

5 THE COURT: A skeen dhu is a knife you carry in
6 your sock if you're wearing kilts. You got to have a
7 knife if you're gonna wear kilts. But it's a black
8 knife. Let me see a picture of it.

9 MR. STOUDEMIRE: Let me see if I have one here,
10 Judge. I may have one.

11 MR. ROSEMOND: What's instructive about all of
12 that, Your Honor, Mr. Stoudemire just admitted that he
13 knew who owned the knife and that's Mr. McCall.

14 THE COURT: It's not so much he admits it. It's up
15 to the jury to find that from the testimony.

16 That's all right. If you don't have it, that's
17 okay.

18 But I mean so it's a knife that would be out, it's
19 not one that you would normally use for household
20 purposes, and it's not one that would be in a display on
21 a wall or something like that?

22 MR. STOUDEMIRE: No, sir. I think what Mr. McCall
23 would testify to is it's one that's laid out that he
24 kept as he calls it a whatnot. And, Judge, the pictures
25 that I have are downstairs.

1 THE COURT: Do you disagree with that description
2 of the knife?

3 MR. ROSEMOND: No, sir, I think that's an accurate
4 description of the knife.

5 THE COURT: In other words, the knife was not a
6 critical element of the altercation until it became a
7 part of the altercation? In other words, it's not the
8 classic case of somebody came on to a knife fight?

9 MR. STOUDEMIRE: That's correct.

10 MR. ROSEMOND: That's correct, Judge.

11 THE COURT: Okay.

12 MR. ROSEMOND: Your Honor, we're at Mr. McCall's
13 residence, we believe it's his knife. It's not a knife
14 that you keep out in the open. And certainly we don't
15 know how many times Mr. Couch has been to that
16 residence. But certainly we don't know where the knife
17 came from on that particular night.

18 THE COURT: You are not saying Mr. Couch brought
19 it?

20 MR. ROSEMOND: No, I'm not.

21 THE COURT: Well, if he didn't bring it and it was
22 there, it was either Mr. McCall's or he knew it was
23 there within his control, I think you call it
24 constructive possession.

25 MR. ROSEMOND: And that's why we believe that this

1 case is proper to be severed between the two victims.

2 (Discussion off the record.)

3 THE COURT: If you were going to prosecute the CDV
4 ABHAN, or CDVHAN, what would be your evidence in that
5 case?

6 MR. STOUDEMIRE: The 9-1-1 audio, the testimony of
7 the victim, Ms. Grant; the testimony of Mr. McCall as he
8 witnessed it, photographs and statements of the officer
9 and the presentation of the knife into evidence; and
10 also testimony from medical personnel that treated her
11 at the hospital.

12 THE COURT: And were her injuries consistent with
13 the coffee pot?

14 MR. STOUDEMIRE: I'm sorry. Were her injuries
15 consistent with?

16 THE COURT: The coffee pot.

17 MR. STOUDEMIRE: There were several lacerations on
18 her, Judge.

19 THE COURT: Well, did the coffee pot break?

20 MR. STOUDEMIRE: The coffee pot broke. There's
21 photographic evidence of the coffee pot. And there is
22 significant evidence in the report where she said the
23 assault took place. And I would have to leave it with
24 the doctor to testify as far as it being consistent with
25 being hit with a coffee pot.

1 THE COURT: Well, what evidence would you rely on
2 in order to make self-defense a viable defense to the
3 CDVHAN?

4 MR. ROSEMOND: I would not have a self-defense for
5 the CDVHAN, and I can't use it in this particular case,
6 either. The problem with the evidence that
7 Mr. Stoudemire just illustrated to you would be that
8 Mr. McCall could testify as to what he observed at the
9 time of the altercation, but that's about it. He can't
10 testify to, well, I was cut with a knife also on my
11 face, and he was found guilty of attempted murder.

12 But certainly, if we use this particular jury, they
13 can in their minds process all that information. And we
14 believe it would be a violation of the substantive
15 rights of Mr. Couch and that's why we are asking for
16 these trials to be severed.

17 THE COURT: But you are saying that Mr. McCall
18 would be a relevant witness in the Sommer case
19 describing as to what occurred?

20 MR. STOUDEMIRE: Yes, sir.

21 THE COURT: That would be subject to
22 Cross-Examination.

23 MR. ROSEMOND: It would. If they would call him to
24 testify what he observed, he would be subject to
25 Cross-Examination. Certainly he could not admit to what

1 the outcome would be of his particular trial.

2 And, honestly, Your Honor, that's why we have Rule
3 404(b), to keep that type of information from infecting
4 jurors, and he couldn't testify to that. And that's
5 with Ms. Sommers [sic] as well. They chose to do it
6 like this.

7 THE COURT: Well, the Court has come across two
8 cases, because I think you can see that it has, for lack
9 of a better word, challenged the Court to make a proper
10 decision, because if there is anything that the Court
11 always is careful about is when it says it's within the
12 discretion of the Judge. Unfortunately, sometimes they
13 say that, although it's rare as hen's teeth, that a
14 Judge is reversed when he exercises discretion, it has
15 occurred, so it doesn't perhaps put an altogether
16 complete license on a Judge exercising unsupported
17 discretion.

18 Two cases that I did find, one is *State v. Deal*
19 from 1995, 319 SC 4, SC 49, where it deals with two
20 different charges from one -- and I mean it's a criminal
21 sexual conduct, and then a defense of it being
22 consensual; and a second charge of having been done --
23 and one being consensual and the other one being, the
24 second event being actually forced. And the element in
25 it was the fact that the Defendant was HIV positive,

1 living with, or in the same house with the alleged
2 victim. And in the first instance he was saying it was
3 consensual because she knew that he had AIDS and she
4 went ahead with it anyway. And the second one tried at
5 the same time was a different event when she said that
6 he had forced her and what the part of the force was
7 that he had scared her that her boyfriend wouldn't like
8 her anymore.

9 There the Court said that because evidence of the
10 HIV status would have been admissible had the charges
11 against him been separately tried, one, he would be
12 introducing it because that established the consensual
13 defense of the first one, or she would be introducing
14 HIV in the second one because it showed the aggravation.

15 And there they found that the Court did not err in
16 denying the severance motion.

17 Now, the other one is a little bit more recent.
18 And this is *State v. Caldwell*, South Carolina Court of
19 Appeals 2008, 378 SC 268. There, there were three young
20 men, boys, if you would, who on three, or on three
21 different occasions the Defendant was accused of having
22 inappropriate contact with her at a swim meet, and
23 although the offenses were charged in separate
24 indictments, they are the same general nature involving
25 connected transaction closely related in time, place and

1 character.

2 There the Court said (reading):

3 If the Defendant's substantive rights would not be
4 prejudiced, the Court has a discretionary power to order
5 the indictments tried together.

6 The defense is considered to be in the same general
7 nature where they are interconnected offenses which are
8 the same nature, but which do not arise out of the chain
9 of circumstances and not provable by the same evidence
10 and may not be properly tried together.

11 Here it sounds as if all three charges arise from a
12 single chain of circumstances, the same, at the same
13 time, during the same event, and at the same place,
14 although there were two separate Defendants as in the
15 *Caldwell* case -- I mean not Defendants, victims, there
16 were three separate victims. That's necessitating some
17 individual evidence as to each of the charges. Much of
18 the evidence produced at trial pertained to each of the
19 separate charges. The same, the separate offenses are
20 proved by the same evidence. Some additional evidence
21 from the individual victims may be necessary to prove
22 the individual crimes, as in this case attempted murder
23 or CDVHAN, is not fatal to the joinder of the charges.

24 And also 404(b) was raised in that case, setting
25 forth the *Lyle* exceptions to admissible evidence of

1 prior bad acts.

2 The Defendant might still be faced with the
3 collective testimony where he either be tried separately
4 on each charge.

5 And apparently that is the case here. In other
6 words, if we tried the attempted murder, the Sommer
7 testimony would come in the circumstances, what led to
8 it, what happened. If we tried the Sommer case, the
9 McCall testimony would come in to, again, as to why it
10 happened and what occurred. And that the 404(b) would
11 not be prejudicial, or it would not be prejudicial in
12 the nature of a 404(b).

13 Having so considered the motion, the Court does
14 find that the charges can be tried together because they
15 arise of the single chain of circumstances, are proved
16 by the same evidence, and are of the same general
17 nature, and that no real right of the Defendant has been
18 prejudiced in the sense that he will still have the
19 self-defense charge against the McCall indictment, and
20 they would be introducing the knife, and the Sommer or
21 the knife would be introduced in the Sommer indictment.

22 All right. Your motion is denied.

23 But I do want to thank both of you for being well
24 prepared on the motion. As I say, it's close.

25 All right. We'll start at 9:30 in the morning?

1 MR. STOUDEMIRE: Yes, sir.

2 THE COURT: Okay. And, Madam Clerk, since I don't
3 file things, I will give you the papers.

4 (Discussion off the record.)

5 (Court adjourned on Monday, October 17, 2011, at
6 approximately 4:30 p.m., to reconvene on Tuesday,
7 October 18, 2011, at approximately 9:30 a.m.)

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1 Tuesday, October 18, 2011

2 Day 2 of 3

3 (Whereupon, the Trial of the State of South
4 Carolina v. Michael Couch resumed, with all parties
5 being present, as follows:)

6
7 (Marked for identification was State's Exhibit 1,
8 DVD of 9-1-1 call -- NOT TRANSCRIBED -- State's
9 Exhibits 2 through 38, photographs; and State's
10 Exhibit 39, knife.)

11 THE COURT: Are we ready to proceed?

12 THE COURT REPORTER: Yes, sir.

13 THE COURT: State ready?

14 MR. STOUDEMIRE: Yes, sir.

15 THE COURT: Defense ready?

16 MR. ROSEMOND: Yes, sir.

17 THE COURT: Ask the jury to join us.

18 (The Jury entered the courtroom at approximately
19 10:04 a.m.)

20 THE COURT: Have we got everybody where they're
21 supposed to be? How about the jury? All right. There
22 we go. Very good. Thank you.

23 Let the record reflect the jury and alternate are
24 in the jury-box.

25 Madam Clerk, if you would please swear the jury.

1 (Whereupon, the Jury was sworn.)

2 THE CLERK: Please be seated.

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, there are two apologies, not apologies but
5 just two things I need to say. It is an apology on my
6 behalf that I would rather not have to make it. Last
7 night one of my teeth fell out, at least a cap on it, so
8 I had to go to the dentist this morning so I was a
9 little bit late getting here.

10 But then we had some technical difficulties and we
11 are having a late start. I do want to thank you for
12 being here on time. But I can assure you I would rather
13 have been somewhere else this morning at 8:30. But
14 anyway, I'm glad he could see me.

15 I'm sure each of you now fully appreciates that the
16 Court of General Sessions for Oconee County exists for
17 purposes of resolving questions of alleged criminal
18 conduct arising between the State of South Carolina and
19 the Defendant.

20 It is a guaranteed right of every citizen that a
21 charge of criminal conduct be presented in open court
22 according to certain rules of procedure. The State has
23 not only an equal right but the duty to present a charge
24 of criminal conduct in open court according to the same
25 rules of criminal procedure. Each of the parties,

1 therefore, both the State and the Defendant, then have
2 an equal right to the opportunity of this judicial
3 proceeding and to have you as a jury now selected and
4 sworn for the trial of this case.

5 Now, one of the most important aspects of your duty
6 as a jury lies essentially in the oath you have just
7 taken: To well and truly try and determine the facts in
8 this case. That oath in a very essential way says that
9 you are the judges of the facts in this case.
10 Obviously, any case tried in court will involve a
11 question about what happened or how something came to
12 happen or whom, if anyone, did anything in a particular
13 occurrence or circumstance.

14 From this point on and from this point forward,
15 then, no one concerned with this trial has the right to
16 decide any question of fact except you, the jury.

17 The facts then are for your resolution and your
18 decision and yours alone. After you hear all of the
19 evidence in the case, then it will be your duty by your
20 mutual and joint discussions to determine the truth of
21 this case by deciding the weight and believability of
22 each part of the evidence and applying the law in the
23 case thereto.

24 Now, as trial judge, I am the judge on the law in
25 the case. It is my responsibility to preside over this

1 trial, to rule on the admissibility of evidence offered
2 during the trial, and state to you, the jury, the law
3 applicable to this case.

4 The Constitution of South Carolina mandates that I
5 as the trial judge cannot directly or indirectly comment
6 about the facts in the case. The process of a verdict
7 then is simply that you, the jury, first determine what
8 the truth of the facts are and then apply to that true
9 state of facts the principle of law applicable, by that
10 process determining your report to the Court, the final
11 verdict in the case, stating the truth of the case as
12 you determine it.

13 I will more fully state to you the principles of
14 law applicable to this case before it is submitted to
15 you for your decision. However, there are several
16 principles of law applicable to the framework of every
17 case in General Sessions Court. I'll outline several of
18 those basic principles to you for your guidance.

19 Now, the Defendant has entered a plea of not guilty
20 to all charges contained in the indictment. Do
21 understand, an indictment in a case is not evidence, it
22 is simply the written instrument that contains the
23 charge or charges against the Defendant and it serves as
24 the formal document by which this case is processed into
25 this court.

1 The plea of not guilty places upon the State the
2 burden of proof in the case. As to what is meant by the
3 term burden of proof, the Defendant is presumed in law
4 innocent of all charges contained in each of the
5 indictments. The burden of proof requires the State to
6 prove guilt beyond a reasonable doubt.

7 Therefore, with that burden, the Defendant, or the
8 accused party, shall be presumed innocent and that
9 presumption of innocence is sufficient to compel a
10 verdict of not guilty or a verdict of acquittal unless
11 you, the jury, conclude that the State has satisfied its
12 obligation to prove the Defendant guilty beyond a
13 reasonable doubt.

14 Now, the term reasonable doubt is the kind of doubt
15 that would cause a reasonable person to hesitate to act.

16 This case will be opened by the Solicitor, after
17 which the same opportunity will be afforded to the
18 Defendant to make an opening statement. When all of the
19 evidence has been received by the Court, counsel for the
20 State and counsel for the Defendant will state to the
21 jury their respective positions, after which the Court
22 will fully, I will more fully state the law applicable
23 in the case.

24 Obviously, all parts of the case are important.
25 You do not know which witness in the case will most

1 impress you, whether the first witness or the last
2 witness. In reaching your final conclusion you will
3 need the guidance and the judgment of other jurors, you
4 will need the guidance of the principles of law that
5 will be stated to you by the Court.

6 For all these reasons, then, when we have a recess
7 period or retire to your jury room or overnight or meal
8 recess, I instruct you not to undertake discussion among
9 yourselves until the case is finally given to you for
10 your deliberations. Nor are you to discuss this case
11 with anyone or permit anyone to discuss this case with
12 you. If they should attempt to do so, report them.

13 Now, the verdict, of course, must be the unanimous
14 verdict of all 12 jurors.

15 Now, there are a few other things I need to mention
16 before we begin. As I mentioned earlier, although I am
17 the only person who can tell you what the law is, you
18 and you alone are the only ones who can determine the
19 facts. I do not have the right to indicate how I may
20 feel, and throughout this trial my intention will be to
21 act impartially for each party.

22 Second, from time to time an attorney may object to
23 some bit of testimony or evidence the other side is
24 seeking to present. As in business, sports, or any
25 other structured activity, there are certain rules both

1 sides must obey in presenting evidence. These rules
2 have a very definite purpose. They ensure that the
3 information you receive is the most trustworthy and
4 reliable evidence available.

5 An objection is the procedure we use for an
6 attorney to call a possible violation of the rules to
7 the Court's attention, and for that reason you should
8 not hold the attorney's objections against his client,
9 nor should you conclude from my ruling on the objection
10 that I favor one side or the other.

11 Finally, I would ask that you pay the closest
12 attention possible to the evidence presented to you. I
13 will ask that you not take notes because if the note
14 taker makes an error, those notes can be more
15 detrimental than helpful during the deliberations. The
16 time-tested system is for each of you to listen
17 carefully and I'm sure each of you will do that.

18 Now, having suggested you do not take notes, the
19 reason for that is very simple. It has been my
20 experience that when we take a note, we have a tendency
21 to concentrate on the note rather than what is happening
22 at the time; in other words, what you are trying to do
23 is to be sure that you copy down what you think you
24 hear, and then you might even be concerned about
25 spelling or sentence structure or something like that.

1 That distracts you from what's happening in this
2 courtroom. In other words, you should be concentrating
3 on the witness and the delivery of the witness's
4 testimony as well as the exhibits and evidence in the
5 courtroom. If you take a note, you have a tendency to
6 be distracted from what is actually happening at the
7 time.

8 Also, as I say, if you make an error in those
9 notes, the notes can be more detrimental than helpful.
10 As an example you are writing down what you think you
11 hear. If you miss a word or think you hear a word that
12 was not said, it can change the note altogether. Now, I
13 use the one word, "not". In other words, if you miss
14 the word "not" in the testimony that you are copying
15 down, then it changes that testimony entirely. So,
16 therefore, I say do not take notes. And if you have a
17 question about what the testimony was, rely on the other
18 members of your jury with their recollection and you
19 determine what was, in fact, said using your collective
20 reasoning.

21 Now, having said that, I do take notes. Now, this
22 is not do as I say, not as I do. The fact is that we
23 have different purposes in this courtroom. As I've
24 said, you and you alone are the only ones that can
25 determine the facts in this case, so you need to

1 concentrate on the testimony and what is happening in
2 this courtroom. I am only concerned about what occurs
3 as far as what is required in our procedure. So I am
4 just jotting down what is happening, not the
5 significance of that. That is for you and you alone.
6 So, therefore, I do take notes but I am not in any way
7 trying to make a decision as to the effect or the value
8 of those, the value of what is done. That is for you
9 and you alone.

10 So, with that, I will recognize the Solicitor for
11 his opening statement.

12 MR. STOUDEMIRE: Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Mr. Stoudemire.

15 Opening Statement on behalf of the State:

16 MR. STOUDEMIRE: Good morning ladies and gentlemen.

17 JURORS: Good morning.

18 MR. STOUDEMIRE: On February 16, 2011, Oconee 9-1-1
19 received a 9-1-1 phone call. It was a panic phone call,
20 from a cell phone, and it was in essence an open line.
21 And by an open line I mean there was not really a
22 conversation between the 9-1-1 operator and the person
23 making the call. The 9-1-1 operator could hear what was
24 going on on the other end, but his questions about
25 trying to gather information about what was happening,

1 where the call was emanating from, the location, the
2 nature of the emergency; those questions could not be
3 answered.

4 What was happening was that Sommer Grant was being
5 assaulted by the Defendant, Michael Couch. Also, what
6 was happening was that Garry McCall was being assaulted
7 by the Defendant, Michael Couch.

8 During the 9-1-1 call at some point you can hear
9 Sommer literally pleading for her life. Law enforcement
10 was dispatched by 9-1-1, but due to the phone call
11 coming in from a cell phone as opposed to a land line
12 which would automatically give an address, things are a
13 little bit more complicated with cell phones. You've
14 got to bounce them off towers, you've got to determine
15 where the closest tower is; if the phone has GPS, will
16 that give an approximate location. Things of that
17 nature.

18 Fortunately 9-1-1 was able to gather as much
19 information as possible, give that to law enforcement,
20 and Officer Patterson from the City of Walhalla Police
21 Department was dispatched to a location within the city
22 limits of Walhalla. When he got near the residence of
23 Mr. McCall, where this incident turned out to be taking
24 place, he pulled up and he saw Mr. McCall either outside
25 or coming out of his house with blood on his face.

1 Exited the vehicle. Asked him what happened. And
2 at that point Mr. McCall said something to the nature of
3 Couch did it, and then pointed inside the house.
4 Officer Patterson could still hear screaming still
5 coming from inside the house. He drew his service
6 weapon. He entered the home. He entered the home
7 through the kitchen, he could see things in disarray in
8 the kitchen, he could still hear screaming going on.

9 He went in the living room, and when he got in the
10 living room, he saw the Defendant, Michael Couch,
11 standing over the victim, Sommer Grant, the female
12 victim. She had blood on her.

13 At that point Officer Patterson announced his
14 presence to the Defendant, Mr. Couch; told him
15 essentially to stop what he was doing, freeze, words to
16 that effect, and Mr. Couch did exactly what he was told
17 to do. He stopped.

18 Sommer Grant, the female victim, then went around
19 Mr. Couch, exited the home, was met by another officer
20 outside. Based on her injuries 9-1-1 emergency people
21 had to be called, an ambulance arrived and took both
22 Ms. Grant and Mr. McCall to the hospital for treatment
23 of their injuries.

24 During the course of this trial you will hear about
25 certain evidence recovered from the scene. You will

1 hear about a knife being recovered from the scene that
2 was used in this attack. You will hear testimony about
3 that knife. You will be able to see that knife. You
4 will be able to hear the 9-1-1 phone call that took
5 place.

6 You will hear from both victims from the witness
7 stand as well as Officer Patterson. You will hear from
8 SLED forensic experts who examined some of the evidence
9 in this case. You will further hear from Dr. Cromer,
10 who is an emergency room physician with a number of
11 years of experience, who examined and treated both of
12 these victims at Oconee Medical Center regarding those
13 injuries, regarding how severe those injuries were and
14 could have been.

15 Mr. Couch has a romantic relationship or has had a
16 romantic relationship with Ms. Grant on and off again
17 for a number of years. They have lived together in the
18 past. Mr. McCall was an acquaintance of Mr. Couch, they
19 knew each other, but I don't think you could call them
20 close friends. Mr. McCall was, in essence, just giving
21 Mr. Couch a place to stay for the night.

22 For this assault Michael Couch has been charged
23 with several crimes. He has been charged with attempted
24 murder with regard to his attack on Mr. McCall. He has
25 been charged with criminal domestic violence of a high

1 and aggravated nature for his attack on Ms. Sommer
2 Grant. And he has been charged with possession of a
3 weapon during a violent crime.

4 And at the conclusion of the case I'll be back to
5 talk about the law and the specific elements of those
6 crimes.

7 The bottom line is this. The State has to prove
8 every element of every single crime put forward to you
9 beyond a reasonable doubt. That is a doubt that is not
10 beyond all reason but is a doubt for which you can give
11 a reason. It doesn't mean there is no doubt whatsoever.
12 The Judge will instruct you on the law later in the
13 case.

14 Proving these elements is a job that I take very
15 seriously and I welcome that responsibility. What I ask
16 of you in this case is two things: Your time and your
17 attention. Nothing more.

18 And at the conclusion of the case I will be back to
19 speak to you again after hearing all the evidence in
20 this case, and I will be asking you to find Michael
21 Couch guilty of each and every crime with which he is
22 charged. Thank you.

23 THE COURT: Mr. Rosemond?

24 Opening Statement on behalf of the Defendant:

25 MR. ROSEMOND: Michael Couch is not guilty.

1 Michael Lamar Couch is not guilty.

2 Yesterday we started this particular trial and we
3 picked 12 jurors who we thought that could listen to the
4 evidence and determine facts from that evidence and make
5 a decision as to whether or not Michael Couch is guilty
6 or not guilty.

7 And, lo and behold, you are the 12 people that we
8 felt like that can listen to this particular evidence
9 and determine whether or not the State can meet its
10 burden of proof.

11 Hi. My name is Delane Rosemond, and I'm the lawyer
12 for Michael Couch, and I have the pleasure of
13 representing him in this particular trial today. And
14 this particular trial is important not only to the State
15 of South Carolina, but it's important to Mr. Couch as
16 well.

17 Let's talk about some of the things that are
18 important in this trial. Our founding fathers who made
19 up the Constitution of the United States of America
20 decided there are some principles of law that we must
21 abide by. Whenever someone is charged with a crime,
22 there are certain rights that they have. And those
23 rights are basically what we call the foundation of our
24 legal system. And the foundation of our legal system
25 starts with one essential fact, and that essential fact

1 is when -- the presumption of innocence. As you look at
2 Michael Couch today, he's presumed to be innocent.

3 You know how we pick up the paper sometimes and we
4 see people's names in the paper, and we automatically
5 assume he must be guilty. Their name is in the paper.
6 And their picture is in the paper. But that's not why
7 our founding fathers made this principle important.
8 They said that everybody that's charged with a crime is
9 presumed to be innocent of that crime until the State
10 proves them guilty.

11 So, as you look at Michael today, Michael is
12 innocent of attempted murder, he's innocent of criminal
13 domestic violence, high and aggravated, and he's
14 innocent of possession of a weapon.

15 The other thing that we need to talk about is the
16 burden of proof. The burden of proof is on the State of
17 South Carolina. All the evidence today to convict
18 Michael Couch of this crime has to come from this table
19 and that witness chair. Michael Couch doesn't have to
20 prove anything. No Defendant anywhere in the United
21 States of America has to prove that they are not guilty.
22 That's not how our system is set up.

23 Our system is set up where you are presumed to be
24 innocent, and the prosecution has to prove that you're
25 guilty. And that's their burden. That's their burden

1 that comes from this particular table. And I will
2 submit to you that they are going to be unable to meet
3 that burden.

4 And, lastly, proof beyond a reasonable doubt. And
5 that's important because at the end of this case you
6 will get this information, and you will have to decide
7 whether or not you have a doubt as to whether or not
8 Michael Couch committed attempted murder. And if you
9 have a doubt, if you have a reasonable doubt, if you can
10 in your mind say, You know, I have a reason why I don't
11 think that Michael Couch attempted murder, it's our
12 obligation to find him not guilty.

13 We talked about the presumption of innocence. We
14 talked about what is it, and does it really exist. You
15 know, we make judgments about people, how they look, how
16 they dress, how they talk. But that doesn't matter
17 because you don't necessarily know what's on the inside
18 of that person. So we can't presume to know where
19 someone is from, whether or not they're from the north
20 or the south. Based on how they dress, whether or not
21 they're rich or poor. We always just have to say, You
22 know, I believe that he's innocent, and I presume that
23 he's innocent.

24 And the presumption of innocence is critical in
25 this case because we have to be careful about making

1 judgments. We have to be careful about listening to
2 9-1-1 tapes and making judgments. You know, the burden
3 of proof is an essential element that we talked about
4 already. But if Michael Couch doesn't present any
5 evidence this week during this trial, we can't hold that
6 against him. That proof comes from this table right
7 here.

8 Let's talk about this attempted murder and kind of
9 talk about what is it and what the evidence has to show.
10 And the definition of the attempted murder that we
11 talked about was a person, with the intent to kill,
12 attempts to kill another person, with malice
13 aforethought, express or implied; commits the offense of
14 attempted murder. And those are the elements that the
15 State has to prove to you. They have to prove each one
16 of these elements. They have to prove that somebody had
17 the intent to kill somebody. And they had malice. And
18 we'll talk about that later on.

19 And I would submit to you the evidence will show
20 that Michael Couch did not have malice. He didn't
21 intend to kill anyone. I believe the evidence will show
22 that Michael Couch did not own the knife. I think the
23 evidence will show that Michael Couch was in a struggle
24 with Mr. McCall when Mr. McCall got cut. And I think
25 the evidence will show that Michael Couch did not commit

1 attempted murder.

2 Well, let's talk about Ms. Grant and what do they
3 have to prove against Ms. Grant. Criminal domestic
4 violence high and aggravated is when a person causes or
5 offers or attempt to cause physical injury to a
6 household or a family member with present ability under
7 the circumstances, by reasonably creating fear or
8 imminent peril. And you will hear what was happening on
9 that particular early morning of February 16th. And you
10 will have to determine whether or not the State can meet
11 with evidence every element up here, which is Michael
12 Couch intentionally committed an assault and battery
13 against Ms. Grant, and whether or not Michael Couch used
14 a deadly weapon against Ms. Grant, and whether or not it
15 resulted in serious bodily injury and/or assault, with
16 or without accompanying battery, which caused her fear
17 of imminent serious injury or death.

18 You know, you will hear a 9-1-1 tape and you will
19 hear it in a minute. And although it's kind of
20 convoluted and kind of jumbled, you will hear what was
21 happening on that particular day. And I ask you to pay
22 close attention to that tape because ultimately it's
23 going to become critically important. I ask you to pay
24 close attention to the testimony of Mr. McCall because
25 it's going to become critically important.

1 And finally, the last crime that he's charged with
2 is possession of a weapon during the commission of a
3 violent crime. And they have to prove to you that
4 Michael Couch, while committing a violent crime, had in
5 his possession a weapon.

6 And let's not get confused that this particular
7 charge goes to Ms. Grant. It doesn't go to Mr. McCall.
8 So, you have to find a weapon in Ms. Grant's case, not
9 Mr. McCall's case. And I believe the evidence will
10 become important in this particular case because the
11 evidence will show that Ms. Grant was somehow hit in the
12 head with a coffee pot.

13 At the end of this case we will ask you for a
14 verdict of not guilty, because I believe once you hear
15 how intoxicated, how grossly intoxicated Mr. McCall was
16 that particular night, or morning, I submit to you that
17 he doesn't know what happened. At the end of this case
18 we'll ask you for a verdict of not guilty for Michael
19 Couch. Thank you.

20 THE COURT: You may call your first witness.

21 MR. STOUDEMIRE: Thank you, Your Honor. The State
22 would call Jeremy Kerr.

23 (Whereupon, the witness, Jeremy Kerr, was sworn by
24 the Clerk of Court.)

25 THE COURT: If you would please, sir, give us your

1 full name for the record.

2 THE WITNESS: Jerry Taylor Kerr.

3 THE COURT: Thank you. Spell your last name.

4 THE WITNESS: It's K-e-r-r.

5 THE COURT: Thank you.

6 THE WITNESS: You're welcome.

7 WHEREUPON,

8 Jeremy Kerr,

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

11 Direct Examination by Mr. Stoudemire:

12 Q. Mr. Kerr, good morning. How are you?

13 A. Very good, thank you.

14 Q. How are you employed?

15 A. At the Oconee County Sheriff's Office.

16 Q. And in what capacity do you work at the Oconee
17 County Sheriff's Office?

18 A. I'm in the 9-1-1 telecommunications, I'm an
19 operator there, supervisor over third-shift dispatch.

20 Q. Okay. And can you tell us what your duties there
21 entail?

22 A. We dispatch fire rescue, answer all 9-1-1 calls,
23 and all Walhalla City officers, and after midnight,
24 Westminster officers.

25 Q. Okay. Can you tell us basically what happens when

1 somebody calls 9-1-1? Where does that call go?

2 A. It comes to us. We'll answer it. We always try to
3 take, find out the location first and get the phone
4 number, and then get the information, their name, what's
5 going on.

6 Q. Okay. And how long have you been working there?

7 A. About five and a half years.

8 Q. And you said you are actually now a supervisor on
9 third shift?

10 A. Yes, sir.

11 Q. Okay. Were you working in that capacity on or
12 about February 16, 2011?

13 A. Yes, sir.

14 Q. Okay. Were you on duty that day?

15 A. Yes, sir.

16 Q. And were you working third shift then as well?

17 A. Yes, sir.

18 Q. During your time there, did you take any 9-1-1
19 calls that evening?

20 A. Yes, sir.

21 Q. Okay. About how many did you take, do you recall?

22 A. It's hard to -- we take a lot, so it's sort of hard
23 to -- I mean, especially -- I don't know, to be honest
24 with you. We take a good bit.

25 Q. Okay. Did you take a 9-1-1 call from a cell phone

1 around 3:00 or 3:30 a.m. that morning?

2 A. Yes, sir.

3 Q. Do you recall taking that phone call?

4 A. Yes, sir.

5 Q. Okay. Tell me a little bit about that phone call
6 as best you remember it.

7 A. I got the call, I said, Oconee County 9-1-1. I
8 could hear a lot of screaming in the background,
9 yelling. I kept saying, Oconee County 9-1-1, hello,
10 hello. I tried to stay quiet for a minute and listen to
11 the background, get background noise. Still couldn't
12 get anybody to the phone at the time. Listened.

13 And then I tried to go to phase two, which all cell
14 phones, they have, most cell phones nowadays that are
15 9-1-1 capable, which the cell phone companies make it
16 where if you are in an emergency you don't know where
17 you are at, you can get a GPS location. So, at that
18 point I transmitted to phase two and they gave me a
19 location or about a location.

20 Q. Okay. And do you recall what that approximate
21 location was?

22 A. Yeah. It was about anywhere from I think eight to
23 13 feet from [REDACTED] South Laurel Street.

24 Q. And [REDACTED] South Laurel Street, what city is that in?

25 A. It's in Walhalla, South Carolina.

1 Q. And, to the best of your knowledge, is that address
2 within the city limits of Walhalla?

3 A. Yes, sir.

4 Q. Okay. And based on that, who was dispatched out to
5 the scene?

6 A. Officer Patterson and Nina McKey, Officer McKee.

7 Q. Okay. So Walhalla Police Department was dispatched
8 because it was in the city limits of Walhalla?

9 A. Right.

10 Q. And how long from the time you were able to
11 dispatch them did it take for them to arrive on the
12 scene? Do you know?

13 A. I'd say anywhere from probably three to five
14 minutes, really. Three to five minutes.

15 Q. Okay. Is that an inordinately long time?

16 A. Not really. I mean, once you are trying to locate,
17 you know, get a certain address since we weren't a
18 hundred percent sure where it was at; but no, it's not
19 too bad.

20 Q. Okay. So, would it be fair to say under the
21 circumstances that was pretty decent?

22 A. Yeah.

23 Q. Have you had an opportunity to listen to the 9-1-1
24 phone call -- well, let me back up a little bit.

25 When a 9-1-1 phone call comes in to the Sheriff's

1 Office, are those phone calls recorded in any way?

2 A. Yes. Every phone call on 9-1-1 is recorded and on
3 the sheriff's seven-digit line is recorded.

4 Q. Okay. And when does the recording begin?

5 A. As soon as they hit 9-1-1, it's already started
6 recording before we even answer the phone.

7 Q. Okay. So, in fact, when you hear, when you listen
8 to a 9-1-1, if you listen to the recording, is it fair
9 to say you may hear conversation going on even before
10 you pick up the phone?

11 A. Right.

12 Q. Okay. And was this particular phone call that we
13 have been discussing, was that recorded as well?

14 A. Yes, sir.

15 Q. Okay. And have you had an opportunity to listen to
16 that recording?

17 A. Yes, sir.

18 MR. STOUDEMIRE: Your Honor, may I approach the
19 witness?

20 (Off-the-record discussion between Mr. Stoudemire
21 and the court reporter.)

22 By Mr. Stoudemire:

23 Q. Mr. Kerr, I'm going to show you what has been
24 marked for identification as State's Exhibit Number 1.
25 Do you recognize this?

1 A. Yes.

2 Q. And what is this?

3 A. That is the 9-1-1 tape recorded.

4 Q. Okay. And it's recorded on to a disk? I don't
5 know if it's a CD or a DVD.

6 A. Right. It's a CD.

7 Q. Okay. And have you had an opportunity to listen to
8 this exact recording?

9 A. Yes, sir.

10 Q. And how do you know that you have had an
11 opportunity to listen to this exact recording?

12 A. Because I've initialed it and it's got my voice on
13 it.

14 Q. So your initials are JTK?

15 A. Yeah.

16 Q. Okay. And when you listened to this, did it appear
17 to be a fair and accurate representation of the phone
18 call as it was made and as it was recorded that evening?

19 A. Yes.

20 Q. Did it appear to you to have been changed or
21 altered in any way from the time it was recorded to the
22 time the call was actually placed?

23 A. No, sir.

24 MR. STOUDEMIRE: At this point I would move to
25 admit State's Exhibit Number 1 into evidence.

1 THE COURT: Any objection?

2 MR. ROSEMOND: No objection.

3 THE COURT: Without objection, State's Exhibit
4 Number 1 is admitted.

5 (State's Ex. # 1 was received in evidence.)

6 MR. STOUDEMIRE: And, Your Honor, at this time we
7 would move to publish State's Exhibit Number 1 to the
8 jury.

9 THE COURT: Very well.

10 By Mr. Stoudemire:

11 Q. And, Mr. Kerr, while this is booting up, how long
12 was this 9-1-1 phone call?

13 A. I would say it was about five minutes.

14 (State's Exhibit Number 1, CD of 9-1-1 call, was
15 played in its entirety for the jury by
16 Mr. Stoudemire -- Not Transcribed.)

17 By Mr. Stoudemire:

18 Q. Now, again, Mr. Kerr, is that the 9-1-1 phone call
19 you took that night?

20 A. Yes, sir.

21 Q. Okay. And obviously you weren't there so you don't
22 know exactly what was happening, just what you heard?

23 A. Yes, sir.

24 MR. STOUDEMIRE: Thank you. That's all the
25 questions I would have. Please answer any questions

1 Mr. Rosemond may have for you.

2 THE COURT: Cross-Examination?

3 MR. ROSEMOND: No questions, Your Honor.

4 THE COURT: Very good. You may step down. Thank
5 you, sir.

6 MR. STOUDEMIRE: Your Honor, we would ask that this
7 witness be excused.

8 MR. ROSEMOND: No objection.

9 THE COURT: All right. Without objection you may
10 be excused.

11 THE WITNESS: All right. Thank you.

12 (Whereupon, the witness was excused.)

13 THE COURT: You may call your next witness.

14 MR. STOUDEMIRE: Before we do that, may
15 Mr. Rosemond and I approach briefly?

16 THE COURT: Certainly.

17 (Discussion at sidebar.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, a matter has come up the Court needs to
20 address, a matter of law, so I'm going to have to ask
21 you to retire to the jury room. Again, do not undertake
22 discussion of the case among yourselves in any way.

23 Also, if there are any refreshments, let's see if
24 we can't --

25 -- use this as your break.

1 Everyone else remain seated while the jury retires
2 from the courtroom.

3 (Whereupon, the Jury left the courtroom at
4 approximately 10:50 a.m.)

5 **THE COURT:** Mr. Stoudemire?

6 **MR. STOUDEMIRE:** Thank you, Your Honor. Your
7 Honor, my next witness in this case is going to be the
8 female victim in this case, Ms. Sommer Grant. In my
9 conversations with her previously had no issues, but
10 this morning when she arrived in court she informed me
11 that when she takes the stand she wishes to assert some
12 sort of a privilege, tells me that she has researched it
13 and she believes she has a privilege that she can
14 assert.

15 I thought it best to take this matter up outside
16 the jury's presence before she gets up and does that.
17 We would just have to send the jury out anyway. And
18 we're just looking for guidance from the Court as to how
19 we need to proceed best.

20 **THE COURT:** Mr. Rosemond?

21 **MR. ROSEMOND:** Your Honor, the only privilege I
22 know that she could extend would be the husband and wife
23 privilege. And certainly I asked my client whether or
24 not they were married. He indicates to me that he
25 believes they were common-law married. And if that's

1 the case, then the privilege against -- well, the
2 privilege in regards to husband and wife may very well
3 apply.

4 THE COURT: All right. What do you say,
5 Mr. Stoudemire?

6 MR. STOUDEMIRE: Your Honor, if she were to take
7 the -- I know of no document saying that they have been
8 declared to be common-law married by a Family Court
9 Judge anywhere in this state, nor do I know of any
10 instance where they held themselves out to the community
11 as husband and wife.

12 However, if she gets up there and says they are
13 married in common law, my understanding of the privilege
14 is confidential communications between a husband and a
15 wife. What we are dealing with here is we are dealing
16 with a statement given to a police officer at a police
17 station, which certainly is not a confidential statement
18 between a husband and a wife. It's not a confidential
19 communication of any kind. And I think it's relating
20 events that happened that night, not only with Ms. Grant
21 and Mr. Couch in the room, but also with Mr. McCall
22 there for at least part of it. So I don't think there
23 was anything confidential of any nature at that point,
24 either. I do not believe a privilege applies.

25 THE COURT: I'll tell you what I'm going to do.

1 For the record, if you would please call the witness and
2 then I'll see what develops.

3 MR. STOUDEMIRE: Yes, sir.

4 (Whereupon, the witness was sworn by the Clerk of
5 Court.)

6 THE COURT: If you would please, ma'am, give us
7 your full name for the record.

8 THE WITNESS: Sommer Rae Grant.

9 THE COURT: Okay.

10 WHEREUPON,

11 Sommer Mae Grant,

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

14 Direct Examination by Mr. Stoudemire:

15 Q. Ms. Grant, how old are you?

16 A. Twenty-one. Twenty-two. Sorry.

17 Q. Back on February 16th of this year, how old were
18 you then?

19 A. Twenty-two.

20 Q. When's your birthday?

21 A. No. Twenty-one. Sorry. I'm a little nervous.

22 Q. When's your birthday?

23 A. March 17, 1989.

24 Q. Okay. So you turned twenty-two on March 17 of this
25 year?

1 A. Yeah.

2 Q. Okay. So, back in February you were twenty-one?

3 A. Yeah.

4 Q. Okay. And at that time what was your relationship
5 with Michael Couch?

6 A. Um, we was together.

7 Q. Okay. Define "together" for me. What do you mean
8 by "together"?

9 A. Pretty much like common-law marriage. We was
10 pretty much out there staying with each other, living
11 with each other.

12 Q. Okay. Were you living together on February 16th,
13 2011?

14 A. We had been -- yeah. We had been staying out in
15 Walhalla together for a while, I guess.

16 Q. Okay. And where had y'all been staying?

17 A. Friends and everything.

18 Q. Okay.

19 A. We was trying to get enough money to get our own
20 place or something.

21 Q. Okay. So, y'all didn't have a residence together?

22 A. Just with friends of ours that were letting us stay
23 with them, just different ones.

24 Q. Okay. And where did you stay on February 16th,
25 2011?

- 1 A. With Garry McCall.
- 2 Q. Okay. And was he a friend of y'all's?
- 3 A. Uh-huh.
- 4 Q. Close friend or more of an acquaintance?
- 5 A. Well, occasionally me and Michael would go over
- 6 there and hang out with him.
- 7 Q. Okay. Had you stayed with him at his home before
- 8 that night?
- 9 A. Yeah. When they lived at their house, their other,
- 10 trailer before.
- 11 Q. Okay. And -- but had you stayed at this Laurel
- 12 Street residence before that night?
- 13 A. We would not stay overnight, but we went and stayed
- 14 like, you know, chilled there for a little while.
- 15 Q. Okay. So, y'all visited?
- 16 A. Uh-huh.
- 17 Q. So, on that night, I say February 16th, did you
- 18 actually arrive at the residence with Michael that
- 19 night?
- 20 A. We was together that, you know, like I said, we'd
- 21 been out there together and everything, and I had to
- 22 leave him and go to an Aloette show, which is a makeup
- 23 show. And then, um, he would, him and Garry, Garry told
- 24 him that we could stay there the night. So, they told
- 25 me where to come, and after my show I got clothes at my

1 grandmother's and went back over there.

2 Q. Okay. What time did you arrive at Mr. McCall's
3 house?

4 A. I'm not really sure. Maybe 10:30, 11, 11:30. I'm
5 not really sure.

6 Q. So, 10:30, 11. So, at that time would it have been
7 February 15th?

8 A. Yes.

9 Q. Okay. And after you arrived, what did you all do
10 then?

11 A. Um, well, I went and knocked on the door. I heard
12 fussing coming a little bit, a little bit of arguing
13 coming from like Garry and Michael. They was both
14 pretty drunk.

15 Q. Okay. So, after you arrived, what did the three of
16 you do then?

17 A. Um, I ate me a sandwich and then I sat on the couch
18 while they got over their little spuge (phonetic) and
19 just sit around and talked, and they was drinking.

20 Q. Okay. Did you all watch TV or anything?

21 A. They listened to the radio.

22 Q. Okay. So, y'all just basically hung out for a
23 while. Is that fair to say?

24 A. Well, we knew we were gonna be staying, but yeah.

25 Q. Okay. And what happened after that?

1 A. It's hard for me to remember anything that happened
2 at all.

3 THE COURT REPORTER: I'm sorry?

4 THE WITNESS: I said it's hard for me to remember
5 anything that happened at all.

6 By Mr. Stoudemire:

7 Q. Okay.

8 A. I mean, it's been a long time.

9 Q. So, after you ate a sandwich, you are saying it's
10 hard for you to remember anything else that happened?

11 A. I know I ate a sandwich and I dozed out or
12 something. I'm not sure. I was on prescription Lortabs
13 from my doctors because of my hand surgery.

14 Q. Okay. And so you dozed off at some point?

15 A. Uh-huh.

16 Q. Do you recall where you were in the house when you
17 dozed off?

18 A. I believe on the couch.

19 Q. Okay. And where was Mr. Couch?

20 A. On the couch.

21 Q. Okay. Was he seated next to you? Was he lying
22 down? What was he doing?

23 A. He was like laid down over on my lap.

24 Q. Okay. Like with his head in your lap?

25 A. (Nodded head.)

1 Q. Is that a yes or no?

2 A. Yes.

3 Q. You got to say -- you can't just nod.

4 Okay. Do you recall where Mr. McCall was at this
5 point?

6 A. No.

7 Q. Okay. Did you wake up -- you said you dozed off.
8 Did you wake up at some point later on?

9 A. Yes.

10 Q. Okay. And when you woke up, were you still in the
11 same position you were in when you dozed off?

12 A. Yes.

13 Q. Okay. And was Mr. Couch still in the same position
14 he was in when you dozed off?

15 A. I'm not really sure. All I know is he was on my
16 lap. I fell asleep. He was in my lap when I fell
17 asleep.

18 Q. Okay. So, when you woke up, you said he was on
19 your lap?

20 A. Uh-huh.

21 Q. Is that...

22 A. Yes.

23 Q. What part of his body was on your lap?

24 A. Like his head and upper body.

25 Q. Okay. So, he had his head on your lap still?

1 A. Uh-huh.

2 Q. Was Mr. McCall in the room at that point?

3 A. No.

4 Q. Okay. And what did you do, if anything, when you
5 woke up?

6 A. Went to the bathroom and changed out of my pants
7 into my pajamas.

8 Q. Okay. And about how long did that take you to
9 change?

10 A. Just a few minutes.

11 Q. Okay. And what did you do after you changed into
12 your pajamas?

13 A. Went back to lay back down.

14 Q. Okay. And when you went back to lay back down
15 after changing into your pajamas, where was Mr. McCall?

16 A. I'm not even sure. I didn't see him in the living
17 room.

18 Q. Okay.

19 THE WITNESS: Um, do I have the right to not
20 testify any further?

21 THE COURT: You are exercising a privilege?

22 THE WITNESS: Yes.

23 THE COURT: What's the privilege?

24 THE WITNESS: I don't understand your question.

25 THE COURT: Well, you are saying you don't want to

1 testify. Why don't you want to testify?

2 THE WITNESS: It's just hard for me to remember a
3 lot of things.

4 THE COURT: Well, if you don't know the answer,
5 then just tell the Solicitor you don't know the answer.
6 You don't remember.

7 THE WITNESS: I just, um, I just would rather not
8 testify.

9 THE COURT: Do what?

10 THE WITNESS: I would just rather not testify.

11 THE COURT: Why?

12 THE WITNESS: Um, I just feel that I have the right
13 to waive, you know?

14 THE COURT: Why not?

15 THE WITNESS: Why do I have a right to not testify?

16 THE COURT: Do you?

17 THE WITNESS: Uh-huh.

18 THE COURT: What is it?

19 THE WITNESS: I'm not sure. I was asking you do I
20 have a right to not testify.

21 THE COURT: Well, I need to know what your right
22 is. What right are you talking about not to testify?

23 Let me ask you, Mr. Rosemond. Do you want to
24 examine the witness?

25 MR. ROSEMOND: Certainly. Whenever Mr. Stoudemire

1 finishes.

2 THE COURT: She's asking the Court for legal
3 advice, you might say, and I'm not sure it's appropriate
4 for me to advise a witness. It's my understanding, of
5 course, that judges are not supposed to have opinions
6 about legal matters, and I think it was *State v. Owens*
7 where a Judge advised a Defendant in a capital case that
8 he would be better served having a jury trial rather
9 than having a judge decide it. The Supreme Court
10 reversed him because they said he's not supposed to
11 advise a party. So I'm asking you.

12 MR. ROSEMOND: I have some questions for you.

13 THE COURT: Apparently, she is exercising some, or
14 alleging to exercise some right.

15 MR. STOUDEMIRE: Judge, the last answer I could
16 discern really from her before she exercised a right is
17 she said she doesn't remember certain things. She did
18 give a statement. I was going to show her the statement
19 in an effort to refresh her memory and see if that
20 refreshed her memory at all.

21 THE COURT: Very well. Again, this is an unusual
22 circumstance, and it's coming up at an unusual time, and
23 I'm going to permit both parties who are the ones
24 involved in this action to give the Court whatever
25 benefit they can of their own examination.

1 Now, Mr. Rosemond wants to wait until you have
2 rested in your direct examination.

3 MR. STOUDEMIRE: Yes, sir.

4 THE COURT: All right, sir. Go ahead and finish
5 your...

6 MR. STOUDEMIRE: Your Honor, may I approach the
7 witness?

8 THE COURT: Certainly.

9 (Marked for identification was State's Exhibit 40,
10 voluntary statement.)

11 By Mr. Stoudemire:

12 Q. Ms. Grant, I'm gonna show you what's been marked as
13 State's Exhibit Number 40 for identification. Do you
14 recognize that? Don't tell me anything about the
15 content of it. I just wonder if you recognize that.

16 A. I really don't remember what all I wrote in it, but
17 that's my handwriting.

18 Q. Okay. And what is the document sitting before you?

19 A. A statement.

20 Q. Okay. And when was this statement given? Is there
21 a date on it?

22 A. 2-16-2011.

23 Q. Okay. And who gave this statement?

24 A. It's got my writing on it, so I guess I did.

25 Q. Okay. And is that your signature at the bottom of

1 the statement as well?

2 A. Uh-huh.

3 Q. Is that a "yes"?

4 A. Yes.

5 Q. Okay. And on page 2 does your signature appear on
6 that as well?

7 A. Yes.

8 Q. And the body of the statement, is that your
9 handwriting?

10 A. Yes.

11 Q. Okay. I want to give you an opportunity please to
12 go ahead and read silently through that statement to see
13 if anything in that refreshes your memory with regards
14 to the evening of February 15th and 16th.

15 A. I'd just rather not answer.

16 Q. You need speak up.

17 A. I'd just rather not testify or anything.

18 Q. So, you don't want to read through the statement?

19 A. I'll glance at it. I was, I mean, like I said, I
20 took prescriptions. I mean...

21 Q. All right. Where was the statement given? Do you
22 recall that?

23 A. It was either done at the house or at the police
24 station.

25 Q. Okay. And do you recall who you gave the statement

1 to?

2 A. I guess it says Officer Davis. I'm not sure who
3 that is, but...

4 Q. Okay. So, are you saying that you gave this
5 statement or didn't give this statement?

6 A. I mean, it's got my handwriting on it so I did give
7 the statement. I just wasn't sure who the officer is.
8 I don't even remember what they looked like.

9 Q. Okay. And in the statement do you recall saying
10 what happened after you woke up there and put your
11 pajamas on?

12 A. I really don't know. I mean, it was just all a
13 bunch of blur. Like, it's been so long, it's just a
14 bunch of blur.

15 Q. So... Well, read beginning right there. Out loud,
16 please.

17 A. I'd just rather not read it out loud.

18 Q. All right. So, you gave a statement, but you are
19 saying you don't remember the contents of the statement?

20 A. I don't, like, I don't remember really what I put
21 in the statement; no, sir, I don't.

22 Q. Okay. So, you can't really confirm that that's
23 what your statement was. Is that what you are saying?

24 A. No, I cannot confirm what was all in the statement
25 because I don't remember what I put.

1 Q. But you do understand that the substance of that
2 statement is a recounting or your recounting of the
3 events that occurred on February 15th and the early
4 morning hours of February 16th at the home of Garry Gean
5 McCall, and it involved you and Mr. McCall and
6 Mr. Couch?

7 A. Do I what?

8 Q. Do you understand the substance of that statement
9 and that it involves events that happened on February
10 15th, 2011, between you, Mr. McCall, and Mr. Couch, and
11 events that happened at Mr. McCall's home?

12 A. Yes. Some I know involves us three.

13 Q. Okay. And that you gave this statement at the
14 Walhalla Police Department?

15 A. Yes, I guess.

16 Q. Okay. And that you gave it to Officer Davis,
17 correct?

18 A. Yes.

19 Q. Okay. And so I'm giving you the opportunity to
20 explain or deny the content of that statement.

21 A. I would just --

22 MR. ROSEMOND: Objection, Your Honor. Explain or
23 deny is not in the elements of recorded recollection.

24 THE COURT: Well, maybe unfortunately what he's
25 doing is apparently trying to introduce extrinsic

1 evidence under 613(b), which requires that he advised
2 the witness the statement, the content of the statement,
3 when it was made, to whom it was made. And if, it's not
4 so much if she denies it, but if she can't recall, it's
5 the same as a denial and it can't be admitted. I think
6 that's where you are going. I don't know.

7 MR. STOUDEMIRE: Yes, sir, that is exactly right.

8 THE COURT: Okay.

9 THE WITNESS: Okay. I guess it's a denial.

10 THE COURT: Anything else?

11 MR. STOUDEMIRE: No, Your Honor. That's all the
12 questions I would have at this point.

13 THE COURT: Very good. Did she say she denied it?

14 THE WITNESS: I don't recall what's in the
15 statement, sir.

16 THE COURT: Pardon?

17 What's her answer?

18 By Mr. Stoudemire:

19 Q. Say your answer again, please.

20 A. I do not recall what all I wrote in the statement
21 that night.

22 THE COURT: All right. That would be admissible --
23 go ahead -- if that's the case.

24 MR. STOUDEMIRE: And, Your Honor, in that case we
25 would move it at the appropriate time.

1 THE COURT: Well, no. Mr. Rosemond is entitled.
2 That's what he had been waiting for.
3 Cross-Examination by Mr. Rosemond:
4 Q. Ms. Grant, were you married to Mr. Couch?
5 A. Was I married to Mr. Couch?
6 Q. Are you -- do you consider yourself married to
7 Michael Couch?
8 A. Yes. At the time when we was all the time
9 together.
10 Q. Okay. Have you told anybody else that you were
11 married to Michael Couch?
12 A. I've told people in the past that we was married.
13 Q. So, you told other people in the public that you
14 were married to Michael Couch; is that right?
15 A. Yes.
16 Q. And y'all lived together?
17 A. Yes.
18 Q. What else did you all do as husband and wife?
19 A. We used to do everything together.
20 Q. Such as what?
21 A. Ride around with each other. We would walk around
22 town. Go places. Go out to eat. Normal things that
23 people do.
24 Q. Now, so, number one, you have held yourself out to
25 be married to Mr. Couch; is that right?

1 A. Yes.

2 Q. And you consider yourself to be married; is that
3 right?

4 A. Yes.

5 Q. Do you have any employment? Are you employed
6 anywhere?

7 A. Yes.

8 Q. Have you ever been employed -- where are you
9 employed?

10 A. Right now?

11 Q. Yes.

12 A. Bi-Lo, and as a caretaker.

13 Q. How long have you been there?

14 A. I've been at Bi-Lo's for about three months, and
15 I've been at Paula's house for about, going on two
16 years.

17 Q. Have you told them that you are married?

18 A. Well, I wasn't, at the time that me, I wasn't
19 working at Bi-Lo's. But Paula, she, I told her I was
20 married.

21 Q. Okay. Mr. Stoudemire had asked you some questions
22 about this statement that you gave. Do you recall
23 giving this statement?

24 A. It's got my signature on it. I really don't
25 remember what all I wrote in it so I'd have to say no.

1 Q. You had indicated that you were taking Lortabs; is
2 that correct?

3 A. Yes, sir.

4 Q. How many Lortabs did you take that particular day?

5 A. I'm not sure. I had my hand cut open and surgery
6 done to it and a metal bar put into it, so I would say
7 at least four or five because I was hurting, I was in a
8 lot of pain from it.

9 Q. You had taken four or five Lortabs prior to giving
10 this particular statement?

11 A. Uh-huh.

12 Q. Is that all in the same day, or when was that?

13 A. I guess Saturday because by sometime that night
14 when I got back to the house to be with Michael, I think
15 I took, you know, either one or two. I can't really
16 remember how many. But...

17 Q. Now, did this statement accurately reflect your
18 opinion as to what happened that particular morning?

19 A. What, now?

20 Q. Does this statement accurately reflect what you
21 believe happened that morning?

22 A. Oh, like I said, I'm not even really sure. It's
23 just all a bunch of blur. I mean, it's just -- I really
24 don't know what to say.

25 Q. Were you coerced in writing this statement?

1 A. Was I what?

2 Q. Coerced? Did anybody force you to write it? Did
3 anybody kind of force you to say those things?

4 A. No.

5 MR. ROSEMOND: No further questions, Your Honor.

6 THE COURT: Re-exam?

7 MR. STOUDEMIRE: None.

8 THE COURT: All right. First, *State v. Govan*, 320
9 SC 392, 465 S.E.2d 574, (reading):

10 Where the Defendant and the witness were never
11 formally married but lived together for four years by
12 the time of the incident, the Defendant says the trial
13 judge erred in denying the witness's spousal immunity
14 motion in admitting the State to compel her testimony.

15 The Supreme Court -- Court of Appeals, excuse me --
16 disagreed, holding that the witness was not entitled to
17 invoke the privilege of spousal immunity because
18 privilege does not protect the Defendant's assault.
19 Section 16-19-1130 does provide for protection by
20 communication made one to the other during the marriage.
21 However, actions in assaulting the Defendant or the
22 witness are not communications.

23 As in *State v. Govan*, I'm going to deny the
24 privilege being applicable in this particular case and
25 require the Defendant to testify. If she either denies

1 what's in the statement or says that she cannot
2 recollect it, then under 613(b) it will be admissible as
3 extrinsic evidence.

4 MR. STOUDEMIRE: Yes, sir.

5 THE COURT: All right. Anything from the State.

6 MR. STOUDEMIRE: Nothing, Your Honor.

7 THE COURT: Noting the objection of the Defendant.

8 MR. ROSEMOND: Thank you, Your Honor.

9 THE COURT: All right. Do you need a break or
10 anything?

11 MR. STOUDEMIRE: Just a couple of minutes, Your
12 Honor, if we could.

13 (Discussion off the record.)

14 (A recess was taken.)

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

17 MR. STOUDEMIRE: We are.

18 THE COURT: Defense ready to proceed?

19 MR. ROSEMOND: Yes, Your Honor.

20 THE COURT: Ms. Grant you understand you are still
21 under oath. You don't need to be resworn. Do you
22 understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: Very good. Thank you, ma'am.

25 Also, for the record, after we had taken a recess

1 the witness inquired of the Court as to certain matters
2 as to whether she should testify and things of that
3 nature, and obviously the Court instructed her he can't
4 advise a witness as to what she should do.

5 Also, I did, we had taken a recess, and, of course,
6 I suggested that the witness might want to stretch her
7 legs, but also not to remain on the stand, and that also
8 she could not discuss her testimony with anyone and I
9 requested that the deputies for security in the
10 courthouse escort her in the event that if anybody
11 should attempt to talk to her about her testimony.

12 All right. Is there anything from the State on the
13 comments made by the Court for the record?

14 MR. STOUDEMIRE: None, Your Honor.

15 THE COURT: From the Defense?

16 MR. ROSEMOND: No, Your Honor.

17 THE COURT: Very good. Ask the jury to join us,
18 please.

19 (The Jury entered the courtroom at approximately
20 11:30 a.m.)

21 MR. STOUDEMIRE: That's correct, Your Honor, the
22 state has called Sommer Grant.

23 THE COURT: If you would please raise your right
24 hand.

25 (Whereupon, the witness, Sommer Rae Grant, was

1 sworn by the Court.)

2 THE COURT: If you would please, ma'am, give us
3 your full name for the record.

4 THE WITNESS: Sommer Rae Grant.

5 THE COURT: You may proceed.

6 WHEREUPON,

7 Sommer Rae Grant

8 after first having been duly sworn, testified as
9 follows:

10 Direct Examination by Mr. Stoudemire:

11 Q. Ms. Grant, how old are you?

12 A. Twenty-two.

13 Q. Back on February 15 and 16 of this year how old
14 were you then?

15 A. Twenty-one.

16 Q. And back then what was your relationship, if any,
17 with the Defendant, Michael Couch?

18 A. Um, we was pretty much I guess common-law marriage,
19 was together. We had been together for a while.

20 Q. Okay.

21 A. About eight years.

22 Q. Did you all have a residence you all were living in
23 together at that time?

24 A. Not at that point, but we had lived at a residence
25 together.

1 Q. Okay. At that time, then, where were you living?

2 A. We usually stayed with friends, just here and
3 there.

4 Q. Okay. So no, no one fixed residence, you were just
5 staying with friends?

6 A. No. Yes. We was trying to get us a place.

7 Q. Got you. And on February 15th and 16th, were you
8 staying with a friend at that time?

9 A. Yes.

10 Q. Okay. And where did you stay on that particular
11 day?

12 A. With Mr. Garry McCall.

13 Q. Okay. And was that at his house on Laurel Street
14 in Walhalla?

15 A. Yes. I'm not sure of the address, but yes.

16 Q. Okay. And to the best of your knowledge is that
17 within the city limits of Walhalla?

18 A. Yes, it is.

19 Q. Okay. All right. Do you recall what happened at
20 Mr. McCall's house on the evening of February 15th and
21 in the early morning hours of February 16th?

22 A. I know I went and me and Michael had been together
23 for like, you know, a while trying to find a place. And
24 we seen Garry at the store and he said we could stay at
25 his house that night. And I remember I had an Aloette

1 show to do and went towards Garry's house towards Laurel
2 Road.

3 And I think I ate something and took a couple of my
4 prescribed Lortabs and then fell asleep. I really
5 don't, like, recall what happened because I took quite a
6 few Lortabs because I was hurting.

7 Q. Okay. Do you recall the police coming out to the
8 residence that night?

9 A. I don't remember just like really anything. I was
10 just...

11 Q. Okay. Do you remember giving a statement to the
12 Walhalla Police Department on February 16th?

13 A. Um, I know I give [sic] one, I think it was that
14 night.

15 Q. Okay.

16 MR. STOUDEMIRE: Your Honor, may I approach the
17 witness?

18 THE COURT: Certainly.

19 MR. STOUDEMIRE: Thank you.

20 By Mr. Stoudemire:

21 Q. Ms. Grant, I show you what's been marked as State's
22 Exhibit 40 for identification. Can you tell me what
23 that document is?

24 A. A statement.

25 Q. Well, I'm asking you.

1 A. Yes, that is my handwriting, and the date was
2 2-16-2011.

3 Q. Okay. And on that statement does it say you gave a
4 statement to Officer Davis?

5 A. Yes, Officer Davis.

6 Q. Okay. And, again, is this -- does your signature
7 appear on this statement?

8 A. Yes, sir.

9 Q. Okay. Does it appear on -- well, how many pages is
10 this statement?

11 A. Two.

12 Q. Okay. Does your signature appear on one page or
13 both pages?

14 A. Both.

15 Q. Okay. And the body of the statement, is that your
16 handwriting?

17 A. Yeah. Kind of sloppy, but yeah.

18 Q. Okay. Do you recall the content of this statement
19 that you wrote on February 16th, 2011, that you gave to
20 Officer Davis?

21 A. Do I recall writing the statement?

22 Q. Do you recall what's in the statement?

23 A. No, I don't recall what's in the statement. Like I
24 said, I took some Lortabs and I was pretty mixed up, I
25 guess.

1 Q. Okay. So, if I were to advise you that the
2 statement dealt with events that happened between you
3 and Mr. McCall and Mr. Couch on the evening of February
4 15th and early February 16th, 2011, do you recall giving
5 a statement about that?

6 A. I know I -- it was either that night or the next
7 morning -- I remember it, I'm sure, yeah.

8 Q. And do you recall giving this statement at the
9 Walhalla Police Station?

10 A. Barely, yeah.

11 Q. Okay. And very briefly I want to give you the
12 opportunity to either explain what's in this statement
13 or deny anything in this statement. Do you want to take
14 that opportunity?

15 A. I really don't want to -- I really don't wish to
16 testify. I mean...

17 Q. Okay. And, again, you don't recall the contents of
18 this statement?

19 A. I'm not sure. I mean, I ain't like really looked
20 over it. I was just, I was pretty out of it that night
21 and the next day and stuff.

22 MR. STOUDEMIRE: Your Honor, at this time the State
23 would move for the admission of State's Exhibit Number
24 40 into evidence under Rule 613(b).

25 MR. ROSEMOND: Objection, Your Honor. I don't

1 think 613(b) covers that admission of that particular
2 statement. She hasn't said that she denied anything in
3 that particular statement. And also, it doesn't come in
4 under the recorded recollection as well.

5 THE COURT: 613(b) is where there is inconsistent
6 prior statements. And according to *State v. Miller*,
7 inability to remember, *State v. Miller*, 262 SC 369,
8 would make it admissible.

9 Objection is overruled.

10 State's Exhibit Number 40 is admitted into
11 evidence.

12 (Received in evidence was State's Exhibit 40.)

13 MR. STOUDEMIRE: Thank you, Your Honor. At this
14 time we would have no further questions for Ms. Grant.

15 THE COURT: Cross-examination?

16 Cross-Examination by Mr. Rosemond:

17 Q. Ms. Grant, were you intoxicated that night?

18 A. Yeah, pretty much, with the Lortabs.

19 Q. Had you been drinking any alcohol that particular
20 night?

21 A. None.

22 Q. You took Lortabs that night?

23 A. The day before. I'd been on them for a while.

24 Q. All right. This incident happened on February the
25 16th about 3:00 in the morning, 2:00 in the morning; is

1 that right?

2 A. Yes.

3 Q. When did you take the Lortabs?

4 A. I really can't give you that time. I just would
5 take them every few, like every couple hours or
6 something. I'd be hurting.

7 Q. How many Lortabs did you take?

8 A. Really I can't tell you how many I took because I
9 really don't know. I guess about four or five. I'm
10 really not sure.

11 Q. You took four or five Lortabs in that 24-hour
12 period; is that correct?

13 A. Yeah. My arm was really hurting.

14 Q. You can't remember giving that statement; is that
15 right?

16 A. I just -- it's hard to remember. I think I give
17 [sic] it at the police -- I'm not really sure. The
18 police station, I guess. But I'm not really sure about
19 what all I put in it because I was so tore up about it
20 that morning.

21 Q. Let's talk about what happened that particular
22 night. You met Mr. Couch over at Garry McCall's house;
23 is that right?

24 A. Yes.

25 Q. And at some point you and Michael Couch were laying

1 on the couch, right?

2 A. Yes.

3 Q. And you got up to go to the bathroom; is that
4 right?

5 A. Yes, sir.

6 Q. Now, an altercation occurred between you and
7 Michael Couch; is that right?

8 A. Yes, somewhat of that happened.

9 Q. Now, there was a knife involved in a fight between
10 Garry McCall and Michael Couch; is that right?

11 A. Yes.

12 Q. Now, Michael Couch did not pull a knife on you, did
13 he?

14 A. Not that, not that I remember, no.

15 Q. Okay. Now, did Michael hit you that night?

16 A. Yes, I believe hit me, but I don't remember what
17 all happened.

18 Q. What role did you play in starting this altercation
19 between you and Michael Couch? Do you remember?

20 A. No.

21 Q. Could you have played a role in the altercation
22 between you and Michael Couch?

23 A. I mean, it's possible. I mean, like we, every
24 couple argues about something.

25 Q. You and Michael Couch fight all the time; is that

1 right?

2 A. Yeah, I guess.

3 Q. And you hit him before and he's hit you before; is
4 that right?

5 A. Yeah. We've had our throw-downs with each other.

6 Q. Now, certainly Michael indicated to you that you
7 got up without his permission to change into your
8 pajamas; is that right?

9 A. Yeah. I mean, all I know is it was over some kind
10 of changing pants or something.

11 Q. Now, this statement that you just, that was just
12 introduced, is it accurate as to what happened that
13 night?

14 A. I mean, I ain't never really like looked over it.
15 To tell you the truth, I really don't -- I just remember
16 like bits and pieces of everything that happened.

17 Q. Okay.

18 A. I don't remember everything that happened. I guess
19 because I was on the Lortabs I'm not real sure.

20 Q. You were on Lortabs before you gave this statement?

21 A. Right.

22 Q. Did you ever tell anybody that you felt you were
23 too intoxicated to give this statement?

24 A. No, I didn't --

25 Q. You didn't? I didn't mean to cut you off. Did

1 anyone ask you whether or not you were too intoxicated
2 to give this statement?

3 A. I'm not really sure. I don't think so.

4 Q. Now let me show you what's been marked State's
5 Exhibit Number 40. At the top of that page, what time
6 did you start giving that statement?

7 A. It says two a.m. or three a.m.

8 Q. All right. So, what's the date on that particular
9 statement?

10 A. The -- hold on one second -- 2-16-2011.

11 Q. So, on February 16th, 2011, at two a.m. or three
12 a.m. in the morning, you gave that statement; is that
13 right? According to that piece of paper.

14 A. Yes.

15 Q. So, you gave that statement sometime right about
16 when this event occurred?

17 A. No. I thought I went there the next morning.

18 Q. Okay. But that's not what that statement said.
19 That statement says that you gave it at two or three
20 a.m. on February the 16th; isn't that true?

21 A. Yes, sir.

22 Q. So, that's not correct on your statement; is that
23 right?

24 A. That's right.

25 Q. There is a second page to that statement; is that

1 right?

2 A. Yes, sir.

3 Q. And on that second page what time does it say that
4 you gave that statement?

5 A. It says at the bottom?

6 Q. At the top.

7 A. The top? Two a.m. or three a.m.

8 Q. Okay. And you signed that document that says you
9 gave that statement at two or three a.m. on February the
10 16th; is that right?

11 A. Uh-huh.

12 Q. And that's on both of those pages; is that right?

13 A. Yes.

14 Q. Now, did anyone help you write that statement?

15 A. No. It's my handwriting.

16 Q. So, on both of those sheets of State's Exhibit
17 Number 40, that's incorrect; is that right?

18 A. Uh-huh.

19 Q. I didn't hear what you said.

20 A. Yes, sir.

21 Q. Michael didn't cut you with a knife; is that right?

22 A. That's right.

23 Q. Now, he didn't hold up a knife and threaten you
24 with it; is that right?

25 A. Not that I remember, no, he didn't.

1 Q. Who was with you when you gave that statement?

2 A. Um, my mother.

3 Q. Okay. Did she accompany -- okay. Your mother was
4 with you?

5 A. Yes, sir.

6 Q. All right. Does that statement say anything about
7 Michael dragging you into the kitchen by your hair?

8 A. Can I read it?

9 Q. Yes, you can read it.

10 A. (Witness reads statement.) No, it does not say.

11 Q. It's not in there, right?

12 A. No, sir.

13 Q. That statement doesn't say that Michael drug you
14 into the kitchen by your hair, does it?

15 A. No, sir.

16 Q. Now, the Lortabs that you were taking, were they
17 prescribed?

18 A. Yes, sir.

19 Q. Who were they prescribed by?

20 A. Dr. Milan from Greenville Hospital.

21 Q. Where did you get them filled at?

22 A. Ken's Pharmacy.

23 Q. Okay. You didn't see Michael Couch and Mr. McCall
24 in a physical altercation, did you?

25 A. I was trying to look for my -- let's see, I believe

1 I was -- I'm not really sure -- but I was, I think I was
2 on my cell phone first. They was off to the side.

3 Q. You didn't see what occurred between Mr. McCall and
4 Michael; is that right?

5 A. That's right. I looked over and I saw blood, and I
6 did remember seeing blood coming from Garry's head.

7 Q. Can you tell this jury that you saw Michael Couch
8 cut Garry McCall?

9 A. No.

10 Q. Y'all were at Garry McCall's house that night; is
11 that right?

12 A. Yes, sir.

13 Q. The knife, have you seen the knife from that night?

14 A. No. I seen a picture of it, I believe it was
15 yesterday.

16 Q. Who showed you a picture yesterday?

17 A. Um, I forget his name.

18 Q. The prosecutor?

19 A. The prosecutor, yes.

20 Q. Had you ever seen that knife before?

21 A. (No response.)

22 Q. I mean, prior to February 16th, 2011, had you ever
23 seen that knife before.

24 A. No. I know that, like, when I first came in, there
25 was a knife setting on Garry's TV stand.

1 Q. Okay. Can you tell me that's the same knife that
2 you saw in that picture yesterday?

3 A. No, because I really didn't pay attention to it. I
4 just glanced over and seen it.

5 Q. So, you don't know whether or not that's the same
6 knife that you saw sitting on the TV stand, correct?

7 A. Correct.

8 Q. Now, the knife that you saw yesterday, did that
9 knife belong to Michael Couch?

10 A. He normally don't carry knives around with him, so
11 I would have to say no, I ain't never seen him with a
12 knife like that before.

13 Q. How well do you know Mr. McCall?

14 A. I know him, he's like the family of a friend. He
15 would come over occasionally, and him and his wife would
16 spend time with my mother and just hang out and stuff.

17 MR. ROSEMOND: No further questions of this
18 witness, Your Honor.

19 THE COURT: Re-exam?

20 MR. STOUDEMIRE: Sorry to belabor the Court's time,
21 but may we approach briefly before I cross-examine her?

22 THE COURT: Certainly.

23 (Discussion at sidebar.)

24 THE COURT: Re-exam.

25

1 Redirect Examination by Mr. Stoudemire:

2 Q. Ms. Grant, clear something up for me. On page 1 of
3 this statement -- you've got that in front of you -- how
4 many times are at the top of this statement?

5 A. Okay. There's three.

6 Q. Okay. And the one that says two or three a.m., and
7 then there's another time before that, correct?

8 A. Yes. And this circle at the top says 12:45 p.m.

9 Q. 12:45 p.m.?

10 A. Uh-huh.

11 Q. And the time at the bottom, can you read that
12 sentence for me, please?

13 A. This statement was completed at 1:11 p.m. on the
14 February, February date of 16th, 2011.

15 Q. Okay. So, 12:45 to 1:11 p.m. on the 16th. Does
16 that sound like an accurate determination as to how long
17 it may have taken you to write that statement?

18 A. I'm not sure.

19 Q. Okay.

20 A. I didn't keep up with the time.

21 Q. Okay. Now, with regard to the content of that
22 statement, Mr. Rosemond asked you about whether or not
23 the statement said that you were dragged into the
24 kitchen, correct?

25 A. Uh-huh.

1 Q. Okay. I want you to read for me, beginning right
2 there. Read it out loud, please.

3 A. It says, (reading):

4 I said no. I'm calling my grandmom. Then Michael
5 Couch said no, you won't have time. Picked up a knife
6 and started punching me, Sommer Grant, and then I went
7 to the kitchen.

8 Q. Keep reading, please.

9 A. I was laying on the floor and starving -- it don't
10 really make sense -- and he started kicking and punching
11 me in the face and stomach and back.

12 Q. I think we skipped a line. Let's try again.

13 A. Okay.

14 Q. Okay. Start with "I said," please.

15 A. It says, (reading):

16 I said, No, I'm calling my grandma. It says,
17 Michael Couch said, No, you won't have time, picked up a
18 knife and started punching me, Sommer Grant. Then I,
19 Sommer Grant, went to the kitchen to try and get away.

20 Q. Keep reading.

21 A. Michael Couch followed me, got me, punching me in
22 the face and stomach and back, broke a coffee glass pot
23 over my face or my forehead. Made me -- see made --
24 okay -- the living room and started beating me again.

25 Q. Okay. Thank you. So, is that what your statement

1 says?

2 A. That's what it says, yes.

3 Q. Okay. So, according to your statement, Mr. Couch
4 had a knife in his hand?

5 A. According to the statement, yes. I really don't
6 remember.

7 Q. I understand. And according to the statement he
8 hit you over the head with a glass coffee pot?

9 A. Well, yes, I guess.

10 Q. Okay. Now, and I know you testified your memory
11 was somewhat fuzzy that night.

12 A. Uh-huh.

13 Q. The knife that you saw that evening, do you ever
14 recall seeing Garry McCall holding that knife that
15 evening?

16 A. It was, um, all I know is I glanced over, he was
17 talking about it that night when I first came in, about
18 a knife.

19 Q. Okay. Well, that's not what I asked. I asked:
20 Did you see him hold the knife?

21 A. I didn't see him hold it, no, but I seen it on the
22 counter.

23 MR. STOUDEMIRE: Thank you. That's all the
24 questions I would have.

25 THE COURT: Recross?

1 Recross-Examination by Mr. Rosemond:

2 Q. Were you mad at Michael that night?

3 A. Huh?

4 Q. Were you mad at Michael that night?

5 A. Yeah, a little bit.

6 Q. Did you write stuff in your statement that just
7 wasn't true?

8 MR. STOUDEMIRE: Your Honor, I would object to
9 that. I think she already answered several times that
10 she doesn't remember --

11 THE WITNESS: I don't remember.

12 MR. STOUDEMIRE: -- everything she wrote --

13 THE COURT: Again, I'm going to permit the
14 question. It goes to credibility. But I think we do
15 have to take the answer that we do get. Go ahead.

16 MR. STOUDEMIRE: Yes, sir, thank you.

17 By Mr. Rosemond:

18 Q. The stuff that you wrote against Michael that night
19 in your statement, was it true or false?

20 A. To tell you the truth, I can't even -- I mean, I
21 can't really tell you. I mean, I was on Lortabs. I
22 mean, my head was all mixed up. I'm not even sure what
23 I was doing or thinking.

24 Q. Is your head all mixed up today? Do you have a
25 clear recollection of your memory today?

1 A. Of what happened that day, yes.

2 MR. ROSEMOND: No further questions, Your Honor.

3 THE COURT: All right. You may step down. Thank
4 you, ma'am.

5 (Whereupon, the witness was excused.)

6 THE COURT: Call your next witness.

7 MR. STOUDEMIRE: Thank you, Your Honor. The State
8 would call Garry McCall.

9 (Whereupon, the witness, Garry McCall, was sworn by
10 the Clerk of Court.)

11 THE COURT: Sir, give us your full name for the
12 record.

13 THE WITNESS: Garry Gean McCall, Junior.

14 THE COURT: Thank you, sir.

15 WHEREUPON,

16 Garry Gean McCall,
17 after first having been duly sworn, testified as
18 follows:

19 Direct Examination by Mr. Stoudemire:

20 Q. Where do you currently reside?

21 A. South Laurel Street in Walhalla.

22 Q. Okay. And how long have you been living on South
23 Laurel Street?

24 A. Since Christmas Day of last year.

25 Q. Christmas Day of 2010?

- 1 A. Yes, sir.
- 2 Q. So, almost a year?
- 3 A. Yes, sir.
- 4 Q. Okay. So, you were living there back on February
- 5 15th and 16th, 2011?
- 6 A. Yes, sir.
- 7 Q. All right. And while you were there on that date,
- 8 did you have any visitors come to your house that day?
- 9 A. Yes, sir.
- 10 Q. Okay. Who came to visit you that day?
- 11 A. Michael Couch and Sommer.
- 12 Q. Okay. And Michael Couch that came to visit you,
- 13 would that be the same Michael Couch that's seated at
- 14 the Defense table in the yellow shirt?
- 15 A. Yes, sir.
- 16 Q. Okay. And did you know Mr. Couch before that day?
- 17 A. Yes, sir.
- 18 Q. Okay. How well did you know Mr. Couch?
- 19 A. I'd known him for 12 or 13 years.
- 20 Q. Okay. Would you consider yourself friends?
- 21 A. Acquaintances.
- 22 Q. Okay.
- 23 A. I never gave him any money or anything like that,
- 24 you know, like I would a friend.
- 25 Q. Understood. You said Mr. Couch came to visit you.

1 Do you recall about what time he got over to the house?

2 A. Afternoon.

3 Q. Sometime in the afternoon?

4 A. I'd say before 3:30.

5 Q. Okay. And was -- you said Sommer visited that day
6 as well. Was Sommer with him then?

7 A. No.

8 Q. Okay. So, he was by himself?

9 A. Yes.

10 Q. Okay. Did he bring anything with him?

11 A. Yes.

12 Q. What did he bring with him?

13 A. Two Lortabs and a bottle of vodka.

14 Q. And the bottle of vodka, was it full or mostly
15 empty? What was it?

16 A. A pint. An unopened pint.

17 Q. An unopened pint?

18 A. An unopened pint.

19 Q. Okay. And, after Mr. Couch arrived, what did you
20 all do?

21 A. Well, I was hanging out clothes. And we went in
22 the house and he gave me the two Lortabs and I stuck
23 them in my pocket and he set the bottle of vodka on the
24 coffee table and we were talking. And he opened the
25 vodka and started drinking it, and it was about half

1 gone. I took maybe two sips, and, well, we were just
2 talking.

3 Q. Okay. And did y'all stay at your house for some
4 period of time after that?

5 A. Yes.

6 Q. Okay. And you said you took two sips. Is it
7 possible you drank more throughout the time Mr. Couch
8 was there?

9 A. No. Not of the, not of the vodka.

10 Q. Okay. Did you have anything else to drink?

11 A. Yes.

12 Q. Any other alcoholic beverage?

13 A. Natural Light beer.

14 Q. Okay.

15 A. I drank seven.

16 Q. Okay. And do you recall what time Ms. Grant
17 arrived at your house that evening?

18 A. I'm not really sure. I think it was after dark.

19 Q. Okay. Did you call her and ask her to come over?

20 A. No.

21 Q. Who did?

22 A. I guess Michael did, but I never seen him do that,
23 I don't think.

24 Q. Okay. But she arrived at your house at some point
25 in the evening?

1 A. Yes.

2 Q. Okay. And again, I'm sorry, I already can't
3 recall. Did you say what time?

4 A. A little after dark.

5 Q. After dark, okay. And, after Ms. Grant arrived,
6 what did the three of y'all do then?

7 A. Just sitting in the living room.

8 Q. Okay. Just talking? Were you still drinking?
9 Anything in particular?

10 A. No. I cooked supper and we ate.

11 Q. Okay. And did you and Mr. Couch have any sort of
12 argument or altercation during the time he was there
13 during that day?

14 A. No. Just when he cut me.

15 Q. Okay. Well, after you ate, do you recall about
16 what time it was when you all ate?

17 A. Around 12, I guess.

18 Q. Around 12 like midnight, around 12?

19 A. Yes.

20 Q. And after that, what did everybody do?

21 A. Oh, we were just sitting there and I can't -- he
22 went to sleep and she was sitting on the couch and I was
23 just sitting in a recliner. I can't recall if I had the
24 TV on or if the radio was on.

25 Q. Okay. And what happened then?

1 A. I went and got a blanket out of the bedroom for
2 them because it was kind of chilly, and I think I filled
3 up the kerosene heater.

4 Q. Okay.

5 A. And he was asleep with his head --

6 Q. When you say "he," who are you talking about?

7 A. Michael Couch.

8 Q. Okay.

9 A. He was asleep with his head in her lap and I was
10 sitting in a recliner, and he just woke up and started
11 beating Sommer up.

12 Q. Okay. Do you recall anything that he said to you
13 or to her?

14 A. Just cussing.

15 Q. Okay. So, no reason that you could see of, that
16 you knew of why he would get mad?

17 A. No. He said something about us being together, and
18 accused her of it.

19 Q. Okay. And when he did that, you said he started
20 beating her up?

21 A. Yes.

22 Q. Okay. What do you mean by beating her up? Can you
23 describe what he did, please?

24 A. He was hitting her in the face and back of the
25 head, on top of the head, and then he drug her across

1 the living room towards me, and I stood up next to the
2 kitchen door, and he was kicking her in the head and
3 stomping.

4 Q. Okay. And when you stood up, what did you do then?

5 A. When he was kicking her, I said, You can't be doing
6 that in my house.

7 Q. Okay. And when you told Michael you can't be doing
8 that in my house, how did he react to you?

9 A. He turned at me and cut me in the face.

10 Q. Okay. Well, what did he cut you with?

11 A. I didn't really see the knife, but I may have got
12 like a half a second glimpse of something.

13 Q. Okay. Okay. Well, did he bring a knife that you
14 know of?

15 A. No.

16 Q. Okay. Was there a knife in the living room where
17 y'all were that evening?

18 A. Yes.

19 Q. Okay. Whose knife was that in the living room that
20 evening?

21 A. Mine.

22 Q. Yours. Okay. Can you tell me what this knife
23 looked like?

24 A. It's a black dagger. I had it setting there for a
25 whatnot.

1 Q. Okay. What do you mean by having it set there for
2 a whatnot?

3 A. Like a collectible.

4 Q. Okay. All right. I'm gonna show you, if you could
5 just turn up to that screen and I'm gonna show you a
6 picture of what has been previously marked as State's
7 Exhibit Number 5.

8 Now, do you recognize that?

9 A. Yes.

10 Q. Okay. And tell me what that is.

11 A. That is the knife that was on my TV stand.

12 Q. Okay. How long have you had this knife?

13 A. Three years.

14 Q. Three years? Okay. And you said the knife was out
15 as a whatnot. Did you always leave it out?

16 A. Yes.

17 Q. Okay. And again, is there any doubt in your mind
18 that this is the knife that you kept out on --

19 A. No.

20 Q. -- your table or whatever in your living room as a
21 whatnot?

22 A. No.

23 MR. STOUDEMIRE: Your Honor, we would move to have
24 State's Number 5 admitted into evidence.

25 THE COURT: Any objection?

1 MR. ROSEMOND: No objection, Your Honor.

2 THE COURT: All right. Without objection State's
3 Number 5 is admitted.

4 (Received in evidence was State's Exhibit 5.)

5 By Mr. Stoudemire:

6 Q. Okay. And you said that you told Michael, you
7 can't do that in my house, and you said he cut you,
8 correct?

9 A. Yes.

10 Q. Okay. Can you describe for me how he cut you? Do
11 you remember?

12 A. He turned and didn't say anything when I said you
13 can't be doing that in my house, and he swung like he
14 was gonna hit me. And I moved back and that's when he
15 cut me across the face.

16 Q. Okay. When you say he swung like he was gonna hit
17 you, did he swing with another hand with a knife in it
18 and cut you or is this just one swing?

19 A. It was one swing with a knife in his hand.

20 Q. And you moved back and got cut?

21 A. Yes.

22 Q. Okay. Where did you get cut?

23 A. From my nose to my ear.

24 Q. Okay. And after you got cut, what did you do then?

25 A. I ran out the back door.

1 Q. Okay. Did you know whether or not 9-1-1 or law
2 enforcement had been called at that point?

3 A. No.

4 Q. Okay. Why did you run out the back door?

5 A. I was afraid for my life.

6 Q. Okay. And were you bleeding at that point?

7 A. Yes.

8 Q. And at some point after you got cut and left out
9 the back door, did law enforcement arrive?

10 A. Yes.

11 Q. Do you recall how long it was after you got cut
12 before law enforcement arrived?

13 A. It seemed like only, like not even a minute.

14 Q. Okay. While you were inside, prior to being cut,
15 did you ever see Mr. Couch pick up this knife?

16 A. No.

17 Q. Okay. Did you ever see him threaten Sommer with
18 the knife?

19 A. I didn't really see the knife, but I seen him
20 hitting her.

21 Q. Okay. And kicking her in the head?

22 A. Yes.

23 Q. Okay. There's been some mention of her being hit
24 with a coffee pot. Were you in the house when that
25 occurred?

1 A. No.

2 Q. When law enforcement arrived, you said it was just
3 a few seconds or a minute or so; is that right?

4 A. Yeah. It was a short amount of time.

5 Q. Okay. Did you say anything to law enforcement when
6 they arrived?

7 A. Yes.

8 Q. What did you tell law enforcement? Do you recall
9 what the first thing was you told them?

10 A. I said that Michael cut me.

11 Q. Okay. And what did law enforcement do at that
12 point?

13 A. I think they called an ambulance.

14 Q. Okay. Did law enforcement go in the house or
15 anything?

16 A. Yes.

17 Q. Okay. When you were outside and law enforcement
18 arrived, were Mr. Couch or Sommer outside at that point?

19 A. No.

20 Q. Okay. To the best of your knowledge were they
21 still in the house?

22 A. Yes.

23 Q. Okay. So, if law enforcement went in the house,
24 you didn't see anything that went on in the house after
25 that point?

- 1 A. No.
- 2 Q. After you left?
- 3 A. No.
- 4 Q. You didn't go back in the house for anything, did
5 you?
- 6 A. No.
- 7 Q. Okay. And you said the ambulance was called?
- 8 A. Yes.
- 9 Q. Okay. And did you end up having to go to the
10 hospital that night?
- 11 A. Yes.
- 12 Q. Did you drive yourself to the hospital?
- 13 A. No.
- 14 Q. How did you get to the hospital?
- 15 A. In an ambulance.
- 16 Q. Okay. And do you recall whether you were sitting
17 up in the ambulance or whether you were lying down or
18 what?
- 19 A. Lying down.
- 20 Q. Lying down? Okay.
- 21 Did any of the law enforcement officers out there
22 talk to you any more before you left in the ambulance?
- 23 A. No.
- 24 Q. Okay. Did they take any pictures or anything like
25 that while you were there?

1 A. Yes.

2 Q. Okay. Did they take any pictures of you?

3 A. Yes.

4 Q. Okay. I'm gonna show you what's been marked as
5 State's Exhibit Number 2. If you could again go ahead
6 and look up on that board. Who is that in this picture?

7 A. Me.

8 Q. Okay. And was this picture taken the night of this
9 incident?

10 A. Yes.

11 Q. Okay. And the blood that's shown there, what is
12 that from?

13 A. The cut.

14 Q. Okay. And is this picture a fair and accurate
15 representation of how you looked that evening to the
16 best of your knowledge?

17 A. Yes.

18 Q. Okay. And to the best of your knowledge has this
19 been changed or altered or enhanced in any way?

20 A. No.

21 Q. Okay. Is that how you looked when the ambulance
22 arrived pretty much?

23 A. Yes.

24 MR. STOUDEMIRE: Okay. Your Honor, at this time we
25 would move State's Exhibit Number 2 placed into

1 evidence.

2 MR. ROSEMOND: Without objection.

3 THE COURT: All right. Without objection State's
4 Exhibit Number 2 is admitted.

5 (Received in evidence was State's Exhibit 2,
6 photograph of victim, Garry McCall.)

7 By Mr. Stoudemire:

8 Q. Now, you said you exited by the back door; is that
9 correct?

10 A. Correct.

11 Q. Okay. I show you State's Exhibit Number 6 briefly.
12 Can you tell me what that is?

13 A. Where I live.

14 Q. Okay. And when you say the back door that you
15 exited by, is that shown in this photograph?

16 A. Yes.

17 Q. Okay. I'm going to go ahead -- and point to this
18 portion of the photograph, if you could. Is this the
19 back door we're talking about right in this area?

20 A. Yes.

21 Q. Okay. And that's where you left the house?

22 A. Yes.

23 Q. What's the room immediately inside that back door?

24 A. The kitchen.

25 Q. Okay. And if you walk straight through the kitchen

1 towards the front of the house over here at the front
2 door, what room is that where the front door is?

3 A. Living room.

4 Q. Living room? Okay. So, you just walk straight
5 through the kitchen to get to the living room; is that
6 right? If you entered through that, through that back
7 or side door, if you walk through the kitchen, you'll
8 get to the living room?

9 A. Yes.

10 Q. Okay. Look at this picture again for me and tell
11 me if that picture fairly and accurately represents the
12 way your house on Laurel Street in Walhalla looked on
13 the night of this incident on February 16th, 2011.

14 A. Yes.

15 Q. It does?

16 A. Yes.

17 Q. Okay. Does that appear to have been changed or
18 anything since it was taken?

19 A. No.

20 MR. STOUDEMIRE: Okay. Your Honor, we would move
21 to have State's Exhibit Number 6 placed into evidence.

22 MR. ROSEMOND: No objection.

23 THE COURT: Without objection, State's Exhibit
24 Number 6 is admitted.

25 (State's Ex. # 6, photograph of house of victim,

1 Garry McCall, was received in evidence.)

2 By Mr. Stoudemire:

3 Q. Mr. McCall, do you recall going to the hospital?

4 A. Yes.

5 Q. Okay. And what type of treatment did you receive
6 at the hospital?

7 A. Stitches.

8 Q. Stitches. Do you know how many?

9 A. 27.

10 Q. 27. All right. And what did you do after you --
11 did you have to stay at the hospital that night or did
12 they go ahead and do the stitches and release you? What
13 did they do?

14 A. It was sometime that morning, after daylight I was
15 released.

16 Q. You were released? And where did you go from then?
17 Where did you go next?

18 A. To the Walhalla Police Station.

19 Q. Okay. And did they take any more pictures of you
20 at the Walhalla Police Station?

21 A. Yes.

22 Q. Okay. I'm gonna show you what's been marked as
23 State's Exhibit 27. If you could look up on the screen.
24 Can you tell me what that is?

25 A. That's me.

1 Q. Okay. And do you know where that picture was
2 taken?

3 A. At the Walhalla Police Station.

4 Q. Okay. Was that taken when you went up there after
5 you were released from the hospital?

6 A. Yes.

7 Q. All right. And is that a fair and accurate
8 representation of how you looked when you went up to the
9 police station that day?

10 A. Yes.

11 Q. Okay. I'm also going to show you what's been
12 marked as State's Number 16 for identification. Let me
13 go ahead and see if I can turn that a little bit. And
14 do you recognize the person in that picture?

15 A. Yes.

16 Q. Okay. And who is that?

17 A. Me.

18 Q. Okay. Was that picture taken at the same time and
19 place as the previous picture?

20 A. (No response.)

21 Q. Up at the Walhalla Police Station?

22 A. Yes.

23 Q. And does that picture fairly and accurately
24 represent how you looked on that date and time?

25 A. Yes.

1 Q. Okay. And again one more. I'm gonna show you
2 what's been marked as State's Number 26 for
3 identification. Is that you in that picture as well?

4 A. Yes.

5 Q. Okay. And was that also taken at the Walhalla
6 Police Station?

7 A. Yes, sir.

8 Q. Okay. And was that taken on February 16, 2011,
9 after you got released from the hospital?

10 A. Yes.

11 Q. Okay. And does that fairly and accurately
12 represent the way you looked at the time you went up to
13 the police station on that day?

14 A. Yes, sir.

15 Q. Okay. Do any of those photographs that I just
16 showed you, State's Numbers 16, 26, and 27, do any of
17 those appear, do they appear to have been changed or
18 altered in any way?

19 A. No.

20 MR. STOUDEMIRE: Your Honor, we would move at this
21 time to admit State's Numbers 16, 26, and 27 into
22 evidence.

23 THE COURT: Any objection?

24 MR. ROSEMOND: No objection.

25 THE COURT: All right. Without objection, State's

1 Exhibits 26, 27, and 16 are admitted.

2 (Received in evidence were State's Exhibits 16, 26,
3 and 27, photographs of victim, Garry McCall, taken
4 at Walhalla Police Station.)

5 By Mr. Stoudemire:

6 Q. And while you were at the police station that day,
7 did you give a written statement to law enforcement?

8 A. Yes.

9 Q. Okay. And to the best of your recollection, was
10 the statement that you gave truthful and accurate at
11 that time?

12 A. Yes.

13 Q. Okay. And the testimony you are giving today, is
14 this truthful and accurate based upon your memory of the
15 events of that evening?

16 A. Yes.

17 Q. Okay.

18 MR. STOUDEMIRE: All right. That's all the
19 questions I would have for you, Mr. McCall. Please
20 answer any questions Mr. Rosemond may have.

21 Cross-Examination by Mr. Rosemond:

22 Q. Mr. McCall, you were grossly intoxicated that
23 night, weren't you?

24 A. No.

25 Q. You said you were not grossly intoxicated that

1 night?

2 A. No.

3 Q. You said you had two sips of a pint of vodka; is
4 that right?

5 A. Yes.

6 Q. And you had seven Natural Lights?

7 A. Yes.

8 Q. That's all you had to drink that day?

9 A. Yes.

10 Q. How about the half a gallon of vodka that was in
11 the refrigerator that you drank? Do you remember that
12 vodka?

13 A. No. I remember there was some in the freezer, but
14 it was water.

15 Q. You remember the vodka bottle that was in the
16 refrigerator?

17 A. Yes.

18 Q. And it contained what, exactly?

19 A. I thought it was vodka, but it was frozen.

20 Q. Okay. If it was vodka that was in the container,
21 and it was frozen, it's still vodka; is that right?

22 A. It might have been some in it, but it was water.

23 Q. Okay. But you drank that that night, didn't you?

24 A. Maybe a sip or two, but it was water.

25 Q. Okay. Now, do you remember talking to Officer

1 Patterson that night?

2 A. Yes.

3 Q. And basically the only thing that you could tell
4 him was "Mr. Couch cut me." Isn't that right?

5 A. Yes.

6 Q. And you couldn't tell him any other things because
7 you were too drunk to tell him any other information,
8 isn't that right?

9 A. He didn't ask me anything else.

10 Q. That's the only thing he asked you? He didn't ask
11 you anything else that night?

12 A. No.

13 Q. Prior to him going to the hospital -- prior to you
14 going to the hospital, you didn't have any other
15 conversation with Mr. Patterson that night?

16 A. I'm not sure.

17 Q. Okay. Now, this was your house. Right? Your
18 house?

19 A. I rent it.

20 Q. Okay. It was your knife; isn't that correct?

21 A. Excuse me?

22 Q. That was your knife?

23 A. Yes.

24 Q. Okay. And you saw Michael hitting his, hitting
25 Sommer; is that right?

- 1 A. Yes.
- 2 Q. And what did you do, just say you can't be hitting
3 her in my house? Is that the only thing you did?
- 4 A. Yes.
- 5 Q. You didn't pick up that knife and tell Michael to
6 stop doing that?
- 7 A. No.
- 8 Q. When Michael turned when you said something to him,
9 did you grab that knife and hold that against Michael?
- 10 A. No.
- 11 Q. Did Michael get cut that night in this altercation
12 between you and him?
- 13 A. I don't know.
- 14 Q. Now, Michael is bigger than you are, isn't he?
- 15 A. Yes.
- 16 Q. And how tall are you?
- 17 A. 5' 11".
- 18 Q. And certainly, you know, you are much shorter than
19 Michael; is that right?
- 20 A. Yes.
- 21 Q. And when you came at Michael, he took that knife
22 away from you, didn't he?
- 23 A. No, I didn't come at Michael and he didn't take no
24 knife away from me.
- 25 Q. Okay. So how many times before that day had

1 Michael been in your house on Laurel Street?

2 A. You asked how many times he walked outside or...

3 Q. How many times prior to February 16th had Michael
4 been in your house on Laurel Street?

5 A. He said that his -- when I lived there, that was
6 the first time.

7 Q. That was the first time he had been to your house
8 that night; isn't that right?

9 A. He said that he lived there before I did.

10 Q. Well, let's go back. You moved in there on
11 December 25th, 2010; is that right?

12 A. Yes.

13 Q. And this incident occurred on February 16th, 2011;
14 is that right?

15 A. Yes.

16 Q. So we're dealing with approximately 50-something
17 days that you lived in that house before Michael got
18 there that night; is that right?

19 A. Yes.

20 Q. Prior, in those 50-something days, Michael hadn't
21 been in that house, isn't that true?

22 A. Yes.

23 Q. And this knife, where was this knife at?

24 A. In front of the TV

25 Q. In front of the TV? Was it out in the open?

- 1 A. Yes.
- 2 Q. You knew where that knife was, didn't you?
- 3 A. Yes.
- 4 Q. Okay. And certainly Michael hadn't seen that knife
5 before that night, had he?
- 6 A. I don't know.
- 7 Q. Okay. Now, you said you had two Lortabs in your
8 pocket. Did you take those Lortabs that night?
- 9 A. I think I took a half a one around right before I
10 eat.
- 11 Q. That was about midnight; is that right, sir?
- 12 A. Yes, sir.
- 13 Q. And for dinner that night, what did you have?
- 14 A. I can't recall.
- 15 Q. You can recall those seven Natural Lights that you
16 said, but you can't recall what you had for dinner; is
17 that right?
- 18 A. (No response.)
- 19 Q. How do you know you had seven Natural Lights that
20 night?
- 21 A. Because I had eight all together.
- 22 Q. You had eight all together where?
- 23 A. In my house.
- 24 Q. Okay. Did Michael drink any Natural Lights that
25 day?

1 A. One.

2 Q. Okay. Did Sommer drink any Natural Lights that
3 day?

4 A. No, not that I know of.

5 Q. Not that you know of. Okay. Do you do drugs?

6 A. No.

7 Q. You never did drugs before?

8 A. I have done them in the past.

9 Q. But you all weren't doing drugs that day, right?

10 A. No.

11 Q. Now, you gave a statement that night to Officer
12 Davis; isn't that correct?

13 A. Yes.

14 Q. The next morning?

15 A. Yes, sir.

16 (Marked for identification was Defendant's Exhibit
17 1, voluntary statement; and Defendant's Exhibit 2,
18 voluntary statement.)

19 By Mr. Rosemond:

20 Q. Mr. McCall, I want to show you what's been marked
21 as Defendant's Number 1 for identification. Can you
22 identify that document right there?

23 A. Yes.

24 Q. What is that document?

25 A. It says "statement."

- 1 Q. Whose statement is it?
- 2 A. Mine.
- 3 Q. And when did you write that statement?
- 4 A. February 16th, 2011.
- 5 Q. Now, who did you give that statement to?
- 6 A. Officer Davis.
- 7 Q. And Officer Davis is with who?
- 8 A. Walhalla Police Department.
- 9 Q. Okay. And is it in your handwriting?
- 10 A. Yes. Some of it is.
- 11 Q. Some of that's your handwriting. Whose handwriting
- 12 is the other part of that statement?
- 13 A. A friend of Sommer's.
- 14 Q. Okay. She wrote part of your statement?
- 15 A. Yeah. When I was writing it, I was kind of in
- 16 shock. And I said, can you finish writing this?
- 17 Because I was pretty shaken up.
- 18 Q. Okay. So you told her what to write in that
- 19 statement; is that right?
- 20 A. Yes.
- 21 Q. Now, was that statement a true -- the statement
- 22 that you are looking at now, was it true what happened
- 23 that night?
- 24 A. Can I read it?
- 25 Q. Certainly.

1 A. (Witness reads statement.) What was the question?

2 Q. Is that statement that you just read true that
3 night?

4 A. Not all of it.

5 Q. So, not all of that's -- not all of what you wrote
6 and what your friend wrote is true in that statement; is
7 that correct?

8 A. Everything I wrote is correct, but there's one
9 thing in here that is not correct, that I kicked him out
10 the door.

11 Q. Okay. So, you didn't kick him out the door?

12 A. No.

13 Q. All right. Did you tell her that you kicked him
14 out the door?

15 A. Yes.

16 Q. Okay. But that's not correct. Is that right?

17 A. No.

18 Q. You gave another statement very shortly thereafter
19 to Ms., Officer Davis. Do you remember that statement?

20 A. Yes.

21 Q. Let me show you what's been marked as Defendant's
22 Number 2 for identification. Can you identify that
23 document?

24 A. Yes.

25 Q. What's that document?

1 A. A statement.

2 Q. A statement of whom?

3 A. Me.

4 Q. Is that your statement?

5 A. Yes.

6 Q. And what date is on that statement?

7 A. February 16th, 2011.

8 Q. Now, is everything in that statement true?

9 A. Can I read it?

10 Q. Certainly.

11 A. (Witness reads statement.) Not all of it's true.

12 The part --

13 Q. Before you tell me the part that's not true. You
14 have two statements in front of you and they are
15 different; isn't that correct?

16 A. Yes.

17 MR. ROSEMOND: Your Honor, we would like to offer,
18 to introduce Defense Exhibits Numbers 1 and 2 into
19 evidence.

20 THE COURT: Any objection.

21 MR. STOUDEMIRE: No objection.

22 THE COURT: All right. Without objection,
23 Defendant's Exhibits Numbers 1 and 2 are admitted.

24 (Defendant's Ex. # 1, voluntary statement of Garry
25 McCall, was received in evidence.)

1 (Defendant's Ex. # 2, voluntary statement of Garry
2 McCall, was received in evidence.)

3 By Mr. Rosemond:

4 Q. You said Exhibit 1 is inaccurate because you didn't
5 kick Mr. Couch out the door; is that right?

6 A. Correct.

7 Q. Now, why would you write that if that wasn't true?

8 A. I was mad at him.

9 Q. You were mad at him. All right. And certainly you
10 put stuff in your statement that wasn't true because you
11 were mad at Michael; is that right?

12 A. No.

13 Q. Well, which is it? You just told me it wasn't true
14 when you put that in there because you were mad at him.
15 But then I just asked you --

16 A. I put in that one thing that I kicked him, but
17 that's not true.

18 Q. Oh, you only put that one thing in there that
19 wasn't true because you were mad at Michael?

20 A. Yes.

21 Q. Okay. Now, the second statement that you gave to
22 Officer Davis, that's Defendant's Exhibit Number 2,
23 whose handwriting is that in?

24 A. Officer Davis.

25 Q. She wrote that statement for you?

1 A. Yes.

2 Q. Why did you have her write that statement for you?

3 A. Because I was, um, I was a little bit tired, and I
4 said, Can you write this so it could be understood?

5 And I wanted it on file for later use.

6 Q. Fair enough. How far did you go in school,

7 Mr. McCall?

8 A. 14 years.

9 Q. Okay. So, you went, got your high school diploma
10 plus two years of college; is that right?

11 A. Yes, sir.

12 Q. And when you gave that statement to Ms., to Officer
13 Davis, you were tired, right?

14 A. Yes.

15 Q. Had your face bandaged; isn't that correct?

16 A. Yes.

17 Q. And you were intoxicated or you had been
18 intoxicated; isn't that right?

19 A. Yes.

20 Q. Now, if we look at Defendant's Exhibit Number 2,
21 the statement that you gave, it has some bad language in
22 it, doesn't it?

23 A. Yes.

24 Q. Now I'm going to ask you to read those first two
25 lines right here.

1 A. In the second one?

2 Q. Yes. In Number 2. In the one that Ms. Davis wrote
3 for you.

4 A. (Reading): At about three a.m. Michael was
5 sleeping with his head in Sommer's lap. He woke up and
6 said, you ain't fucking him.

7 Did you say three?

8 Q. Three. Keep going.

9 A. Read the whole thing?

10 Q. I'll tell you when to stop. Go ahead.

11 A. (Reading): Then punched Sommer several times in
12 the head and in her face, then grabbed her by the hair
13 and drug her on the ground through the living room floor
14 and kicked her.

15 Q. All right. That's good. You saw Michael drag
16 Mrs. [sic] Grant on the floor through the living room
17 all the way to the kitchen?

18 A. No. It was right in front of my recliner.

19 Q. You saw Mr. Couch drag Ms. Grant from right in
20 front of your recliner all the way into the kitchen?

21 A. No.

22 Q. Where did you see Michael Couch drag Sommer Grant
23 to, then?

24 A. From where the couch was to next to the kitchen
25 door but still in the living room.

1 Q. So, he physically drug her by the hair and drug her
2 across the floor all the way to the kitchen door; is
3 that right?

4 A. Yes.

5 Q. He had his hands in her hair and drug her, pulled
6 her across the floor; is that right?

7 A. Yes.

8 Q. Is that your testimony?

9 A. Yes.

10 Q. Did that happen?

11 A. Yes.

12 Q. Are you sure it happened?

13 A. Yes.

14 Q. You saw him do that?

15 A. Yes.

16 Q. What did you say to Michael at that time whenever
17 you saw him do that?

18 A. I told him he can't be doing that in my house.

19 Q. How far is this recliner from the TV stand?

20 A. I'd say six feet.

21 Q. About from me to that rail right there (pointing)?

22 A. Yeah, or closer, yeah.

23 Q. Okay. A little closer?

24 A. About right there.

25 Q. Who was closer to the TV stand, you or Mr. Couch?

- 1 A. Mr. Couch.
- 2 Q. Mr. Couch was closer to the TV stand?
- 3 A. Yes.
- 4 Q. Now, that TV stand, is it close to the kitchen?
- 5 A. No.
- 6 Q. It's not, is it?
- 7 A. No.
- 8 Q. Okay. Now, so when Mr. Couch drug Mrs. [sic] Grant
- 9 by the hair, he didn't have a knife with him then, did
- 10 he, because you would have saw it.
- 11 A. I didn't see it.
- 12 Q. You didn't see it. You didn't see him having the
- 13 knife in his possession when he drug her across the
- 14 floor; isn't that true?
- 15 A. I seen something in his hand when he was kicking
- 16 her, but I, I was like in shock like trying to get away
- 17 from it but --
- 18 Q. Why were you in shock?
- 19 A. Because it was traumatic.
- 20 Q. It was traumatic to you?
- 21 A. Yeah.
- 22 Q. Now, you said Mister -- you allege Mr. Couch
- 23 grabbed that knife and shuck it out, right?
- 24 A. Yes.
- 25 Q. When I think of "shuck it out," what do you mean

1 when you say "shuck it out"? The blade goes into the
2 knife itself?

3 A. I have never heard that.

4 Q. Okay. Would you please pull your statement out
5 that you read and would you read right here?

6 A. (Reading): Michael, you can't be hitting her in my
7 house. Then he grabbed my knife that I had under my TV
8 stand and snuck it out.

9 Q. And snuck it out. S-n-u-c-k. That's not shuck it
10 out, right?

11 A. I don't think so.

12 Q. I'm just asking you. It's your statement. I'm
13 just trying to see. When you say he snuck it out, what
14 do you mean?

15 A. I don't know.

16 Q. You don't really know what you mean when you wrote
17 this statement, do you?

18 A. Yeah, I know what I meant. I was saying that he
19 pulled it out.

20 Q. Okay. Did he sneak it out on you?

21 A. Yeah. 'Cause I, I didn't see it until right when
22 he cut me that I knew for sure that there was a knife.

23 Q. Mr. McCall, you were trying to help Sommer that
24 night, weren't you?

25 A. I could have did more, but he was hitting her bad;

1 and when he started kicking her, I said, You can't be
2 doing that in my house.

3 Q. So, it was okay for him to hit her. He just
4 couldn't kick her in your house. Is that what you're
5 telling me?

6 A. Well, I don't think he should have did any of this.

7 Q. And the way that you were trying to protect
8 Ms. Grant was to get that knife and hope to get Michael
9 to stop; isn't that true?

10 A. No.

11 Q. You were mad at Michael and that's why you grabbed
12 that knife to try to get him to stop; is that right?

13 A. I wasn't mad at him.

14 Q. You just told everybody that you were mad at him.
15 I mean, you were mad at Michael, were you not?

16 A. After he cut me, I was.

17 Q. Okay. And so, you put stuff in your statement that
18 isn't true; isn't that right?

19 A. Yeah.

20 Q. Yeah. You put that stuff in your statement. You
21 said -- number one, it says, I blacked out. You didn't
22 black out, did you?

23 A. I was like in shock after he cut me.

24 Q. Did you lose consciousness?

25 A. No.

1 Q. Okay. So that's a lie in your statement; isn't
2 that right?

3 A. It was kind of like --

4 Q. I didn't ask you that. It's either --

5 THE COURT: Just a moment. He asks a question; you
6 answer the question, but then you can explain your
7 answer. So ask the question.

8 By Mr. Rosemond:

9 Q. You did not black out that night, did you?

10 A. No.

11 THE COURT: You can explain your answer if you want
12 to.

13 THE WITNESS: I was like in shock kind of.

14 By Mr. Rosemond:

15 Q. Have you ever been in shock before?

16 A. No.

17 Q. So, you really don't know what shock feels like, do
18 you?

19 A. Not really.

20 Q. And then the other lie in your statement is, I
21 kicked him in the back.

22 A. Yeah. I don't remember doing that.

23 Q. Okay. That's not true; isn't that right?

24 A. No.

25 Q. And you really tried to stick it to him when you

1 said when you hadn't really told anybody that you had
2 that knife; isn't that right?

3 A. I never had the knife in my hand.

4 Q. It's kind of hard to remember details of that
5 night; isn't that right? Isn't that correct?

6 A. I remember most of it.

7 MR. ROSEMOND: No further questions, Your Honor.

8 THE COURT: Re-exam?

9 MR. STOUDEMIRE: Nothing, Your Honor.

10 THE COURT: All right. You may step down. Thank
11 you.

12 I think this would be a good time to take a lunch
13 break.

14 You can step down, sir.

15 THE WITNESS: Thank you.

16 (Witness leaves stand.)

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 before we do break for lunch, I have received your note.
19 Please excuse the jury no later than 4:30 p.m. if
20 possible. Several jurors have engagements at 6:00
21 outside the County.

22 My policy usually is to end about 5:00, sometimes
23 before five, sometimes after five. The reason for that
24 is I do understand and appreciate very well that we have
25 two lives in this world. One begins early in the

1 morning and goes to 5:00 and then one starts at 5:00 and
2 goes on sometimes forever. But the point is, normally,
3 as you've seen, I don't like to split a witness, in
4 other words, have part of a witness's testimony now and
5 then bring them back the next day or something. So
6 normally I will let the witness finish their testimony,
7 both examination and Cross-Examination.

8 Also, though, realizing that, I don't like to take
9 lengthy witnesses at a point before five that would take
10 them beyond five. So, with your request, we'll try to
11 do, I think I can do that at least by 4:30. So, we
12 might have to break a little bit earlier today to make
13 the 4:30, but we'll be on that side of that today.

14 All right. With that I'll excuse you for lunch.
15 How much time do you need for lunch? It's a quarter to
16 one now.

17 THE FOREMAN: A lot of us really don't need much
18 time at all. We would want to come back as soon as
19 possible.

20 THE COURT: All right. That would be 2:00.

21 THE FOREMAN: 1:30.

22 THE COURT: Excuse me. All right. That would be
23 1:30. It might be a little bit after 1:30. But say
24 1:30?

25 THE FOREMAN: Yes, sir.

1 THE COURT: Again, do not undertake discussion of
2 the case among yourselves in any way or permit anybody
3 else to discuss the case with you. Very good. Thank
4 you.

5 (Whereupon, the jury left the courtroom at
6 approximately 12:50 p.m.)

7 (Court's Ex. # 1, note from jury re adjourning at
8 4:30 p.m., was marked for identification.)

9 THE COURT: All right. Anything from the State
10 before we take a lunch break?

11 MR. STOUDEMIRE: Nothing, Your Honor.

12 THE COURT: From the Defense?

13 MR. ROSEMOND: No, Your Honor.

14 THE COURT: All right. We'll be back at 1:30. And
15 let's do see if we can start at that time.

16 (A luncheon recess occurred.)

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1 AFTERNOON PROCEEDINGS

2 1:38 p.m.

3 THE COURT: Is the State ready to proceed?

4 MR. STOUDEMIRE: We are, Your Honor.

5 THE COURT: Defense?

6 MR. ROSEMOND: Yes, Your Honor.

7 THE COURT: All right. Ask the jury to join us.

8 (The jury entered the courtroom at approximately
9 1:40 p.m.)10 THE COURT: All right. Let the record reflect the
11 jury and alternate are in the jury-box.

12 You may call your next witness.

13 MR. STOUDEMIRE: Thank you, Your Honor. The State
14 would call Officer Matt Patterson.15 (Whereupon, the witness, Matt Patterson, was sworn
16 by the Clerk of Court.)

17 THE CLERK: Please be seated.

18 THE COURT: If you would please, sir, give us your
19 full name for the record.

20 THE WITNESS: Matt Patterson.

21 THE COURT: Thank you, sir.

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1 WHEREUPON,

2 Matthew Patterson,

3 after first having been duly sworn, testified as
4 follows:

5 Direct Examination by Mr. Stoudemire:

6 Q. Officer Patterson, where are you employed?

7 A. Walhalla Police Department.

8 Q. And how long have you been employed with Walhalla
9 PD?

10 A. Approximately two years.

11 Q. Okay. And were you in law enforcement prior to
12 coming to the Walhalla Police Department?

13 A. Yes, sir.

14 Q. Okay. How long total had you been in law
15 enforcement?

16 A. It will be eight years in December.

17 Q. Okay. And have you been to the South Carolina Law
18 Enforcement Academy?

19 A. Yes, sir.

20 Q. And what type of training did you go through down
21 there?

22 A. We go through different types of training from
23 legal training, criminal domestic violence law training,
24 physical training, firearm training, driver training.

25 Q. Okay. And what is your current title with Walhalla

- 1 Police Department?
- 2 A. I am a Sergeant.
- 3 Q. Sergeant?
- 4 A. Right.
- 5 Q. And were you working with the Walhalla Police
- 6 Department on or about the early morning hours of
- 7 February 16th, 2011?
- 8 A. Yes, sir.
- 9 Q. Were you on duty that day?
- 10 A. Yes, sir.
- 11 Q. And were you dispatched out to any scenes of any
- 12 incidents during your hours that day?
- 13 A. Yes, sir.
- 14 Q. At some point were you dispatched out to the area
- 15 of South Laurel Street in Walhalla?
- 16 A. Yes, sir.
- 17 Q. And is South Laurel Street in Walhalla, is that
- 18 within the city limits of Walhalla?
- 19 A. Yes, sir, it is.
- 20 Q. So, that is within the jurisdiction of the Walhalla
- 21 Police Department?
- 22 A. Yes.
- 23 Q. Okay. What time would you have been dispatched out
- 24 there? Do you recall?
- 25 A. It was around 3:30 a.m.

1 Q. Okay. And how were you sent out there?

2 A. The call was received through dispatch that it was
3 a 9-1-1 open line with a verbal altercation going on in
4 the back of their home.

5 Q. Okay. And is that pretty much all the information
6 you had at that point?

7 A. At the time, yes, sir.

8 Q. And, once you got that call, what did you do then?

9 A. I responded to the area, to South Laurel Street, to
10 try to indicate where this was going on.

11 Q. Okay. And were you able to locate where this
12 altercation or 9-1-1 phone call had stemmed from?

13 A. Yes, sir.

14 Q. And how were you able to do that?

15 A. We was patrolling the area of South Laurel Street.
16 We had to hide the patrol car and put the windows down
17 and listen to see if we could hear from the roadway. I
18 did hear the verbal altercation going on at [REDACTED]

19 Q. You could hear the verbal altercation from your
20 vehicle?

21 A. Yes, sir.

22 Q. Okay. Did you have the window down?

23 A. Yes, sir, the windows were down.

24 Q. How far away from the residence would you say you
25 were when you heard this verbal altercation going on?

- 1 A. I was on the roadway, and from my car I could hear
2 it coming from inside the residence.
- 3 Q. Just right out in front of the house?
- 4 A. Yes, sir.
- 5 Q. Okay. And, once you heard that, what did you do at
6 that point?
- 7 A. I pointed to the driveway to go check on the
8 situation and was met outside by a White male.
- 9 Q. Okay. And who were you met by outside?
- 10 A. Mr. McCall.
- 11 Q. And was that the same Mr. McCall that testified
12 earlier today?
- 13 A. Yes, sir.
- 14 Q. Okay. How did he appear to you physically at that
15 point?
- 16 A. He had a lot of blood on his face and his shirt and
17 what looked like to be a laceration on the left side of
18 his face.
- 19 Q. Okay. Did he say anything to you when you
20 approached him?
- 21 A. He said that Couch did it.
- 22 Q. Okay. And were you able to discern where Couch was
23 at that time?
- 24 A. When he made the statement that Couch had cut him,
25 he pointed inside the house.

1 Q. Okay. And what did you do at that point?

2 A. That was when I entered the residence.

3 Q. All right. And, when you went to enter this
4 residence, do you recall what door you entered the
5 residence through?

6 A. I entered the side door.

7 Q. The side door?

8 A. Yes, sir.

9 Q. Okay. I'm gonna show you State's Number 6 real
10 quick. Would the side door be the door over in this
11 area?

12 A. Yes.

13 Q. And when you entered that side door, how did you
14 enter the residence?

15 A. As in?

16 Q. Well, as in did you have your service weapon drawn?

17 A. Yes, sir, I did, because I could hear the
18 altercation going on inside the residence and what
19 appeared to be one victim had already been cut.

20 Q. Okay. Can you describe the sounds that you heard,
21 this altercation?

22 A. I heard a male and a female screaming.

23 Q. Okay. So, fair to say both were fairly loud?

24 A. Yes, sir.

25 Q. Okay. And when you entered the residence through

1 that side door, what room did you enter at that point?

2 A. That's the kitchen area.

3 Q. Okay. And what did you see in the kitchen area?

4 A. Everything was just kind of in disarray, like it
5 had been thrown around. I did see blood on the floor,
6 drops of blood on the floor.

7 Q. Okay. Was anything broken or anything?

8 A. Numerous things were broken. Toward the left side
9 of the kitchen I could see glass on the ground, a coffee
10 pot sitting up on the counter that was busted.

11 Q. Okay. And where did you go from the kitchen?

12 A. In the next room, the living room.

13 Q. Okay. And can you describe what you saw when you
14 entered the living room?

15 A. I saw Ms. Grant sitting on the couch, and I saw the
16 Defendant, Mr. Couch, kind of standing over her, kind of
17 towering over her, pointing his finger, yelling at her.

18 Q. Okay. From your viewpoint was the couch he was
19 sitting on, was that on the left or right or directly in
20 front of you? Where was it located?

21 A. The left side of the room.

22 Q. Okay. And when you say she was sitting on that,
23 how was she seated?

24 A. Kind of on the edge, kind of hunkered down, for
25 lack of better words.

1 Q. Okay. Hunkered down how?

2 A. Kind of slumped over.

3 Q. Okay. So, was her head up, was it down, what?

4 A. I don't recall exactly.

5 Q. Okay. And what did you do when you saw Ms. Grant
6 and Mr. Couch over the top of her?

7 A. I announced my presence.

8 Q. Okay. And how did you announce your presence, do
9 you recall?

10 A. I don't recall exactly what words were said, no.

11 Q. Is it fair to say you made yourself known as a law
12 enforcement officer?

13 A. Yes.

14 Q. Okay. And upon doing that, what happened then?

15 A. At that time Ms. Grant saw me, ran past me to
16 another officer waiting outside in the next room.

17 Q. Okay.

18 A. And Mr. Couch acknowledged that I was there.

19 Q. Okay. How did he acknowledge you were there?

20 A. He turned around and put his hands in the air.

21 Q. Okay. When Ms. Grant was going around you, were
22 you able to notice how she appeared physically at that
23 point?

24 A. Other than lots of blood in her hair and on her
25 face, that would be it.

1 Q. Okay. And how did Mr. Couch appear to you
2 physically at that point?

3 A. I would say normal. Angry, but normal.

4 Q. Angry, but normal?

5 A. Yes, sir.

6 Q. Okay. And, after that, what did you do then?

7 A. After that, Mr. Couch was placed in the handcuffs
8 and I set him down on the couch.

9 Q. Okay. And what did you do after putting handcuffs
10 on Mr. Couch and having him sit down?

11 A. Basically he was just put in investigative
12 detention, he was not under arrest, and I just asked him
13 what was going on.

14 Q. Okay. And did you read him his *Miranda* rights?

15 A. Not at that time, no, sir.

16 Q. Not at that time, okay. Did he give you any sort
17 of a written or verbal statement at that point?

18 A. No, sir.

19 Q. Okay. Okay. And after doing that, what did you do
20 then?

21 A. Mr. Couch was walked outside and placed into a
22 patrol car.

23 Q. Okay. And was he placed into your vehicle?

24 A. Another officer who was on scene.

25 Q. Okay. And was he placed in the front seat or the

1 back seat of that vehicle?

2 A. In the back seat.

3 Q. Okay. Why was he put in that vehicle?

4 A. Because it was equipped with a cage in the back
5 seat.

6 Q. Okay.

7 A. The vehicle I was driving wasn't equipped with a
8 cage.

9 Q. And, when you say a "cage," what do you mean?

10 A. It's a prisoner transport system that's placed in
11 the patrol cars.

12 Q. Okay. And, so when you are referring to a cage,
13 are you referring to that partition that's there between
14 the front seat and the back seat?

15 A. Yes, sir.

16 Q. Okay. And was he handcuffed when he was in that
17 vehicle?

18 A. Yes, sir.

19 Q. Okay. Did he give you any trouble going to the
20 vehicle or anything like that?

21 A. No, sir.

22 Q. Okay. And he didn't resist you in any way getting
23 into the vehicle, did he?

24 A. No, sir.

25 Q. Okay. And, after putting him in this patrol

1 vehicle, putting Mr. Couch in this patrol vehicle, what
2 did you do at that point?

3 A. EMS had been called and they were on the way or had
4 already arrived at the scene.

5 Q. Okay. And so, while you were waiting on them, did
6 you do anything else?

7 A. I talked just briefly with Mr. McCall as to what
8 had happened before EMS arrived.

9 Q. Okay. And at that point was Mr. McCall able to
10 tell you anything about what had happened?

11 A. Basically all he stated again was --

12 MR. ROSEMOND: Objection, Your Honor, hearsay.

13 MR. STOUDEMIRE: Your Honor, I think at this point,
14 shortly after this incident, anything Mr. McCall would
15 have said to the officer is so close in time after this
16 incident occurred that it would be considered an
17 exception under hearsay as an excited utterance.

18 MR. ROSEMOND: He's already put Mr. Couch in the
19 car, he's going back into the house. The reason I
20 didn't object the first time he talked to Mr. McCall was
21 because he was asking him what happened, why was he on
22 the scene. But this is not close in time and is not a
23 hearsay exception in this case.

24 THE COURT: Which one are you using? Present sense
25 impression or excited utterance?

1 MR. STOUDEMIRE: Your Honor, I would use excited
2 utterance. I think it's extremely close in time. I
3 could ask the officer how long after he got there.

4 THE COURT: All right. Let's do this. Let's lay a
5 foundation, please.

6 MR. STOUDEMIRE: Okay.

7 By Mr. Stoudemire:

8 Q. After you arrived on the scene, how long was it
9 before you put Mr. Couch in handcuffs, approximately?

10 A. Two minutes.

11 Q. Okay. And after you put Mr. Couch in handcuffs,
12 how long was it before you put him in the patrol
13 vehicle?

14 A. No more than 30 seconds.

15 Q. All right. And after this two minutes and 30
16 seconds, how long was it before you spoke with
17 Mr. McCall?

18 A. Right after I placed him in the patrol car I walked
19 to him, so maybe 20 seconds.

20 MR. STOUDEMIRE: Your Honor, I think that that does
21 fall within excited utterance. We're talking around
22 less than three minutes from the time he arrived on the
23 scene.

24 THE COURT: I'm going to permit Voir Dire of
25 Mr. Rosemond.

1 Voir Dire Examination by Mr. Rosemond:

2 Q. Sergeant Patterson, after you entered the home, you
3 immediately placed Mr. Couch in investigative detention;
4 is that right?

5 A. Correct.

6 Q. And then you had him sit down on the couch; is that
7 right?

8 A. Correct.

9 Q. But you didn't ask him any questions; is that
10 correct?

11 A. Right.

12 Q. Now, inside the home was Mrs. [sic] Grant, right?

13 A. She I believe had already exited.

14 Q. She had already exited the home.

15 A. Yes.

16 Q. So, the only person inside the home at that time is
17 you and Mr. Couch?

18 A. Right.

19 Q. So, you walked Mr. Couch outside of the residence?

20 A. Correct.

21 Q. And placed him in the patrol car of whom?

22 A. Officer McKee.

23 Q. Then you walked back and you talked to -- did you
24 talk to Ms. Grant or did you talk to Mr. McCall?

25 A. Mr. McCall, I believe.

1 Q. When did you talk to Mrs. [sic] Grant?

2 A. After I talked with Mr. McCall.

3 Q. Okay. Now, you indicated that, you know, it took
4 you two minutes to put him in handcuffs; is that right?

5 A. Approximately.

6 Q. Okay. How was Mr. McCall's demeanor at that
7 particular time?

8 A. He was outside the residence.

9 Q. Okay. He was outside the residence. But was he --
10 how was his demeanor? Was he still under excitement or
11 anything?

12 A. I hadn't spent a whole lot of time with him other
13 than the brief, what happened, and he told me and I left
14 him on the front porch.

15 Q. Was he still excited or was he still, still under
16 the stress of excitement of what had occurred?

17 A. I would say so, yes, sir.

18 Q. Okay. Now, did he talk to you calmly?

19 A. As calmly as he could be. I wouldn't say it was
20 calmly, no.

21 Q. Okay.

22 MR. ROSEMOND: No further questions, Your Honor.

23 THE COURT: Anything further, Mr. Stoudemire?

24 MR. STOUEMIRE: Not on that issue, no, sir.

25 THE COURT: Well, I'm going to find that it is

1 excited utterance or under the old *res gestae* rule.
2 Obviously it's close in time as well as the
3 circumstances, he was under the effect of the offense
4 that he was testifying to at least offering his
5 statements as to it. So I'm gonna overrule your
6 objection.

7 You may answer the question.

8 Restate your question.

9 MR. STOUDEMIRE: Yes, sir, thank you.

10 By Mr. Stoudemire:

11 Q. When you approached Mr. McCall after putting
12 Mr. Couch in the vehicle, what was Mr. McCall able to
13 tell you, if anything, at that point?

14 A. I stated that Couch had cut him.

15 Q. Okay. Did he state how?

16 A. Not at that time, no, sir.

17 Q. Okay. And how long after stating that did EMS
18 arrive?

19 A. I don't know exactly. It was briefly.

20 Q. Okay. And at that point did you start -- well,
21 what did you do after talking with Mr. McCall?

22 A. I spoke with Ms. Grant.

23 Q. Okay. And how long after speaking with Mr. McCall
24 did you speak with Ms. Grant?

25 A. It was directly after I spoke with him.

1 Q. Okay. How did she appear to be physically?

2 A. Very bloody, a lot of blood on her face.

3 Q. Okay. And how about emotionally?

4 A. Very disturbed, upset.

5 Q. Okay. Was she crying?

6 A. Yes, sir.

7 Q. And did she still appear to be under the effects of
8 the incident that you had come in upon?

9 A. Yes.

10 Q. Okay. And so I would ask you then what, if
11 anything, was Ms. Grant able to tell you at that time?

12 A. She stated that Michael Couch had accused her and
13 Mr. McCall of having sex. Then after that, argument
14 ensued between Mr. McCall and Mr. Couch.

15 Q. Okay. Did she say anything that she saw at that
16 point?

17 A. She said that after they got into the altercation
18 she saw Couch grab the knife.

19 Q. Okay. All right. Did she say anything about how
20 she was assaulted at that point?

21 A. At that point she said that Mr. Couch began hitting
22 her on or about her face and head and neck. Said she
23 then went into the kitchen where he grabbed a glass
24 coffee pot on the counter and hit her in the head with
25 it.

- 1 Q. Okay. And after talking with Mr. McCall and
2 Ms. Grant, what did you do at that point?
- 3 A. At that point I went back to the patrol car to
4 immediately leave with Mr. Couch.
- 5 Q. Okay. And again, did Mr. Couch give you any
6 verbal -- did you Mirandize him at that point?
- 7 A. At that time I did read him his *Miranda* rights.
- 8 Q. Okay. And did he waive his *Miranda* rights or give
9 you any sort of a statement at that time?
- 10 A. No, sir. He said he wasn't gonna talk to me.
- 11 Q. Okay. And what did you do then?
- 12 A. At that time EMS was on scene and was transporting
13 the victims to the hospital.
- 14 Q. Okay. While you were out on the scene, did you
15 take photographs of anything there?
- 16 A. Yes, sir.
- 17 Q. Okay. What did you take photographs of while you
18 were out there?
- 19 A. It would have been of the residence, the outside of
20 the residence, the inside of the residence, pictures of
21 the victims.
- 22 Q. Okay. And this photograph, it's State's Number 6,
23 are you the officer that took that photograph?
- 24 A. Yes, sir.
- 25 Q. Okay. And you said you also took photographs of

1 the inside of the residence as well?

2 A. Correct.

3 Q. Okay. And let's try to go through these the best I
4 can. I want to show you a series of photographs.

5 Looking at this, can you tell me what this is a
6 photograph of?

7 THE COURT: What number is that?

8 MR. STOUDEMIRE: I'm sorry. This is State's
9 Exhibit Number 12 marked for identification.

10 THE WITNESS: That's entering the residence from
11 the door to the kitchen area.

12 By Mr. Stoudemire:

13 Q. Okay. And is that the kitchen area we see in this
14 picture?

15 A. Yes, sir.

16 Q. And so, that's the stove there?

17 A. Yes, sir.

18 Q. And what is that? Can you tell in this photograph
19 at all?

20 A. I can't tell.

21 Q. Okay. But you took this photograph, correct?

22 A. Correct.

23 Q. Okay. And did you take that in the early morning
24 hours of February 16th, 2011?

25 A. Yes, sir.

- 1 Q. Okay. And is that a fair and accurate
2 representation of the scene the way it appeared to you
3 at the time this photograph was taken?
- 4 A. Yes, sir.
- 5 Q. Okay. And moving on next to State's Number 13
6 marked for identification, can you tell me what that is?
- 7 A. The same room, the kitchen, standing in the
8 doorway.
- 9 Q. Okay. Just a little further inside the room?
- 10 A. Just a little further, yes.
- 11 Q. Okay. And can you tell what that is at this point?
- 12 A. It looks like a refrigerator.
- 13 Q. Okay. And we've got some small things on the floor
14 here. What is that?
- 15 A. That's drops of blood.
- 16 Q. Or at least what appeared to be blood?
- 17 A. Yes, sir.
- 18 Q. And again, you took that photograph as well?
- 19 A. Yes, sir.
- 20 Q. Okay. And State's Number 14 marked for
21 identification, can you tell me please what that is?
- 22 A. That's glass from the broken coffee pot.
- 23 Q. Okay. And what floor is that on?
- 24 A. It's on the kitchen floor.
- 25 Q. And you took that photograph, as well?

- 1 A. Yes, sir.
- 2 Q. And State's Number 15 marked for identification.
- 3 Can you tell me what that is?
- 4 A. Part of the broken coffee pot on the counter in the
- 5 kitchen.
- 6 Q. And you took that photograph as well?
- 7 A. Yes, sir.
- 8 Q. Okay. And so the kitchen connects with the living
- 9 room; is that correct?
- 10 A. Yes, sir.
- 11 Q. Okay. I'm gonna show you now what's been marked as
- 12 State's Exhibit Number 10. Can you tell me what that
- 13 is?
- 14 A. That's the doorway entering into the living room.
- 15 Q. Okay. So, this wood panelling right here, what
- 16 room is that actually in?
- 17 A. That would be standing in the kitchen.
- 18 Q. Okay. And so this is the doorway on the door from
- 19 the kitchen to the living room?
- 20 A. Yes.
- 21 Q. All right. And did you take this photograph on
- 22 February 16th, 2011?
- 23 A. I did.
- 24 Q. Okay. Okay. And now I'll show you what's been
- 25 marked as State's Exhibit Number 7 for identification.

1 Can you tell me what that is, please?

2 A. That's the living room.

3 Q. Okay. And did you take this photograph as well?

4 THE COURT: What number is that?

5 MR. STOUDEMIRE: I'm sorry. State's Number 7, Your
6 Honor.

7 THE WITNESS: I did.

8 By Mr. Stoudemire:

9 Q. Okay. And did you take this while you were out on
10 the scene that evening on the 16th of February?

11 A. Yes, sir.

12 Q. Okay. And this couch or sofa right here that this
13 pen is pointing at, is that the sofa where you sat
14 Mr. Couch down?

15 A. Yes, sir.

16 Q. Okay. And let's see. And you said you also took
17 photos of the victims as well, correct?

18 A. Yes, sir.

19 Q. Do you remember if you took photos of them inside
20 or outside?

21 A. I don't remember exactly where they were.

22 Q. Okay. You took photos of them out at the residence
23 that night?

24 A. Yes, sir.

25 Q. Okay. I want to show you what's briefly been

1 marked -- or what's been marked as State's Exhibit
2 Number 2 that's already been admitted. Did you take
3 that photograph?

4 A. I did.

5 Q. Okay. And is that Mr. McCall out at the scene that
6 night?

7 A. Yes, sir.

8 Q. Okay. And I'm gonna show you what's been marked as
9 State's Exhibit Number 3 for identification. Can you
10 tell me who is in that photograph?

11 A. That's Ms. Grant.

12 Q. And where was this photograph taken?

13 A. At the residence.

14 Q. Okay. Was this prior to EMS arriving?

15 A. Yes, sir.

16 Q. All right. And was this taken on February 16th,
17 2011?

18 A. Yes, sir.

19 Q. Okay. Does this fairly and accurately depict the
20 way that Sommer Grant looked at the time you were out at
21 the residence before EMS arrived?

22 A. Yes, sir.

23 Q. Has it changed in any way since the time you took
24 this photograph?

25 A. No, sir.

1 Q. Next I show you State's Exhibit Number 4 for
2 identification. Can you tell me who that is in that
3 photograph?

4 A. That's Ms. Grant also.

5 Q. And was that taken at the same time as the previous
6 photograph?

7 A. Yes, sir.

8 Q. Again, does that also appear to be a fair and
9 accurate representation of the way Ms. Grant looked at
10 the time of this incident on February 16, 2011?

11 A. Yes, sir.

12 Q. And has it been changed or altered in any way?

13 A. No, sir.

14 Q. Have any of those pictures been changed or altered
15 in any way since you took those photographs that night?

16 A. No, sir.

17 Q. Do they fairly represent the scene as you found it
18 that evening?

19 A. Yes, sir.

20 MR. STOUDEMIRE: Your Honor, at this time we would
21 move to admit State's Exhibit Numbers 3, 4, 7, 10, 12,
22 13, 14, and 15 into evidence.

23 THE COURT: Any objection?

24 MR. ROSEMOND: No objection, Your Honor.

25 THE COURT: All right. Without objection, State's

1 Exhibits 3, 4, 7, 10, 12, 13, 14, and 15 are admitted
2 into evidence.

3 (Received in evidence were State's Exhibits 3, 4,
4 7, 10, 12, 13, 14, and 15, photographs.)

5 MR. STOUDEMIRE: Thank you, Your Honor.

6 By Mr. Stoudemire:

7 Q. Now, after you took these photographs and
8 photographs of the scene, what did you do after that?

9 A. I went back into the residence just to see what all
10 was there.

11 Q. Okay. And there had been some mention of a knife
12 at this point. Did you find a knife in the residence?

13 A. Yes, sir, I did.

14 Q. Okay. And can you describe the knife you found?

15 A. It was a fixed-blade knife, probably a three,
16 three-inch blade or a four-inch blade, black handle,
17 small heel.

18 Q. I show you what has been admitted as State's
19 Exhibit Number 5. Is this the knife you found in the
20 residence?

21 A. Yes, sir, it is.

22 Q. Okay. And did you, in fact, take this photograph?

23 A. I did.

24 Q. Where did you find that knife in the residence?

25 A. It was found on the coffee table in the living

1 room.

2 Q. Okay. And, so looking back through -- I'm gonna
3 put back up State's Exhibit Number 7 that's been
4 admitted. When you say it was found on the coffee
5 table, is this the table you're talking about?

6 A. Yes, sir, it is.

7 Q. Okay. Were there any other weapons around that you
8 saw at that time?

9 A. No, sir.

10 Q. Okay. Were there any other knives around that you
11 saw at that time?

12 A. No, sir.

13 Q. Okay. And when seeing that knife, did you collect
14 that knife?

15 A. I did.

16 Q. And how did you go about collecting that knife that
17 evening?

18 A. It was -- I collected it with gloves on, took it to
19 my patrol car where it was secured inside my car and
20 locked up.

21 Q. Okay. When you say you were wearing gloves, what
22 type of gloves were you wearing?

23 A. At the time I was probably wearing leather gloves.

24 Q. Okay. And when you collect evidence and what you
25 were taught at the Law Enforcement Academy, how are you

1 supposed to handle evidence like that when you collect
2 them?

3 A. As in -- I'm not following.

4 Q. As in based on your training and experience, how do
5 you normally collect evidence when you handle something
6 like a weapon?

7 A. I always wear gloves so as not to contaminate
8 anything on it. Then it's secured in some way, it's
9 secured that it can't be tampered with.

10 Q. Okay. And when you put it back in your vehicle,
11 how did you secure it in your vehicle?

12 A. The doors were locked to the vehicle.

13 Q. Okay. And were you the only person at the scene
14 that night that had keys to that vehicle?

15 A. I was.

16 Q. Okay. And, when you put it in the vehicle, you
17 said you locked the doors, correct?

18 A. Correct.

19 Q. Okay. And what did you do after that?

20 A. After that, that was when I took the individual
21 photos of all the scene.

22 Q. Okay. And so where was the knife while you were
23 taking the digital photos?

24 A. It was locked in my car.

25 Q. Let me ask you this. After taking the digital

1 photos -- let me ask you this: After you took the
2 digital photos, did you do anything else at the scene
3 before you went back to your patrol vehicle?

4 A. Not that I can recall.

5 Q. Okay. And when you got back to your patrol
6 vehicle, was the knife in the same position as it was
7 when you put it in your patrol vehicle?

8 A. Yes, sir.

9 Q. Okay. Did it appear to have been tampered with,
10 contaminated, or disturbed in any way, shape or form at
11 that time?

12 A. No, sir.

13 Q. Okay. When you got back to your vehicle, were the
14 doors still locked?

15 A. Yes, sir.

16 Q. Okay. Did it appear that anyone had gotten into
17 your vehicle other than you?

18 A. No, sir.

19 Q. And where did you go once you got back to the
20 vehicle with the knife from that point?

21 A. From that point it was taken to the Walhalla Police
22 Department.

23 Q. Okay. And when you took the knife to the Walhalla
24 Police Department, what did you do with it then?

25 A. It was placed into an evidence box and then placed

1 into evidence there at the Police Department and locked
2 up.

3 Q. Okay. When you say locked up, how is it locked up
4 into evidence there?

5 A. We have lockers that have padlocks on them.

6 Q. Okay. And I'm gonna show you what has been marked
7 as State's Exhibit Number 39 for identification.

8 MR. STOUDEMIRE: Your Honor, may I approach the
9 witness?

10 THE COURT: Certainly.

11 MR. STOUDEMIRE: Thank you.

12 By Mr. Stoudemire:

13 Q. Can you identify this box for me?

14 A. This is the evidence box that the knife was placed
15 in.

16 Q. Okay. How do you know that that particular
17 evidence box is the one the knife was placed in?

18 A. From the, the label on it, the descriptions that
19 are written in my handwriting on the box.

20 Q. Okay. And is that your handwriting, in fact, on
21 the box?

22 A. It is.

23 Q. Okay. And does it say anywhere on there as to the
24 date this piece of evidence was collected or the
25 location you collected it from?

- 1 A. It was collected on 2-16-2011.
- 2 Q. Does it say where you collected it from?
- 3 A. Yes, sir. [REDACTED] South Laurel Street in Walhalla,
4 South Carolina.
- 5 Q. And when you put items such as this into evidence
6 are they assigned case numbers or anything like that?
- 7 A. Yes, sir.
- 8 Q. Okay. Was this piece of evidence assigned a case
9 number?
- 10 A. Yes, sir.
- 11 Q. Okay. And what case number was this given?
- 12 A. It's 11 and 000072.
- 13 Q. Okay. And does that case number correspond with
14 anything else in this particular case?
- 15 A. The incident report.
- 16 Q. Okay. And the incident report, that would be the
17 report that you prepared in connection with your duties
18 in this case?
- 19 A. Correct.
- 20 Q. And does that case number, that's a Walhalla Police
21 Department case number, correct?
- 22 A. Right.
- 23 Q. And everything you do on this particular case falls
24 in line with that case number, correct?
- 25 A. Correct.

1 Q. Okay. So, is it fair to say that that case number
2 on the police report that you prepared in this case
3 dealing from this incident and the case number on the
4 box are the same case number?

5 A. Yes, sir.

6 Q. Okay. And this appears to be your handwriting --

7 A. Yes, sir, it is.

8 Q. -- to the best of your knowledge on this box?

9 A. It is.

10 Q. Okay. And again, what did you do with that box
11 once you placed the knife in that box?

12 A. It was locked into an evidence locker.

13 Q. Okay. And you said that locker is secured by a
14 padlock?

15 A. Yes, sir.

16 Q. Did you secure it by padlock at that point?

17 A. Yes, sir.

18 Q. Okay. Can you go ahead and open up that box for
19 me, please, and let's see what's inside.

20 A. (Complies.)

21 Q. Okay. Can you take out whatever's in the box,
22 please?

23 A. (Complies.)

24 Q. Okay. And what are you holding?

25 A. This was the knife that I collected at the scene of

1 the incident.

2 Q. Any doubt in your mind that's the knife you
3 collected from the scene that night?

4 A. No, sir.

5 Q. Thank you. You can go ahead and put it back in the
6 box.

7 MR. STOUDEMIRE: Your Honor, at this time we admit
8 to move State's Exhibit Number 39 into evidence.

9 MR. ROSEMOND: No objection.

10 THE COURT: Without objection State's 39 is
11 admitted.

12 (Received in evidence was State's Exhibit 39,
13 knife.)

14 By Mr. Stoudemire:

15 Q. Officer Patterson, at the time you put that knife
16 into evidence, why did you put it into evidence at that
17 point?

18 A. So it could be secured and processed.

19 Q. And by processed, what do you mean, "processed"?

20 A. For any evidence that may have been on the knife,
21 traces of blood.

22 Q. Fingerprints, blood, anything like that?

23 A. Yes, sir.

24 Q. And after you put that knife into evidence and
25 secured that, where did you go from there?

1 A. From there I went to the hospital --

2 Q. Okay.

3 A. -- to meet with the victims.

4 Q. Okay. And did you take any statements from either
5 of the victims at that point?

6 A. No.

7 Q. What did you do while you were down there?

8 A. Basically I just wanted to speak with them and
9 complete a victims' notification form.

10 Q. Okay. And did you do that while you were down
11 there?

12 A. Yes, sir.

13 Q. And, after doing that, what did you do then?

14 A. They were advised to come back to the Police
15 Department once they were released from the hospital.

16 Q. Okay. And did you accompany them back to the
17 Police Department or were they supposed to do that on
18 their own?

19 A. On their own.

20 Q. On their own. Thank you.

21 And going back to the scene, when you read
22 Mr. Couch his *Miranda* rights, was he placed under arrest
23 at that time?

24 A. Yes, sir.

25 Q. Okay. And placing him under arrest, what was your

1 arrest based on?

2 A. Based on the evidence that was found, the totality
3 of all the circumstances that were there that night.

4 MR. STOUDEMIRE: Okay. Thank you, Officer. Please
5 answer any questions that Mr. Rosemond may have.

6 Cross-Examination by Mr. Rosemond:

7 Q. Sergeant Patterson, you wrote a report that
8 morning?

9 A. Yes.

10 Q. And do you have that in front of you?

11 A. I do.

12 Q. On the first page, under the narrative, the second
13 paragraph, what's that first sentence say?

14 A. (Reading): I then spoke with McCall, who was
15 grossly intoxicated.

16 Q. So, when you talked with McCall that particular
17 morning at his residence, you noticed that he was
18 grossly intoxicated, right?

19 A. Correct.

20 Q. Was he falling down drunk?

21 A. I wouldn't say falling down drunk, no, sir.

22 Q. Okay. But you could smell the alcohol coming from
23 him?

24 A. Right.

25 Q. Now, after you talked with him and he told you that

1 "Couch cut me," what other detail did he provide you
2 about that morning?

3 A. Nothing at that time.

4 Q. Okay. Did you ask him about any other details?

5 A. No, sir.

6 Q. Was he able to provide you with any other details?

7 A. Not at that time.

8 Q. Okay. Your second sentence in that, right after
9 that particular sentence, what does that second sentence
10 say?

11 A. The same paragraph?

12 Q. Same paragraph.

13 A. (Reading): I asked McCall what happened and he
14 stated that Couch cut him for no reason.

15 Q. What's the next sentence?

16 A. (Reading): McCall could not provide any further
17 information at this time.

18 Q. He could not because he was intoxicated?

19 A. Because EMS was coming to transport him.

20 Q. Okay. You arrived that night about what time,
21 3:30?

22 A. Let's see. Time arrived was 3:58 according to the
23 report.

24 Q. Okay. And you saw -- once you got there, you heard
25 a verbal altercation taking place; is that right?

1 A. That's right.

2 Q. And after you talked to Mr. McCall, you entered the
3 residence; is that right?

4 A. Right.

5 Q. And at that time you saw an altercation between
6 Mr. McCall -- I mean Mr. Couch and Ms. Grant and you put
7 Mr. Couch in handcuffs; is that right?

8 A. Correct.

9 Q. Why did you put him in handcuffs?

10 A. Because there's a man on the front porch who's been
11 cut who says that Mr. Couch cut him.

12 Q. Okay. Now, was he free to leave at that time?

13 A. Not at that time, no, sir.

14 Q. You hadn't placed him under arrest at that time,
15 had you?

16 A. No, sir.

17 Q. I think the prosecutor asked you had you Mirandized
18 him at that time?

19 A. Not at that time, no, sir.

20 Q. You talked to Ms. Grant about what occurred after
21 you placed Mr. Couch in the patrol car; is that right?

22 A. Correct.

23 Q. Now, you didn't see Mr. Couch cut Mr. McCall, did
24 you?

25 A. No, sir.

1 Q. You weren't there. Now, did Mr. Couch have any
2 cuts on him?

3 A. Not that I observed, no, sir.

4 Q. Do you recall ever taking photographs of Mr. Couch?

5 A. No, sir.

6 Q. You didn't?

7 A. I did not.

8 Q. Did you find any other alcoholic beverages in the
9 living room that particular day?

10 A. There was a bottle of vodka I believe in one room.

11 Q. What size bottle of vodka was it?

12 A. I don't drink, so I don't know.

13 Q. Was it a big bottle or a small bottle?

14 A. I'd say it was a big bottle.

15 Q. Is that the big bottle of vodka that you are
16 talking about? (Showing picture on screen.)

17 A. Yes, sir, I believe so.

18 Q. And can you tell whether or not it was empty or
19 not?

20 A. I don't recall.

21 Q. Okay. Did you collect it that evening?

22 A. No, sir.

23 Q. Okay. Now, did you talk with my client at all
24 during this investigation after you arrested him?

25 A. After the arrest, no, sir.

1 Q. And the coffee pot that you said you saw in the
2 kitchen, did you show that coffee pot to Ms. Grant?

3 A. I don't believe so, no.

4 Q. So, you don't have any way to know whether or not
5 that was the coffee pot that was used in that
6 altercation, do you?

7 A. No, sir.

8 Q. Now, that knife that was introduced into evidence,
9 Mr. McCall, did he ever admit to you that that was his
10 knife?

11 A. Yes, he did.

12 Q. Did you ever ask Mr. McCall where did the knife
13 come from?

14 A. I didn't ask him where it come from, no, sir.

15 Q. You saw what appeared to be some spots on the floor
16 in the kitchen and in the living room; is that right?

17 A. That's right.

18 Q. Did you collect those, did you collect those
19 specimens?

20 A. No, sir.

21 Q. Do you know if anybody collected those specimens?

22 A. No. Just the photos were taken of them.

23 MR. ROSEMOND: No further questions, Your Honor.

24 THE COURT: Re-exam?

25 MR. STOUDEMIRE: None, Your Honor.

1 THE COURT: All right. You may step down.

2 (Witness leaves stand.)

3 THE COURT: May I see the attorneys?

4 MR. STOUDEMIRE: Yes, sir.

5 (Discussion at sidebar.)

6 THE COURT: All right. You may call your next
7 witness.

8 MR. STOUDEMIRE: Your Honor, we would call Sergeant
9 Patrick Merck.

10 (Whereupon, the witness, Sergeant Patrick Merck,
11 was sworn by the Clerk of Court.)

12 THE CLERK: Please be seated.

13 THE COURT: If you would, sir, please give us your
14 full name for the record.

15 THE WITNESS: It's Patrick Merck.

16 THE COURT: Very good. Thank you, sir.

17 WHEREUPON,

18 Patrick Merck,

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

21 Direct Examination by Mr. Stoudemire:

22 Q. Sergeant Merck, are you employed with the Ocone
23 County Sheriff's Office?

24 A. Yes, sir, I am.

25 Q. And I said Sergeant. Your current rank is

- 1 Sergeant; am I correct?
- 2 A. That's correct.
- 3 Q. What are your current job duties with the Sheriff's
- 4 Office?
- 5 A. My current duties are being assigned with the crime
- 6 scene and evidence unit.
- 7 Q. Okay. And in connection with your duties, did you
- 8 have occasion to collect or be present for collection of
- 9 a blood sample from the Defendant, Michael Couch, in
- 10 this case?
- 11 A. Yes, sir, I did.
- 12 Q. And do you recall when a new blood sample was
- 13 collected?
- 14 A. July the 14th, 2011.
- 15 Q. Okay. And were you present while that was done?
- 16 A. Yes, sir.
- 17 Q. Any question in your mind the blood collected was
- 18 from the Defendant, Michael Couch?
- 19 A. No, sir.
- 20 Q. Okay. And after that blood was collected, what did
- 21 you do, if anything, with that blood?
- 22 A. Just packaged it so that it's preserved in plastic
- 23 to be placed in evidence --
- 24 Q. Okay.
- 25 A. -- in a refrigerated evidence container.

1 Q. Okay. And when you said it's placed in evidence,
2 is that kept in a secure area of the Sheriff's Office?

3 A. Yes, sir, it is.

4 Q. Okay. Does anybody and everybody have access to
5 that?

6 A. No, sir, they do not.

7 Q. Okay. And who does have access to it?

8 A. Just myself and Sergeant David Philpott. We are
9 the only two.

10 Q. And what, if anything, after this blood evidence
11 was collected did you do after -- you said July 14th?

12 A. Yes, sir.

13 Q. Okay. After July 14th, did you do anything with
14 Mr. Couch's blood at that point at any time after?

15 A. The only thing I did was submit it to SLED for
16 analysis.

17 Q. Okay. And when you say submit it to SLED, what do
18 you mean by that?

19 A. Basically transport it to SLED in Columbia and
20 submit it into evidence through their log-in department.

21 Q. Okay. And so, when you took that blood down to
22 SLED, you had to get it out of the area where you had
23 stored it personally, correct?

24 A. Right.

25 Q. Okay. When you took that evidence out to take it

1 down to SLED, did it appear to you to have been tampered
2 with, altered or compromised in any way?

3 A. No, sir, it did not.

4 Q. Okay. And, when you took it to SLED, was it in
5 your possession at any and all times during that trip to
6 Columbia to the SLED office?

7 A. Yes, sir.

8 Q. When you got to SLED, what's the procedure when you
9 take evidence and log it in at SLED?

10 A. It's a fairly simple process. You do the
11 paperwork, pre-log it, take it in to SLED, sign in to go
12 into the log-in area. They review your paperwork, take
13 the item of evidence, check everything, make sure
14 everything is correct. You sign like a signature pad.
15 It's a digital-type signature.

16 Q. Okay.

17 A. And that's basically it. They print out a receipt,
18 you get a copy of it, and that's the process.

19 Q. So, they take the evidence, you get the receipt?

20 A. Correct.

21 Q. Okay. And is that what was done in this particular
22 case?

23 A. Yes, sir, it is.

24 Q. Now, on what date did you take it down to SLED, do
25 you recall?

1 A. July 21st, 2011.

2 Q. And after you took that particular piece of
3 evidence down to SLED, Mr. Couch's blood -- well, how
4 many vials of blood did you take, do you know?

5 A. I took just one.

6 Q. Just one? Okay. After you took that vial of blood
7 down there, did you have any connection with this case
8 other than that?

9 A. Not at this, not at that time, no, sir.

10 Q. Okay. And did you have any contact with that blood
11 at any point after it got down to SLED?

12 A. No, sir, I did not.

13 Q. Okay. So, that was the end of your involvement
14 with regard to this piece of evidence?

15 A. Correct.

16 MR. STOUDEMIRE: Thank you. That's all the
17 questions I would have.

18 THE COURT: Cross-examine.

19 Cross-Examination by Mr. Rosemond:

20 Q. Sergeant Merck, do you do fingerprint analysis?

21 A. On some items, yes, sir.

22 Q. Did you do any fingerprint analysis on the
23 particular knife?

24 A. No, sir, I did not.

25 MR. ROSEMOND: No further questions, Your Honor.

1 THE COURT: Any Redirect?

2 MR. STOUDEMIRE: None, Your Honor. And we would
3 ask that this witness be excused.

4 MR. ROSEMOND: No objection.

5 THE COURT: All right. Without objection you may
6 be excused. Thank you, Sergeant.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness was excused.)

9 THE COURT: I'm going to suggest a short break at
10 this time. Mr. Foreman, ladies and gentlemen of the
11 jury, this is for your benefit, so when you are ready to
12 come back, just knock on the door and we'll reconvene
13 the trial. Again, do not undertake discussion of the
14 case among yourselves in any way.

15 Everyone else remain seated while the jury retires
16 from the courtroom.

17 (Whereupon, the Jury left the courtroom at
18 approximately 2:34 p.m.)

19 THE COURT: Anything from the State?

20 MR. STOUDEMIRE: Nothing, Your Honor.

21 THE COURT: From the Defense?

22 MR. ROSEMOND: No, Your Honor.

23 THE COURT: All right.

24 (A recess was taken.)

25 THE COURT: State ready?

1 MR. STOUDEMIRE: We are, Your Honor.

2 THE COURT: Defense ready?

3 MR. ROSEMOND: Yes, Your Honor.

4 THE COURT: Okay. Ask the jury to join us.

5 (The Jury entered the courtroom at approximately

6 2:44 p.m.)

7 THE COURT: Let the record reflect the jury and
8 alternates are in the jury-box.

9 Mr. Foreman, ladies and gentlemen, we will now
10 proceed with the State's case.

11 You may call your next witness.

12 MR. STOUDEMIRE: Thank you, Your Honor. The State
13 would call Sergeant Sherri Hollifield.

14 (Whereupon, the witness, Sergeant Sherri
15 Hollifield, was sworn by the Clerk of Court.)

16 THE COURT: If you would please, ma'am, give us
17 your full name for the record.

18 THE WITNESS: Sherri Hollifield.

19 THE COURT: Very good. Thank you.

20 MR. STOUDEMIRE: Thank you.

21 WHEREUPON,

22 Sherri Hollifield,

23 after first having been duly sworn, testified as
24 follows:

25 Direct Examination by Mr. Stoudemire:

1 Q. Sergeant Hollifield, go ahead and pull that
2 microphone up. I know you're a little soft-spoken so I
3 want to make sure the jury can hear you.

4 Where are you employed?

5 A. Walhalla Police Department.

6 Q. And how long have you worked for the Walhalla
7 Police Department?

8 A. Approximately two years.

9 Q. Were you in law enforcement prior to working for
10 Walhalla PD?

11 A. Yes.

12 Q. And how long total had you worked in law
13 enforcement?

14 A. Approximately 13 years.

15 Q. Okay. And have you been to the South Carolina Law
16 Enforcement Academy as well?

17 A. Yes.

18 Q. And is it fair to say you are a certified law
19 enforcement officer?

20 A. Yes.

21 Q. What are your job duties with the Walhalla PD?

22 A. I am a patrol sergeant and also evidence.

23 Q. Okay. And would it be fair to say Walhalla is a
24 small department so people have to do multiple jobs?

25 A. That's correct.

1 Q. Okay. And were you currently in charge of evidence
2 on or about February 16th of this year?

3 A. Yes.

4 Q. And are you still in charge of evidence for
5 Walhalla PD?

6 A. Yes.

7 MR. STOUDEMIRE: Your Honor, may I approach the
8 witness?

9 THE COURT: Certainly.

10 By Mr. Stoudemire:

11 Q. I'm gonna show you what has been admitted as
12 State's Exhibit Number 39 -- I don't want to knock over
13 your water. Do you recognize that?

14 A. Yes, I do.

15 Q. And can you tell me what that is?

16 A. It's an evidence box that was a part of the crime
17 scene that contains the knife from the crime scene.

18 Q. Okay. And have you ever personally opened this
19 box?

20 A. No, I have not.

21 Q. Okay. And what is your involvement with this
22 particular piece of evidence in this case?

23 A. With this piece of evidence I removed it out of
24 locker 1 on the date after the incident. It was then
25 placed into the main evidence room. And I submitted it

1 to SLED on June the 1st for processing by them.

2 Q. Okay. And, when you say you took it out of locker
3 1, is that the padlocked locker that Officer Patterson
4 spoke about earlier?

5 A. That's correct.

6 Q. Okay. And, when you took it from that locker, you
7 said you put it in an evidence room; is that correct?

8 A. That's correct.

9 Q. Is that evidence room in a secure area of the
10 Walhalla Police Department?

11 A. Yes, it is.

12 Q. And does everybody have access to this evidence
13 room?

14 A. No, they don't.

15 Q. Okay. So who is allowed to place evidence in that
16 evidence room?

17 A. I am allowed to do that. I have access and the
18 Chief has access but he does not get involved in the
19 evidence collection, the whole processing of it.

20 Q. Let's just say if the Chief had been involved in
21 this particular case with that piece of evidence, would
22 there be some marking on there showing that the Chief
23 was involved in some way?

24 A. Yes.

25 Q. Is there a space for people to log in on that box

1 when they touch that box?

2 A. Yes. Under the chain of possession.

3 Q. Okay. And does the Chief's name appear anywhere on
4 that?

5 A. It does not.

6 Q. Okay. And y'all are the only two people that have
7 access to that room; is that correct?

8 A. That's correct.

9 Q. Okay. Is that room kept locked and secure at all
10 times?

11 A. Yes, it is.

12 Q. Okay. And you said on what date did you take the
13 item from that room down to SLED?

14 A. June the 1st of 2011.

15 Q. June the 1st. And is that marked on that box as
16 well?

17 A. Yes, it is.

18 Q. Okay. And when you took that box from the locker
19 where Officer Patterson placed it and put it in the
20 evidence room and then took it down to SLED, during that
21 time, any and all involvement that you had, did that box
22 appear to have been opened, tampered with, altered or
23 compromised in any way, shape or form?

24 A. No, it did not.

25 Q. Okay. Did it appear to be in the same condition

1 the day you took it to SLED as it was the day you took
2 it out of locker number 1 right after this occurred?

3 A. Yes.

4 Q. Okay. And, when you took it down to SLED, did you
5 take it to the SLED offices down in Columbia?

6 A. I did.

7 Q. And you said you took it down there for processing;
8 is that correct?

9 A. That's correct.

10 Q. What type of processing were you requesting to be
11 done at that point?

12 A. A DNA analysis.

13 Q. A DNA analysis?

14 A. Right.

15 Q. Were you requesting fingerprint analysis as well?

16 A. I believe so. Yes. Yes.

17 Q. Okay. And, when you get down to SLED with a piece
18 of evidence, we've heard Sergeant Merck testify about
19 the log-in procedure. Is the log-in procedure for that
20 piece of evidence similar to what Sergeant Merck
21 testified to earlier?

22 A. Yes.

23 Q. Okay. And were you in the room for his testimony?

24 A. Yes.

25 Q. Okay. So once you take that item down to SLED and

1 you log it in, they give you some sort of an evidence
2 receipt; is that correct?

3 A. That's correct.

4 Q. Okay. And when was the next time you saw that
5 particular box after logging it in to SLED back in June
6 of this year?

7 A. Um, that was Monday morning of this week when I
8 picked it up.

9 Q. Okay. And you picked it up to bring it back to
10 Walhalla for purposes here today?

11 A. That's correct.

12 Q. Okay. Did you have any other involvement with that
13 knife at all?

14 A. No, sir.

15 Q. And did you ever actually physically lay hands on
16 that knife --

17 A. I did not.

18 Q. -- at any time?

19 A. I did not.

20 Q. Okay.

21 MR. STOUDEMIRE: Thank you. That's all the
22 questions I would have. Please answer any that
23 Mr. Rosemond may have for you.

24 MR. ROSEMOND: No questions, Your Honor.

25 THE COURT: Very good. You may step down. Thank

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1 you, ma'am.

2 MR. STOUDEMIRE: Thank you, Your Honor. Next the
3 State would call Melissa Skipper Wallace.

4 (Whereupon, the witness, Melissa Skipper Wallace,
5 was sworn by the Clerk of Court.)

6 THE CLERK: Please be seated.

7 THE COURT: Ma'am, please give us your full name
8 for the record.

9 THE WITNESS: Melissa Skipper Wallace.

10 THE COURT: Thank you, ma'am.

11 You may proceed.

12 MR. STOUDEMIRE: Thank you.

13 WHEREUPON,

14 Melissa Skipper Wallace,
15 after first having been duly sworn, testified as
16 follows:

17 Direct Examination by Mr. Stoudemire:

18 Q. Ms. Wallace, where are you employed?

19 A. I'm employed by the South Carolina Law Enforcement
20 Division, commonly known as SLED.

21 Q. And in what capacity do you work for SLED?

22 A. I am currently assigned to the latent fingerprint
23 processing department.

24 Q. Okay. And how long had you worked in latent prints
25 down there?

1 A. Just over six years.

2 Q. All right. Can you tell us a little bit about your
3 training and experience in latent prints for us, please?

4 A. I have a Bachelor of Science Degree in mathematics
5 from the University of South Carolina. I am a certified
6 law enforcement officer in the State of South Carolina.

7 I've also successfully completed courses in
8 fingerprint ridgeology, advanced palm print comparison
9 techniques, and complex latents. I've also successfully
10 completed the SLED latent crime scene department's
11 two-year in-house training program under qualified
12 senior examiners.

13 Q. Have you ever testified in court before?

14 A. Yes.

15 Q. And approximately how many times have you testified
16 in court?

17 A. (Pauses.) A lot. (Laughter.)

18 Q. Fair enough. During this testimony, have you ever
19 been declared an expert in any particular field?

20 A. I have, in crime scene latent prints, footwear
21 examination, tire print analysis, plus pattern analysis
22 and crime scene reconstruction.

23 Q. Okay. So, that is in a variety of fields?

24 A. Yes.

25 Q. Did you happen to have involvement with SLED case

1 number L 11-06044?

2 A. Yes, sir.

3 Q. Okay. And is that the case that involves
4 Mr. Michael Couch as the subject and Garry McCall and
5 Sommer Grant as the victims?

6 A. If I can refer to my notes?

7 Q. Absolutely.

8 A. (Witness reviews notes.) It is.

9 Q. Okay. What involvement did you have with that
10 particular SLED case?

11 A. I processed a knife that was submitted to our
12 laboratory.

13 Q. Okay. And when this knife comes in to SLED and
14 comes in to the latent print department, how does it
15 come to your department?

16 A. Evidence comes in to our evidence log-in, which is
17 downstairs, they receive evidence for all departments in
18 the forensic laboratory. It then gets separated out by
19 the departments. We have an administrative assistant
20 who retrieves evidence from log-in and they bring it
21 upstairs and put it in an evidence vault for us, at
22 which point we can retrieve cases from there.

23 Q. Okay. And so when this particular piece of
24 evidence -- well, what particular piece of evidence were
25 you asked to examine in this case?

1 A. I was asked to examine a knife.

2 Q. Okay. And you've got State's Exhibit, I believe,
3 number 39 before you. Is that the box that the knife
4 arrived to you in, or was it in a different container
5 when it got to latent prints?

6 A. It was in this box.

7 Q. Okay. So it arrives to you the same way it arrives
8 to SLED, in the same package?

9 A. Um, it depends.

10 Q. Okay.

11 A. In this case it was sealed when we received it with
12 a label for the lab number.

13 Q. Okay. And that would have been done at intake when
14 it was brought in to SLED?

15 A. That's correct.

16 Q. Okay. When you got this particular piece of
17 evidence, did it appear to have been compromised
18 tampered with or altered in any way?

19 A. No. The box was still sealed.

20 Q. Okay. And if it had appeared to be compromised,
21 tampered with or altered in any way, would you have been
22 able to do any analysis on this particular piece of
23 evidence?

24 A. We can. We just make notation that it was not
25 sealed.

1 Q. Okay. And is there any such notation in your notes
2 in this case?

3 A. There is not.

4 Q. All right. And what date did you get this knife to
5 examine?

6 A. I received it on the 2nd of August of this year.

7 Q. Okay. And what analysis were you asked to perform
8 on this particular piece of evidence?

9 A. For our department, if there is a combined DNA and
10 latent fingerprint request, the evidence comes to us and
11 we will collect that DNA evidence for the DNA
12 department. And that's what happened in this case.
13 There was a DNA and latent fingerprint request on the
14 item.

15 Q. Okay. And with regard to the latent print
16 analysis, this is something that you have done a number
17 of times, is that fair to say?

18 A. Yes, sir.

19 Q. And this is also a field where you have been
20 declared an expert before?

21 A. That's correct.

22 Q. Okay. And what about DNA collection, is that
23 something that you would be declared an expert in or
24 have been declared an expert in?

25 A. No, that's not something that we typically are

1 declared an expert in. It's just a collection.

2 Q. Okay. And would part of your training with regard
3 to crime scene evidence collection, would that go
4 towards collecting DNA in this particular case?

5 A. It would.

6 MR. STOUDEMIRE: Your Honor, at this time we would
7 ask that Ms. Wallace be declared an expert in latent
8 prints.

9 THE COURT: Any Voir Dire?

10 MR. ROSEMOND: No Voir Dire, Your Honor. No
11 objection.

12 THE COURT: All right. Without objection the
13 witness is qualified in latent fingerprint investigation
14 or analysis.

15 Mr. Foreman, ladies and gentlemen, normally a
16 witness is not permitted to testify to anything other
17 than what they know of their own knowledge, which means
18 exercise of their own senses, seeing, hearing, touching,
19 things of that nature.

20 However, if a witness is qualified by reason of
21 background, training or experience in a particular area,
22 then that witness, if qualified, will be permitted to
23 give their opinions as to matters in that area, in other
24 words they are called expert witnesses.

25 Now, this witness has been qualified in the area of

1 latent fingerprint analysis. With that she will be
2 permitted to testify as to what her opinion might be.
3 However, do remember all witnesses' testimony, experts
4 or otherwise, is for your evaluation.

5 All right. You may proceed.

6 MR. STOUDEMIRE: Thank you, Your Honor.

7 By Mr. Stoudemire:

8 Q. And so, with regard to this particular knife, what
9 analysis did you perform with regard to it?

10 A. I observed what appeared to be blood on the knife.
11 I collected a sample of it and tested it with a chemical
12 we call Phenolphthalein. It's a presumptive test for
13 blood. The reaction was positive for blood. A sample
14 was submitted to our DNA department.

15 I also processed it for fingerprints. This type of
16 item is what we call a non-porous item, and that means
17 that it doesn't have any pores or openings, things that
18 are not hard surfaces like metal, glass, hard plastics.
19 Porous items being anything like cardboard, paper,
20 things like that.

21 In this particular case I did a visual exam of the
22 item prior to processing, and the visual exam in this
23 case is holding it up and just looking at the item
24 itself using oblique lighting or lighting at an angle.
25 After which I collected the swabs, as I stated before.

1 And then I processed the knife with a process we call,
2 that's called cyanoacrylate or superglue. Superglue if
3 heated up, it becomes a vapor that adheres to the item
4 and helps harden the fingerprints.

5 I then did another visual exam with oblique
6 lighting and then processed it further with black
7 powder, which is just an enhancement technique, and then
8 did another visual exam.

9 Q. Now, first, with regard to what you noticed as
10 blood, where was that located on the particular -- on
11 this knife?

12 A. The swab was collected from the edge of the handle
13 and the hilt area of the knife.

14 Q. Okay. So the edge of the handle and also down low
15 on the hilt were...

16 A. The area where the blade comes in contact with the
17 handle, hilt being in this case the thinner part that
18 prevents slippage of the hand on down to the blade.

19 Q. Okay. And is it fair to say that the hilt is what
20 divides the blade and the handle, it's kind of between
21 the two?

22 A. That is a fairly accurate statement, yes.

23 Q. And so, you did a presumptive test for blood in
24 that particular case, and then when it came out to be
25 blood, you collected a sample for DNA purposes?

1 A. I did.

2 Q. Okay. And with regard to that sample, do you do
3 analysis of that sample in your department?

4 A. No.

5 Q. Okay. Where do you send that for analysis?

6 A. It's sealed up and packaged properly and we take it
7 back downstairs to our evidence lighting department and
8 it gets put into the DNA intake.

9 Q. Okay. So then, so then at that point DNA can get
10 it and they can do analysis of it at that point on that
11 particular sample?

12 A. That's correct.

13 Q. Okay. And with regard to the analysis you did on
14 the knife for fingerprints, what were your conclusions
15 on that?

16 A. There were ridges on the, on the knife, but they
17 were insufficient for any type of identification, which
18 is what we call no value.

19 Q. Okay. And, when you say there were ridges on the
20 knife, do you know where on the knife these ridges were
21 found?

22 A. I didn't, I didn't document where they were.

23 Q. Okay. And is that because they were insufficient
24 for analysis?

25 A. That's correct.

1 Q. What do you mean by it was insufficient for
2 analysis?

3 A. Well, not insufficient for analysis. It's
4 insufficient for identification purposes. Sometimes
5 we'll have ridges that have a certain pattern type where
6 we will be able to eliminate a particular person based
7 upon pattern type alone. However, it's not something
8 that's acceptable to make an identification, however. I
9 mean, that we would definitively say that is a
10 particular person.

11 Q. Okay. And we've all seen these crime scene shows
12 where they talk about a number of points on a
13 fingerprint you need or something of that nature. Is
14 that something you go by --

15 MR. ROSEMOND: Objection, Your Honor relevance.
16 She already said ---

17 THE COURT: Let's just ask her what she uses for
18 identification and then also how, if it does fit into
19 some recognized program for latent fingerprint
20 identification.

21 MR. STOUDEMIRE: Yes, sir.

22 By Mr. Stoudemire:

23 Q. What do you use to try to match up prints that you
24 get off of an item to any known fingerprints that are
25 out there?

1 A. Ridge detail is based on an examiner's training and
2 experience as well as the quality of the print and the
3 amount of detail that is there, and it is in clarity of
4 that detail. We don't use a specific number of points
5 *per se* like you see on a lot of TV shows. But again
6 it's based on the examiner's training and experience.

7 Q. Okay. And is there any program you are able to put
8 these ridge details in to see if there is any known
9 fingerprint out there or anything like that?

10 A. If they fingerprint for any ridge detail that we
11 recover that is identifiable, then it's possible we may
12 be able to enter it into Automated Fingerprint
13 Identification System which is known as AFIS. But it
14 would have to meet standards for AFIS as well.

15 Q. And the bottom line is this particular, any ridge
16 detail you gather on this simply didn't meet the
17 standard you would need?

18 A. That's correct.

19 Q. Okay. Is there any reason why you wouldn't be able
20 to get prints off this particular knife?

21 A. In this case the handle of the knife is grooved and
22 textured. The ability to recover a fingerprint off an
23 item can be based on the texture of that item, which is
24 receiving the fingerprints, as well as things like the
25 environmental factors, hot, cold temperature; as well as

1 the actual surface of the hand.

2 Fingerprints are fragile in nature. They are made
3 up of mostly moisture, sweat, the oils from the face or
4 facial area, so they are easily damaged. And if it's
5 not a smooth, hard surface, it's harder to receive a
6 complete print.

7 Q. Okay. And fair to say the handle in this
8 particular case is not a smooth, hard surface?

9 A. Parts of it are. But it's broken up and it's
10 multi-textured. Parts of it are plastic which are
11 grooved and then parts of it are smooth, hard metal.
12 But once again, it depends on the quality of the
13 fingerprint.

14 MR. STOUDEMIRE: Okay. Thank you. That's all the
15 questions that I would have. Please answer any that
16 Mr. Rosemond may have for you.

17 THE COURT: Cross-exam?

18 MR. ROSEMOND: No questions, Your Honor.

19 THE COURT: All right. You may step down. Thank
20 you very much.

21 Can the witness be excused?

22 MR. STOUDEMIRE: Absolutely, Your Honor.

23 THE COURT: Any objection?

24 MR. ROSEMOND: No objection, Your Honor.

25 THE COURT: Without objection. Thank you very

1 much, ma'am.

2 THE WITNESS: Thank you.

3 (Whereupon, the witness was excused.)

4 THE COURT: Call your next witness.

5 THE WITNESS: Your Honor, we would next call

6 Jennifer Clayton.

7 THE COURT: Thank you, ma'am.

8 (Whereupon, the witness, Jennifer Clayton, was

9 sworn by the Clerk of Court.)

10 THE CLERK: Please be seated.

11 MR. STOUDEMIRE: Thank you.

12 THE COURT: If you would please, ma'am, give us
13 your full name for the record.

14 THE WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

15 THE COURT: Thank you, ma'am.

16 WHEREUPON,

17 Jennifer Clayton,

18 after first having been duly sworn, testified as
19 follows:

20 Direct Examination by Mr. Stoudemire:

21 Q. Ms. Clayton, where are you employed?

22 A. I'm currently employed by the South Carolina Law
23 Enforcement Division, commonly known as SLED, and I work
24 in the DNA analysis department.

25 Q. And how long have you worked in DNA analysis?

1 A. I've been in the department for approximately nine
2 years.

3 Q. All right. And can you tell us a little bit about
4 your training and experience, please?

5 A. I earned a Bachelor of Science in biology from the
6 University of North Carolina, Chapel Hill. I've also
7 taken classes at NC State and U.S.C. My coursework
8 includes molecular biology, genetics, statistics and
9 biochemistry.

10 I've completed an internship with the North
11 Carolina State Bureau of Investigations genetics
12 department, which is the equivalent of SLED's DNA
13 department.

14 When I was originally hired on with SLED, I was
15 hired as a forensic technician in the DNA department. I
16 worked as a forensic technician for two years before
17 becoming a DNA analyst. Once I retired as a DNA
18 analyst, I trained under another qualified analyst and
19 did case work under his supervision before I was allowed
20 to do any case work on my own.

21 Q. And how long have you been doing case work on your
22 own in this field?

23 A. I believe it's been approximately six years.

24 Q. Okay. And have you ever been declared an expert in
25 any field in a court of law in this state or any other?

1 A. Yes, I have.

2 Q. Okay. And in what field were you declared an
3 expert in?

4 A. In DNA, and -- forensic DNA and forensic serology.

5 MR. STOUDEMIRE: Your Honor, at this time we would
6 ask that the witness be declared an expert in the field
7 of DNA and forensic serology.

8 THE COURT: Any Voir Dire?

9 MR. ROSEMOND: No Voir Dire, Your Honor.

10 THE COURT: Any objection?

11 MR. ROSEMOND: No objection.

12 THE COURT: Without objection the witness will be
13 qualified as an expert in forensic DNA and forensic
14 serology.

15 Again, as I've said with the other witness, the
16 witness is qualified as an expert and then they will be
17 able to give their opinion as to testimony or as to
18 evidence they found. However, all witnesses' testimony,
19 expert or otherwise, is for your evaluation.

20 You may proceed.

21 MR. STOUDEMIRE: Thank you, Your Honor.

22 By Mr. Stoudemire:

23 Q. Ms. Clayton, were you involved in analysis of any
24 evidence with regard to SLED lab number L 11-06044?

25 A. Yes, I was.

1 Q. Okay. And again, is that the case involving
2 Michael Couch as the subject and Sommer Grant and Garry
3 McCall as the alleged victims?

4 A. May I refer to my notes?

5 Q. Yes, please.

6 A. Yes, sir, it is.

7 Q. Okay. We heard earlier from Ms. Wallace that she
8 had a blood sample from a knife in this particular case.
9 Were you present for that testimony?

10 A. Yes, I was.

11 Q. And that swab was then taken and essentially put in
12 the hopper, so to speak, for analysis in your
13 department; is that correct?

14 A. That's correct.

15 Q. Okay. When did that particular item of evidence
16 come to your department?

17 A. I took that item into my custody on August 12th of
18 this year.

19 Q. Okay. And were you able to examine that particular
20 swab to any known DNA samples that SLED had at that
21 time?

22 A. Yes, I was.

23 Q. Okay. And were you able to examine that with
24 regard to a known sample from the subject, Michael
25 Couch?

1 A. Yes, I was.

2 Q. And is that the same SLED sample that was taken
3 down to SLED by Sergeant Patrick Merck at the Oconee
4 County Sheriff's Office?

5 A. You said Patrick Merck?

6 Q. Yes.

7 A. Yes.

8 Q. And, when these samples arrived in your department,
9 did they appear to have been compromised, tampered with
10 or altered in any way, shape or form?

11 A. No, sir. They, when these samples arrived, a
12 portion of the blood sample was poured on a sterile
13 paper by a forensic technician to stabilize the DNA.
14 The DNA is stable for a longer period of time in a dry
15 form than in a liquid form. But the sample was not
16 altered in any way.

17 Q. Okay. And if the sample had arrived to your
18 department altered or compromised, would you have been
19 able to perform any analysis on these particular
20 samples -- or these samples?

21 A. If there was doubt as to the integrity of the
22 sample, no, it would be necessary to collect another
23 sample.

24 Q. Okay. And based on your training and experience
25 and your involvement in this particular case, was there

1 any doubt in your mind as to the integrity of either the
2 sample that was sent to you from latent prints or the
3 sample of Mr. Couch's blood that was sent to you from
4 the Oconee County Sheriff's Office?

5 A. No, sir.

6 Q. Okay. And what analysis did you perform with
7 regard to these two samples?

8 A. With regard to the swab that was collected from the
9 knife handle or hilt area of the knife, I first
10 performed a presumptive test for possible presence of
11 blood and then I took that sample to DNA.

12 Once a profile was developed from that sample, I
13 then developed a profile from the standard that was
14 submitted.

15 Q. Okay. And were you able to conclude anything from
16 examination of these samples?

17 A. Yes, sir. On the swab taken from the handle or
18 hilt area of the knife there was blood indicated. When
19 it was taken to DNA, the DNA profile that was developed
20 from item 1 matches the DNA profile of Michael Couch.
21 The probability of randomly selecting a non-related
22 individual having a DNA profile matching this item is
23 approximately 1 in 160 trillion.

24 What that means is if an individual were to go out
25 into the population and select someone at random, the

1 probability that that individual would happen to have a
2 DNA profile matching the beginning profile developed
3 from the swab from the knife is approximately 1 in 160
4 trillion.

5 Q. Okay. So, in laymen's terms, was it Mr. Couch's
6 blood that was recovered from the hilt or handle of this
7 knife?

8 A. Assuming that Mr. Couch does not have an identical
9 sibling, the DNA that was obtained from the item most
10 likely came from Michael Couch.

11 Q. Okay. And when you say "most likely," it's most
12 likely to 1 in 160 trillion?

13 A. Well, 160 trillion is just the possibility that
14 were you to select someone at random they would match
15 that item. It's not actually the probability that it is
16 Michael Couch's.

17 Q. Got you. Okay. All right. But in all likelihood
18 it's Mr. Couch?

19 A. In, statistically speaking that is likely.

20 Q. Okay.

21 A. Assuming he does not have an identical sibling, of
22 course.

23 MR. STOUDEMIRE: Those are all the questions I
24 have. Please answer any that Mr. Rosemond may have for
25 you.

1 MR. ROSEMOND: No questions, Your Honor.

2 THE COURT: All right. May the witness be excused?

3 MR. STOUDEMIRE: Yes, Your Honor.

4 MR. ROSEMOND: No objection.

5 THE COURT: Without objection you may be excused.

6 Thank you very much, ma'am.

7 (Whereupon, the witness was excused.)

8 THE COURT: Got another witness?

9 MR. STOUDEMIRE: Yes, sir.

10 THE COURT: Call your next witness.

11 MR. STOUDEMIRE: Your Honor, we call Lily Davis
12 from Walhalla Police Department.

13 (Whereupon, the witness, Lily Davis, was sworn by
14 the Clerk of Court.)

15 THE CLERK: Please be seated.

16 THE COURT: If you would please, ma'am, give us
17 your full name for the record.

18 THE WITNESS: Lily Mae Davis.

19 THE COURT: Very good. Thank you, ma'am.

20 WHEREUPON,

21 Lily Mae Davis,

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

24 Direct Examination by Mr. Stoudemire:

25 Q. Officer Davis, what's your current -- are you

1 employed with the Walhalla Police Department?

2 A. Yes, sir.

3 Q. Okay. How long have you been employed with them?

4 A. Four years last month.

5 Q. Okay. And have you been to the South Carolina Law
6 Enforcement Academy?

7 A. Yes, sir.

8 Q. And are you today a certified law enforcement
9 officer?

10 A. Yes, sir.

11 Q. What are your current duties and rank?

12 A. I'm just a road officer now, sir. I answer calls
13 and perform traffic stops, that kind of thing.

14 Q. Okay. Do you also collect statements, take
15 photographs?

16 A. Yes, sir. Anything that needs to be done pretty
17 much.

18 Q. Okay. Did you have occasion to be involved in this
19 case that stemmed from an incident in the early morning
20 hours of February 16th, 2011 --

21 A. Yes, sir -- sorry.

22 Q. What was your involvement in that?

23 A. The following day around lunchtime I had to
24 perform, to take some statements and take some photos as
25 follow-up for the incident report.

- 1 Q. Okay. And, well, first, with regard to photos,
2 what photos did you take -- well, who did you take
3 photos of?
- 4 A. Garry McCall and Sommer Grant.
- 5 Q. Okay. And where were these photos taken?
- 6 A. At the Walhalla Police Department in our courtroom.
- 7 Q. Okay. I'm gonna show you some photos if could just
8 look at the screen. I'm gonna show you first what's
9 been marked as State's Exhibit Number 17 for
10 identification. Can you identify that for me?
- 11 A. Yes, sir. That's Sommer Grant.
- 12 Q. Is that one of the photographs you took?
- 13 A. Yes, sir.
- 14 Q. Okay. And you took that on or about sometime on
15 February 16th?
- 16 A. Yes, sir, I did.
- 17 Q. Okay. And, again, this was taken at the Walhalla
18 Police Department?
- 19 A. Yes, sir.
- 20 Q. Okay. And I'm gonna show you next what's been
21 marked as State's Exhibit Number 18 for identification.
22 Can you tell me who that is?
- 23 A. That is Sommer Grant.
- 24 Q. Again, was this photo taken by you at the Walhalla
25 Police Department?

1 A. Yes, sir.

2 Q. And State's Exhibit Number 19, please, tell me who
3 that is.

4 A. That is Sommer Grant.

5 Q. Okay. And, again, was that taken at Walhalla
6 Police Department on or about February 16th, 2011?

7 A. Yes, sir.

8 Q. And again taken by you?

9 A. Yes.

10 Q. And State's Exhibit Number 20. Was this photograph
11 taken by you?

12 A. Yes, sir.

13 Q. Okay. And the same, date, time and place as the
14 other photographs?

15 A. Yes, sir.

16 Q. And State's Exhibit Number 21, can you tell me what
17 that is?

18 A. That is the arm of Sommer Grant, the elbow area.

19 Q. Is that easier to tell it's an elbow?

20 A. Yes, sir.

21 Q. Okay. Was this taken at the Walhalla PD by you as
22 well?

23 A. Yes, sir.

24 Q. And was this taken at the same date and time as the
25 previous photographs?

- 1 A. Yes, sir.
- 2 Q. Okay. Next with regard to State's Exhibit Number
- 3 22, is that Sommer Grant as well?
- 4 A. Yes, sir.
- 5 Q. Okay. And was that taken at Walhalla PD by you?
- 6 A. Yes, sir.
- 7 Q. And again February 16th, 2011?
- 8 A. Yes, sir.
- 9 Q. And State's Exhibit Number 23, was that taken by
- 10 you?
- 11 A. Yes, sir.
- 12 Q. And again, is that Sommer Grant?
- 13 A. Yes, sir.
- 14 Q. Okay. And lastly, State's Exhibit Number 24, was
- 15 that taken by you as well?
- 16 A. Yes, sir.
- 17 Q. Okay. And is that Sommer Grant?
- 18 A. Yes, sir.
- 19 Q. Thank you. And was that taken at the Walhalla
- 20 Police Department on or about February 16th, 2011?
- 21 A. Yes, sir.
- 22 Q. Okay. Do all of these photographs that I've just
- 23 showed you fairly and accurately represent Ms. Grant as
- 24 she appeared on that date up at the Walhalla Police
- 25 Department when you took the photographs?

1 A. Yes, sir.

2 Q. And have they been changed or altered in any way,
3 to the best of your knowledge, since they were taken by
4 you?

5 A. To the best of my knowledge, no, sir.

6 MR. STOUDEMIRE: Your Honor, at this time we would
7 move to admit State's Exhibits Number 17 through State's
8 Exhibit Number 24 into evidence.

9 MR. ROSEMOND: No objection.

10 THE COURT: All right. Without objection, State's
11 Exhibits Numbers 17, 18, 19, 20, 21, 22, 23, and 24 are
12 admitted without objection.

13 MR. ROSEMOND: No objection.

14 MR. STOUDEMIRE: Thank you.

15 (State's Ex. # 17, 18, 19, 20, 21, 22, 23, and 24,
16 photographs of Sommer Grant, were received in
17 evidence.)

18 By Mr. Stoudemire:

19 Q. Officer Davis, when Ms. Grant was up at Walhalla PD
20 that day, did you also have an opportunity to get a
21 written statement from her?

22 A. Yes, I did.

23 Q. Okay. Tell me about how you usually go about
24 getting written statements from witnesses.

25 A. I explain to people, you know, what they're there

1 for, and that even though I'm not the officer that
2 reported to the scene, I'm there to take a written
3 statement from them voluntarily.

4 And I ask them first off are they under the
5 influence of any kind of drug, any kind of alcohol;
6 knowing if they have been to the hospital, did they get
7 prescribed anything. Because if they have, we are
8 taught not to take any statement from them at all.

9 Q. Okay. And, when Ms. Grant appeared to you that
10 day, did you go over those same questions and
11 admonitions with her?

12 A. Yes, sir, it's routine procedure.

13 Q. All right. And based on the answers she gave you,
14 were you able to go ahead and obtain a written statement
15 from her?

16 A. Yes, sir. She said she was not on anything and she
17 doesn't drink any alcohol at all. She was not under the
18 influence of anything.

19 MR. STOUDEMIRE: Your Honor, may I approach the
20 witness?

21 THE COURT: Certainly.

22 By Mr. Stoudemire:

23 Q. I'm gonna show you what has been marked and
24 admitted as State's Exhibit Number 40. Can you tell me
25 what this is? Do you remember that?

1 A. Yes, sir. This is a statement that Sommer Grant
2 wrote for me that day.

3 Q. Okay. And we've got some times at the top. What
4 time was this statement obtained by Walhalla PD?

5 A. 12:45 p.m.

6 Q. Okay. Under it the times of two or three a.m.
7 appear. What are those?

8 A. Sommer Grant was under the impression that because
9 it says time --

10 MR. ROSEMOND: Objection, Your Honor.

11 THE WITNESS: It says time started.

12 THE COURT: Just a moment.

13 Your objection?

14 MR. ROSEMOND: To testify what she was thinking at
15 the time is improper without having heard what Sommer
16 Grant was thinking at the time.

17 MR. STOUDEMIRE: I'll rephrase it.

18 THE COURT: Restate your question.

19 MR. STOUDEMIRE: Yes, sir.

20 THE COURT: All right. Sustained.

21 MR. STOUDEMIRE: Yes, sir.

22 By Mr. Stoudemire:

23 Q. The 12:45 at the top, is that your handwriting or
24 is that someone else's?

25 A. That is my handwriting because it was wrong below

1 it, but we're taught not to alter anybody's statement in
2 any way, shape or form. That way you can't say that I
3 changed her statement. Knowing that was wrong, I wrote
4 the correct time above it.

5 Q. And the 12:45 p.m., what does that indicate? Why
6 did you write that?

7 A. That was the time that she actually started her
8 statement.

9 Q. Okay. And the line down at the bottom that said
10 this statement is completed at 1:11 p.m., is that your
11 handwriting or is that her handwriting?

12 A. That is actually my handwriting.

13 Q. Okay. So she wrote her statement from 12:45 p.m.
14 on February 16th to 1:11 p.m. on February 16th?

15 A. Yes, sir.

16 Q. Okay. And in your training and your experience as
17 a law enforcement officer, have you had the opportunity
18 to deal with people that are intoxicated?

19 A. Yes, I have.

20 Q. And have you had the opportunity to deal with
21 people that were under the influence of drugs and/or
22 alcohol?

23 A. Yes, sir.

24 Q. Okay. Based on your training and your experience,
25 did Ms. Grant appear to be under the influence of drugs

1 or alcohol at the time she came to Walhalla PD and gave
2 you that statement?

3 A. No, sir.

4 MR. STOUDEMIRE: Thank you. That's all the
5 questions I would have.

6 Cross-Examination by Mr. Rosemond:

7 Q. Officer Davis, you also took Mr. McCall's
8 statement; is that right?

9 A. Yes, sir.

10 Q. And that statement was about the same time as
11 Ms. Grant's statement; is that right?

12 A. Yes, sir, they came together.

13 Q. They rode together?

14 A. They showed up together.

15 Q. They showed up together. Okay. Mr. McCall, was he
16 still intoxicated whenever he arrived to give his
17 statement?

18 A. No, sir.

19 Q. Were you able to detect any odor of alcoholic
20 beverage coming from his body?

21 A. No, sir, I could not.

22 Q. He gave you two statements that day; is that right?

23 A. Yes, sir.

24 Q. The first statement he wrote out with the
25 assistance of a person by the name of Jessica; is that

1 right?

2 A. Yes, sir.

3 Q. Why did -- did you have him write out two
4 statements?

5 A. I began his own at first and then he had a friend
6 finish it off for him. After reviewing it, I didn't
7 believe that he grasped the concept that we needed in
8 the statement, and I said, was he having difficulties,
9 and he was. And I said, would he prefer to tell me what
10 happened. And I said he could tell his story and I
11 could write it for him. And he said, yeah, that he'd
12 prefer it that way.

13 Q. You indicated he was having difficulty grasping
14 what you were asking him to do. What gave you that
15 impression?

16 A. He was still very emotional about what happened.
17 He kept making statements about his face and his
18 stitches. If I had a big gash on my face, I would be
19 emotional, too. I could tell that was very much
20 bothering him.

21 Q. So, Ms. Jessica Klingerman (phonetic), was she in
22 the room while he was writing this statement?

23 A. Yes, sir.

24 Q. You allowed her to write the second half of his
25 first statement; is that right?

1 A. Yes, sir.

2 Q. But you had him to write another one to get a
3 better understanding of what happened that night; is
4 that right?

5 A. Yes, sir.

6 Q. Now, did Mrs. [sic] Grant tell you that she was
7 under -- that she had been taking Lortabs?

8 A. No, sir, she did not.

9 Q. Did you ask her that?

10 A. Not specifically Lortabs, but I asked her was she
11 under the influence of any medications or any alcohol;
12 or if she went to a hospital to get checked out, did
13 they give her any kind of medication that would inhibit
14 her mind or prevent her from giving a clear statement.
15 I clearly recall asking her that.

16 Q. What was her answer when you asked her did she
17 receive any medication at the hospital?

18 A. She said no.

19 Q. You asked Mr. McCall the same question?

20 A. Yes, sir.

21 Q. And he responded similar to Ms. Grant?

22 A. Yes, sir.

23 Q. Both of them denied receiving any type of
24 medication at the hospital?

25 A. Yes, sir.

1 MR. ROSEMOND: No further questions, Your Honor.

2 THE COURT: Re-exam?

3 MR. STOUDEMIRE: Just briefly.

4 Redirect Examination by Mr. Stoudemire:

5 Q. Officer Davis, did you ask if they received any
6 medication at all or any medication that would affect
7 their ability to give a statement?

8 A. I asked if they had taken anything, been prescribed
9 anything or had anybody been taking it. I mean, if they
10 have a prescription for something, that's fine; but if
11 they had it in their system, I didn't want them giving
12 any kind of statement.

13 MR. STOUDEMIRE: That's all I have. Thank you.

14 THE COURT: Recross-Examination?

15 MR. ROSEMOND: No, Your Honor.

16 THE COURT: Very good. You may step down.

17 MR. STOUDEMIRE: Your Honor, we would ask that this
18 witness be excused.

19 MR. ROSEMOND: Without objection.

20 THE COURT: Without objection, you may be excused.
21 Thank you, ma'am.

22 (Whereupon, the witness was excused.)

23 MR. STOUDEMIRE: Your Honor, we have no other
24 witnesses to call for today. Our next witness is
25 scheduled for tomorrow morning.

1 THE COURT: All right. How many witnesses do you
2 have tomorrow?

3 MR. STOUDEMIRE: I anticipate just one.

4 THE COURT: All right. Very good.

5 Well, we made the 4:30. Again, I do want to thank
6 you for your patience, but also I want to thank the
7 attorneys for moving the trial through in an efficient
8 fashion.

9 I am gonna ask you to come in at 10:00. I'll have
10 the attorneys come in a little bit before, maybe 9:30,
11 to be sure we have everything out of the way as things
12 will happen and we will have things to come up. But
13 hopefully everything will move smoothly. We'll begin at
14 10:00 and we'll see how it goes from there.

15 Now, again, do not undertake discussion among
16 yourselves or permit anybody from discussing it with
17 you. I was a little bit late this morning because of my
18 problem. However, I do also want to caution you that I
19 notice that we have been receiving some coverage in the
20 media, the newspapers. As I emphasize, you must make
21 your determination based on the testimony and evidence
22 in this courtroom and the exhibits and other evidence
23 also in this courtroom.

24 Please do not read anything in the newspaper, and
25 if you see anything on TV or hear anything on the radio,

1 just disassociate with it, and if you need to, walk out
2 of the room. Because, as I say, I want to be sure that
3 what you do see is appropriate for you to consider in
4 reaching a proper resolution in this case.

5 So, with that I'm going to excuse you and have you
6 back or see you tomorrow morning at 10:00.

7 Everyone else remain seated while the jury retires
8 from the courtroom.

9 (Whereupon, the Jury left the courtroom at
10 approximately 4:30 p.m.)

11 THE COURT: All right. Is there anything from the
12 State?

13 MR. STOUDEMIRE: Nothing, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. ROSEMOND: No, Your Honor.

16 THE COURT: I would like to see the attorneys in
17 chambers.

18 (Discussion off the record.)

19 Court's Instructions to Defendant re: Testifying or Not:

20 THE COURT: There is one thing I need to do.

21 Obviously, we are at the point where we are getting
22 close to the conclusion of the trial. I do need to
23 advise the Defendant of his rights.

24 Mr. Couch, if you would please stand. Raise your
25 right hand.

1 (Whereupon, the Defendant, Michael Couch, was sworn
2 by the Court.)

3 THE COURT: Very good. Thank you, sir.

4 At this time I'm going to explain to you certain of
5 your Constitutional rights. If you do not understand
6 anything I say, please let me know. If you want me to
7 explain anything in more detail, please let me know. Do
8 you understand this?

9 THE DEFENDANT: Yeah.

10 THE COURT: We have reached the stage of trial
11 where you may present your defense. You have the right
12 to claim the protections given to you by the Fifth
13 Amendment to the Constitution of the United States.

14 This Amendment says, in pertinent part (reading):

15 No person shall be compelled in any criminal case
16 to be a witness against themselves. This means that you
17 cannot be required to testify in this case. You have
18 the right to testify in your own behalf; however, no one
19 can make you testify. This is a personal right and no
20 one can waive that right except you.

21 Do you understand this?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you do decide to testify, you will
24 be subject to the same rules that govern other witnesses
25 and you may be examined and cross-examined on any

1 relevant issue in this case.

2 In addition, if you have any convictions involving
3 dishonesty or false statement or crimes punishable by
4 imprisonment over one year, and this Court determines
5 that the probative value of admitting it outweighs any
6 prejudicial effect on you, the Solicitor will be able to
7 use your record to attack your credibility.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you decide to testify, this decision
11 on your part must be freely, voluntarily, knowingly and
12 intelligently made with the knowledge of the provisions
13 of the Fifth Amendment and the consequences of your
14 decision to testify.

15 If you decide not to testify, I will instruct the
16 jurors they cannot give the fact that you did not
17 testify any consideration whatsoever, and there is to be
18 absolutely no prejudice to you because you did not
19 testify.

20 You may talk to your attorney, your family or
21 friends or anyone else, but the final decision will be
22 left up to you.

23 Do you understand this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand what I've explained

1 to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about what
4 I've explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Very good. So, I'll be asking you once
7 the State rests and I decide there's sufficient evidence
8 for this case to go forward, I'll be asking you for your
9 decision whether you want to testify or not.

10 THE DEFENDANT: Yes, sir.

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

12 Anything else from the State?

13 MR. STOUDEMIRE: Nothing, Your Honor.

14 THE COURT: Anything else from the Defense?

15 MR. ROSEMOND: No, Your Honor.

16 THE COURT: After you have had a chance just to
17 talk to him briefly, I would like to see counsel in
18 chambers.

19 MR. STOUDEMIRE: Yes, Your Honor.

20 THE COURT: All right. We'll stand in recess until
21 10:00 in the morning.

22 (Whereupon, the trial adjourned for the day on
23 Tuesday, October 18, 2011, at approximately 3:46
24 p.m., to resume at approximately 10:00 a.m. on
25 Wednesday, October 19, 2011.)

2 **Day 3 of 3**

4 (Whereupon, the Trial of the State of South
5 Carolina v. Michael Lamar Couch resumed at
6 approximately 10:14 a.m., with all parties being
7 present.)

9 THE COURT: Is the State ready?

10 MR. STOUDEMIRE: We are, Your Honor.

11 THE COURT: Is the Defense ready?

12 MR. ROSEMOND: Yes, Your Honor.

13 THE COURT: All right. Very well. Ask the jury to
14 join us, please.

15 (The jury entered the courtroom at approximately
16 10:15 a.m.)

17 THE COURT: All right. Let the record reflect the
18 jury and alternates are in the jury-box.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 we'll now continue with the State's case.

21 Mr. Stoudemire, you may call your next witness.

22 MR. STOUDEMIRE: Thank you, Your Honor, may it
23 please the Court, the State would call Captain Ronald
24 Wilbanks.

25 (Whereupon, the witness, Captain Ronald Wilbanks,

1 was sworn by the Clerk of Court.)

2 THE CLERK: Please be seated.

3 THE COURT: If you would, sir, please state your
4 name for the record.

5 MR. McCALL: Ronald Wilbanks.

6 THE COURT: Thank you, sir.

7 WHEREUPON,

8 Ronald Wilbanks,

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

11 Direct Examination by Mr. Stoudemire:

12 Q. Your current title is Captain; is that correct?

13 A. Yes, sir.

14 Q. Okay. And what are your current duties with the
15 Walhalla Police Department?

16 A. I investigate certain crimes at the Police
17 Department. I assist other officers with their
18 investigations, administrative stuff. Answer calls,
19 various things.

20 Q. Make coffee, whatever needs to be done?

21 A. Yes, sir.

22 Q. And you are a fairly small department, so you all
23 wear a myriad of hats?

24 A. That is correct.

25 Q. Okay. How long have you been in law enforcement

1 total?

2 A. Since 1993.

3 Q. Okay. And you have been to the Criminal Justice
4 Academy and you are a certified law enforcement officer?

5 A. Yes, sir.

6 Q. In the course of your duties with the Walhalla
7 Police Department, do you recall assisting Sergeant
8 Patterson during the course of this investigation
9 regarding this particular case we're here on today?

10 A. I have.

11 Q. What involvement did you have with this case?

12 A. I have went down to the Detention Center and took a
13 statement from the Defendant, Michael Couch.

14 Q. Did you do anything other than take a statement
15 from him?

16 A. I took some photographs as well.

17 Q. Okay. Let me go through the photographs first.

18 I'm gonna show you several that have been premarked and
19 I want to see if you can identify these for me, please,
20 sir.

21 First I'm gonna show you what's been marked as
22 State's Exhibit Number 29 for identification. Can you
23 tell me what that is?

24 A. That is a picture of Michael's index finger where
25 he had an injury of some sort.

- 1 Q. Okay. And that's on the right hand?
- 2 A. Yes, sir.
- 3 Q. Okay. And was this taken down at the jail when you
- 4 were talking to him on this case?
- 5 A. It was.
- 6 Q. And do you recall what date that was?
- 7 A. Not, not right off I don't. The 16th, I think.
- 8 Q. Okay. And does this fairly represent Mr. Couch's
- 9 hand the way it looked that day?
- 10 A. Yes, sir.
- 11 Q. And has it been changed or altered in any way?
- 12 A. No, sir.
- 13 Q. And I'm going to show you next what's been marked
- 14 as State's Exhibit 30 for identification. Can you tell
- 15 me what this photo is of, please, sir?
- 16 A. That is an injury to his knuckle.
- 17 Q. And that's on his left hand, correct?
- 18 A. It is.
- 19 Q. Was that taken the same time as the other photo?
- 20 A. Yes, sir.
- 21 Q. All right. And again, State's Exhibit Number 31
- 22 for identification -- let's see if that helps at all.
- 23 Not much. Is that another photo of his left hand?
- 24 A. Yes, sir.
- 25 Q. Okay. And State's Exhibit Number 32?

- 1 A. That's a picture of his index finger, right hand.
- 2 Q. Okay. And Number 33 marked for identification?
- 3 A. That's a cut, scratch off of his right arm.
- 4 Q. Okay. And I believe State's Number -- excuse me.
- 5 I got my stuff out of order a little bit.
- 6 State's Exhibit Number 34?
- 7 A. It's the same thing. It's the cut from the right
- 8 arm, or scratch.
- 9 Q. Just a little bit closer up?
- 10 A. Yes, sir.
- 11 Q. All right. And State's Exhibit Number 35 marked
- 12 for identification, can you tell me what that is?
- 13 A. An injury to his right shin there.
- 14 Q. Okay. And was this taken down at the jail as well?
- 15 A. Yes, sir.
- 16 Q. And again, State's Exhibit Number 36?
- 17 A. The same.
- 18 Q. The same thing, just a little closer?
- 19 A. Yes, sir.
- 20 Q. Okay. And lastly, State's Exhibit Number 38?
- 21 A. It's an injury to his right leg.
- 22 Q. Okay. And that was covered up by a Band-Aid?
- 23 A. Yes, sir.
- 24 Q. All right. Now, of the photographs that I showed
- 25 you, were all of those taken on the same date, on or

1 about February 16th, 2011?

2 A. They were.

3 Q. And are all of those photos of the Defendant in
4 this case, Michael Couch?

5 A. They are.

6 Q. And you took all those photos; is that correct?

7 A. I did.

8 Q. Okay. And do all of those photos fairly and
9 accurately represent the way that Mr. Couch appeared at
10 that time and at the Law Enforcement Center when you
11 took those pictures?

12 A. Yes, sir.

13 Q. Okay. Have any of these photographs been changed
14 or altered in any way since you took them?

15 A. No.

16 MR. STOUDEMIRE: Your Honor, at this time the State
17 would move to introduce State's Exhibits 29, 30, 31, 32,
18 33, 34, 35, 36, and 38.

19 THE COURT: Any objection.

20 MR. ROSEMOND: No objection, Your Honor.

21 THE COURT: Without objection, State's Exhibits
22 Numbers 29, 30, 31, 32, 33, 34, 35, 36 and 38 are
23 admitted.

24 MR. STOUDEMIRE: Thank you, Your Honor.

25 (Received in evidence were State's Exhibits 29, 30,

1 31, 32, 33, 34, 35, 36 and 38, photographs of the
2 Defendant's injuries.)

3 By Mr. Stoudemire:

4 Q. Sergeant Wilbanks, you said you also took a
5 statement from Mr. Couch?

6 A. I did.

7 Q. Okay. Was that statement memorialized in writing?

8 A. Yes.

9 Q. Okay. Who wrote it? Did you write it for him or
10 he write it himself?

11 A. He wrote it.

12 Q. Okay. Did you tell him what to say in that
13 statement?

14 A. No.

15 Q. Okay.

16 A. Just his side of the story, if he wanted to tell me
17 anything about what happened, and that's what he did, he
18 wrote it down on paper.

19 Q. Okay. And what was the basic content of that
20 statement?

21 A. Basically he, the best of my memory, without having
22 it in front of me --

23 MR. ROSEMOND: Objection, Your Honor. No need for
24 him to speculate as to what he said if he has the
25 statement.

1 MR. STOUDEMIRE: And, Judge, I was just about to
2 approach with the statement and refresh his memory with
3 the statement.

4 THE COURT: All right. Very well.

5 (Mr. Stoudemire hands statement to witness.)

6 THE WITNESS: Would you like me to read the
7 statement, or you just want to give me a --

8 By Mr. Stoudemire:

9 Q. You can go ahead and read it.

10 A. Okay. In his statement he wrote, went to sleep
11 around 12 midnight, woke up around three to go to the
12 bathroom and caught Sommer and Bugger kissing. I yelled
13 at Bugger, turned, surprised, and pulled his knife and
14 told me that he would hurt me if I tried anything.
15 Well, he came at me with a knife and cut me in two
16 places and kicked me. It happened so fast, I didn't
17 have time to call the law. I got the knife out of his
18 hands while we were tussling. He was cut on his cheek.
19 I acted in self-defense and was not trying to kill this
20 man.

21 Sommer was not cut by a knife. She jumped on my
22 back while me and Bugger was fighting, and she did get
23 struck. I was woke up out of my sleep and saw them
24 kissing. I, I believe that says reacted, out of
25 self-defense towards Bugger McCall because he pulled a

1 knife on me first and used it.

2 Q. Okay. Fair to say he just claimed self-defense?

3 A. Yes, sir.

4 Q. Okay. Did you ask him any other questions after he
5 wrote that statement?

6 A. No. I asked him if that's all he had to say about
7 the incidents. He indicated yes. And I asked him no
8 more questions.

9 Q. Okay. And that concluded the interview?

10 A. Yeah, it did.

11 Q. And did you have any involvement with this case
12 other than taking those photographs and that statement
13 from Mr. Couch?

14 A. None at all.

15 MR. STOUDEMIRE: Okay. Thank you. That's all the
16 questions I would have. Please answer any questions
17 Mr. Rosemond may have.

18 Cross-Examination by Mr. Rosemond:

19 Q. Captain Wilbanks, that statement, is it signed?

20 A. It is.

21 Q. Who is it signed by?

22 A. Down here it says signature of person giving
23 voluntary statement, Michael Couch.

24 Q. And what time did, was on that statement and what
25 date did it occur?

1 A. Let's see. February the 16th, 2011, time started
2 was 2:30 p.m. The statement was completed at 2:43 p.m.

3 Q. Did you watch Michael write that particular
4 statement?

5 A. Yes, sir, I was in the room with him.

6 Q. Was anybody else in the room with you, with you and
7 Michael?

8 A. Not, not that I recall. I think it was just
9 Michael and I.

10 Q. And whose handwriting is that in?

11 A. Michael's.

12 (Defendant's Ex. # 3, statement of Defendant, was
13 marked for identification.)

14 By Mr. Rosemond:

15 Q. Mr. Wilbanks, I show you Defendant's Exhibit 3. Is
16 your signature on that document anywhere?

17 A. Yes, sir, right beside "witness."

18 Q. And you were a witness to that particular document?

19 A. Yes, sir.

20 Q. And there's no question as to who wrote that
21 document, is there?

22 A. No, sir.

23 MR. ROSEMOND: Your Honor, we would like to offer
24 and introduce Defendant's Exhibit 3 into evidence.

25 MR. STOUDEMIRE: No objection, Your Honor.

1 THE COURT: Without objection, Defense Number 3 is
2 admitted.

3 (Defendant's Ex. # 3 was received in evidence.)

4 MR. ROSEMOND: No further questions, Your Honor.

5 MR. STOUDEMIRE: No redirect, Your Honor.

6 THE COURT: You may step down.

7 MR. STOUDEMIRE: We would ask that this witness be
8 excused.

9 MR. ROSEMOND: Without objection.

10 THE COURT: Without objection the witness may be
11 excused. Thank you, sir.

12 (Whereupon, the witness was excused.)

13 THE COURT: You may call your next witness.

14 MR. STOUDEMIRE: Thank you. We would call Dr. Greg
15 Cromer.

16 (Whereupon, the witness, Dr. Gregory Cromer, was
17 sworn by the Clerk of Court.)

18 THE CLERK: Please be seated.

19 THE COURT: All right. If you would please give
20 your full name for the record.

21 MR. McCALL: Gregory Earl Cromer.

22 THE COURT: Thank you, sir.

23

24

25

1 WHEREUPON,

2 Gregory Earl Cromer,

3 after first having been duly sworn, testified as
4 follows:

5 Direct Examination by Mr. Stoudemire:

6 Q. Dr. Cromer, where are you employed?

7 A. With Blue Ridge Emergency Physicians at Oconee
8 Medical Center.

9 Q. Okay. And how long have you worked with them?

10 A. Ten years.

11 Q. And you are a licensed medical doctor, correct?

12 A. Yes. I'm board certified in emergency medicine
13 physician.

14 Q. Can you tell us a little bit about your background,
15 training, and experience, please?

16 A. College at Clemson University --

17 MR. ROSEMOND: Your Honor, we would stipulate that
18 he's qualified as an expert in the field of emergency
19 room care.

20 MR. STOUDEMIRE: Thank you.

21 THE COURT: Is that what you were seeking to do?

22 MR. STOUDEMIRE: That's where I was going.

23 THE COURT: All right. I do find that Gregory Earl
24 Cromer, M.D., is qualified as an expert in emergency
25 room care.

1 Is that the correct field?

2 THE WITNESS: Yes, sir.

3 THE COURT: Very good.

4 And, Mr. Foreman, ladies and gentlemen of the jury,
5 as we found with other experts, again, this witness will
6 be permitted to give his opinion as to matters that are
7 within his area of expertise. However, all witnesses'
8 testimony is for your evaluation.

9 You may proceed.

10 MR. STOUDEMIRE: Thank you, Your Honor.

11 By Mr. Stoudemire:

12 Q. Dr. Cromer, how long have you worked at Oconee
13 Medical Center?

14 A. Ten years.

15 Q. Okay. And you have been in the emergency room that
16 entire time?

17 A. Yes, sir.

18 Q. Okay. And is it fair to say over the course of
19 your ten years in emergency medicine you have had
20 occasion to see a variety of injuries that come through?

21 A. Yes, sir.

22 Q. All right. Were you on duty on February 16th,
23 2011?

24 A. Yes, I was.

25 Q. Okay. And obviously on duty in the emergency room

1 that day?

2 A. Yes, sir.

3 Q. Did you have occasion to treat either of the
4 victims in this case, Sommer McCall -- excuse me --
5 Sommer Grant or Garry McCall?

6 A. I treated both of them.

7 Q. Okay. Do you recall what injuries you treated them
8 for?

9 A. Yes, I do.

10 Q. Okay. Can you tell me first, how did they appear
11 when you first made contact with them at the E.R. that
12 day, or in the early morning hours of February 16th?

13 A. Sommer had extensive bruising around both eyes and
14 her face, had a cut on the left side of her face right
15 next to her eye; was upset that she got hurt, but
16 otherwise seemed clearheaded, speaking normally with no
17 neurologic deficits.

18 He was anxious about having his face cut, but was
19 alert, talking to me, making complete sentences the
20 whole time he was talking with me.

21 Q. First, dealing with Ms. Grant, Sommer, did she
22 appear to be intoxicated either by alcohol or drugs in
23 any way to you?

24 A. Not overtly, no.

25 Q. Okay. And during the course of your duties with

1 the Oconee Medical Center, have you had the occasion to
2 deal with patients that are intoxicated either by
3 alcohol or drugs?

4 A. Yes, on both accounts.

5 Q. Okay. I'm gonna show you first what's been
6 admitted as State's Exhibit Number 20. If you could
7 look at the screen for me on that. Is that Sommer
8 Grant, the victim in this case?

9 A. Yes, it is.

10 Q. Okay. And I notice that we've got -- you said that
11 she had injuries to both eyes and a cut around, a cut
12 under her left eye or near left eye?

13 A. A lot of bruising around both eyes, the right worse
14 than the left. You can see a lot of bruising and
15 swelling. The cut is that little black semicircular
16 mark next to her left eye.

17 Q. And that would be in this area?

18 A. Yes, sir.

19 Q. Based on your training and experience, what would
20 be the most likely cause of the bruising that we see
21 around her eyes in this photograph?

22 A. Being punched in the face.

23 Q. Okay. Did she sustain any injuries to her face
24 other than just the bruises?

25 A. She does have the laceration or the cut on the left

1 side of her face kind of right next to her eye right
2 there.

3 Q. Any injuries to her nose or anything?

4 A. She also had a broken nose and I think that was it.

5 Q. Okay. So a broken nose, a good bit of bruising
6 around both eyes and the cut near the left eye?

7 A. Yes.

8 Q. Did you have to close the left eye with stitches or
9 anything, or...

10 A. The laceration or the cut on the left side of the
11 face had to be closed with stitches.

12 Q. Okay. And approximately how close was that cut to
13 her eye?

14 A. About one centimeter, which is -- an inch is two
15 and a half centimeters, so about 40 percent of an inch.

16 Q. Okay. So less than half an inch away?

17 A. That far about (indicating).

18 Q. Okay. In looking at her wounds and assessing them
19 initially, how did the cut near her eye appear to you?

20 A. Um, what are you asking, exactly?

21 Q. Well, was it jagged, was it clean?

22 A. It was a relatively clean cut in that area. The
23 thing that was most concerning is how close it was to
24 the eye itself. Just whenever you get anything that
25 close, you have potential injury to the eye or the

1 vision in that eye. Hers didn't seem like a straight
2 linear cut.

3 Q. Okay. And with a straight linear cut like that, is
4 that more or less likely to be caused by a weapon of any
5 type?

6 A. She stated to me that she was punched in the face
7 and that she was cut in the face. And you can get cuts
8 from punches but you can also get cuts from knives as
9 well. That seemed a fairly smooth cut.

10 Q. Okay. Would a fairly smooth cut like that be
11 fairly consistent with a cut with a knife?

12 A. Yes, it would.

13 Q. And again, you had to close that wound with some
14 sutures?

15 A. Yes, I did.

16 Q. All right. If that cut near her eye were -- and
17 you said it's approximately one centimeter away from the
18 eye?

19 A. Yes.

20 Q. If we move that cut over that one centimeter into
21 the eye, what's the likely result?

22 A. She would have had a loss in vision permanently.

23 Q. She could have been blinded in one eye?

24 A. The same depth of the cut, if you had moved it
25 over, about a centimeter over, you would have gone

1 through the upper and lower eyelid and through the
2 globe.

3 Q. All right. And based on your training and your
4 experience and your practice as a medical doctor, would
5 you consider the loss of an eye a serious bodily injury?

6 A. Yes, sir.

7 Q. And the potential of that was literally less than a
8 centimeter away in this case?

9 A. Yes, it was.

10 Q. Thank you.

11 Turning next I show you what's been admitted as
12 State's Exhibit Number 25. Is this Mr. McCall that you
13 treated that day?

14 A. Yes, it is.

15 Q. All right. And tell me about what injuries you
16 treated Mr. McCall for.

17 A. He had sustained a large laceration over the left
18 side of his face.

19 Q. Okay. How deep a laceration was this?

20 A. It was a fairly deep laceration. I don't have the
21 exact number of centimeters down, but it was a pretty
22 deep cut.

23 Q. Okay. And I show you, with regard to depth, I show
24 you State's Exhibit Number 2 that's been admitted. Is
25 it more in line with how Mr. McCall appeared when he

1 came in to the E.R.?

2 A. Yes, it is.

3 Q. Okay. And did he have any cuts on his face other
4 than the one that you treated?

5 A. No, he didn't.

6 Q. Okay. So all the blood we see in this picture came
7 from that one cut?

8 A. Yes, it did.

9 Q. Okay. And we see -- it looks to be fairly deep
10 right along this area under his eye. Is it fair to say
11 that that would be the deepest point?

12 A. That was.

13 Q. Okay. Tell us, what part of -- or is there
14 anything significant in that area of the face that can
15 be injured with a cut like this?

16 A. Yeah. There's two things that -- well, there's
17 three big things. One, if you had gone a little bit
18 higher, you would have gone through the eye, which is
19 same loss of eye. Through the area if you go about an
20 inch below where he was, there's the facial nerve which
21 controls the sensation and the motor function to your
22 face. And one of the carotid glands, which is one of
23 the salivary glands in that area, if you move down to
24 actually more into here, actually the carotid and the
25 jugular live right there. So if you actually get three

1 or four inches away into that, you're getting into some
2 of the major blood vessels in the body.

3 Q. Okay. So, if the carotid were hit, what was the
4 likely result with that?

5 A. You would die.

6 Q. What length of time about?

7 A. A minute, minute and a half at most.

8 Q. So depending on where a knife wound hits you in the
9 face, you can go anywhere from blindness to paralysis to
10 death?

11 A. Yes.

12 Q. Okay. And the injuries that you saw on Mr. McCall
13 that day, were they consistent with injuries being
14 caused by a knife?

15 A. Yes, they were.

16 Q. Okay. Any doubt in your mind on that?

17 A. No.

18 Q. All right. And, when Mr. McCall appeared to you,
19 did he appear to be intoxicated either by drugs or
20 alcohol?

21 A. No. I mean, he was upset about having the cut on
22 his face, but he was not overtly intoxicated.

23 Q. Had he been drinking somewhat?

24 A. He did admit to drinking earlier in the day. But,
25 like I said, he wasn't slurring his speech, he wasn't

1 acting grossly intoxicated.

2 Q. Okay. So even if others may have classified it as
3 grossly intoxicated, it's not something you would
4 classify it as?

5 MR. ROSEMOND: Objection, Your Honor. Pitting the
6 witness.

7 THE COURT: Very good. Sustained.

8 MR. STOUDEMIRE: Thank you.

9 By Mr. Stoudemire:

10 Q. Lastly, I'm gonna show you some photos very briefly
11 of the Defendant in this case. I show you what's been
12 admitted as State's Exhibit Number 30. And I know you
13 did not examine Mr. Couch in this case, correct?

14 A. That's correct.

15 Q. Okay. Based on your training and experience, the
16 cut we see on the knuckle, what circumstances do you
17 normally see that type of injury in an E.R.?

18 A. Somebody punching something or hitting something.

19 Q. Does that appear to be a defensive wound to you?

20 A. No.

21 THE COURT: What exhibit was that?

22 MR. STOUDEMIRE: I'm sorry. That was State's 30.

23 THE COURT: Very good.

24 By Mr. Stoudemire:

25 Q. And next, with regard to State's Number 32, do you

1 ever see injuries of this type in the E.R.?

2 A. From the wound itself it looks like a simple
3 laceration or cut on the finger. The, as far as what
4 causes that, that's a sharp-bladed instrument that
5 probably caused that or getting it caught on something.
6 When you are talking about defensive wounds versus
7 offensive wounds, nothing is absolute, but for the most
8 part those people who have defensive wounds by knife
9 usually have cuts on their forearms basically when
10 they're putting their arms up to protect the face. They
11 cross the forearms or cross the back blade of the hands
12 are typically where most of the injuries occur from
13 defensive-type wounds.

14 On the palm aspect of the finger, that's usually
15 you grabbed ahold of something short that did cause
16 that. Like having a knife in your hand and your fingers
17 slipping open and it hit the blade.

18 Q. So, is it fair to say if we have defensive wounds,
19 it's more likely somebody holding their arms up in this
20 fashion?

21 A. Yes.

22 Q. That you would see injuries around here
23 (indicating)?

24 A. When you are talking about a cut there, you have to
25 have your hands kind of like that (demonstrating) to get

1 a defensive wound from a cut going down.

2 Q. Okay.

3 MR. STOUDEMIRE: Thank you, Dr. Cromer, those are
4 all the questions I would have. Please answer any
5 questions Mr. Rosemond may have.

6 THE COURT: Cross-examine?

7 Cross-Examination by Mr. Rosemond:

8 Q. Dr. Cromer, you said you were a graduate of Clemson
9 University; is that right?

10 A. Yes, sir.

11 Q. I take it you are pretty happy the Tigers are
12 undefeated, aren't you?

13 A. Yes, sir.

14 Q. Let's go back to Sommer Grant. You indicated that
15 had the cut been a little closer to the eye, you would
16 have been worried about her losing her vision; is that
17 right?

18 A. That's correct.

19 Q. But, in fact, she didn't lose her vision; is that
20 correct?

21 A. No, she didn't.

22 Q. And, once you assessed the particular injury to her
23 face, you were not as concerned about her losing her
24 vision at that time; is that right?

25 A. Well, the injuries to her face didn't really make

1 me concerned about potential vision loss as much as the,
2 where the cut was.

3 Q. Okay.

4 A. The concern I have whenever somebody has cuts close
5 to vital organs or close to vital parts is most people
6 that are swinging a knife aren't skilled enough to plan
7 an attack and hit one specific inch of space. Most
8 people just swing and what they hit is what they hit.
9 When you start getting into close proximity to vital
10 parts of your body, eyes, throat, face, we're more
11 worried about the slight movement of where your arm or
12 your hand is is the difference between potentially
13 severe injuries versus just something that just needs
14 stitches and sent home.

15 Q. The injury to Mr. McCall, I believe that was a
16 large laceration to his face?

17 A. Yes.

18 Q. And you indicated that there's three major concerns
19 that you would have with someone who appears in the E.R.
20 with that type of injury; is that right?

21 A. Yes.

22 Q. And one of them was the facial nerve that goes
23 right below your cheekbone?

24 A. Yes. It actually exits out about right there and
25 kind of does that with most of the face (demonstrating).

1 Q. Okay. Did Mr. McCall sustain any injury to his
2 facial nerve?

3 A. No, he did not.

4 Q. Now, where is the carotid artery at?

5 A. It runs from behind the ear right behind the jaw,
6 the angle of the jaw straight down the neck.

7 Q. Now, where was Mr. McCall cut at?

8 A. About right here (indicating). So, about three or
9 four centimeters -- or about three to four inches above
10 where the carotid was.

11 Q. So, that cut or that laceration he sustained wasn't
12 near the carotid artery?

13 A. Kind of relatively speaking. But it wasn't in
14 close proximity to where that laceration was gonna
15 injure it.

16 Q. Had he hit the carotid artery, Mr. McCall could
17 have died; is that correct? Legally.

18 A. Pretty much guaranteed.

19 Q. But certainly that laceration was up around his ear
20 to about his nose area; is that right?

21 A. Yes, it is.

22 Q. And certainly, once you saw the location of that
23 laceration, you weren't really concerned about him dying
24 at that time; is that right?

25 A. No, I wasn't.

1 Q. Now, I think the other area that you talked about
2 was him losing, blindness if that cut would have been a
3 little higher?

4 A. Yes, sir.

5 Q. Now, you talked about lacerations to the hands?

6 A. Uh-huh.

7 Q. Let me show you what's been marked as State's
8 Exhibit Number 33.

9 A. Yes.

10 Q. Tell me what you see in that picture on that right
11 arm.

12 A. A scratch on his right upper arm.

13 Q. Okay. Is a scratch the same thing as a laceration
14 to the arm, or a cut?

15 A. Typically with laceration you are talking about
16 cutting through the full thickness of the skin whereas a
17 scratch is just a breaking off of the top layer of the
18 skin.

19 Q. Let me show you what's State's Exhibit Number 34.
20 What is that picture of? Can you tell?

21 A. It looks like the same injury, just a little
22 closer. It looks like a, from what I can tell out of
23 the picture, it looks like a scratch. It doesn't look
24 like anything that I would close with stitches.

25 Q. Now, you have testified to this picture that the

1 State showed you, Number 32?

2 A. Yes.

3 Q. When you start talking about offensive and
4 defensive wounds, you said most of the time you see them
5 on the back of the hands; is that right?

6 A. Typically, most people when they're getting hit or
7 when somebody is coming at their face will curl up their
8 arms and hands like this using the backs of their hands
9 or they kind of put them up like this and get cuts on
10 the blade on the back side of the hands or on the
11 forearms typically. Depending on how you hold your arm
12 depends on where you get cut typically.

13 Q. Interestingly, a few minutes ago you also testified
14 as to perhaps that may be where someone is grabbing a
15 knife; is that right?

16 A. That's true.

17 Q. Does that injury right there look like consistent
18 with someone grabbing a knife?

19 A. Well, that, a laceration on your index finger, one
20 of the -- there's no way I can say a hundred percent
21 sure if that was caused by him grabbing a knife or what
22 that was caused by. With that being said, that would be
23 an atypical spot for a defensive-type wound. Because
24 you would have to have basically your hand laid out like
25 that, and the tip of the blade cut just right there.

1 What it looks like to me when I think of somebody
2 holding a knife and that laceration occurring because
3 they were holding the knife, it would be more indicative
4 of their hand slipping from the handle up on to the
5 blade more than a defensive-type wound.

6 Q. And in terms of, when you say offensive-type wound,
7 what do you mean?

8 A. Actively cutting you or actively cutting somebody
9 or you get injured in the process of trying to do
10 something to somebody.

11 Q. If you are taking a knife away from somebody by
12 grabbing that knife out of their hands, that's not
13 necessarily a defensive wound, is it?

14 A. It's a little bit of semantics. I would still say
15 it was probably defensive because you are trying to keep
16 that person from sticking the knife someplace else.

17 Q. Would that also explain the fact how, by grabbing
18 that knife out of somebody else's hand, how you may get
19 cut on your inner part of your index finger?

20 A. It's possible.

21 MR. ROSEMOND: Thank you, Dr. Cromer.

22 THE WITNESS: You're welcome.

23 MR. ROSEMOND: No further questions, Your Honor.

24 THE COURT: Re-exam?

25 MR. STOUDEMIRE: None, Your Honor. We would ask

1 that this witness be excused.

2 THE COURT: Any objection?

3 MR. ROSEMOND: No objection.

4 THE COURT: All right. Without objection you may
5 step down. Thank you.

6 THE WITNESS: Thank you, Your Honor.

7 (Whereupon, the witness was excused.)

8 THE COURT: All right. You may call your next
9 witness.

10 MR. STOUDEMIRE: Your Honor, the State has no more
11 witnesses. The State would rest.

12 THE COURT: Ladies and gentlemen of the jury, the
13 State has completed its Case-in-Chief and there are some
14 matters we need to take up with the attorneys before we
15 proceed.

16 Now, again, you have not heard the whole case. We
17 have argument of counsel, the charge on the law by the
18 Court before it is finally given to you for your
19 consideration. So, therefore, I'm going to ask you to
20 retire to the jury room while I take up these matters,
21 and once I complete that, I'll ask you to come back.

22 But again, do not undertake the discussion of the
23 case among yourselves in any way. Thank you very much.

24 Everyone else remain seated while the jury retires
25 from the courtroom.

1 (Whereupon, the Jury left the courtroom at
2 approximately 10:52 a.m.)

3 THE COURT: Anything further from the State?

4 MR. STOUDEMIRE: Nothing, Your Honor.

5 THE COURT: From the defense?

6 Motion for Directed Verdict by the Defense:

7 MR. ROSEMOND: Your Honor, just a motion for a
8 directed verdict on the possession of a weapon during
9 the commission of a violent crime, and that is only as
10 to Ms. Sommer Grant. Certainly Ms. Grant did not
11 testify as to Mr. Couch having a knife.

12 Certainly, although Dr. Cromer says that these
13 wounds that she sustained appeared to be from a smooth
14 object, doesn't necessarily mean it was with the knife
15 in question in this particular case. And certainly,
16 Your Honor, we would ask that you direct a verdict for
17 the Defendant in that particular case.

18 THE COURT: All right.

19 Mr. Stoudemire?

20 MR. STOUDEMIRE: If I understand correctly, his
21 motion for directed verdict is only on the possession of
22 a weapon charge?

23 THE COURT: Yes, sir. I think.

24 Is that correct, Mr. Rosemond?

25 MR. ROSEMOND: That's correct, Your Honor.

1 MR. STOUDEMIRE: Judge, the statement that was
2 admitted yesterday, Sommer Grant's statement, Ms. Grant
3 read a portion of that statement aloud, and in her
4 statement it says (reading):

5 No, I'm calling my grandma. Michael Couch said,
6 no, you won't, had picked up a knife, started punching
7 Sommer Grant. Then I went to the kitchen to get away.

8 She says clearly in her statement that he picked up
9 a knife. I think there was mention of a knife by Sommer
10 Grant. Her statement has been admitted into evidence.
11 There are other portions of that statement that the jury
12 would be privy to be able to read that mention a knife
13 and mention him holding a knife and threatening her with
14 that knife.

15 Furthermore, Dr. Cromer did state that her injuries
16 around her eye were consistent with being caused by a
17 knife. I think there is evidence of a knife being
18 present in this case. And in viewing the evidence most
19 favorably in light of the State in this case, I believe
20 there is enough to proceed to the jury on that
21 particular charge.

22 THE COURT: Mr. Rosemond?

23 MR. ROSEMOND: No reply, Your Honor.

24 THE COURT: Well, interesting enough, my notes also
25 reflect as part of reexamination, Ms. Grant said, quote,

1 I said, no, I am calling my grandmom. I went into the
2 kitchen trying to get away. Defendant picking up a
3 knife. Defendant picked up knife, but hit her over the
4 head with a coffee pot.

5 Now, of course, then the doctor's testimony, as
6 Mr. Rosemond noted, was to the effect that there was a
7 fairly smooth and consistent cut consistent with a cut
8 by a knife.

9 Court's Ruling on Defense Motion for Directed Verdict:

10 THE COURT: Under the circumstances of the case the
11 Court is obviously only concerned with the existence or
12 non-existence of evidence, not its weight. If there is
13 any direct or any circumstantial evidence which tends to
14 prove the Defendant's guilt, from which the Defendant's
15 guilt can be fairly and logically deduced, the case must
16 go to the jury and the motion for a directed verdict is
17 denied. Rule 19(a) of criminal procedure.

18 Anything further from the Defense at this time?

19 MR. ROSEMOND: Not at this time, Your Honor.

20 THE COURT: Has the Defendant decided if he wishes
21 to testify or not?

22 MR. ROSEMOND: He has decided that question, Your
23 Honor.

24 Court's questioning of Defendant re Testifying or Not:

25 THE COURT: All right. Mr. Couch, if you would,

1 please. You understand that you are still under oath?
2 I put you under oath yesterday when we were discussing
3 your right not to testify. Do you understand what I
4 explained to you yesterday?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you have any questions about what I
7 did explain to you yesterday?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you discussed with your lawyer
10 whether you should or should not testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you wish to talk with your lawyer
13 any more at this time?

14 THE DEFENDANT: Um...

15 THE COURT: On the question of testifying.

16 THE DEFENDANT: Oh, no, sir.

17 THE COURT: All right. Have you made up your mind
18 as to whether or not you want to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Do you wish to testify in
21 this case?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Is there anything you want
24 to ask the Court about this decision to testify or not
25 to testify?

1. THE DEFENDANT: No, sir.

2 THE COURT: All right. I find that the Defendant
3 freely, voluntarily, knowingly and intelligently waives
4 his right to testify.

5 You may sit down. Thank you, sir.

6 All right, Mr. Rosemond, how many witnesses do you
7 have?

8 MR. ROSEMOND: The Defendant would rest whenever,
9 at that time.

10 THE COURT: Pardon?

11 MR. ROSEMOND: We don't have any witnesses. We
12 would be resting.

13 THE COURT: All right. Let me be sure, now. As I
14 understand it, you have introduced two exhibits into
15 evidence?

16 MR. ROSEMOND: Three, Your Honor.

17 THE COURT: Excuse me. Three exhibits. The point
18 is, though, the Defendant has put up evidence, so the
19 State will have opening and closing and you will have
20 the one argument.

21 MR. ROSEMOND: Yes, Your Honor.

22 THE COURT: All right. You understand that.

23 All right. What I would suggest we do -- first of
24 all, when the jury comes back, I'll recognize you for
25 your case and you will announce that the Defense does

1 rest. I will then instruct the jury that they are not
2 to consider in any way the Defendant's decision to
3 exercise his right to not testify.

4 Are you ready to go forward this morning? I'll
5 give us a break to go over the request for charges this
6 morning and all that. Are you ready to go forward this
7 morning?

8 MR. STOUDEMIRE: Yes, sir.

9 THE COURT: Are you ready, Mr. Rosemond?

10 MR. ROSEMOND: Yes, sir.

11 THE COURT: All right. So, what I will do is,
12 again, I'll recognize you, you will rest, and then I'll
13 ask the jury to take a break and it will probably be
14 some time. So, and then we'll go through the requests
15 for charges and then go to the jury after that.

16 All right. Anything from the State?

17 MR. STOUDEMIRE: Nothing, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. ROSEMOND: I want to make sure, Your Honor.

20 Will we break before closing arguments?

21 THE COURT: Yes. We'll break not only for closings
22 but also I'll take up the request for charges. I would
23 suggest it will probably be at least a half an hour
24 after I send the jury out. If you need longer, let me
25 know.

1 All right. Ask the jury to join us, please.

2 (The Jury entered the courtroom at approximately
3 11:00 a.m.)

4 THE COURT: Let the record reflect the jury and
5 alternate are in the jury-box.

6 Mr. Rosemond, I recognize the Defense.

7 MR. ROSEMOND: The Defense rests in this case, Your
8 Honor.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, that completes all the testimony and evidence in
11 the case.

12 Now, I do need to explain something to you. One,
13 the law does not compel a Defendant in a criminal case
14 to take the witness stand and testify. And no
15 presumption of any guilt may be raised and no inference
16 of any kind may be drawn from the Defendant's decision
17 not to testify.

18 The law never imposes upon a Defendant in a
19 criminal case the burden of calling any witnesses or
20 proceeding with entering evidence or testifying. The
21 burden of proof remains on the State to prove guilt of
22 any charge, as beyond a reasonable doubt as to that
23 charge, and there is no -- the fact that the Defendant
24 exercised his Constitutional rights is not even to be
25 discussed in the jury room during your deliberations.

1 Now, however, it is going to take me a little bit
2 of time to get everything ready for the final stage of
3 the case, which will be the final argument by counsel
4 and then the charge on the law.

5 And I would suggest it's probably gonna take about
6 a half an hour to get everything ready. So I'm going to
7 have to ask you to retire to the jury room. But do take
8 this as your morning break and then we'll go to the jury
9 when we come back. And we hopefully will have the case
10 in your hands before lunch.

11 All right. With that I'm gonna ask you to retire
12 to the jury room, and when I'm ready, I'll call you
13 back. It will probably be about a half an hour.

14 Again, do not undertake discussion of the case
15 among yourselves in any way.

16 Everyone else remain seated while the jury retires
17 from the courtroom.

18 (Whereupon, the Jury left the courtroom at
19 approximately 11:03 a.m.)

20 **THE COURT:** Let's take a few minutes. I think I
21 have your charges, but I need to look at them. We'll
22 take about five minutes and then come back and do the
23 charges; and then once we do that, then I'll give you a
24 break before we start the final argument.

25 (A recess was taken.)

1 THE COURT: All right. Let's go ahead and get the
2 Defendant to do the charges right now.

3 (Whereupon, the Defendant entered the courtroom.)

4 THE COURT: Anything from the State before I begin?

5 MR. STOUDEMIRE: Nothing, Your Honor.

6 THE COURT: From the Defense?

7 MR. ROSEMOND: No, Your Honor.

8 Charge Conference:

9 THE COURT: All right. I've looked at your request
10 for charges. And starting with the State's requests.
11 Your intent request is fine until you get down to a
12 deadly weapon. In 2009 the Supreme Court held that a
13 jury charge instructing that malice may be inferred from
14 the use of a deadly weapon is no longer good law of
15 South Carolina where evidence is presented that would
16 reduce, mitigate, or excuse or justify the homicide.
17 Use of a deadly weapon, implied malice instruction has
18 no place in a murder or assault and battery with intent
19 to kill prosecution where there is evidence that would
20 reduce or mitigate or excuse or justify of the killing
21 of another person. And they overruled all of their
22 cases prior to that time. That is *State v. Belcher*,
23 Supreme Court Opinion No. 26729. So, I will not charge
24 the intent from *Lyles*.

25 I will charge, obviously, the general intent does

1 not require specific intent, and it is obviously
2 determined from the facts.

3 The same thing with malice. I think it is *State v.*
4 *Kelsey*. I don't think that's even the right cite. But
5 *Belcher* does abort, overrule that, so I will charge
6 malice as the first one. Malice is the wrongful intent
7 to injure another with a wicked and depraved spirit.

8 On the Defense requests. The charge number one,
9 self-defense, is pretty much mine. It's a little bit
10 more extensive than I would usually use, but I will
11 charge the request for charge, except on page 5 at the
12 top, evidence of prior difficulty between the Defendant
13 and the victim.

14 Have we had any sort of testimony to that effect?
15 In other words, I just won't charge it. I don't think
16 it's relevant in this case. Mr. Rosemond?

17 MR. ROSEMOND: We haven't had any testimony to
18 that.

19 THE COURT: I thought they were all friends for 13
20 years until all that, until that particular morning.

21 And then at the bottom, I will not charge that if
22 the Defendant was on his own premises or on his own
23 property, he had no duty to retreat.

24 I will charge the second request in that paragraph,
25 the Defendant has no duty to retreat, but by doing so

1 the danger of being killed or serious bodily injury. I
2 will charge that, but not the first sentence -- or the
3 second sentence. Do you understand?

4 MR. ROSEMOND: Yes, Your Honor.

5 THE COURT: Do you understand, Mr. Stoudemire?

6 MR. STOUDEMIRE: Yes, sir.

7 THE COURT: All right. And then your second
8 request, appearances, I think is covered in your first
9 request, the general charge. I'll look at it more
10 carefully. I might put one of the others. But if it's
11 redundant, then I'll charge the general charge which I
12 think has appearances.

13 And then I'll charge the third charge, intentional.

14 All right. Now --

15 MR. ROSEMOND: One question, Your Honor?

16 THE COURT: Yes, sir.

17 MR. ROSEMOND: Under the assault and battery with
18 intent to kill statute it was okay to -- it would be
19 adequate generally tending to establish. You don't have
20 to establish specific intent for assault and battery
21 with intent to kill. But I disagree with attempted
22 murder. I think on attempted murder you have to have
23 that specific intent in attempted murder case. Now, you
24 know, Mr. Stoudemire's first line says it is adequate
25 generally tending to establish but specific intent is

1 not necessary. And I disagree with that, Your Honor.

2 THE COURT: Mr. Stoudemire? I was trying to think.

3 What was *Foust*? Wasn't that assault with intent to
4 kill?

5 MR. STOUDEMIRE: I think that was assault with
6 intent to kill.

7 THE COURT: What would be the difference between
8 assault and battery with intent to kill and murder
9 because the old charge that I don't agree with was that
10 assault and battery with intent to kill is the same as
11 murder except death does not ensue.

12 MR. STOUDEMIRE: Maybe that's why they came up with
13 the attempted murder statute. The only thing, in the
14 attempted murder it says express or implied. Judge,
15 it's up to you on intent. If you want to say specific
16 or general intent, again, that's within the Court's
17 discretion. I think general intent is fine in this case
18 simply because the statute says express or implied. I
19 don't know of anything that's come down on the attempted
20 murder statute saying that you cannot have general
21 intent.

22 THE COURT: Look under *Foust*.

23 MR. ROSEMOND: And the reason for that, Your Honor,
24 is that attempted murder only came about as of June of
25 last year.

1 THE COURT: Well, June of 2010. But this occurred
2 in February of 2011.

3 MR. STOUDEMIRE: Correct.

4 MR. ROSEMOND: Correct. And that's why there's no
5 Appellate Court opinions out there.

6 THE COURT: But it does say either express or
7 implied.

8 (The Court conferred with the law clerk off the
9 record.)

10 THE COURT: All right. While I'm looking at that
11 question, let's look at the verdict forms. If you would
12 come forward, please.

13 (Counsel approach.)

14 All right. Jumping back to Mr. Rosemond's
15 objections to specific intent, *State v. Foust*, it was
16 assault and battery with intent to kill, and the Supreme
17 Court overruled prior cases and held that conviction for
18 assault and battery with intent to kill does not require
19 a showing of specific intent to kill and is sufficient
20 if shown some general intent such as heretofore implied
21 in cases of murder. That's 325 SC 12. So I will charge
22 general intent. Overrule your objection.

23 Now, have you had a chance to consider the verdict
24 form?

25 MR. STOUDEMIRE: Yes, sir.

1 THE COURT: Any suggestions?

2 MR. STOUDEMIRE: Judge, my only exception on the
3 verdict form is assault and battery, third degree.
4 Certainly I think that the statute on assault says that
5 assault and battery third is a lesser-included of
6 attempted murder. However, I just don't feel that based
7 upon the evidence presented in this particular case that
8 a jury could reasonably infer that this incident was
9 that light. If it's that light, it may as well be not
10 guilty.

11 THE COURT: Well, that's their option, too. But
12 the only thing is, as I said on the directed verdict
13 motion, the Court is not concerned with the weight of
14 the evidence but if there was any evidence. And if I
15 remember the evidence of Ms. Grant was that they have
16 fusses like this all the time and it was not something
17 unusual and I think it was something there for the jury
18 to determine whether or not this was just another fuss
19 or if it, in fact, rose to the level of one or the
20 other. So I'm going to deny your motion.

21 MR. STOUDEMIRE: Yes, sir.

22 THE COURT: I'm gonna include it in the charge --
23 in the verdict form.

24 Mr. Rosemond, anything?

25 MR. ROSEMOND: No objection to the form, Your

1 Honor.

2 THE COURT: Have I got the name spelled right,
3 correctly? Because I have Garry McCall spelled as Garry
4 Gean, G-e-a-n, McCall, Junior; and Ms. Grant as Sommer
5 Rae, R-a-e? Is Sommer S-u-m-m-e-r or --

6 MR. STOUDEMIRE: Sommer is S-o and Garry McCall is
7 G-a-r-r-y.

8 THE COURT: So Garry. And then Sommer is
9 S-o-m-m-e-r?

10 MR. STOUDEMIRE: Yes, sir.

11 THE COURT: Any other exceptions?

12 (Counsel confer.)

13 THE COURT: All right. One thing has been
14 mentioned before. But Indictment 2011-GS-37-404 charges
15 solely the possession of a weapon during the commission
16 of a violent crime against Sommer Rae Grant; is that
17 correct?

18 MR. STOUDEMIRE: That's correct.

19 THE COURT: Very good.

20 Madam Clerk, think we'll probably have to order
21 lunch.

22 THE CLERK: I was thinking that we probably will,
23 too.

24 THE COURT: Rather than going to lunch and coming
25 back.

1 THE CLERK: That's totally up to you. That's fine
2 with me.

3 THE COURT: Thank you. Mr. Rosemond, I've got your
4 corrections.

5 (Discussion off the record.)

6 THE COURT: All right. I understand that we are
7 ready to proceed. Anything from the State before we ask
8 the jury to come back?

9 MR. STOUDEMIRE: No, sir.

10 THE COURT: From the Defense?

11 MR. ROSEMOND: No, Your Honor.

12 THE COURT: All right. The state will open, the
13 Defendant will argue, and then the State will close.

14 Is that correct, Mr. Stoudemire?

15 MR. STOUDEMIRE: That's my understanding, Your
16 Honor.

17 THE COURT: Mr. Rosemond?

18 MR. ROSEMOND: Yes, sir.

19 THE COURT: All right. Very good. Ask the jury to
20 join us, please.

21 (The jury entered the courtroom at approximately
22 12:02 p.m.)

23 THE COURT: All right. Let the record reflect the
24 jury and alternates are in the jury-box.

25 Mr. Foreman, ladies and gentlemen of the jury, we

1 will now conclude the trial of this case, which will be
2 first the argument by counsel and then the charge on the
3 law by the court. In the argument by counsel the State,
4 having the burden of proof, will go first, the Defense
5 will argue and then the State will close.

6 MR. STOUDEMIRE: Thank you, Your Honor, may it
7 please the Court?

8 THE COURT: Mr. Stoudemire?

9 Closing Argument on behalf of the State (Law):

10 MR. STOUDEMIRE: Ladies and gentlemen, Mr. Couch is
11 charged, as I said at the beginning of this case, with
12 three indictments that you have to consider. First is
13 the charge of attempted murder.

14 Now, attempted murder under our law deals with the
15 following elements. It says a person who, with intent
16 to kill, attempts to kill another person, with malice
17 aforethought, either expressed or implied. And if that
18 is the case, that person commits the offense of
19 attempted murder.

20 Now, there are many parts to this. The intent to
21 kill, the Judge is going to instruct you on different
22 types of intent, general and specific intent. The Judge
23 will also instruct you on a definition of malice. You
24 will also receive definitions on what constitutes
25 malice.

1 With regard to the second indictment, which
2 involves Sommer Grant, Mr. Couch is charged with
3 criminal domestic violence of a high and aggravated
4 nature. What the State has to prove element wise in
5 this is the following.

6 First, the State -- the law says it is unlawful to
7 cause physical harm or injury to a person's own
8 household member; or offer or attempt to cause physical
9 harm or injury to a person's own household member with
10 apparent present ability under circumstances reasonably
11 creating fear and imminent peril.

12 Now, you will also receive definitions of what a
13 household member is. I would submit to you based on the
14 testimony that you have heard that Sommer Grant and
15 Michael Couch were household members and they do meet
16 the definition of household.

17 Next for that criminal domestic violence to be
18 considered high and aggravated, it must have been an
19 assault and battery which either involved the use of a
20 deadly weapon or resulted in injury, in a serious bodily
21 injury to the victim, or an assault with or without an
22 accompanying battery which would reasonably cause a
23 person to fear imminent serious bodily injury or death.

24 Those are things you must consider. It doesn't
25 necessarily mean that there has to be a serious bodily

1 injury. There are other portions to that, and you must
2 consider all of these things.

3 Lastly, Mr. Couch is charged with possession of a
4 weapon during a violent crime. Now, let me be very
5 specific here. This charge only applies to the victim,
6 Sommer Rae Grant. This charge does not apply and you
7 should not consider it with regard to the victim, Garry
8 McCall. It only applies to Ms. Grant.

9 So, you would have to find that during the assault
10 of Ms. Grant, if a person, the Defendant, is in
11 possession of a firearm or visibly displays what appears
12 to be a firearm or visibly displays a knife during the
13 commission of a violent crime, you would have to find
14 that to find Mr. Couch guilty of possession of a weapon
15 during a violent crime.

16 Now, there are also lesser-included offenses of
17 these charges. For instance, with the charge of
18 attempted murder, there are several lesser-included
19 offenses under South Carolina law. There is a
20 lesser-included offense of assault and battery of a high
21 and aggravated nature. The Judge will instruct you on
22 that.

23 There are also lesser-included offenses of assault
24 first degree and assault second degree and lastly third
25 degree. So, please pay careful attention to the Judge

1 on all these charges. All of these things must be
2 considered by you in your deliberations in the jury
3 room. Both Mr. Rosemond and I have selected you as
4 jurors because we feel you have got good common sense
5 and that you have the ability to listen and use that
6 good common sense in your deliberations. You brought it
7 in with you and you will take it back in the jury room
8 with you.

9 In a few minutes I will come back and I will talk
10 to you specifically how the facts in this particular
11 case apply to the law I just showed you up on the
12 screen. Thank you.

13 Closing Argument on behalf of the Defendant:

14 MR. ROSEMOND: Michael Couch is not guilty.
15 Michael Couch is not guilty.

16 As I told you earlier at the beginning of this
17 case, the evidence that will come from that witness
18 stand is what you will consider in determining whether
19 or not Michael Couch is guilty of a crime. And you
20 heard from the best State's witness and that was Garry
21 McCall. And guess what? Garry McCall is an admitted
22 liar. He admitted on the stand that he lied to the
23 police. He admitted on the stand that the statement
24 that he gave to the police on that particular morning
25 was not true.

1 What did he say? He says, I kicked him in the
2 back. That wasn't true. Well, why would you add that
3 in there if that wasn't true? What did he say? Because
4 I was mad at Michael Couch.

5 But, you know, how does it hurt Michael Couch by
6 saying that "I kicked him in the back"? It doesn't hurt
7 Michael Couch at all. But what hurts Michael Couch is
8 when you don't tell the truth about you having a knife
9 on that particular morning when he grabbed the knife and
10 he threatened my client, and he doesn't tell the police
11 that, that hurts Michael Couch.

12 And I submit to you that there is more than reason
13 to believe that his testimony was false. We went
14 through that. I asked him, I said, "Mr. McCall, what
15 did you have to drink?" What did he say?

16 He said, "I had seven beers, two small sips of
17 vodka."

18 But then I asked him. I said, "Is that all you
19 had?"

20 "Yeah, that's all I had."

21 I asked him, "And what about the half a gallon of
22 vodka that was in your refrigerator?"

23 And what did he tell us, ladies and gentlemen? He
24 told us that was full of what? Water. Water. Use your
25 common sense. How many people put water in a vodka

1 bottle in the refrigerator? And I submit to you that
2 wasn't water in there.

3 I also submit to you that the picture right here
4 that shows that half a gallon of vodka sitting in his
5 living room. But he wouldn't admit that to the police,
6 nor did he admit it to you guys whenever I asked him
7 about drinking from that half gallon.

8 What did Sergeant McCall say -- Sergeant Patterson?
9 He was grossly intoxicated. Well, you don't get grossly
10 intoxicated by just having two sips of vodka and seven
11 Natural Lights.

12 And what did I ask him? Well, you know, he ate
13 dinner at midnight. Well, some people eat late at
14 night, so I won't argue with that.

15 "But what did you have for dinner? What did you
16 cook?"

17 "I can't remember."

18 But you can remember seven Natural Lights on that
19 date, but you can't remember what you cooked.

20 I submit to you, ladies and gentlemen, the
21 testimony of Garry McCall that night was severely
22 questionable.

23 What else did he tell us in his statement from the
24 witness stand? He said Garry McCall [sic] dragged
25 Sommer Grant across the floor from the living room to

1 the kitchen by her hair.

2 Did Sommer Grant tell you that? No. Did the
3 person that supposedly got subjected to that tell you
4 that Garry McCall [sic] drug her through the floor by
5 her hair? No, she didn't. And I submit to you, even if
6 you looked at her statement that she gave to the police
7 that you will have back in the jury room, she did not
8 say in there what Garry McCall said in his statement.
9 And if she didn't say it, it didn't happen.

10 And I don't know what Garry McCall was on that
11 particular night. I don't know whether or not he was
12 taking something other than a half a Lortab that he said
13 he took. But I do know that the testimony that he gave
14 in this particular trial was a lie. He lied to the
15 police and he has lied to this particular jury. He lied
16 about having this knife. And he wants to send my client
17 to jail for attempted murder.

18 And what do we talk about with attempted murder?
19 Mr. Stoudemire just showed you on the screen what is
20 attempted murder. And basically they have to prove that
21 Michael Couch, with the intent to kill Garry McCall, had
22 malice; and he thought about it before trying to kill
23 Garry McCall. And I submit to you, ladies and
24 gentlemen, that didn't happen. Read Michael Couch's
25 statement about what happened.

1 Sommer Grant. And what does Sommer tell you? She
2 told us that, you know, I just can't remember. You
3 know, there's a lot of things going on that particular
4 night. She doesn't remember writing things that was in
5 her statement. She says she took four or five Lortabs
6 that particular day. Said, I don't remember Michael
7 Couch having a knife on me.

8 And certainly she came in here apprehensive about
9 her testimony because what she said was, I'm just
10 unsure.

11 But you heard the 9-1-1 tape. You can use your
12 common sense about what was going on, what was happening
13 on that particular day. And from that common sense I
14 would ask you to figure out whether or not Mr. Couch was
15 guilty of criminal domestic violence high and aggravated
16 against Ms. Grant.

17 You know, the second most important witness this
18 particular week was Officer Patterson. And what did
19 Officer Patterson say? I asked him to read his report.
20 I said, Go through your second paragraph of the first
21 line and read that to us. The first thing he said was,
22 Mr. McCall was grossly intoxicated.

23 This is a police officer who works the streets
24 every day, every night, who knows when someone is
25 grossly intoxicated, who arrests people for being

1 grossly intoxicated. Every day he puts his life on the
2 line, and he knows when someone is grossly intoxicated.

3 He also said Michael Couch had two cuts on his
4 elbow. He also confirmed the big container of vodka,
5 when Mr. McCall would have you believe that Mr. Couch
6 only brought a little small pint of vodka over there.
7 But certainly Officer Patterson confirmed much of that
8 testimony.

9 And what did he do? He also secured this
10 particular knife. For what? For processing. For
11 processing. And that's what good police officers do
12 because you want to make sure that you find out who
13 touched that particular knife.

14 Michael Couch's fingerprints wasn't on that knife.
15 And you would expect Michael Couch's knife, hands,
16 fingerprints to be on that knife.

17 And then another forensic technician from SLED came
18 and testified that there was some blood on the knife,
19 and that was Michael Couch's blood. Not surprising to
20 me. Because ultimately, if there was a struggle for a
21 knife, and you saw the wounds on Michael Couch's hands,
22 that since he was cut, that his blood would be on the
23 knife. You could also suspect that the blood from Garry
24 McCall would be on the knife, but I don't know what
25 happened to that.

1 But I do know that certainly my client's
2 fingerprints were not on the knife. Whose knife was it?
3 The knife belonged to Garry McCall. The knife came from
4 his house, his knife. He knew where the knife was. And
5 he simply came at my client with that knife. And there
6 was a struggle, and Mr. McCall was cut.

7 You know, Michael Couch hadn't been in that house
8 since Mr. McCall moved in on Christmas Day. And if he
9 hadn't been in someone's house, you don't know where
10 stuff is. And I submit to you, ladies and gentlemen,
11 that Mr. McCall knew where that knife was and he used
12 that knife against my client.

13 Now, you would think that he would have been
14 charged with possession of a weapon during the
15 commission of a crime for McCall because we know there
16 was a knife involved in that struggle. But to have the
17 possession of a weapon against Mr. McCall -- against
18 Ms. Grant, and only Ms. Grant, and I think you have to
19 kind of go back and look at the evidence to determine
20 whether or not there was a knife involved with the
21 assault on Ms. Grant. She testified that there wasn't.
22 But certainly it only applies to Ms. Grant.

23 What we talked about in the beginning of this case
24 was the foundations of our legal system. And one of the
25 foundations or the three main tenets of our foundation

1 is the presumption of innocence. If you look at my
2 client, Michael Couch, today, that he's still not guilty
3 of the crimes charged.

4 And the burden of proof that we talked about comes
5 from this table and that chair, and they have the
6 responsibility to give you enough information that you
7 can say, you know, I don't have a reasonable doubt in my
8 mind that Michael Couch tried to kill Garry McCall. And
9 I do believe that there is reasonable doubt out there.
10 He may be guilty of something else, but it's not
11 attempted murder.

12 You're gonna have some other choices to choose from
13 such as assault and battery of a high and aggravated or
14 an assault and battery. And you have three of those to
15 choose from in looking at this case. But, ladies and
16 gentlemen, I will tell you that Michael Couch did not
17 have the intent to kill Garry McCall.

18 It is unfortunate that Garry McCall got cut. It is
19 unfortunate that we all are here today. But certainly
20 my client did not have an intent to kill Mr. McCall.

21 Proof beyond a reasonable doubt. That's the catch
22 phrase we all hear on TV, the CSI show or any police
23 show. And when you get back to the jury room, if you
24 could come up with some reason not to believe that my
25 client committed attempted murder, then you have a duty

1 to come back with something else other than that.

2 So when you start asking yourself, do I have a
3 reason whether or not he committed attempted murder?
4 Yes, you do. And the reasons are up on the screen up
5 there. The first reason why he didn't attempt to kill
6 Garry McCall, because Garry McCall is not telling the
7 truth. He's an admitted liar in this courtroom and he
8 admitted to you that he lied. He lied to you, he lied
9 to the police, and that should give you pause to believe
10 anything that Garry McCall says.

11 The second reasonable doubt is he didn't have any
12 intent to kill Mr. McCall. Ms. Grant never saw Garry
13 McCall getting cut. She can't tell you what happened on
14 that day.

15 And something else that should give you some
16 reasonable doubt is how grossly intoxicated Garry McCall
17 was. And when you are grossly intoxicated, you don't
18 remember things that you do. You don't remember things
19 that you say. The cuts on Michael Couch's hand, on his
20 arm, leads you to believe that he tried to grab that
21 knife from McCall and take it from him. And that's when
22 the struggle ensued. There's no fingerprints on that
23 knife.

24 And Grant admitted to you that she had four or five
25 Lortabs the day before, although she didn't tell Officer

1 Davis that she was taking Lortabs before she started her
2 statements.

3 This morning we heard from Dr. Greg Cromer. And
4 Dr. Cromer said it was definitely possible, humanly
5 possible, that the cuts sustained on Michael Couch's
6 hand came from him grabbing that knife.

7 Ladies and gentlemen, this particular case is
8 important because Michael Couch is charged with
9 attempted murder. But he didn't do it. He may be
10 guilty of something else, one of those lesser-included
11 that you're going to hear about. But I submit to you
12 that on February 16th, 2011, Michael Couch did not try
13 to kill Garry McCall.

14 We have to be very leery of Garry McCall's
15 testimony because of the many, many lies that we heard.
16 And I keep thinking in my mind about Garry McCall saying
17 one thing: That Michael Couch drug Sommer Grant by the
18 hair through the living room over to the kitchen. And
19 if he lies about that, if he lies about kicking Michael
20 in the back, what else is he lying to you about? What
21 else is he lying to you about? What else did he lie to
22 the police about?

23 He lied to the police about not having that knife.
24 He lied to police about not pulling that knife on
25 Michael Couch. In self-defense Michael Couch took that

1 knife from him and unfortunately Michael Couch is here
2 today facing these charges.

3 I'm sorry he got cut, but it's not attempted
4 murder, ladies and gentlemen. Thank you.

5 THE COURT: Mr. Stoudemire?

6 MR. STOUDEMIRE: Thank you, Your Honor.

7 Closing Statement on behalf of the State (Facts):

8 MR. STOUDEMIRE: Not exactly the music I planned to
9 start with. I promise I will not sing, I will not
10 dance. You wouldn't like either.

11 Ladies and gentlemen, I'm gonna try to go this just
12 as cleanly and succinctly as I can and as quickly as I
13 can because I know you have been here a long time and
14 you've heard a lot of stuff and you want to get on with
15 your deliberations.

16 First, I want to thank you for your time and for
17 your attention during this entire process. This is not
18 something everybody is willing to do, and I appreciate
19 all of you being willing to come up here and not try to
20 find a reason out of it, but be willing to serve and
21 willing to take part in our judicial system. Thank you.

22 You've got several things to decide here. First,
23 you've got to decide the charge of attempted murder.
24 Now, we went over a little bit before attempted murder
25 and what's required in attempted murder. So let's try

1 to do that again and I'll try to do that as quickly as I
2 can.

3 Attempted murder the statute says is a person who
4 with the intent to kill attempts to kill another person
5 with malice aforethought, either expressed or implied.
6 If all those are present, then the person can be found
7 guilty of attempted murder.

8 Now, a person who, Michael Couch, very simple, with
9 the intent to kill, attempts to kill another person with
10 malice aforethought, either expressed or implied.

11 Now, ladies and gentlemen, I would submit to you
12 that when you pick up a knife such as this one and you
13 slash somebody across the face like Garry McCall got
14 slashed with this knife, he wasn't trying to give him a
15 clean, close shave.

16 Ladies and gentlemen, you don't have to sit there
17 and announce, I have a knife in my hand. I am going to
18 cut you from your ear to the tip of your nose.

19 Intent can be shown through your actions, ladies
20 and gentlemen, and certainly, certainly it was in this
21 particular case. I think we can all see what the result
22 was from what happened when Mr. Couch got his hands on
23 that knife.

24 Now, the question comes in, how did he get his
25 hands on that knife? Well, the Defense and Mr. Couch's

1 statement would have you believe that there was some
2 sort of a struggle for the knife and Mr. Couch managed
3 to come up with the knife and in self-defense slashed.
4 Let's look at the injury on the right hand of Mr. Couch
5 briefly and let's remember the testimony that we've
6 heard in this case.

7 What we heard in this case from the SLED expert,
8 who is the expert in latent prints, who found blood on
9 this knife. Where did she find blood? She found blood
10 down in this area of the knife, she said where the
11 handle meets the hilt which is this area that extends
12 from the blade.

13 Ladies and gentlemen, when you told a knife, you're
14 gonna hold it like this (demonstrating). Look at where
15 my hand is, look at where the injury is on Mr. Couch's
16 hand. Ladies and gentlemen, he wasn't trying to defend
17 himself from being cut. He wasn't trying to do anything
18 of that sort. He had that knife. He had that knife
19 from the beginning. There has been no testimony from
20 that witness stand that anybody other than Michael Couch
21 handled that knife except for the statement of Michael
22 Couch.

23 Garry McCall says he never touched the knife that
24 night. Now, granted, Garry McCall's statement says,
25 Well, I kicked him. Garry McCall got on this witness

1 stand and said, You know what? That wasn't true. But
2 he also said up there, I could have done more.

3 Ladies and gentlemen, I would submit to you that
4 Garry McCall when he gave that statement was kind of
5 wishing he had done more to stop it that night and said
6 something maybe in his own mind to think that he did
7 more than what he actually did. He did what he could.
8 He did what he could to stop a bad assault that night on
9 Sommer Grant.

10 Now, was he successful in stopping that? Not
11 really. Sommer Grant didn't do a darn thing wrong that
12 night. She came over. She sat down, fell asleep. They
13 ate a little bit. She fell asleep, she got up to change
14 into her pajamas and she came back, and then, for lack
15 of a better way of putting it, literally all hell broke
16 loose and it broke loose on her.

17 She's got one eye that's swollen shut, a broken
18 nose, a bruise, a cut on her face. Nothing good went on
19 that night, ladies and gentlemen, not a darn thing.

20 Now let's get back to attempted murder. What we've
21 got is a person who, with intent to kill -- and ladies
22 and gentlemen, I would again submit to you that if you
23 pick up a knife and you slash it at a person's face, not
24 at their arm, not poke it at them, you slash at their
25 face up in this area around their eye, around their jaw,

1 there is only one thing you can intend to do.

2 With malice aforethought. Malice is not something
3 that takes days to form. It can be formed like that
4 (snaps fingers). The Judge will instruct you on malice.
5 It can either be express or implied.

6 Ladies and gentlemen, when you slash at somebody's
7 face with a knife like the one that is in evidence,
8 there is only one thing that implies.

9 Now, with regard to Sommer Grant. Criminal
10 domestic violence. You have to cause injury or physical
11 harm to your own household member. Sommer Grant got up
12 on this stand -- and granted her memory seemed sketchy
13 at times -- she got up on this stand and said yes, she
14 considered herself to be married at common law to
15 Michael Couch. Ladies and gentlemen, she said that they
16 lived together from time to time, that they had been
17 together for a number of years, and she considered them
18 married at common law.

19 Ladies and gentlemen, the Judge is going to
20 instruct you on what a household member is. I would
21 submit to you that Sommer Grant clearly without question
22 meets the definition of household member.

23 Now, you have to offer or attempt to cause harm or
24 injury to a person's own household member; with the
25 apparent present ability under the circumstances

1 reasonably creating fear of imminent peril.

2 Ladies and gentlemen, you have seen the pictures.

3 Apparent present ability creating fear of imminent
4 peril. He had the ability, ladies and gentlemen, no
5 question about it, he had the ability.

6 Now, to make it high and aggravated, you either
7 have to have the use of a deadly weapon, or the assault
8 must result in a serious bodily injury to the person.

9 Now, Dr. Cromer testified that these injuries, as
10 they exist today, are not serious bodily injuries. If
11 you move that cut a centimeter away into the eye, then
12 you've got a serious bodily injury, no question about
13 that.

14 Use of a deadly weapon. You've got the knife right
15 there. You're going to have Sommer Grant's statement
16 back in the jury room with you. And if you recall,
17 ladies and gentlemen, she read a portion of that
18 statement aloud.

19 And the portion she read aloud? (Reading):

20 I said, no, I'm calling my grandmom. Michael Couch
21 said, no, you won't have time, picked up a knife and
22 started punching me.

23 Ladies and gentlemen, her memory here was sketchy,
24 no question about it. I would submit to you that there
25 were about a million other places that Sommer Grant

1 wanted to be instead of sitting on that witness stand.
2 But the day of this incident, after getting finished at
3 the hospital, being bandaged up, being sewn up by
4 Dr. Cromer, she went up to the Walhalla Police
5 Department and she gave that statement. And that's what
6 she wrote down.

7 You heard Officer Davis testify. Ms. Grant said,
8 well, I took some Lortabs. You heard Officer Davis
9 testify. She goes over with every single person giving
10 a statement: Have you taken any drugs? Have you had
11 any alcohol? All that kind of stuff. If they answer no
12 to all of that and appear to her to be in their right
13 mind, then she takes that statement. If she did not
14 appear to be of her right mind and have the ability to
15 write that statement, then she wouldn't have let her do
16 it.

17 Ladies and gentlemen, she wrote her own statement.
18 She wasn't under the influence of anything that morning.
19 I know what she said. But I would submit to you that
20 she was perfectly fine that morning. She knew what she
21 was writing. And what she wrote then and there on that
22 day was the truth.

23 Now, the last thing you have to decide is
24 possession of a weapon during a violent crime. And,
25 again, make no mistake, this deals solely with Sommer

1 Grant. So, it doesn't deal with Garry McCall. Clearly
2 there's a weapon involved with Garry McCall. He
3 certainly didn't cut himself shaving, it wasn't some
4 strange karate chop from Michael Couch with incredible
5 force that caused that gash on his face. You have got
6 to find that Mr. Couch during that CDV, during that
7 assault on Sommer Grant, had in his possession a knife.
8 And not just a deadly weapon. The statute says it has
9 to either be a firearm or a knife.

10 Ladies and gentlemen, you've got the knife in
11 evidence. You have Sommer Grant's statement saying that
12 he picked up a knife. He doesn't have to use the knife
13 on her. But in this particular instance you also heard
14 from Dr. Cromer. What did the injury to that eye most
15 likely come from? Most likely, sharp edge, knife,
16 things like that.

17 I would submit to you, ladies and gentlemen, that
18 Michael Couch not only held that knife, he used that
19 knife.

20 Now we have the question of self-defense. Michael
21 Couch said everything he did, it was self-defense.
22 Garry McCall came at him with the knife. He somehow
23 managed to get the knife away from Garry McCall while
24 having Sommer Grant climbing on his back and somehow
25 managed to shake her off, get Garry McCall away from

1 him, and managed to slash him with the knife.

2 Now, ladies and gentlemen, you also heard the
3 testimony of Officer Patterson. When he got to the
4 scene, Garry McCall is outside bleeding from the left
5 side of his face profusely. He said Couch did it.
6 Pointed inside his house.

7 Now, what did the officer find when he went in the
8 house? He found Sommer Grant on the couch, curled up in
9 a ball, cowering in fear, with Mr. Couch over her. And
10 here's how she looked. Ladies and gentlemen, if you are
11 defending yourself and the person you are defending
12 yourself from leaves his own house, why did he stay in
13 and keep assaulting her? Why are you doing this?

14 Ladies and gentlemen, there are a lot of things for
15 you to consider. There's no question about that. But I
16 would also submit to you in Mr. Couch's claims for
17 self-defense he has to be without fault in bringing on
18 the difficulty. And the Judge will instruct you on the
19 law on self-defense. Listen to him carefully on that,
20 please.

21 (Mr. Stoudemire plays 9-1-1 call in its entirety
22 for the jury again -- NOT TRANSCRIBED.)

23 MR. STOUDEMIRE: Ladies and gentlemen, these people
24 don't live like you and I do. Things happen differently
25 in their homes than they have in ours. Don't hold that

1 against Mr. McCall and what happened to him. Don't hold
2 it against Sommer Grant and what happened to her.
3 Michael Couch is guilty of each and every charge that
4 I've talked to you about. He is guilty of attempted
5 murder, he is guilty of criminal domestic violence of a
6 high and aggravated nature, and he is most certainly
7 guilty of possession of a weapon during that crime
8 against Sommer Grant. Thank you.

9 Charge by the Court to the Jury:

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, I now have to charge you, which simply means
12 to instruct you. And it's gonna take about 20 minutes.
13 So, if you need to take a break or something before
14 that, we'll do that. Otherwise, I'll just go ahead and
15 continue.

16 THE FOREMAN: Do you all need a break?

17 JURORS: No.

18 THE FOREMAN: No, go ahead.

19 THE COURT: As jurors you have functions and
20 responsibilities to perform which are entirely different
21 from mine as the trial judge --

22 (Whereupon, a man left the courtroom.)

23 THE COURT: If anybody else needs to leave the
24 courtroom during this charge, do it now.

25 Thank you.

1 As I say, I am prohibited by the Constitution of
2 our State from charging you on the facts of this case.
3 I am also prohibited from discussing the facts of the
4 case with you or in any way intimating what feelings, if
5 any, I have about the case. It is your responsibility
6 and yours alone to pass upon all issues of fact
7 presented in the case. I would, therefore, charge you
8 that if during the course of the trial or during my
9 charge, if you are given or left with the impression or
10 feeling that I have a personal feeling about the facts
11 in this case, I would specifically instruct you to
12 disregard that feeling or impression. Moreover, you are
13 the sole judges of the testimony and not the argument of
14 counsel.

15 It is also your duty and yours alone to weigh the
16 testimony and evidence in the case and to pass upon the
17 credibility or believability of the witnesses. In this
18 connection you have the right to believe all that a
19 witness tells you or to disbelieve all that a witness
20 tells you. You have a right to believe a part of what a
21 witness tells you and disbelieve a part of what a
22 witness tells you. You have the right to take in
23 consideration any bias, prejudice or interest you feel a
24 witness might have in the case.

25 I say this merely to emphasize the weight you see

1 fit to give to the testimony, to the credibility of
2 witnesses as well as all issues of fact are for your
3 sole determination. As judges of the facts you are the
4 sole judges of the credibility, that is, the
5 believability of the witnesses who have testified in
6 this case.

7 In passing upon their credibility you may take into
8 consideration many things, such as the appearance and
9 manner of the witness on the stand, sometimes referred
10 to as the demeanor of the witness. Was the witness
11 forthright or hesitant? Was the witness's testimony
12 consistent or did it contain discrepancies? What was
13 the ability of the witness to know the facts about which
14 he or she testified? Did the witness have a cause or a
15 reason to be biased or prejudiced in favor of the
16 testimony he or she gave, or was the testimony of the
17 witness corroborated or made stronger by other testimony
18 and evidence, or was it made weaker or impeached by such
19 other testimony and evidence?

20 As jurors you have the right to believe a small
21 portion of a witness's testimony and discard the larger,
22 or vice versa. You may believe all of a witness's
23 testimony or none of it.

24 Our rules of evidence ordinarily do not permit
25 witnesses to testify to opinions or conclusions. An

1 exception to this rule exists for witnesses we call
2 expert witnesses. A witness who by education and
3 experience that has become expert in some art, science
4 or profession may give an opinion as to the subject the
5 witness claims to be an expert in, and they may also
6 give the reasons for that opinion. You should consider
7 any expert opinion given by a witness like any other
8 witness, give it the weight you think it deserves. If
9 you decide that an expert witness's opinion is not based
10 on sufficient education or experience, or if you decide
11 that the reasons given in support of the opinion are not
12 sound or that the opinion is outweighed by other
13 evidence, you may disregard the opinion entirely.

14 An expert opinion is to be given no greater weight
15 than any other witness's simply because the witness is
16 an expert. You don't have to accept an expert's
17 opinion, even though it is uncontradicted. Throughout
18 this entire process you have but one single objective,
19 and that is to seek the truth regardless from what
20 witness the testimony may have come.

21 Now, by the same Constitution and law which makes
22 you the finders of the facts and evidence as I discussed
23 with you, I as the Judge is made the sole and only
24 instructor on the law. You must accept as correct the
25 law which I charge and apply to it the evidence as you

1 find it and reach a verdict. If I should make an error
2 in the law as I instruct it to you, there is another
3 time or place that has to be considered and, if
4 necessary, corrected. But for the purposes of this case
5 today, you must accept the law as I charge it to you to
6 be the correct law.

7 Now, the Defendant has pled not guilty to this
8 indictment and that plea puts the burden of proof on the
9 State to prove the Defendant guilty. A person charged
10 with committing a criminal offense in South Carolina is
11 never required to prove himself innocent. I charge you
12 that it is an important rule of law that the Defendant
13 in a criminal trial, no matter what the seriousness of
14 the charge may be, will always be presumed to be
15 innocent of the crime for which the indictment was
16 issued unless the guilt has been proven by evidence
17 satisfying you of that guilt beyond a reasonable doubt.

18 The presumption of innocence does not end when you
19 begin your deliberations, but it accompanies the
20 Defendant throughout the trial until you reach a verdict
21 of guilty based upon the evidence satisfying you of that
22 guilt beyond a reasonable doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the
25 Defendant which remains with the Defendant until it has

1 been stripped from the Defendant by evidence satisfying
2 you of the Defendant's guilt beyond a reasonable doubt.

3 Presumption of innocence is not a mere legal
4 theory, it's not just a legal phrase. It's a
5 substantial right to which every Defendant is entitled
6 unless you, the jury, are satisfied from the evidence
7 that the Defendant's guilt is beyond a reasonable doubt.
8 What is a reasonable doubt? A reasonable doubt is the
9 kind of doubt that would cause a reasonable person to
10 hesitate to act.

11 I instruct you and emphasize that the fact the
12 Defendant did not testify is not a factor to be
13 considered by you in any way in your deliberations in
14 your consideration of the question of whether or not the
15 Defendant is guilty of the charges in the indictment.
16 It must not be considered by you in any manner whatever.
17 The Defendant has a Constitution at right to remain
18 silent, and the exercise of that right must not even be
19 considered by you in your deliberations.

20 I repeat. Under your oath that you took, you are
21 to draw no conclusion whatsoever from the fact the
22 Defendant in this case did not testify. The fact that
23 the Defendant did not testify should not even be
24 discussed by you in the jury room. The Defendant is not
25 required to prove his innocence. The burden of proof

1 remains on the State to prove guilt beyond a reasonable
2 doubt.

3 Now, ladies and gentlemen of the jury, there are
4 two types of evidence that are generally presented
5 during a trial: Direct evidence and circumstantial
6 evidence. Direct evidence is the testimony of a person
7 who claims to have actual knowledge of a fact, such as
8 an eyewitness. It is evidence which immediately
9 establishes the main fact to be proved. Circumstantial
10 evidence is the proof of a chain of facts and
11 circumstances indicating the existence of a fact.
12 This evidence immediately establishes a collateral fact
13 from which the main fact may be inferred.
14 Circumstantial evidence is based on inference and not on
15 personal knowledge or observation. It is proof that
16 does not actually establish the fact in question, but
17 that asserts or ascribes something else by which you may
18 either reasonably infer the truth to be fact, or at
19 least increase in the probability that the fact is true.

20 For circumstantial evidence to be sufficient to
21 warrant the finding of a fact, the circumstances must
22 lead to that fact with reasonable certainty. Facts and
23 circumstances should be considered in the light of
24 ordinary experience and common sense. An existence of a
25 fact cannot be based on speculation, surmise or matters

1 of conjecture. The law makes absolutely no distinction
2 between the weight or value to be given either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than
5 direct evidence. You should weigh all of the evidence
6 in the case. After weighing all of the evidence, if you
7 are not satisfied or convinced of the guilt of the
8 Defendant beyond a reasonable doubt, you must find the
9 Defendant not guilty.

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

18 There is no way to prove intent to a mathematical
19 certainty. There is no way medical science can dissect
20 a person's brain and determine what the person had in
21 mind. So, the law says criminal intent may be inferred
22 from the circumstances shown to exist. This is how you
23 make a determination of whether or not the required
24 intent was present. It is necessary to establish intent
25 by direct and positive evidence. But intent may be

1 established by inference in the same way as any other
2 fact by taking into consideration the acts of the
3 parties and all of the facts and circumstances of the
4 case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based on the circumstances
8 shown to have existed.

9 Criminal liability is normally based upon the
10 occurrence of two factors: An evil meaning mind and an
11 evil doing hand. A person who causes a particular
12 result is said to act purposefully; or if he consciously
13 desires that result, whatever the likelihood of the
14 result happening from his conduct.

15 A person is said to act knowingly if he is aware
16 the result is particularly certain to follow his conduct
17 whatever his desire may be as to the result.

18 An act is done intentionally when done with a
19 conscious awareness or knowledge of the nature of the
20 act involved and with the purpose of committing that
21 act. If the act was the result of ignorance, mistake or
22 accident, it was not intentionally, even if the mistake
23 or accident was negligent or reckless.

24 Suspicion, however strong, is not enough to sustain
25 a conviction. The evidence presented by the State has

1 to be substantial evidence that tends to prove the guilt
2 of the Defendant beyond a reasonable doubt.

3 Now, the indictments in this case allege three
4 different offenses against Michael Lamar Couch. The
5 charges are Indictment Number 2011-GS-37-391, attempted
6 murder; Indictment Number 2011-GS-37-403, criminal
7 domestic violence of a high and aggravated nature; and
8 2011-GS-37-404, possession of a weapon during a violent
9 crime. Each of the three indictments charges a separate
10 and distinct offense. You must decide each indictment
11 separately on the evidence and the law applicable to it,
12 uninfluenced by your decision as to any other
13 indictment. The Defendant may be convicted or acquitted
14 on one or all of the offenses charged. Then you will be
15 asked to write a separate verdict of guilty or not
16 guilty for each indictment.

17 I remind you the fact the Defendant was arrested,
18 charged and indicted in this case is not evidence in
19 this case and cannot be considered by you as evidence of
20 guilt in this case, nor does it create any presumption
21 or inference of guilt. The indictments are simply the
22 formal written instruments which contain the charges
23 made against the Defendant. They are the formal
24 document by which the cases are brought into this court.

25 Under our law in South Carolina we have a principle

1 known as lesser-included offenses. Some crimes that are
2 of a lesser degree are included in crimes which are of a
3 greater degree. In this particular case there are four
4 lesser-included offenses for you to consider on
5 Indictment Number 2007-GS-37-391. Indictment Number
6 2011-GS-37-391 charges Michael Lamar Couch with the
7 attempted murder of Garry Gean McCall, Junior.
8 Attempted murder includes the lesser included offenses
9 of assault and battery of a high and aggravated nature
10 or assault and battery in the first degree or assault
11 and battery in the second degree and assault and battery
12 in the third degree. Therefore, you may consider the
13 lesser-included offenses of assault and battery of a
14 high and aggravated nature or assault and battery in the
15 first degree or assault and battery in the second degree
16 and assault and battery in the third degree on the
17 Indictment 2011-GS-37-391, attempted murder.

18 There is one lesser-included offense for you to
19 consider on Indictment Number 2011-GS-37-403.
20 Indictment 2011-GS-37-403 charges Michael Lamar Couch
21 with criminal domestic violence of a high and aggravated
22 nature against Sommer Rae Grant. The offense of
23 criminal domestic violence of a high and aggravated
24 nature also includes the lesser-included offense of
25 criminal domestic violence. Therefore, you may consider

1 the lesser-included offense of criminal domestic
2 violence on Indictment Number 2011-GS-37-403.

3 As far as the attempted murder charge, the
4 Defendant is charged with attempted murder. In order to
5 prove this charge the State must prove the Defendant
6 attempted to kill another person with malice
7 aforethought, either expressed or implied. Malice is
8 hatred, ill will or hostility towards another person.
9 It is the intentional doing of a wrongful act without
10 just cause or excuse and with an intent to inflict an
11 injury or under circumstances that the law may infer an
12 evil intent.

13 Malice aforethought does not require that malice
14 exist for any particular time before the act is
15 committed. But malice must exist in the mind of the
16 Defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of
18 the previous evil intent and the act.

19 Malice aforethought may be expressed or inferred.
20 These terms, expressed and inferred, do not mean
21 different kinds of malice, but merely it means the
22 manner by which malice may be shown to exist, that is
23 either by direct evidence or inference from the facts
24 and circumstances which are proved. Express malice is
25 shown when a person speaks words which express hatred or

1 ill will for another.

2 If the facts are proved beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, this inference would be simply an
5 evidentiary fact to be considered by you. Along with
6 the other evidence in the case, you may give it the
7 weight you decide it should receive.

8 A specific intent to kill is not an element of
9 attempted murder, but there must be a general intent to
10 commit serious bodily injury. Intent means intending
11 the result which actually occurs, not accidentally or
12 involuntarily. Intent may be shown by acts or conduct
13 by the Defendant from other circumstances from which you
14 would naturally and reasonably infer intent. Evidence
15 of the character of the assault, the purpose to be
16 accomplished and the resulting wounds or the injuries
17 may be considered in determining the intent with which
18 the assault was committed. Intent may also be inferred
19 when it is demonstrated the Defendant voluntarily and
20 willfully committed the act, a natural tendency which
21 was to destroy another's life.

22 If you as jurors, however, have a reasonable doubt
23 as to whether the State met its burden of proof and
24 shown all the elements in the crime of attempted murder,
25 you would then consider the lesser-included offense of

1 assault and battery of a high and aggravated nature. If
2 you have a reasonable doubt as to whether the Defendant
3 has met its burden of proof -- excuse me -- whether the
4 State has met its burden of proof and shown all the
5 elements of assault and battery of a high and aggravated
6 nature, you should then consider the lesser-included
7 offenses of assault and battery in the first degree.

8 If you have a reasonable doubt as to whether the
9 State has met its burden of proof in proving assault and
10 battery in the first degree, you would consider the
11 lesser-included offense of assault and battery in the
12 second degree.

13 If you have a reasonable doubt as to whether the
14 State has met its burden of proof as to all elements of
15 assault and battery in the second degree, then you would
16 consider the lesser-included offense of assault and
17 battery in the third degree.

18 If you have a reasonable doubt as to whether the
19 State has met its burden of proof and shown all the
20 elements of assault and battery in the third degree, you
21 would then find the Defendant not guilty.

22 Now, an assault and battery of a high and
23 aggravated nature is when a person unlawfully injures
24 another and great bodily injury to another person
25 results. Great bodily injury means bodily injury which

1 causes substantial risk of death or which causes serious
2 permanent disfigurement or loss or impairment of
3 function of a bodily member or organ.

4 Now, assault and battery in the first degree, which
5 is a lesser-included offense of assault and battery of a
6 high and aggravated nature, a person commits the offense
7 of assault and battery of a high and aggravated nature
8 in the first degree if the person unlawfully attempts to
9 injure another person with the present ability to do so
10 and the act is accomplished by means likely to produce
11 death or great bodily injury.

12 Also, the assault and battery in the second degree
13 is when a person commits the offense of assault and
14 battery in the second degree if the person unlawfully
15 injures another person or offers or attempts to injure
16 another person with the present ability to do so and
17 either moderate bodily injury to another person results
18 or moderate bodily injury to another person could have
19 resulted. Moderate bodily injury means physical injury
20 that requires treatment to an organ system of the body
21 other than the skin, muscles and connective tissues of
22 the body, except where there is penetration of the skin,
23 muscles and connective tissues that require surgical
24 repair or a complex nature or when treatment of the
25 injuries requires the use of regional or general

1 anesthesia.

2 Now, assault and battery in the third degree, a
3 person commits this offense in the third degree if a
4 person unlawfully injures another person or offers or
5 attempts to injure another person with the present
6 ability to do so.

7 As to the charge of criminal domestic violence of a
8 high and aggravated nature, the State must prove beyond
9 a reasonable doubt that the Defendant caused physical
10 harm or injury to a member of the Defendant's own
11 household or that the Defendant offered or attempted to
12 cause physical harm or injury to a member of the
13 Defendant's own household with a present ability to
14 cause harm or injury by the circumstances reasonably
15 creating a fear of an imminent danger.

16 A household member is defined under our law as a
17 spouse, a former spouse, a parent, a child, a
18 grandparent, a brother or sister, grandchild, a person
19 with whom the Defendant has a child in common, and a
20 person of the opposite sex with whom the Defendant is
21 living or has lived in the past.

22 The State must prove beyond a reasonable doubt that
23 one of the following occurred: An assault and battery
24 which resulted in serious bodily injury to the victim or
25 an assault with or without accompanying battery which

1 would reasonably cause a person to fear imminent serious
2 bodily injury or death.

3 If you as jurors have a reasonable doubt as to
4 whether or not the State has met its burden in showing
5 all of the elements of the crime of assault and battery
6 of a high and aggravated nature, you would then consider
7 the lesser-included offense of criminal domestic
8 violence. If you have a reasonable doubt as to whether
9 the State has met its burden of proof and shown all the
10 elements of criminal domestic violence, you would find
11 the Defendant not guilty.

12 As I say, included within the offense of criminal
13 domestic violence of a high and aggravated nature is
14 criminal domestic violence. The State must prove beyond
15 a reasonable doubt that the Defendant caused physical
16 harm or injury to a member of the Defendant's own
17 household or that the Defendant offered or attempted to
18 cause physical harm or injury to a member of the
19 Defendant's own household with the apparent present
20 ability to cause harm or injury under the circumstances
21 reasonably creating a fear of imminent danger.

22 As I said earlier, a household member is a spouse,
23 former spouse, a parent, a child, a grandparent, or a
24 brother or sister, a grandchild, or a person with whom
25 the Defendant has a child in common, or a person of the

1 opposite sex with whom a person is living or has lived
2 with in the past.

3 The Defendant is also charged with possession of a
4 weapon during the commission of a violent or attempt to
5 commit a violent crime. The State must prove beyond a
6 reasonable doubt that the Defendant physically displayed
7 a knife during the commission of a violent crime. A
8 knife means an instrument or tool with a sharp pointed
9 blade whether or not fashioned to, fastened to a handle
10 which can be used to cut, slash or wound.

11 In order to find the Defendant guilty of possession
12 of a weapon during the commission of a violent crime,
13 you must find the Defendant guilty of either committing
14 a violent crime or attempting to commit a violent crime.

15 Section 16-1-60 of the South Carolina Code of Laws
16 provides that criminal domestic violence of a high and
17 aggravated nature is a violent crime.

18 Now, the Defendant has raised in this case what is
19 called the defense of self-defense. Self-defense is a
20 complete defense, and if it is established, you must
21 find the Defendant not guilty. The State has the burden
22 of disproving self-defense by proof beyond a reasonable
23 doubt as I explained that term to you.

24 If you have a reasonable doubt of the Defendant's
25 guilt after considering all the evidence, including the

1 elements of self-defense, then you must find the
2 Defendant not guilty. On the other hand, if you have no
3 reasonable doubt of the Defendant's guilt, after
4 considering all the evidence, including the elements of
5 self-defense, then you must find the Defendant guilty.

6 Now, the following elements are required to
7 establish self-defense. First, the Defendant must be
8 without fault in bringing on the difficulty. If the
9 Defendant's conduct was the type which was reasonably
10 calculated to and did provoke a deadly assault, the
11 Defendant would be at fault in bringing on the
12 difficulty and would not be entitled to an acquittal
13 based on self-defense.

14 The second element of self-defense is that the
15 Defendant was actually in imminent danger of death or
16 serious bodily injury or that the Defendant actually
17 believed he was in imminent danger of death or serious
18 bodily injury. If the Defendant was actually in
19 imminent danger, it must be shown that the circumstances
20 would have warranted a person of ordinary firmness and
21 courage to strike the fatal blow to prevent death or
22 serious bodily injury. If the Defendant believed he was
23 in danger of death or serious bodily injury, it must be
24 shown that a reasonably prudent person of ordinary
25 firmness and courage would have had the same belief.

1 In deciding whether the Defendant actually was, or
2 believed that he was in imminent danger of death or
3 serious bodily injury, you will consider all of the
4 facts and circumstances surrounding the crime, including
5 the physical conditions and characteristics of the
6 victim. The Defendant does not have to show that he was
7 actually in danger. It is enough that the Defendant
8 believed he was in imminent danger, and a reasonable and
9 prudent person of ordinary firmness and courage would
10 have had the same belief.

11 The Defendant has a right to act on appearances
12 even though Defendant's beliefs may have been mistaken.
13 It is for you to decide whether the Defendant's fear of
14 immediate danger or death or serious bodily injury was
15 reasonable and would have been felt by an ordinary
16 person in the same circumstances and situation.

17 I will further charge you that the relative size,
18 ages and weights of the Defendant and victim may be
19 considered in deciding the apparent or the actual need
20 for force, for self-defense, and the amount of force
21 that was needed.

22 The final element of self-defense is that the
23 Defendant had no probable way to avoid the danger or
24 death or serious bodily injury than to act as the
25 Defendant did in a particular circumstance. A Defendant

1 has no duty to retreat if by doing so or being killed --
2 his doing so, the danger of being killed or suffering
3 serious bodily injury would be increased. I would
4 further charge you that a person cannot be required to
5 make an exact calculation as to the degree or the amount
6 of force which may be needed to avoid death or serious
7 bodily injury.

8 Therefore, in self-defense, the Defendant has the
9 right to use the force needed to avoid death or serious
10 bodily injury. The force used in self-defense does not
11 have to be limited to the degree or the amount of force
12 used by the victim. The Defendant has the right to use
13 so much force as appears to be necessary to complete
14 self-protection when a person of ordinary reason and
15 firmness would have believed that they needed to prevent
16 death or serious bodily harm.

17 The Defendant is justified in defending himself or
18 others and in firing the first shot. Then the Defendant
19 is justified in continuing until it is apparent that
20 this threat of serious bodily injury or death
21 disappears.

22 If you have a reasonable doubt as to any of these
23 indictments, after considering all of the evidence which
24 you have on each of the indictments and each of the
25 included offenses, then you must find the Defendant not

1 guilty. On the other hand, if you find no reasonable
2 doubt as to the Defendant's guilt after considering all
3 the evidence as to that indictment, then you must find
4 the Defendant guilty of the indictment and the charge
5 therein.

6 Now, ladies and gentlemen of the jury, you have
7 been selected as fair and impartial jurors sworn to
8 impartially try and determine the facts of this case,
9 and when you have complied with your oath to do so, then
10 no one will have the right to criticize your verdict,
11 and you will have fully discharged your duties as
12 jurors. You should not be influenced by opinions or
13 expression of opinions, if any, which you may have heard
14 on the outside, but decide this case according to the
15 testimony and evidence that you have heard from the lips
16 of the sworn witnesses along with the other evidence
17 that may have been introduced.

18 As I said earlier, you are the judges of the facts
19 in this case and you are to determine only if the
20 Defendant is guilty or not guilty of each indictment and
21 each lesser-included charge in those indictments based
22 upon testimony and evidence presented in the trial and
23 after applying the law as I have given it to you.

24 If from the evidence you have a reasonable doubt as
25 to whether or not the Defendant is guilty as to any of

1 these indictments, it is your duty to acquit him and
2 write the two words "not guilty" on that indictment.
3 Under the oath you took you swore to decide this case
4 based only and solely on the testimony and evidence and
5 the law you heard in this courtroom. It is your duty to
6 lay aside all bias and prejudice and sympathy you may
7 have in reaching your verdict. You have no friends to
8 reward or enemies to punish in this case.

9 I might note that the word "verdict" comes from the
10 Latin term *veredicto*, which means to speak the truth.
11 Abide by your oath and determine a verdict which, in
12 fact, speaks the truth.

13 Mr. Foreman, I have prepared a verdict form for you
14 to use in your deliberations. As I've said earlier,
15 whatever verdict you reach must be the unanimous verdict
16 of all 12 members of the jury. And if you will notice,
17 it starts with Indictment Number 2011-GS-37-391 charging
18 the Defendant with attempted murder of Garry McCall,
19 Junior. Whatever verdict that you have as I say, has to
20 be unanimous so it provides that we, the jury,
21 unanimously find the Defendant, Michael Lamar Couch, is
22 not guilty, or guilty of attempted murder, or guilty of
23 the lesser-included offense, assault and battery of a
24 high and aggravated nature, or guilty of the
25 lesser-included offense of assault and battery in the

1 first degree, or guilty of the lesser-included offense
2 of assault and battery in the second degree, or guilty
3 of the lesser-included offense of assault and battery in
4 the third degree.

5 Now, on the second page you have Indictment Number
6 2011-GS-37-403 charging criminal domestic violence of a
7 high and aggravated nature against Sommer Rae Grant.
8 Again, your verdict must be unanimous. Therefore, it's
9 provided we, the jury, unanimously find the Defendant
10 Michael Lamar Couch is not guilty or guilty of the
11 charge of criminal domestic violence of a high and
12 aggravated nature, or guilty of the lesser-included
13 offense of criminal domestic violence.

14 And then again in Indictment Number 2011-GS-37-404,
15 it's charging the possession of a weapon during the
16 commission of a violent crime against Sommer Rae Grant.
17 It provides we, the jury, unanimously find the Defendant
18 Michael Lamar Couch is not guilty, or guilty of
19 possession of a weapon during the commission of a
20 violent crime.

21 Now, in each of those three indictments, whichever
22 is your unanimous verdict, you will indicate which
23 verdict it is. Now, there will be three separate
24 verdicts, in other words. Once you have completed the
25 form, Mr. Foreman, please sign on the line above your

1 name, knock on the door and we'll return and receive
2 your verdict at that time.

3 I have some matters I need to take up with the
4 attorneys before I will ask you to begin your
5 deliberations. But once I finish that, I will send in
6 the verdict form with the Bailiff, together with all the
7 other evidence introduced in the case; and once you
8 receive all the evidence, then if you would begin your
9 deliberations. And once you reach a verdict as to all
10 three indictments, knock on the door and we'll ask you
11 to return to receive your verdict.

12 It is my understanding that your lunch has been
13 ordered. You may eat during your deliberations if you
14 like or you can take a little recess. Either way, once
15 you do complete your work and reach your verdict on all
16 three indictments, knock on the door.

17 Once more I'll ask you to retire to the jury room
18 once more before beginning your deliberations.

19 Now, if the two alternates would wait, and the
20 balance of the jury retire to the jury room.

21 (Whereupon, the jury left the courtroom at
22 approximately 1:24 p.m., except for the two
23 alternate jurors.)

24 THE COURT: All right. Are there any exceptions to
25 the charge or additional requests to the charge from the

1 State?

2 MR. STOUDEMIRE: None, Your Honor.

3 THE COURT: From the Defendant?

4 MR. ROSEMOND: No, Your Honor.

5 THE COURT: Very good. Let's collect all the
6 exhibits and be sure only the ones that go back are the
7 ones that do go back, and obviously none that have not
8 been admitted.

9 MR. STOUDEMIRE: Yes, sir.

10 THE COURT: All right. We'll go off the record for
11 y'all to do that.

12 (Discussion off the record among counsel and the
13 court reporter.)

14 (Discussion off the record among the Court and the
15 two alternate jurors, after which the two alternate
16 jurors were excused at approximately 1:27 p.m.)

17 (Whereupon, the jury started their deliberations at
18 approximately 1:27 p.m.)

19 THE COURT: That's it. It's in the jury's hands.

20 Mr. Stoudemire, Mr. Rosemond, I think you did
21 excellent job in preparing a very difficult case. You
22 certainly challenged the Court. You were patient with
23 me, and I appreciate that. But, as we all know, now
24 it's in the jury's hands. But I do thank you for the
25 most professional representation of your clients in this

1 case.

2 MR. ROSEMOND: Thank you, Judge.

3 MR. STOUDEMIRE: Thank you, Your Honor.

4 (Whereupon, the jury continued their deliberations,
5 after which there was a note from the jury at
6 approximately 2:10 p.m.)

7 (Marked for identification was Court's Exhibit 2,
8 jury note dated October 19, 2011.)

9 THE COURT: All right. I have a question from the
10 jury. (Reading):

11 Can we please have a device to listen to the 9-1-1
12 audio CD? Of course, my policy is to replay it as many
13 times as they want and whenever they need to out here.

14 The reason for that is the CD is testimonial
15 evidence and I'm just not, I would as soon not have
16 anything changed on the CD or anything like that.

17 Of course, I'm sure we've come a long time since
18 Marie --

19 THE COURT REPORTER: Rosemary Woods.

20 THE COURT: Rosemary Woods. Thank you.

21 -- who worked for President Nixon and hit the wrong
22 button and eliminated 18 minutes, so I wouldn't want to
23 take a chance of someone hitting the wrong button on the
24 player back there.

25 Next is definitions of assault and battery of a

1 high and aggravated nature and then assault and battery
2 first degree and second degree.

3 So my intent would be to bring them out and to play
4 the CD first, and then charge them again on the assault
5 and battery charges and again ask them if they need any
6 more, anything else, or any other further questions.

7 All right. Any other thoughts from the State?

8 MR. STOUDEMIRE: None, Your Honor.

9 THE COURT: From the Defense --

10 MR. ROSEMOND: Would you send that law back, too,
11 with them, for the ABHAN?

12 THE COURT: No. That's another thing. Because I
13 want to know what they're thinking about. And I also
14 want to know the answer they are getting. I don't want
15 an answer coming from CSI two days ago or last week. I
16 don't want somebody to say, Well, I saw CSI and I know
17 what this means. I want to know what their question was
18 and I want to know what their answer to that question
19 was, as long as I do it, and if I do it in open court on
20 the record, it will be there. But not what some other
21 authority suggests. No, I do not send the charges back
22 to the jury.

23 All right. Anything further -- now, if you object,
24 that's fine. I'll note your objection. But I'm not
25 gonna do it. Do you want to object?

1 MR. ROSEMOND: No, Your Honor. I was more talking
2 in terms of the law in regards to an assault and battery
3 and not sending the 9-1-1 tape back in.

4 THE COURT: Well, I was gonna do it with the
5 assault and battery.

6 MR. ROSEMOND: Okay.

7 THE COURT: Again, not to overdo any of us, but the
8 three of us or the four of us have gotten law degrees,
9 and if you sat us there we would probably have a
10 discussion on what the relationship with the law says.
11 And at least we know what we think, and we don't always
12 agree, that's why we have Appellate Courts. At least 50
13 percent of the people, or is it people on the Appellate
14 Court, don't understand the law. So, I'm not sure
15 they'll do any better, you know, without the advantages
16 that trained attorneys and judges have. So, that's the
17 reason I don't send charges back.

18 All right. Let's ask the jury to join us.

19 (The jury entered the courtroom at approximately
20 2:27 p.m.)

21 THE COURT: All right. Mr. Foreman, ladies and
22 gentlemen of the jury, I've been provided a question
23 from the jury: Can we please have a device to listen to
24 the 9-1-1 audio CD?

25 I'll replay it as many times as you want in the

1 courtroom. The reason I do not send testimonial
2 evidence back to the jury room, unlike photographs and
3 things like that, is that the testimony of the device
4 sometimes can be, unfortunately, wrong button, you know,
5 something like that. And I use as an example a lady
6 named Rosemary Woods who was President Nixon's
7 secretary, and she hit a button on some tapes of
8 proceedings in The White House and eliminated 18 minutes
9 before she found her error. Obviously, it was an
10 innocent mistake. And so I do not send -- that's true
11 of recordings of audio or visual. So I will replay it
12 as many times as you want and try to make it as clear as
13 we can get it.

14 As far as the definitions for assault and battery
15 of a high and aggravated nature and assault and battery
16 first degree, second degree, and third degree, I'll read
17 those back to you.

18 And again, if you have any questions --

19 (The Foreman raised his hand.)

20 THE COURT: Yes, sir.

21 THE FOREMAN: Is it possible to get the speakers
22 closer?

23 THE COURT: Yes, sir. I think. Yes, sir. That's
24 exactly what we wanted.

25 Let's go off the record for a moment and get

1 everything set up.

2 THE FOREMAN: The CD is still in that room.

3 (Discussion off the record.)

4 (Whereupon, the CD of the 9-1-1 call was played for
5 jury in its entirety -- NOT TRANSCRIBED -- at
6 approximately 2:32 p.m.)

7 THE COURT: Is that what you wanted?

8 THE FOREMAN: I think we want to hear it again.

9 THE COURT: All right. Very good. Let me ask you
10 this. Would you want to hear it now or would you want
11 me to do the other charges? It makes no difference to
12 me.

13 THE FOREMAN: Do the other charges and then come
14 back and listen to it again.

15 THE COURT: Okay. Then come back. That might
16 help. (Reading):

17 If you as jurors have a reasonable doubt as to
18 whether the State has met its burden of proof and shown
19 all the elements of the crime of attempted murder, you
20 would then consider the offenses of assault and battery
21 of a high and aggravated nature. If you have a
22 reasonable doubt as to whether the State met its burden
23 of proof of all the elements of the elements of high and
24 aggravated nature, you would then consider the
25 lesser-included offense of assault and battery first.

1 If the State has not met its burden of proof as to all
2 the elements of assault and battery first degree, you
3 would then consider the lesser-included offense of
4 assault and battery in the second degree. If you have a
5 reasonable doubt as to whether the State has met its
6 burden of proof in showing all the elements of assault
7 and battery in the second degree, you would then
8 consider the lesser-included offense of assault and
9 battery in the third degree. If you have a reasonable
10 doubt as to whether the State met its burden of proof in
11 showing all of the elements of assault and battery in
12 the third degree, you would then find the Defendant not
13 guilty.

14 Now, a person commits the offense of assault and
15 battery of a high and aggravated nature if the person
16 unlawfully injures another person and great bodily
17 injury to another person results. Great bodily injury
18 means bodily injury which causes a substantial risk of
19 death or which causes serious permanent disfigurement or
20 a protracted loss or core impairment of the function of
21 a bodily member or organ.

22 Now, second, a person commits the offense of
23 assault and battery in the first degree if the person
24 unlawfully offers or attempts to injure another person
25 with the present ability and the act is accomplished by

1 means likely to produce death or great bodily injury. A
2 person commits the offense of assault and battery in the
3 second degree if the person unlawfully injures another
4 person or offers or attempts to injure another person
5 with the present ability to do so, and moderate bodily
6 injury to another person results or moderate bodily
7 injury to another person could have resulted. And
8 moderate bodily injury means physical injury requiring
9 treatment to an organ system or the body, other than the
10 skin, muscles and connective tissues of the body, except
11 when there is penetration of the skin, muscles and
12 connective tissues that requires surgical repair of a
13 complex nature, or when treatment of the injuries
14 require the use of regional or general anesthesia.

15 Assault and battery in the third degree, a person
16 commits, the person commits the offense of assault and
17 battery in the third degree if a person unlawfully
18 injures another person or offers or attempts to injure
19 another person with the present ability to do so.

20 Now, do you need any further discussion as to what
21 the different degrees are?

22 THE FOREMAN: Everybody okay with that?

23 JUROR: Uh-huh.

24 JUROR: Yes.

25 THE FOREMAN: Yes.

1 (Whereupon, the jury conferred off the record in
2 the jury-box, after which the CD of the 9-1-1 call was
3 played again for the jury in its entirety -- NOT
4 TRANSCRIBED.)

5 (Whereupon, the jury conferred off the record in
6 jury-box.)

7 THE COURT: Was that sufficient?

8 THE FOREMAN: Yes, sir.

9 THE COURT: Do you want any other further
10 instructions on the three --

11 A JUROR: Yes. On the third count.

12 THE FOREMAN: Yes. Could you read the third
13 indictment for us again, just to clarify?

14 THE COURT: The third indictment on possession?

15 THE FOREMAN: Yes, sir.

16 THE COURT: (Reading): In Indictment Number
17 2011-GS-37-404, the Defendant is charged with
18 possession -- by the way, that is the indictment
19 relating to possession of a weapon during the commission
20 of a violent crime against Sommer Rae Grant.

21 The Defendant is charged with possession of a
22 weapon during the commission or attempt to commit a
23 violent crime. The State must prove beyond a reasonable
24 doubt that the Defendant visibly displayed a knife
25 during the commission of a violent crime. A knife means

1 an instrument or tool with a sharp cutting blade,
2 whether or not fastened to a handle which can be used to
3 inflict a cut, slash or wound. In order for the
4 Defendant to be found guilty of possession of a weapon
5 during the commission of a violent crime, you must first
6 find the Defendant guilty of either committing a violent
7 crime or attempting to commit a violent crime.

8 Under our law, Section 16-1-60 of the South
9 Carolina Code of laws provides that criminal domestic
10 violence of a high and aggravated nature is a violent
11 crime.

12 Any further instructions?

13 A JUROR: What is possession?

14 THE COURT: Possession is two parts. It can either
15 be constructive possession or actual possession. Actual
16 possession is when you have it physically in your
17 control. Constructive possession can be if you have
18 control of an item within your area of, as I say,
19 control.

20 (A juror raised his hand.)

21 THE COURT: Yes, sir.

22 A JUROR: In the case of Sommer, if he had put the
23 knife down at some point, and didn't attack her --

24 THE COURT: No. That would be a charge on the
25 facts, and I can't charge on the facts.

1 A JUROR: Oh. I was trying to figure that out. Do
2 you have to have it in your hand while you're actually
3 physically --

4 THE COURT: Let me read it to you. I can charge
5 you on the law, I just can't charge you on the facts.

6 (Reading): The Defendant is charged with
7 possession of a weapon during the commission of or
8 attempt to commit a violent crime. The State must prove
9 beyond a reasonable doubt that the Defendant visibly
10 displayed a knife during the commission of a violent
11 crime. A knife means an instrument or tool with a sharp
12 cutting blade, whether or not fastened to a handle which
13 can be used to inflict a cut, slash or wound. In order
14 to find the Defendant guilty of a possession of a weapon
15 during the commission of a violent crime, you must first
16 find the Defendant guilty of either committing a violent
17 crime or attempting to commit a violent crime.

18 Our South Carolina Code of Laws provides criminal
19 domestic violence of a high and aggravated nature is a
20 violent crime.

21 A JUROR: Okay.

22 THE COURT: Anything else?

23 (There was no response.)

24 THE COURT: Very good. Thank you very much. And I
25 do want to thank you for your attention and your

1 concern. Thank you very much. If you will retire now
2 and continue your deliberations.

3 (Whereupon, the jury left the courtroom at
4 approximately 2:53 p.m.)

5 THE COURT: Any exceptions or requests from the
6 State?

7 MR. STOUDEMIRE: None, Your Honor.

8 THE COURT: From the Defense?

9 MR. ROSEMOND: No, Your Honor. However, I do want
10 to go back and make sure you had noted my objections for
11 the language about general intent for the attempted
12 murder rather than the specific attempt.

13 THE COURT: Very good. I don't know that I did
14 note it on the record, but now it is my understanding
15 that you were excepting to my charge charging general
16 intent rather than specific intent. Very good. So your
17 objection is noted -- timely objection is noted for the
18 record. Anything else?

19 MR. STOUDEMIRE: No, Your Honor.

20 MR. ROSEMOND: Nothing from the Defense, Your
21 Honor.

22 THE COURT: All right. We'll stand at ease until
23 we have a verdict.

24 (Whereupon, the Court stood at ease on the State v.
25 Michael Couch and considered other matters, after

1 which a verdict was reached by the jury at
2 approximately 3:15 p.m.)

3 Verdict of the Jury:

4 THE COURT: All right. It is my understanding the
5 jury has reached a verdict. Anything from the State
6 before we bring the jury back?

7 MR. STOUDEMIRE: Nothing, Your Honor.

8 THE COURT: Anything from Defense?

9 MR. ROSEMOND: No, Your Honor.

10 THE COURT: Ladies and gentlemen who are here in
11 attendance today, I'm going to admonish you, not just
12 advise you but admonish you that regardless of the
13 verdicts in these cases, there is not to be any sort of
14 outburst. If you feel that you cannot control your
15 emotions, leave at this time. Otherwise it will be
16 considered contempt of the court.

17 All right. Does anybody want to leave?

18 (There was no response.)

19 THE COURT: Very good. Ask the jury to join us,
20 please.

21 (The jury entered the courtroom at approximately
22 3:21 p.m.)

23 THE COURT: Let the record reflect the jury is in
24 the jury-box. Mr. Foreman, I understand the jury has
25 reached a verdict on the indictments.

1 THE FOREMAN: We have, Your Honor.

2 THE COURT: If you would please hand it up to the
3 bailiff.

4 State of South Carolina versus Michael Lamar couch.
5 Indictment 2011-GS-37-391 charging the attempted murder
6 of Garry Gean McCall, Junior. We, the jury, unanimously
7 find that the Defendant, Michael Lamar Couch, is guilty
8 of the lesser-included offense of assault and battery of
9 a high and aggravated nature.

10 Indictment number 2011-GS-37-403 charging criminal
11 domestic violence of a high and aggravated nature
12 against Sommer Rae Grant: We, the jury, unanimously
13 find Michael Lamar Couch is guilty of criminal domestic
14 violence of a high and aggravated nature.

15 Indictment Number 2011-GS-37-414, charging
16 possession of a weapon during the violent crime against
17 Sommer Rae Grant: We, the jury, unanimously find that
18 the Defendant, Michael Lamar Couch, is guilty of
19 possession of a weapon during the commission of a
20 violent crime.

21 Signed Eric W. Bost, Foreperson, Walhalla, South
22 Carolina, October 19th, 2011.

23 Mr. Foreman, ladies and gentlemen of the jury, are
24 these your verdicts and are they still your verdicts?
25 If so, indicate by raising your right hand.

1 Let the record reflect the jury affirmed the
2 verdict on each of the indictments.

3 All right. Is there anything from the State before
4 I dismiss them?

5 MR. STOUDEMIRE: Nothing from the State, Your
6 Honor.

7 THE COURT: Anything from the Defense?

8 MR. ROSEMOND: No, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, the
10 Court is never interested in a verdict, only how that
11 verdict is reached. And, as I mentioned to the
12 alternate jurors earlier, although it looks like I'm
13 doing everything in the world except paying attention up
14 here, I've developed a certain ability to keep up with
15 what's going on in the courtroom. And I noticed
16 throughout the trial of this case all of you as well as
17 our alternates, too, paid very careful and close
18 attention not only to the testimony and exhibits but
19 also the argument of counsel. And I was impressed with
20 your questions as far as the charge on the law.

21 I do appreciate your service. I can assure you
22 that if it was not for citizen participation in our
23 system of justice, it would not be the admired system of
24 justice that it is in all the world, and it would not
25 function without citizen participation.

1 I might note that Winston Churchill, the Prime
2 Minister of Great Britain during the second world war
3 once made the observation that no greater service can a
4 citizen perform in peacetime than that as a juror,
5 because without citizens' participation our whole system
6 of justice would collapse. We have to have people who
7 care. And I know that all of you would rather have been
8 somewhere else than you have been the last three
9 years -- three years (laughter) -- last three days.
10 However, I hope it hasn't been without some benefit to
11 you.

12 Now, the only thing I can offer or do for you, if
13 you remember on Monday when I qualified the entire jury
14 panel, I asked if any members had served on a jury in
15 the last three years. At least you won't have to be
16 called for jury service for another three years. But,
17 as I say, I hope it has not been without benefit,
18 because the State of South Carolina is in your debt and
19 I thank you for it.

20 So, that concludes your service for this week and I
21 thank you for it. And I hope you have a wonderful
22 balance of the week as well as a -- have you all seen
23 outside? It looks like it might be bright and
24 beautiful, but it might be a little chilly, so take care
25 of yourselves. Thank you very much.

1 Everyone else remain seated while the jury retires
2 from the courtroom.

3 Oh, Mr. Bost, I need to see you, sir.

4 (Whereupon, the jury was excused, except the
5 Foreman, Mr. Bost, to conform the indictments to
6 the verdict form.)

7 (Discussion off the record between the Court and
8 the Foreman.)

9 (Whereupon, the jury left the courtroom at
10 approximately 3:27 p.m. except for the Foreman.)

11 (Whereupon, the Foreman left the courtroom at
12 approximately 3:28 p.m.)

13 THE COURT: State ready?

14 MR. STOUDEMIRE: Yes, Your Honor.

15 THE COURT: Defense ready?

16 MR. ROSEMOND: Yes, Your Honor.

17 THE COURT: I am going to note motions both on
18 behalf of the State and the Defendant to be filed within
19 ten days.

20 MR. STOUDEMIRE: Yes, sir.

21 MR. ROSEMOND: Yes, sir.

22 THE COURT: So, both the State and the Defendant
23 have an opportunity to file any post-trial motions
24 within that time.

25 All right. Bring the Defendant around.

1 Sentencing of the Defendant by the Court:

2 THE COURT: All right. Mr. Stoudemire, what do you
3 have to say on behalf of the State? And if any of the
4 victims would like to be heard, also.

5 MR. STOUDEMIRE: Yes, sir. Your Honor, I think at
6 least one of the victims would like to speak, and then
7 I'm gonna say a couple words, and then I think Chief
8 Chastain from the Walhalla Police Department would like
9 to speak as well.

10 Your Honor, this is certainly not Mr. Couch's first
11 brush with the law. I know Your Honor is always
12 interested in his prior record, and with your permission
13 I'll go ahead and recite that.

14 Your Honor, he has a prior criminal domestic
15 violence conviction from 1997. He has a malicious
16 injury to property, two counts of that. He has
17 nonviolent burglary second, two counts of that, also
18 from 1997. He also has two petit larcenies from 1997 as
19 well. Excuse me. Four petit larcenies from 1997.

20 Your Honor, he also has possession of tools used in
21 a crime from 1997 in connection with that burglary as
22 well. Shoplifting from 1999, trespassing from 1999,
23 contributing to the delinquency of a minor from that
24 same year.

25 And 2001 is a violent burg second. Also an ABHAN

1 conviction from 2001, malicious injury to personal
2 property, and assault and battery with intent to kill
3 from 2001, as well.

4 Your Honor, he has possession of marijuana from
5 2003, just a simple possession charge; failure to stop
6 for a blue light from 2003, resisting arrest from 2003.
7 Open container, shoplifting, trespassing from 2004,
8 another ABHAN from 2005, public disorderly conduct,
9 trespassing, trespassing, and entry upon land of another
10 from 2005.

11 Shoplifting again in 2006, possession of a weapon
12 by certain persons unlawful from 2006 as well;
13 possession of a stolen vehicle from 2007 --

14 THE DEFENDANT: I didn't do that.

15 MR. STOUDEMIRE: -- public disorderly conduct from
16 2007 and 2008. Unlawful use of telephone from 2008.
17 Your Honor, he's got another criminal domestic violence
18 conviction from 2009. He was tried in Magistrate's
19 Court on that. That is the same victim that was the
20 victim in this CDV high and aggravated nature.

21 And, since he's been incarcerated, he picked up an
22 assault and battery third degree while he was down at
23 the jail, and he was tried and convicted in Municipal
24 Court in the City of Walhalla on that charge. He
25 presently has two other charges pending in General

1 Sessions Court from his time down at the jail as well.
2 Those are assault and battery second degree and an
3 indecent exposure charge.

4 And Your Honor, from the State's standpoint, given
5 Mr. Couch's prior criminal history, given the facts that
6 came out in this trial, the violent nature of this
7 offense, from the Solicitor's Office we feel that the
8 maximum sentence should not only be entertained but is
9 completely appropriate.

10 And Chief Chastain I know wants to say some words.

11 THE COURT: All right, Chief?

12 CHIEF CHASTAIN: Yes, sir, Your Honor. I've been
13 in police work for almost 20 years, and I believe
14 anybody who's been in police work in the last 20 years
15 has probably dealt with Mr. Couch on a regular basis, I
16 believe even back when he was a juvenile.

17 I sat down with him and talked to him and I told
18 him he would end up in this spot one day if he didn't
19 straighten up. I've dealt with him and our department
20 has dealt with him a lot the last three or four years.

21 I think he done pretty good when he got out of jail
22 the last time. Tried to get him a job. Done fairly
23 well for six months but just kind of fell back into his
24 role that we were used to him being at. And it seems
25 like the more time goes on, the more violent his

1 tendencies seem to be.

2 From my standpoint, I think a max sentence would
3 not only help Mr. Couch get rehabilitated, but it would
4 sure put the people that live in Walhalla at ease.
5 Because I don't believe he's learned his lesson through
6 all the other punishments he's had. And that's our
7 understanding on behalf of the Police Department.

8 THE COURT: Very good. Thank you, sir.

9 MR. STOUDEMIRE: Your Honor, I think one of the
10 victims wants to speak as well.

11 MR. McCALL: Garry McCall.

12 THE COURT: Yes, sir.

13 MR. McCALL: I want to say I'm thankful for
14 Ms. Sommer Grant having the phone hidden in her pants,
15 because I didn't even know that there was a 9-1-1 tape
16 at the time, and I'm so thankful for that. Because I
17 believe that if the law wasn't there when she called,
18 that he would have even maybe have killed us, I think,
19 if the law didn't show up at that time. That's all I
20 have to say.

21 THE COURT: All right.

22 All right. Anyone else?

23 MS. GRANT: Sommer Grant. And I just want to say
24 that me and Michael have been through a lot. We was
25 together for about eight years, I guess, and I stabbed

1 him, I've hit him. He's done the same to me. I mean,
2 it's just back and forth. I know and I believe what he
3 did, he knows it was wrong. But I also don't think he
4 should get like, you know, a long time. I think more
5 than anything he needs maybe anger management or some
6 counseling or something than time.

7 THE COURT: Thank you, ma'am.

8 MR. STOUDEMIRE: Your Honor, I think that's
9 everyone on behalf of the State.

10 THE COURT: All right.

11 Mr. Rosemond, tell me a little bit about Mr. Couch.

12 MR. ROSEMOND: Your Honor, Mr. Couch is thirty-one
13 years of age. He is, has his G.E.D., indicates to me
14 that he went through two years of college.

15 And certainly, as you look at his particular
16 record, he's been pretty much in and out of jail.

17 I disagree with the fact that the Chief said that
18 his crimes seem to be getting worse. I mean, he had an
19 assault and battery of a high and aggravated, two of
20 them, in '97 and in early 2000.

21 Be that as it may, you know, certainly Mr. Couch
22 has indicated to me that, you know, he's trying to stop
23 his behavior. I don't know what sets Mr. Couch off
24 during those times. But certainly in the courtroom this
25 particular week has been his mother, has been his sister

1 who is willing to speak, and certainly I would hope that
2 whatever sentence that you fashion for Mr. Couch is one
3 that will give him a chance to come out of prison one
4 day and certainly hopefully have some redeemable
5 qualities.

6 I would note, Your Honor, that the statute changed
7 for assault and battery of a high and aggravated as of
8 June 2010 and certainly now it is not more than 20
9 years. Less than, a little over a year ago it was not
10 more than 10 years. So, certainly that's a big
11 difference in terms of where we are at today.

12 You know, the legislature sought to change the
13 assault and battery with intent to kill statute with one
14 of attempted murder. And back there the ABWIK statute
15 carried 20 years as you very well know. And certainly,
16 when they changed the ABWIK statute or changed that
17 particular charge and made it attempted murder, they
18 took the attempted murder up to 30 years and they made
19 the ABHAN go up to 20 years.

20 I would think that since it says not more than 20
21 years, that you not give Mr. Couch the entire 20 years
22 for the ABHAN charge. And certainly I would ask, even
23 if you are going to give him the max for the criminal
24 domestic violence high and aggravated charge, fashion a
25 sentence where, when he is released from prison, he will

1 have some chance in this world to come back in to
2 society and be, hopefully be a decent human being. And
3 he does have some decent qualities. And certainly I
4 would ask that you will take that in consideration.

5 His sister wants to speak, Your Honor.

6 DEFENDANT'S SISTER: Hi. I'm Terry Ruth. I'm here
7 on Mike's -- I mean I'm Michael's sister. I just want
8 to say that a long time of sentence is not what Michael
9 needs. What he done was not right and he should pay the
10 consequences of his crime. But I also believe that in
11 that, there needs to be some rehabilitation.

12 I can tell you that on the outside, all the crimes
13 that he's committed, the officers didn't say that, but
14 it's in here (pointing to her head). They don't see
15 what goes on in your mind. He needs help with that. I
16 think he needs to be sent to some rehabilitation center
17 that gives him, to be put on medication for his anger
18 and his outbursts. Because I've seen that, too, with
19 living with my brother. So if you could take in
20 consideration that, I would be very grateful. Thanks.

21 THE COURT: Yes, ma'am. Thank you.

22 Anyone else?

23 (There was no response.)

24 THE DEFENDANT: I want to say something.

25 THE COURT: All right. Mr. Couch, anything you

1 would like to say?

2 THE DEFENDANT: Sir, I would just like to say that
3 even though you see all those charges, that doesn't mean
4 I'm a bad person (crying).

5 I've had a hard life. I made a lot of mistakes in
6 my life. But I do have faith in the Lord. God can
7 change anybody.

8 I never meant to hurt her like that. I wasn't
9 gonna kill her, I wasn't gonna kill him. A lot of the
10 charges I got for the violence, I'd been around other
11 people that had had troubled lives, a troubled life like
12 me. And when you mix alcohol in with that, you never
13 get nothing good out of it. Something is always gonna
14 turn out going wrong. Because anything the devil has a
15 hand in, he's gonna try to destroy wherever he can.
16 (Crying.)

17 God knows I got a good heart. I do have remorse.
18 I am capable of change because God can change anybody.
19 My record doesn't speak for who I am, it just speaks for
20 the mistakes that I've made.

21 Nobody is perfect. Paul in the Bible persecuted
22 Christians. Moses killed. David had a man sit in the
23 front line because he wanted his wife. But God used all
24 them, and he forgave them.

25 I just ask that you have mercy on me and give me an

1 opportunity to have some life left on the outside. I
2 pray that whatever you do, the Lord will use me and know
3 that I'm not as bad as what the Walhalla Police has made
4 me out to be. Over the years they have -- seems like
5 they have, wherever I'm at, they're at, regardless of
6 whether I do wrong or not. It seems like whenever I
7 first got my first charge, they never stopped. They
8 never let up on me. Everything that ever happened they
9 accused me of it. And they automatically assume that
10 I'm guilty.

11 They've charged me with a lot of things that I've
12 beat, a lot of charges that I have actually beat. They
13 charged me for the first degree burglary that I didn't
14 do. I pled to it, I pled that, I pled to a no contest,
15 or I pled if I'd have went to court, to trial, that I
16 might have been found guilty. I was scared that I might
17 have been found guilty even though I wasn't.

18 They've charged me a lot. They charged me with
19 CDVs that I beat. They've locked me up. They charged
20 me with a bottle walking down the street bothering
21 nobody and they come and locked me up.

22 You know, alcohol destroys peoples' lives. And
23 from me having a bad childhood, I resorted to drugs and
24 alcohol. If you could only see the inside of me, I
25 would give a man the shirt off my back.

1 I want to apologize for what I did to Sommer. I
2 want her to know that I love her. I want her to know
3 that I wouldn't try to kill her.

4 And I want Garry to know that I'm sorry.

5 I don't know what got in to me that night. I
6 assumed something that could or could not have been
7 true. I was under the influence of alcohol, and I guess
8 what they say, called alcoholic spirit, when it goes in
9 your body, it must obviously put spirits that you don't
10 want in to you.

11 I just ask for mercy, and I want everybody to know
12 that I do have love, a lot of love in my heart and I'm
13 not ruined. I can change because God can change
14 anybody. I pray and I ask you to forgive me. I ask you
15 to whatever the Lord sees fit for me to get, that I get,
16 that I accept it. And that I will do whatever he uses
17 me to do.

18 MR. ROSEMOND: Finally, Your Honor, as we sat here
19 through this particular trial, we've listened to the
20 evidence and we've looked at his record, I certainly
21 believe that a sentence of 15 years is an appropriate
22 sentence. No more than 20, Your Honor. And certainly I
23 think that would be an appropriate sentence for
24 Mr. Couch in this particular matter.

25 THE COURT: There's a mandatory five-year sentence,

1 isn't it, on possession?

2 MR. STOUDEMIRE: Yes, sir.

3 MR. ROSEMOND: And I don't think that has to be
4 consecutive, Your Honor. I think there's a concurrent
5 aspect of that as well.

6 THE COURT: How much time has he served?

7 MR. ROSEMOND: Since February the 16th, Your Honor.
8 That would be --

9 THE DEFENDANT: Eight months...

10 MR. ROSEMOND: I have 248 days, Your Honor.

11 THE COURT: What did you say, Mr. Rosemond?

12 MR. ROSEMOND: I had 248.

13 THE COURT: I got 246. Let's say 247.

14 Anything else from you, Mr. Couch?

15 MR. ROSEMOND: Nothing from the defense, Your
16 Honor.

17 THE COURT: Mr. Couch, anything else?

18 THE DEFENDANT: No, sir.

19 THE COURT: Indictment Number 2011-GS-37-391, the
20 sentence of the Court is the Defendant, Michael Lamar
21 Couch, be committed to the State Department of
22 Corrections for a term of 20 years, provided upon the
23 service of 15 years and payment of costs and assessments
24 as applicable. The balance is suspended: Probation for
25 five years.

1 Indictment Number 2011-GS-37-404, the sentence of
2 the Court is that the Defendant be committed to the
3 State Department of Corrections for a term of five years
4 plus pay the costs and assessments as applicable.

5 Indictment Number 2011-GS-37-403, the sentence of
6 the court is that the Defendant be committed to the
7 State Department of Corrections for a term of ten years
8 provided upon the service of five years and payment of
9 costs and assessments as applicable. The balance is
10 suspended with probation for five years.

11 All sentences to run concurrent. Defendant be
12 given credit for 247 days' time served, to undergo drug
13 and alcohol testing and treatment, substance abuse
14 counseling while incarcerated to include ATU, and to
15 successfully complete the batterer's program under
16 Section 16-25-65. Probation is to be suspended while on
17 probation. In other words, he's got five years'
18 probation under this one and he's got five years'
19 probation under '391.

20 THE PROBATION OFFICER: Consecutive?

21 THE COURT: Probation is to be suspended while on
22 probation. In other words, he will have time to do his
23 batterer's program.

24 All right. Good luck to you, sir.

25 THE DEFENDANT: Thank you, Your Honor.

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1 MR. STOUDEMIRE: Thank you, Your Honor.

2 THE COURT: Chief, thank you very much.

3 (Whereupon, the trial of the State of South

4 Carolina v. Michael Lamar Couch was concluded on

5 October 19, 2011, at approximately 4:21 p.m.)

6 ** End of Requested Certified Transcript of Record **

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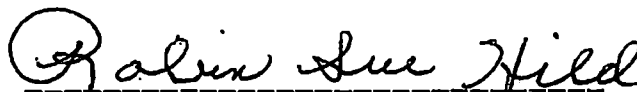
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 17 day, 18th day, and 19th day of October, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 30, 2012

A handwritten signature in cursive script that reads "Robin Sue Hild". The signature is written in dark ink and is positioned above a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of OCONEE

MICHAEL LAMAR EPOCH

Full name and prison number (if any) of Applicant

~~28254~~
v. 282654

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

2014 CP 31-433

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2014 JUL 29 P 3:43

INSTRUCTIONS - READ CAREFULLY

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 the 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.

1. Place of detention South Carolina Department of Corrections
McCormick Correctional Institute (MCCI)
2. Name and location of Court which imposed sentence Court of General
Sessions, County of Oconee
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) 21011-GS-37-00391 ABHIAN
(b) 21011-GS-37-00403 CDVIAN

- (c) 2011-GS-37-00404 possession of a weapon during commission of crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 19, 2011, 20 yrs suspended up 15 yrs Service w/ 5 yr
- (b) October 19, 2011, 5 yrs
- (c) October 19, 2011, 10 yrs suspended upon service 5 yr w/ 5 yr probation
6. Check whether a finding of guilty was made: 5 yrs
- (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. STATE OF South Carolina court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. Filed July 10, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c)

N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Violation of Federal Constitution and South Carolina Law as guaranteed to Due process of Law
 (b) Violation of Federal Constitution and South Carolina Law as guaranteed to fair trial
 (c) Violation of Federal Constitution and South Carolina Law as guaranteed to effective counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Due process of Law was not followed in my trial
 (b) The trial was unfair
 (c) I did not get effective assistance of counsel

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (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? NO

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. N/A
 ii. N/A
 iii. N/A
 iv. N/A

- (b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i.
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i.
- ii.
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i.
- ii.
- 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.
- ii.
- iii.

(b) the proceedings in which each ground was raised:

- i.
- ii.
- iii.

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) Not Legally allowed
 (b) Not Legally allowed
 (c) Not Legally allowed

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (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. R. Pelane Rosemond

ii. David Alexander, SCCID, Division of
Appellate Defense, P.O. Box 1589, Columbia, SC
29211

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. Trial in General Session Court

ii. Direct Appeal in Court of appeals

iii. N/A

19. State clearly the relief you seek in filing this application:

VACATE ^{conviction} / SET ASIDE ^{conviction} / or Correct Sentence

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of OCCONEE)

VERIFICATION

2014-CP-31-433

I, MICHAEL LAMPA COUCH, 282654, 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.

Michael Couch

SWORN to and subscribed before me this 26
day of June, 2014.

J. Frank (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED OCCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2014 JUL 29 PM 3:43

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT 2014 CP 37-433
IN SUPPORT THEREOF**

I, MICHAEL LAMAR COUCH 282654, 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.

Michael Couch

Applicant

SWORN or affirmed to and subscribed before me this

26 day of June, 2014.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 JUL 29 P 3:43

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Michael Lamar Couch,	)	C.A. No. 2014-CP-37-433
S.C.D.C. No. 282654	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(counsel has been appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 29, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the Department of Corrections pursuant to orders from the Oconee County Clerk of Court. On May 11, 2011, the Oconee County grand jury indicted Applicant for attempted murder (2011-GS-37-391), criminal domestic violence, high and aggravated natured (2011-GS-37-403), and possession of a weapon during a violent offense (2011-GS-37-404). He was represented by E. Delane Rosemond, Esq. On the week of October 17, 2011, the State called its case to trial. Applicant was found guilty of the lesser-included offense of assault and battery of a high and aggravated nature "ABHAN," on the attempted murder charge and guilty as indicted on the two other charges. The Honorable Alexander S. Macaulay sentenced Applicant a term of twenty (20) years imprisonment suspended upon fourteen (14) years active incarceration and five years probation for ABHAN. Applicant was also sentenced to a term of ten (10) years imprisonment suspended upon the service of five (5) years

active and five (5) years imprisonment. Last Applicant was sentenced to a term of five (5) years imprisonment on the weapons offense. The sentences were to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by David Alexander, Esq., of the Division of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Michael Couch, Op. No. 2013-UP-313 (filed on July 10, 2013). The Remittitur was issued on August 16, 2013.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction and Applicant's appellate records¹, and Applicant's trial transcript².

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
 - a. "I did not receive effective assistance of counsel"
2. Due Process violation

III.

The Applicant pleads unsubstantiated allegations that are facially deficient. "A conclusory allegation of ineffectiveness raises no constitutional issue because a petitioner must show how counsel was deficient and how there was prejudice." Miller v. Johnson, 200 F.3d 274, 282 (5th Cir. 2000). The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

¹ Appellate records include Appellant's brief, the State's brief, the Court of Appeal's opinion, and the remittitur.

² Applicant's S.C.D.C. records will be forwarded upon receipt.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured 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 cannot be conclusively refuted by the record. 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.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Respondent intends to move to dismiss Applicant's action absent timely and sufficient amended pleadings.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

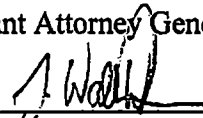
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE

Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Telephone: (803) 734-3737

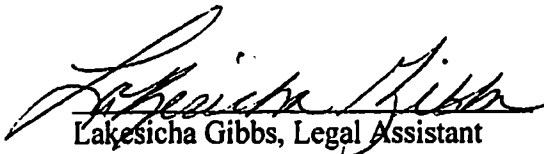
Oct 29th, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
	)	
	)	2014-CP-37-433
	)	
MICHAEL LAMAR COUCH, #282654	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh W. Welborn, Esquire
PO Box 173
Anderson, SC 29622

DATED this 29th day of October, 2014.


 Lakesicha Gibbs, Legal Assistant
 For Respondent

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

Office Telephone:
(864) 226-5787

Fax:
(864) 224-3738

October 29, 2015

Patrick Schmeckpeper
Assistant to Attorney General
P. O. Box 11549
Columbia, South Carolina 29211-1549

In RE: Michael L. Couch #00282654 vs. State of South Carolina
Case #: 2014-CP-37-433

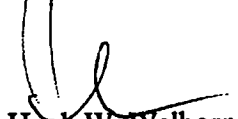
Dear Patrick:

In general terms, my client has alleged the following amendments need to be made to his application for post-conviction relief. Please advise if you would accept this as valid amendments without the necessity of my having to file an amended application, etc.

1. Counsel was ineffective for failing to argue for a directed verdict on the possession of weapon charge. Client states victim clearly stated that he did not cut her or hold a knife and threaten her. Defense counsel did not argue that neither alleged victim testified that he used a knife or was seen with a knife. Defense counsel did not argue these points nor did he object to the doctor's testimony as an unreliable opinion because he was not qualified as a forensic pathologist. Defense counsel failed to argue these points or even a direct verdict upon all charges
2. Client then goes into the different charges, (ABHAN & CDVHAN, Possession of Weapon During the Commission of a Violent Crime) and what has to happen to be found guilty of the charges citing different cases. (ABHAN, CDVHAN, etc.)
3. Counsel was ineffective for failing to investigate and prepare for trial. Client states there was no legal link between cellphone call and 911 recording used to convict.
4. Counsel was ineffective for not properly objecting and motioning against prejudicial statements and 911 recording. Client states none of the statements or recording should have been allowed and counsel did not do all he could to prevent it from happening to prevent jurors from being prejudicially influenced.

5. Counsel was ineffective for not objecting to spousal testimony and did not object at any time to trial court denial of spousal privilege.
6. In closing arguments, Mr. Couch states counsel gave up his self-defense defense and told the jury I was guilty of something. Trial counsel admitting to the jury defendant's guilt resulted in performance below and objective standard of reasonableness.

With kind regards,



Hugh W. Welborn

HWW:sba

cc: Client

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	Case No(s) : 2014CP3700433
	)	
Michael L. Couch,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

October 24, 2016
Walhalla, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

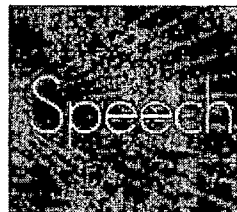
A P P E A R A N C E S:

R. MILLS ARIAIL, Esquire
Attorney for the Applicant

JOHANNA C. VALENZUELA, Esquire
Attorney for the Respondent

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7™

I N D E XDIRECT CROSS REDIRECT RECROSS

Applicant Witnesses:

Michael Couch

by Mr. Ariail 9

by Ms. Valenzuela 40

Respondent Witnesses:

Delane Rosemond

by Ms. Valenzuela 48

by Mr. Ariail 61

Certificate of Reporter 73

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

APPLICANT EXHIBITS

A-1	Applicant's Notes	20	

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 24th day of October, 2016 at approximately 10:14 a.m.)

THE COURT: And I'm sorry. Did you say this is Couch or Craig?

MS. VALENZUELA: Couch.

THE COURT: Couch.

MS. VALENZUELA: Yes, ma'am.

THE COURT: I'm sorry.

(WHEREUPON, there is a pause.)

MS. VALENZUELA: Your Honor, may it please the Court. This is the case of Michael Lamar Couch versus the State of South Carolina, case number 2014-CP-37-433. Mr. Couch filed this application in July 29 of 2014. This was -- he is presently confined with the Department of Corrections, and this was after the Grand Jury of Oconee County indicted him for Attempted Murder in May of 2011. They also indicted him for Criminal Domestic Violence of a High and Aggravated Nature and Possession of a Weapon During a Violent Offense.

THE COURT: Okay.

MS. VALENZUELA: He was represented by Mr. Delane Rosemond ---

1 **THE COURT:** Okay.

2 **MS. VALENZUELA:** --- who is present in the
3 courtroom. On the week of October 17th of 2011,
4 the State ended up calling this case to trial,
5 and he was found guilty of a lesser included
6 offense of Assault and Battery of a High and
7 Aggravated Nature on the Attempted Murder
8 charge and then guilty as indicted on the two
9 other charges.

10 The Honorable Judge McCauley sentenced
11 Applicant to 20 years suspended on 14 years of
12 active incarceration and five years probation
13 for the ABHAN. He was also sentenced to a term
14 of 10 years suspended upon the service of five
15 years active and five years -- five years
16 active, I'm sorry. And then he -- then, in
17 addition, another five years for the weapons
18 offense, but all of those charges were to run
19 concurrently.

20 **THE COURT:** All right.

21 **MS. VALENZUELA:** A notice of appeal was
22 filed on the applicant's behalf at the South
23 Carolina Court of Appeals affirming the
24 convictions and the sentences without
25 remittitur being issued on August 16th of 2013.

1 The applicant is currently represented by
2 Mr. Mills Ariail and has filed a series of
3 different amendments. It's my understanding
4 that we're working off of the last amendment,
5 which we received from his prior counsel, which
6 is Mr. Hugh Welborn. We received that in a
7 letter. That was sent to us on October 29th,
8 2015. I will allow Mr. Ariail to summarize
9 those and let us know if there's any additions
10 or changes to those allegations.

11 **THE COURT:** Sure. Mr. Ariail?

12 **MR. ARIAIL:** Yes, Your Honor. May it
13 please the Court.

14 **THE COURT:** Yes.

15 **MR. ARIAIL:** Mr. Welborn -- I've taken
16 this case over from Mr. Welborn due to his
17 health reasons.

18 **THE COURT:** Okay.

19 **MR. ARIAIL:** So I've worked with Mr. Couch
20 in regards to this. What I understand is there
21 was an order or a letter on October 29, 2015
22 that I think -- I'm not sure if it's been made
23 a part of the record of the last hearing.

24 **MS. VALENZUELA:** It should be -- it should
25 be on the disk, Your Honor.

1 **THE COURT:** Okay. And I apologize. I'm
2 having difficulty accessing it right now. It's
3 okay. It's okay. It's not your fault, it's
4 completely my fault. But I'll have it in just a
5 minute.

6 **MS. VALENZUELA:** Okay.

7 **MR. ARIAIL:** All right. And I can give a
8 copy or we can just wait if you want to.

9 **THE COURT:** If you've got a copy, that
10 would be great.

11 **MR. ARIAIL:** Yeah, I'll try to go off of
12 this one, Your Honor.

13 **THE COURT:** I don't want to take your only
14 copy.

15 **THE CLERK:** Do you want me to make a copy?

16 **THE COURT:** Do you have ---

17 **THE CLERK:** Uh-huh.

18 **THE COURT:** --- some way to make it?

19 **MR. ARIAIL:** Okay. Thank you.

20 (WHEREUPON, there is a pause.)

21 **THE COURT:** Okay.

22 **MR. ARIAIL:** Okay. Perfect. Okay. So the
23 letter that was submitted that we had -- I'll
24 make it a part of the record -- October 29th,
25 2015 by Mr. Welborn and was to -- Mr.

Remarks

1 Schmeckpeper, I think, was in Anderson or
2 Oconee at that time doing the Attorney
3 General's Office. He laid out six different
4 points which he wanted to raise. My client has
5 notified me while I was putting this on the
6 record that Mr. Rosemond did make a directed
7 verdict motion under, number 1, for the weapons
8 charge, but it was not for the other two
9 charges, the Attempted Murder and the CDV High
10 and Aggravated, which he wanted a directed
11 verdict motion for.

12 The other one is pretty self-explanatory in
13 regards to failing to investigate and prepare
14 for trial. Client states there's no legal link
15 between the cell phone call and 911 recording.
16 I think he wanted that suppressed or a motion
17 to suppress that. He didn't object to any
18 prejudicial statements. I think he's laid out
19 some of those prejudicial statements, which he
20 believes shouldn't have come in or should have
21 been objected to.

22 There is a question in regards to testimony
23 from one of the witnesses in regards to spousal
24 immunity and -- I'll have to go back and ask my
25 client. I think there was some objection at one

1 period of time in regards to one of the
2 witnesses was a common law wife and they had a
3 discussion in regards to that, but he's got
4 some issues in regards to whether or not that
5 was -- an objection was raised properly in
6 regards to that.

7 And then, lastly, gave up his self-defense
8 claim and told the jury, "I was guilty of
9 something," and I'm going to let him testify to
10 what he believes is --

11 **THE COURT:** Gotcha. Okay.

12 **MR. ARIAIL:** -- Mr. Rosemond did in
13 regards. So those are pretty much our issues,
14 Your Honor.

15 **THE COURT:** All right. Well, I appreciate
16 you laying them out. If you want to proceed --

17 **MR. ARIAIL:** Sure, Your Honor. I'll call
18 Mr. Couch to the stand.

19 **THE COURT:** All right. Raise your right
20 hand please.

21 **MICHAEL COUCH**
22 having first been duly sworn, testifies as follows:

23 **THE COURT:** Okay. You can put your hand
24 down.

25 **DIRECT EXAMINATION**

1 **BY MR. ARIAIL:**

2 **Q** You got all your stuff, Mr. Couch?

3 **A** Yes, sir.

4 **Q** Good. I'm going to take you through a
5 little bit in regards to this case to get some
6 understanding. You were represented by Mr. Rosemond
7 in this case, correct?

8 **A** Yes, sir.

9 **Q** Okay. And he represented you on the
10 Attempted Murder, CDV High and Aggravated and
11 Possession of a Weapon During a Violent Offense,
12 correct?

13 **A** Yes, sir.

14 **Q** Okay. And he took this case -- he
15 represented you on all three of those charges,
16 correct?

17 **A** Yes, sir.

18 **Q** And you went to trial for those on, I think
19 it was October 17th, 2011?

20 **A** Yes, sir.

21 **Q** And just -- I know we're having a little
22 problem. I want to make sure everybody can hear you.
23 If you going to -- speak up. You can move that
24 towards you.

25 **THE COURT:** Yeah, I'm having a little

1 trouble hearing you.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Okay.

4 **BY MR. ARIAIL:**

5 **Q** If you can move it further during your
6 response, that will help us out.

7 **A** Okay.

8 **Q** You went to trial. Tell me, did you retain
9 Mr. Rosemond?

10 **A** Pro bono.

11 **Q** You say pro bono. Was he appointed by the
12 court?

13 **A** (Nods head.)

14 **Q** So he was appointed to represent you. You
15 were indicted on these, I think, on May 11th, 2011,
16 is that correct?

17 **A** Yes, sir.

18 **Q** Okay. How -- and you can maybe scoot that
19 up if you can.

20 **A** Okay.

21 **Q** I'm having a hard time hearing you.

22 **A** Yes, sir.

23 **Q** That's better. When you were indicted, had
24 you been -- when were you arrested on these charges?

25 **A** February 16th, 2011.

1 Q 2011, okay. And from February to May, I
2 guess when you were indicted, were you incarcerated
3 for that time?

4 A Yes, sir.

5 Q Did you ever make bond on these charges?

6 A No, sir.

7 Q Okay. So from the day you were arrested to
8 the date of trial, you were incarcerated, correct?

9 A Yes, sir.

10 Q Okay. Now, when was he appointed to
11 represent you? Do you remember?

12 A I don't remember, sir.

13 Q Okay. How long after you were incarcerated
14 do you think it was?

15 A Not long.

16 Q Okay. So when he -- when he was appointed,
17 did he come and meet with you to discuss the case?

18 A A couple of times.

19 Q Okay. You were in the Oconee County
20 Detention Center, is that right?

21 A Yes, sir.

22 Q Okay. So he came down there and met with
23 you and discussed the case?

24 A Once or twice.

25 Q Okay. So on those one or two times, what

1 did y'all discuss during that?

2 **A** Not a lot.

3 **Q** Okay. If you can give me an understanding,
4 did he talk to you about what you were charged with?

5 **A** Yes, sir.

6 **Q** Did he talk to you about what the elements
7 of the crime that they had to prove?

8 **A** No.

9 **Q** Did he talk to you about what the -- did
10 y'all go over discovery?

11 **A** No, he sent me discovery.

12 **Q** So he sent you the whole pack of discovery
13 to be able to look at. Did that include the witness
14 statements?

15 **A** Yeah.

16 **Q** Okay. And there were two, Mr. McCall and --

17 **A** Grant.

18 **Q** Okay. There were two that were, I guess,
19 the alleged victims in this case, correct?

20 **A** (Nods head.)

21 **Q** So did he provide you their statements as
22 to what they said?

23 **A** Yes, sir.

24 **Q** Did y'all go over them?

25 **A** No. He just sent them to me.

1 Q Did you discuss with him what they had said
2 and how that impacted the case?

3 A I think I told him -- I told him the parts
4 in there that I said were lies.

5 Q Okay. So you went over the statements with
6 him and you told him what the issues you have with
7 the statements, is that correct?

8 A It's hard for me to remember.

9 Q Okay. During these discussions, did he give
10 you any guidance or any information on what he felt
11 about the case?

12 A Not really.

13 Q Did he tell you what his strategy was going
14 to be?

15 A No, not really. He didn't come -- come to
16 see me but a couple of times, sir.

17 Q Okay. Tell me, did y'all discuss what your
18 strategy was going to be at trial?

19 A Nah. He came and told me that they was
20 offering me 20 and if I didn't take the 20, I was
21 going to be going to trial. I told him I was ready to
22 go to trial. Basically, that was all.

23 Q Okay. Did you discuss what he was going to
24 do at trial and how he was going to try to -- what he
25 was going to try to -- what he was going to argue to

1 the jury?

2 A No.

3 Q Did y'all discuss anything about how these
4 witnesses, you know, were going to impact the case?

5 A I mean, not -- not a lot.

6 Q The summary of this case, and you tell me
7 if I'm incorrect, there were two individuals that
8 claimed that you had assaulted them. Okay. It was at
9 a house, Mr. McCall's house. There was a knife and, I
10 think, a coffee pot involved where you assaulted,
11 alleged to have assaulted one of the individuals with
12 a coffee pot and then cut another one with a knife,
13 is that correct?

14 A Well, according to their statements, that's
15 what they said in their statements.

16 Q Okay. Did you discuss that with him?

17 A I gave -- I mean, he had my statement that
18 I gave.

19 Q Right.

20 A Of my version of the events.

21 Q And that was submitted at trial, correct?

22 A (Nods head.)

23 Q And your version was different than their
24 version, correct?

25 A Yes, sir.

1 Q Okay. And when you got to trial, there was
2 a 911 tape also, correct?

3 A Yes, sir.

4 Q Okay. And the 911 tape, did you discuss
5 that with Mr. Rosemond?

6 A No, sir. I didn't -- he didn't discuss it
7 with me. I didn't -- I didn't know about the law
8 until I got into the law library.

9 Q Okay. And we've gone through this, your
10 position is that he should have done something to
11 move to suppress that tape, is that correct?

12 A Oh, yes. Yes, sir.

13 Q And what do you believe -- I mean, what is
14 your position on how he was going to get that
15 excluded?

16 A I'm saying -- I've got it right here.

17 Q Okay. Well, I'm asking you to tell the
18 Court.

19 A Oh. I didn't know you were just asking me
20 about failing to prepare for trial. I mean, if you
21 were asking me about that, I got it wrote down. I got
22 the trial page numbers and everything.

23 Q Okay. And I'm going to -- we can submit
24 that as an exhibit, if you want to, in a little bit.
25 I'm just trying to get you to summarize what your

1 issues are that we have discussed. Okay.

2 **A** Oh, so I'm wanting to get this on the
3 record.

4 **Q** Okay. I'll put that as an exhibit here in
5 just a second. I mean, I need to take a look at it
6 and see, and we've got to show it to the other side.
7 But what I want to do is just go through and get a
8 summary of what you're saying he did wrong in regards
9 to the 911 tape.

10 **A** Okay. Actually, on trial page 69, the
11 Solicitor admitted to open line, no caller
12 identified. Trial page 78, 18 and 19, my own counsel
13 says, you know, you will hear a 911 tape and you will
14 hear it in a minute. Trial page 78, 20 and 21, he
15 said, you will hear what was happening on that day.
16 Page 82, lines 11 through 12, 911 dispatcher said,
17 couldn't get anybody to the phone. Trial page 85,
18 lines 24 and 25, Solicitor moved to admit 911 tape
19 into evidence. Trial page 86, my counsel makes no
20 objection to the 911 tape being admitted. Trial page
21 87, line 3, he does not wish to cross-examine.

22 Rule 901, South Carolina Rules of Evidence,
23 Requirement of Authentication or Identification. A
24 requirement of authentication or identification as a
25 condition precedent to admissibility is satisfied by

1 evidence sufficient to support a finding that the
2 matter in question is what a proponent claims. (5) is
3 identification of a voice, whether heard firsthand or
4 through mechanical or electronic transmission or
5 recording, by opinion based upon hearing the voice at
6 any time under circumstances connecting it with the
7 alleged speaker.

8 And (6), Telephone Conversation. Telephone
9 conversations, by evidence that a call was made to
10 the number assigned at the time by the telephone
11 company to a particular person or business.

12 Q Okay. So your claim is -- and we can submit
13 that. You don't have to read the whole document.
14 You're claiming that he should have moved to suppress
15 that or try to keep that out, correct?

16 A Yes, sir. And I'll tell you why. I was
17 wanting to try to tell you why.

18 Q I understand you're telling me what your
19 position is and you just cited some items right
20 there. You want to submit that for the court to
21 review, correct?

22 THE COURT: I'm going to tell you this,
23 sir, I need to review some documents, including
24 that one that you've got before I'm going to
25 rule on this case. And I will review that before

1 I rule on this case. I'm not going to rule
2 today. So, in other words, you don't have to go
3 through and read everything if it's in that
4 document because I will have that document and
5 I'm going to read it.

6 **BY MR. ARIAIL:**

7 Q I'll do this and make it real easy, can I
8 see that document and I'll show it to her and then I
9 can make it a part of the record. How about that?

10 A Yeah, I was going to give it to -- I mean.

11 Q Well, I've got to make it an exhibit. So
12 give me the whole -- is that the whole document?

13 A Yeah.

14 Q What about these pages right here?

15 A Yeah. Yes, sir. But when you ask me
16 questions, I'm going to have to refer to it.

17 Q I'm going to mark it. I'm going to let her
18 review it, then I'll be able to give it back to you.
19 Are they in order? Am I correct?

20 A Yeah.

21 Q 1, 2 -- (Pause.)

22 **MS. VALENZUELA:** Your Honor --

23 **THE COURT:** So this document -- sorry.

24 **MS. VALENZUELA:** Your Honor, I was just
25 going to say, Your Honor, the State has no

1 objection as long as we get a copy, which
2 counsel has indicated he will make for us.

3 **THE COURT:** Okay.

4 **MR. ARIAIL:** I was just going to move it
5 in and give it to him, if that's good. We'll
6 just put it in as Applicant's Number 1, if I
7 could do that.

8 **THE COURT:** All right. It's so admitted.

9 **(WHEREUPON, Applicant's 1 is marked for**
10 **identification and admitted into the record.)**

11 **BY MR. ARIAIL:**

12 **Q** All right. I'm going to give this back to
13 you just so we can work through it a little bit right
14 now. Okay. So those -- the information I just went
15 over, you provided a summary in here about how you
16 believe that that 911 tape should be excluded,
17 correct?

18 **A** Yeah.

19 **Q** Okay. Now, most of -- I want to go through
20 it and I want you to -- we're going to submit this
21 and I want you to understand this is going to be part
22 of the record and Judge Verdin is going to review it.
23 We don't need to read over items. I just kind of want
24 to go through and get an understanding of what you
25 think these other issues are that Mr. Rosemond failed

1 to do or how he was ineffective in this case. Okay.
2 You've laid a lot -- you've submitted a lot of
3 documents to the court and to Mr. Welborn about that.
4 I just want to go through and summarize it a little
5 bit more.

6 **A** I understand that if I don't get it on the
7 record that --

8 **THE COURT:** It's now a part of the record.

9 **THE WITNESS:** Okay.

10 **THE COURT:** You understand?

11 **THE WITNESS:** Yes, ma'am.

12 **THE COURT:** So in other words, whether it
13 comes from you speaking ---

14 **THE WITNESS:** Or you reading it.

15 **THE COURT:** --- or it's a document, it
16 becomes part of the record. But you are exactly
17 right about that. So that was a good thing that
18 your attorney put that thing in. That way, it's
19 all covered.

20 **BY MR. ARIAIL:**

21 **Q** So you covered a lot of it. I don't want --
22 a lot of times, people get up here and they want to
23 read it again to get it on the record. You don't have
24 to do that, okay. You've already made it a part of
25 the record. What I want to do is go through and just

1 get a quick understanding of what's in that document,
2 not word-for-word, but exactly what you believe are
3 the issues. Now, we've talked. One of the issues that
4 you raised to me is an issue in regards to directed
5 verdict. What is your issue that you have with Mr.
6 Rosemond in regards to his motion for directed
7 verdict?

8 **A** I was wanting to say one more thing about
9 this 911.

10 **Q** Okay. Please.

11 **A** The record includes the evidence that the
12 911 call was properly recorded. The evidence is
13 lacking, required under 901, to identify the voice of
14 a person making the call is that of the alleged
15 victim in this case. It violated -- the only evidence
16 at trial, I believe, offered to prove me guilty of
17 the crime was the 911 tape, unauthenticated 911
18 telephone recording and it violated my right to
19 confront witnesses against me as guaranteed by the
20 6th Amendment to the United States. Because 901
21 requires identification of a voice and a telephone
22 call before a recording of a telephone call is to be
23 admitted into evidence.

24 **THE COURT:** All right.

25 **THE WITNESS:** There was no -- he never

1 objected. And it also violated Rules 104(b). No
2 cell phone was found or collected and put into
3 evidence.

4 **THE COURT:** Okay.

5 **THE WITNESS:** Sergeant Kerr or Patterson
6 didn't have any personal knowledge of who made
7 the cell phone call. There was no evidence
8 linking the cell phone call to who supposedly
9 made it. Officers lacked personal knowledge of
10 the origin or condition precedent. And the
11 recording shouldn't have been admitted.

12 Also Rule 60 -- 602 --

13 **BY MR. ARIAIL:**

14 **Q** That's all a part of your document,
15 correct?

16 **A** Yeah.

17 **Q** Okay. And so that's part of the record. I
18 know you're wanting to bring that out. What I want to
19 go into, did you discuss with Mr. Rosemond about
20 these issues that you had with this tape?

21 **A** No, I didn't know anything about it at the
22 time, sir.

23 **Q** Okay. Did you tell him, I'm not on the tape
24 or you can't hear the voices?

25 **A** No, I didn't say anything.

1 Q Did you listen to the tape beforehand?

2 A No, I listened to it at trial.

3 Q Okay. So you never heard it beforehand?

4 A No.

5 Q Did y'all discuss that there was a tape out
6 there?

7 A I don't know, but I know I never heard it
8 before the trial.

9 Q Okay.

10 A And nobody said -- you know, nobody asked
11 me was that me and nobody asked her, Summer, was that
12 her. And they didn't ask Summer was that her. And
13 they didn't ask me. They just put it into evidence.

14 Q So you're saying, at trial, no one asked
15 her whether that was her voice on the tape?

16 A No.

17 Q Okay. Now, we were talking, I think, before
18 you went back into the 911 tape, about a directed
19 verdict motion that you wanted or thought that Mr.
20 Rosemond should have made. We talked about that. Tell
21 me what issue you had in regards to him and in
22 regards to the directed verdict motion.

23 A Well, because -- I mean, it's just -- I
24 mean -- excuse me, sir. I mean, page 130 -- Gary was
25 asking me -- was asked did he see me threaten Summer

1 with a knife. He answered no.

2 Q But that would be -- that would be for the
3 weapon charge. He did --

4 A What are you talking about?

5 Q I'm trying to find out what you're
6 saying ---

7 A Directed verdict?

8 Q --- he did that you believe was ineffective
9 in regards to directed verdict. He made a directed
10 verdict in regards to the weapons charge from what I
11 understand, correct?

12 A Yeah. I was just wanting to -- well, Gary
13 was asked what he was cut with. Page 134, he
14 responded he didn't really see the knife. Was asked
15 about me having a knife -- was asked about me having
16 a knife. He said I didn't see it, Page 160. Summer
17 stated I -- on page 120, lines 21 through 25, she
18 stated I did not cut her with a knife or hold up one
19 and threaten her.

20 On page 127, she asked whether she put
21 things in her statement that were true or false. She
22 states she can not really tell because she was on
23 Lortabs. She doesn't know what she was doing or
24 thinking. Was asked -- on page 126, was asked did she
25 see me hold a knife. She answered no, I didn't see

1 him hold it. She was asked on page 122, did she see
2 me cut Gary with a knife. She said no.

3 Dr. Cromer was asked if he was concerned
4 with the victim dying because of assault. You've got
5 to -- it is required to prove beyond a reasonable
6 doubt that I committed an assault and battery which
7 includes use of a deadly weapon or results in serious
8 bodily injury. South Carolina Code 16-25-65, an
9 assault and battery high and aggravated nature, if
10 unlawful injury -- unlawfully injure a person and
11 great bodily injury to another person results or is
12 acts -- likely to produce death or great bodily
13 injury. Great bodily injury means substantial risk of
14 death that causes serious or permanent disfigurement
15 or presents a loss or impairment of --

16 **BY MR. ARIAIL:**

17 Q I know that you -- you're just reading your
18 document.

19 A No, I'm saying -- I'm going to tell you
20 about the doctor on page 278. The doctor was not
21 concerned with the victim dying. And on page 317, the
22 doctor stated the injuries were not serious bodily
23 injuries.

24 Q But didn't the doctor state that if he had
25 had been cut in his carotid artery, he could have

1 died? I mean, I -- wasn't that --

2 **A** He stated -- doctor stated injuries were
3 not serious bodily injuries.

4 **Q** Okay. Now, I'm trying to understand exactly
5 how that relates to your question -- your issue of---

6 **A** Directed verdict.

7 **Q** --- in regards to the directed verdict.

8 **A** Yeah, because you've got to meet -- you've
9 got to meet --

10 **Q** Did he explain to you the standard for a
11 directed verdict motion?

12 **A** No.

13 **Q** I mean, did y'all discuss why he didn't
14 make those motions in regards to --

15 **A** No, sir.

16 **Q** Okay. You're thinking that he -- these
17 charges, I guess, would have been dismissed had he
18 made that directed verdict motion?

19 **A** Yes, sir.

20 **Q** Okay.

21 **A** I need to ask a question. I wanted to go
22 about this the proper way. I'm hoping that I am.
23 That's why I'm trying to --

24 **THE COURT:** Let me just say this to you,
25 okay, you've got an outstanding lawyer here

1 who's very experienced in doing these PCR
2 hearings. I think he's having a little trouble
3 getting information from you because you're
4 wanting to do it -- no offense to you -- you're
5 wanting to do it your way instead of letting him
6 help you with this. So why don't you just let
7 him help you with this and listen to him and
8 then maybe we'll kind of move things along.
9 Okay. Let's try that.

10 **BY MR. ARIAIL:**

11 Q And the key is, that document, you keep on
12 going back to that. It's part of the record. I'm just
13 trying to get a summary for the Court to understand
14 when Judge Verdin reviews everything, that she
15 understands what you want her to concentrate on, to
16 take a look at it, okay. And you've got it, you
17 preserved it. It's there. And then I just want to go
18 through with you and just get a little better
19 understanding, okay.

20 Now, what I -- the other items that I think
21 we discussed and what I want to make sure and put on
22 the record is you have some issue in regards to him,
23 I guess, giving up your self-defense argument. I
24 think, you know, at some point, that was a claim you
25 had but you didn't testify about it or present any

1 evidence. Did you discuss how that would impact your
2 case and your self-defense argument if you didn't
3 testify, you didn't put any evidence in regards to
4 that?

5 **A** Well, self-defense covers -- you know,
6 covers any injury that could have happened because I
7 didn't have -- you know, I got it wrote down that,
8 you know, I didn't have to show that I was actually
9 -- it is enough that I believed I was in imminent
10 danger. I didn't have -- I had the right to act on
11 appearances. But I didn't have any way to avoid
12 danger or death or serious bodily injury in that
13 particular circumstance.

14 **Q** I understand that. Judge Verdin has
15 probably tried numerous cases with self-defense. She
16 knows that.

17 **A** Okay.

18 **Q** What I'm trying to get at is, in this case,
19 your circumstances, did you discuss with Mr. Rosemond
20 about what you had to do to prove self-defense or get
21 a charge for self-defense?

22 **A** I can -- I'm not understanding your
23 question.

24 **Q** Okay. But you understand that you've got to
25 put up -- to be able to get a charge of self-defense,

1 there has to be evidence that you were defending
2 yourself in this case.

3 **A** Oh, in my statement.

4 **Q** So you think -- did you discuss with him if
5 putting up your statement without your testimony was
6 going to be enough to get a self-defense charge?

7 **A** Okay.

8 **Q** You're saying at some point that he gave
9 that up. What do you mean by that?

10 **A** In closing argument. See, he said -- page
11 309, he says, I may be guilty of something else, but
12 not attempted murder. You know, page 311, he says, I
13 may be guilty of something else. One of the lesser
14 includeds you're going to hear about, but I submit to
15 you on February 16th, 2011, I did not try to kill
16 Gary McCall, but in my statement, I said that the man
17 came at me with a knife. It was just instinct. It was
18 self-defense. It wasn't, I'm guilty of something
19 else. It was self-defense. I was not guilty of
20 anything. It was self-defense.

21 **Q** Okay. So you're saying that he gave that
22 up. You were looking for an all-or-none kind of deal?

23 **A** Yeah.

24 **Q** The jury is going to find you were
25 defending yourself and you're going to be acquitted

1 of all this. And you're saying that Mr. Rosemond, I
2 guess, said --

3 A Told the jury I may be guilty of something.

4 Q Did you discuss with him about, you know,
5 the strategy about doing that or why he was doing
6 that?

7 A He didn't ever even -- no, not really. I
8 mean --

9 Q You did get convicted of a lesser included
10 offense of attempted murder, correct?

11 A Yes, but it was self-defense, sir.

12 Q Okay. So you're saying that you believe he
13 should have stuck with that self-defense?

14 A Yes.

15 Q Okay. And he was inefficient -- ineffective
16 for not doing that?

17 A Yes. You know, it was not only ineffective,
18 but he abandoned the required duty of loyalty to me.
19 He did not simply make poor strategic choices, he
20 acted with reckless disregard for my best interest
21 and, at times, apparently, with the intention to
22 weaken my case.

23 Q Okay.

24 A Osborn versus Schillinger.

25 Q Okay. And you've got that as part of your--

1 **A** Yeah.

2 **Q** Okay. That's part of that.

3 **THE COURT:** You may not know this, sir,
4 but just so you know, I've got a transcript here
5 of the entire trial.

6 **THE WITNESS:** Yes, ma'am.

7 **THE COURT:** 378 pages. I'm going to read
8 every word of it before I rule. So I feel like
9 you feel like you've got to tell every little
10 detail ---

11 **THE WITNESS:** I apologize.

12 **THE COURT:** --- and you don't. No, it's
13 okay. No, you don't apologize about that. But I
14 am wanting to assure you that I'm going to read
15 every word of it before I rule. Every word.

16 **BY MR. ARIAIL:**

17 **Q** Now, what I want to go back to is an issue
18 -- I'm going to take this out of order because I
19 think you -- are there things that you asked him to
20 do in this case, like investigate or go speak with
21 witnesses or do things that you wanted him to do that
22 you believe he didn't do?

23 **A** Yes. You know, Summer didn't even want to
24 testify. I mean, she knew -- to be honest with you,
25 she just knew she had told lies. She didn't want to

1 -- she didn't want to testify against me.

2 Q I'm going to go thRough and try to
3 summarize this for the court.

4 A Okay.

5 Q I mean, I know she didn't want to testify.
6 There was an issue in the case of whether or not she
7 was your common law wife and spousal immunity and all
8 that, correct?

9 A Yes, sir.

10 Q That was argued by Mr. Rosemond, correct?

11 A No, he didn't argue that. It wasn't
12 preserved for appellant review.

13 Q Okay. But --

14 A He never denied the denial. He never
15 objected to the denial of the spousal privilege. It
16 wasn't preserved for appellant review.

17 Q Did he explain to you what spousal
18 privilege involves, includes?

19 A He didn't explain to me anything. He
20 explained -- when we were at trial, he was speaking
21 with the judge and the Solicitor. But --

22 Q Did he explain to you that spousal
23 privilege involves communication between you and her
24 and the difference between a statement between her
25 and the police?

1 **A** Yeah, any communication is -- I've got it
2 wrote down. Section 19-11-30.

3 **Q** Okay. And I understand, but did y'all have
4 a discussion in regards to that?

5 **A** No.

6 **Q** Okay. You indicated -- and I want to --
7 there was a forensic, I guess, fingerprint expert
8 that testified, correct?

9 **A** Yes, sir.

10 **Q** You told me that he should have gotten
11 another expert to test for the fingerprints, is that
12 correct?

13 **A** No, they should have got another expert to
14 review the doctor's speculation testimony, because he
15 was -- the doctor was an expert in emergency room
16 care and not pathological forensics.

17 **Q** Okay. Did you discuss that with him?

18 **A** No, he didn't discuss anything. We went to
19 trial. It just all unfolded at trial, sir.

20 **Q** You think he should have gotten a forensic
21 expert to --

22 **A** Rebuke the State's speculation testimony,
23 yes, from the doctor.

24 **Q** The doctor?

25 **A** Yes. Because --

1 Q The doctor was the doctor who saw Mr.
2 McCall and Summer after the incident, correct?

3 A Yes, sir.

4 Q So, I mean, he was testifying about what he
5 witnessed and what he saw, correct?

6 A Yeah, he -- yes, sir. But he was trying to
7 speculate that, you know, Summer had two stitches or
8 whatnot, and he tried to speculate that she was cut
9 with a knife, right?

10 Q Right.

11 A Well, in her testimony, she -- she got up
12 on the stand and said I didn't cut her or hold a
13 knife up on her.

14 Q Right.

15 A And the doctor speculated -- he never
16 objected to that.

17 Q Okay. That's what I think I want to
18 concentrate on that. You're saying that there's
19 testimony that the doctor offered that was
20 speculating that he should have objected to?

21 A Yes, sir.

22 Q And it dealt with a knife being used on
23 Summer?

24 A Yes, sir.

25 Q Okay. Now, did he do anything in regards to

1 the testimony from the doctor about Mr. McCall that
2 you think was wrong?

3 A Uh...

4 Q With the doctor.

5 A I'm not going to read it. I want to look
6 and see.

7 Q That's fine.

8 A (Reviewing.)

9 All the testimony, you know, -- I don't --
10 what was you trying to ask, sir?

11 Q I'm trying to find -- the doctor testified
12 at trial, and you said there were certain things that
13 he should have objected to about the doctor's
14 testimony in regards to Summer. What I'm asking you,
15 are there things that he testified to, the doctor
16 did, at trial, that was speculating about Mr. McCall
17 that you think Mr. Rosemond should have objected to?

18 A Uh...

19 Q If they're not, I understand that.

20 A I don't -- I don't...

21 Q That's fair. I mean, I just want to make
22 sure I'm getting it on the record that that was a
23 part of yours.

24 A Well, I mean, he was asked did he see me
25 hold a knife. On page 126, he said, I didn't see him

1 hold it. I seen it on the counter.

2 Q I mean, I --

3 A I mean --

4 Q I mean, the whole theory of what I'm
5 understanding y'all were trying to prove is, I didn't
6 have a knife. I didn't do this. It was in self-
7 defense, right?

8 A Self-defense.

9 Q Okay. And you're thinking he waived that or
10 didn't pursue that like you wanted him to do,
11 correct?

12 A Yes, sir.

13 Q Okay.

14 A He should have objected to him speculating
15 ---

16 Q Okay.

17 A --- her cut coming from a knife whenever
18 she got on the stand and said that I didn't cut her
19 or hold a knife up or threaten her.

20 Q Right. And you -- I've gone through. I
21 mean, these are things we have discussed and what I
22 want to put it as part of the record. You've got that
23 that you've submitted. Judge Verdin is going to
24 review it. From my records and my notes, these are
25 the items that you have addressed with me?

1 **A** Yes, sir. Yes, sir.

2 **Q** Is that a good summary and put the points
3 on the record that you want to, correct?

4 **A** I know --

5 **Q** If it's part of that document that you're
6 going back to, that's going to be a part of the
7 record, you understand?

8 **A** Yes, sir. Well, you know the spousal, you
9 never asked me about the spousal.

10 **Q** I think we did. We kind of hit on it, but
11 I'll be glad to -- I mean --

12 **THE COURT:** I think y'all talked about
13 that.

14 **BY MR. ARIAIL:**

15 **Q** I covered it, pretty much talking. You had
16 an objection that she shouldn't have been testifying
17 because of spousal immunity, correct? Okay.

18 **A** Or, you know, she could have pleaded the
19 5th Amendment if she would have known, if she would
20 have known that she could have. Nobody instructed her
21 that that's what she could have done. She repeatedly
22 -- you got the transcript -- over and over tried not
23 -- did not want to -- did not want to testify.

24 **Q** Right.

25 **A** If she would have known, somebody would

1 have instructed her, a lawyer, she could have pled
2 the 5th Amendment, then --

3 Q I understand she could have pled the 5th,
4 but you're not saying that Mr. Rosemond did anything
5 ineffective in telling her to plead the 5th.

6 A He never did -- he allowed the Solicitor to
7 keep badgering her. She didn't know the law. She
8 didn't want to testify. If he would have informed her
9 instead of allowing that to happen, he could have
10 objected and said, look, this is what -- maybe she's
11 trying to, you know, plead the 5th.

12 Q Okay.

13 A And he never did.

14 Q Okay. And you've got that as part of your
15 document. I want to make sure -- I mean, I've
16 summarized everything for you.

17 A Yes.

18 Q I think we brought all your points. Judge
19 Verdin is going to look at that. Have I covered
20 everything you want me to do by getting that document
21 in part of the record and trying to bring out these
22 things that you wanted, is that it?

23 A Sir, as long as she's got this, then --

24 Q She's got it.

25 THE COURT: It will be a part of the

1 record and I assure you I'm going to read every
2 word you have written there, as well as all the
3 materials. I have the transcript and everything
4 in this case. I'm going to look at it all. I
5 understand that this is very important to you.

6 **THE WITNESS:** Yeah.

7 **THE COURT:** I understand that and I will
8 do it.

9 **MR. ARIAIL:** Based on that, Your Honor, I
10 have no further questions.

11 **THE COURT:** Thank you.

12 Yes, ma'am.

13 **MS. VALENZUELA:** May it please the Court?

14 **CROSS-EXAMINATION**

15 **BY MR. ARIAIL:**

16 **Q** Okay. Mr. Couch, we were talking earlier
17 and you mentioned earlier that your problem with the
18 911 call is that it was the only evidence at trial
19 that was presented against you and it was
20 unauthenticated. You had a problem with that,
21 correct?

22 **A** Yes.

23 **Q** Okay. But you also provided a statement to
24 police and that statement was part of the evidence
25 that was at trial, correct?

1 **A** (Nods head.)

2 **Q** You have to speak up.

3 **A** Yes, ma'am.

4 **Q** Okay. And you also -- there were also
5 photos of the location inside the home showing
6 different things on the floor, is that correct?

7 **A** Things that were not investigated.

8 **Q** There were photographs of the location that
9 were presented in the trial, correct?

10 **A** What'd you say, ma'am?

11 **Q** Photographs. Photos of the house where
12 everything happened that were part of the trial?

13 **A** That's what they put into evidence.

14 **Q** Okay. Thank you. And then also there were
15 photographs of the victims, correct?

16 **A** I think they --

17 **Q** Were put in by the State.

18 **A** I believe so.

19 **Q** And then there was also victims' testimony
20 presented at trial, correct? Both the male victim and
21 your wife testified or your common law wife that you
22 claimed testified at trial?

23 **A** Yes, statements that should have been
24 excluded under Rule 613(b).

25 **Q** I understand that. And there was also a

1 knife that was presented and also DNA evidence that
2 linked your blood to the knife. That was part of the
3 evidence presented at trial?

4 **A** Ma'am, that's really like part of my self-
5 defense because my blood was on that knife because
6 the man cut me.

7 **Q** On the handle of the knife?

8 **A** He came at me with that knife.

9 **Q** On the handle of the knife?

10 **A** Yeah, and there were two different opinions
11 about that.

12 **Q** Okay. And then additionally, the extent of
13 the injuries to the victim were presented at trial,
14 that the female victim had a broken nose, two black
15 eyes and a cut to the face that required stitches,
16 correct?

17 **A** Uh...

18 **MS. VALENZUELA:** And that's on page 269,
19 Your Honor, for the --

20 **THE COURT:** Okay.

21 **MS. VALENZUELA:** -- for the Court's
22 information.

23 **THE WITNESS:** All I know is the doctor
24 said the injuries were not serious bodily
25 injuries.

1 **BY MS. VALENZUELA:**

2 **Q** But there was testimony from a doctor who
3 observed the injuries to the victims?

4 **A** Speculation testimony.

5 **Q** Okay. And speaking of that testimony by the
6 doctor, you had a concern earlier about the doctor
7 saying that it wasn't a substantial risk of death,
8 but the doctor did testify that the injury was near
9 the eye, near a facial nerve, near the carotid and a
10 jugular vein and that if a cut had happened to the
11 carotid, that person would die in one and a half
12 minutes, correct?

13 **A** But it wasn't in the carotid artery and it
14 wasn't in the facial nerve and it wasn't a serious
15 bodily injury.

16 **Q** But that was testimony that was presented
17 by the State?

18 **A** Speculation.

19 **Q** Okay.

20 **A** And, uh, --

21 **Q** Whose house were we in when this happened?

22 **A** Uh...

23 **Q** Who did the house belong to?

24 **A** They said Gary McCall.

25 **Q** Okay. So this -- all of these events

1 happened in the victim's house?

2 A That's what they said.

3 Q Okay. And so in your statement was a claim
4 that you observed the male victim kissing the female
5 victim. You were in a romantic relationship with the
6 female victim and then suddenly, the male victim
7 attacked you with the knife and then you accidentally
8 punched the female victim because she was on his back
9 trying to get him off of you.

10 A I didn't -- my statement didn't say that.

11 Q How did -- how did your statement explain
12 the injuries to the female victim's face?

13 A You have it.

14 Q Well, you did it, right? You said it.

15 A It -- like I said, she jumped on my back.

16 Q She jumped on your back and then that's how
17 you injured her face, according to your statement?

18 A Yeah. . .

19 Q Now, I'm going to turn to your argument
20 that in closing, your trial attorney abandoned his
21 loyalty to you when he argued that you were guilty of
22 something but maybe not the full crime. Didn't your
23 attorney successfully get the judge to charge on an
24 assault and battery third degree, which was a
25 misdemeanor?

1 **A** In self-defense, the defendant has the
2 right to use the force needed to avoid death or
3 serious bodily injury.

4 **Q** I'm going to -- to move on. You also made a
5 claim about the spousal immunity. Now, the -- part of
6 the record is the appellant opinion in this case. Do
7 you remember that there was an appeal filed on your
8 behalf?

9 **A** Uh-huh.

10 **Q** And do you remember that the Court of
11 Appeals issued an opinion in that case?

12 **A** Yeah, it wasn't preserved for appellant
13 review, though. He never objected.

14 **Q** And so on that opinion, which is part of
15 the record, it actually goes into Point 1, as to
16 whether the trial court erred in admitting a written
17 statement to evidence despite the writer's
18 implication of the spousal immunity privilege, and
19 then it goes through and it cites cases that say that
20 the admission or exclusion of evidence is in the
21 sound discretion of the trial court, correct?

22 **A** (No audible response.)

23 **Q** The Court can look at that and determine
24 whether it was actually resolved on what we refer to
25 as the merits or resolved because it wasn't preserved

1 for appeal. And your position is that it wasn't
2 preserved, but the State would argue that the opinion
3 speaks for itself there.

4 Now, you had an argument or you believe
5 that your attorney should have objected to the
6 doctor's testimony as to the injuries being caused by
7 a knife, correct?

8 A Yes, ma'am.

9 Q Okay. And -- but the doctor that during
10 your trial testified that it was the victim telling
11 her, explaining her injuries to him and that in
12 explaining her injuries to him, she stated that it
13 was done by a knife?

14 A I know my trial testimony said I didn't cut
15 her or hold up a knife and threaten her.

16 Q So --

17 A You know, she did admit to being on Lortabs
18 before she wrote her statement.

19 Q Understand that, but this would have been
20 him talking about the night of the event, not when
21 she was testifying.

22 A Also that was another reason why she was
23 trying not to testify, cause she knows, she knows
24 what happened.

25 Q Right. According to what she knew happened

1 that night, she told the -- she told the doctor that
2 it was caused by a cut. But later on, in the
3 testimony when asked, the doctor said that it was a
4 cut and it could have been caused by a punch or it
5 could have been caused by a knife, correct?

6 **A** (No audible response.)

7 **MS. VALENZUELA:** Your Honor, may I have a
8 moment?

9 **THE COURT:** Certainly.

10 **MS. VALENZUELA:** Nothing further, Your
11 Honor.

12 **THE COURT:** All right.

13 **MR. ARIAIL:** No redirect, Your Honor.

14 **THE COURT:** All right. Sir, you can step
15 down.

16 **MR. ARIAIL:** Your Honor, that is our case.

17 **THE COURT:** All right.

18 **MS. VALENZUELA:** Your Honor, I have a copy
19 of the appellant opinion. Did it come up in
20 your list?

21 **THE COURT:** Let me double check here.

22 **MS. VALENZUELA:** And I can hand it up.

23 **THE COURT:** If you will, leave it right
24 there and then I get a copy of it -- I'll make a
25 copy of it.

1 Oh, I'm sorry. I was talking to him.

2 **MS. VALENZUELA:** Your Honor, the State
3 would call Mr. Delane Rosemond to the stand.

4 **THE COURT:** Sir, if you will, come forward
5 and be sworn.

6 Raise your right hand please when you get a
7 chance.

8 **DELANE ROSEMOND**

9 having first been duly sworn, testifies as follows:

10

11 **DIRECT EXAMINATION**

12 **BY MS. VALENZUELA:**

13 **Q** Mr. Rosemond, would you state your full
14 name for the record?

15 **A** Edward Delane Rosemond.

16 **Q** And Mr. Rosemond, how long have you been
17 practicing criminal law?

18 **A** Since 1998.

19 **Q** And have you been focused on criminal work
20 throughout that entire time?

21 **A** Not solely focused on criminal work, but my
22 practice does encompass criminal work.

23 **Q** Now, you were appointed to this case, is
24 that right?

25 **A** Yes, I was.

1 **Q** Okay. And how many times did you end up
2 meeting with the applicant prior to going to trial?

3 **A** I would suspect about seven or eight times.

4 **Q** And was he cooperative during the course of
5 your representation?

6 **A** Pretty much, he was cooperative.

7 **Q** Did you end up filing any Brady or Rule 5
8 motions?

9 **A** We did file a Brady motion and a Rule 5
10 motion, and subsequently received the information
11 back from that motion.

12 **Q** Okay. And did you use information that you
13 got back from that motion to cover that information
14 with your client, the applicant?

15 **A** I did. What I normally do in my practice is
16 to make a package of the documents, send that to my
17 client in the mail. Mr. Couch was in jail at that
18 particular time, so I sent him, based upon my
19 records, at least five separate letters saying,
20 "Enclosed please find discovery in this case." And
21 then I would go talk to him about it.

22 **Q** Now, there was a lot of time spent
23 discussing a 911 call. Do you know if you played or
24 covered that 911 call with your client before the
25 trial?

1 **A** I can't remember whether or not I actually
2 played that 911 call for him prior to the trial. As I
3 looked on my outline here, I don't see where it was
4 saved to my iPad or my laptop to take with me.

5 **Q** What was on that 911 call? What was the
6 substance of what the jury heard?

7 **A** It was either made by Ms. Grant or Mr.
8 McCall indicating that it was a physical altercation
9 that was happening at the time. There was a person on
10 there screaming for help. What stands out about that
11 call, that call was played during the closing
12 arguments and Mr. Couch leaned over to me and said,
13 "This is just terrible. Can I leave?" I said, "No,
14 you can't leave. If I've got to sit there and listen
15 to it, you gotta sit there and listen to it." And
16 certainly, it was a very descriptive phone call of
17 what took place that particular night. Every time he
18 hit her, you heard the slap against her face.

19 **Q** How was it entered into evidence at trial?

20 **A** Through the 911 technician, I believe.

21 **Q** And was there any reason that you saw to
22 object to -- any reasonable basis that you would have
23 to object and have that objection sustained?

24 **A** No, that 911 tape was coming in. 911 tapes
25 routinely come in in courts throughout South

1 Carolina. It was a fair and accurate representation
2 of -- which was testified by the 911 operator that
3 particular night. There was no doubt in my mind that
4 that 911 tape was not coming in.

5 Q Was there testimony from the 911 operator
6 that linked that call as coming to the address that
7 it showed?

8 A Certainly, the 911 operator testified that
9 it came up on his screen coming from the city of
10 Walhalla and that particular address.

11 Q Okay. I'm going to take this back. I know I
12 took us off a little bit talking about that 911 call,
13 but getting back to before trial, did you end up
14 going over the elements of the charges and what the
15 State was required to prove with your client prior to
16 trial?

17 A I did. What I did was sit down and I
18 created a trial outline. And certainly, that trial
19 outline indicates that, you know, Michael Couch is 31
20 years of age. He's single, no children, who's charged
21 with Attempted Murder, CDVHAN, Possession of a Weapon
22 During the Commission of a Violent Crime. And then,
23 he and I sat down and went over my trial outline.
24 What that outline, such as for Attempted Murder, it
25 lists the elements. It lists a person with intent to

1 kill attempts to kill another person with malice
2 aforethought with expressed or implied consent.

3 We went through what we needed for general
4 intent, specific intent. He and I talked about the
5 elements of the other charges in terms of the CDV as
6 well as the possession of a weapon of a violent
7 crime. So when he says to you that he did not go --
8 that I did not go over the elements with him, that is
9 just simply not the case.

10 Q Now, did y'all have an opportunity to
11 discuss his version of the facts?

12 A We did.

13 Q Okay. And did y'all also have an
14 opportunity to discuss any defenses that you thought
15 or he thought might be applicable to his defense?

16 A And he is correct. You know, we spent some
17 time discussing self-defense. Certainly, I see a jury
18 charge that was drafted that talked about self-
19 defense. Certainly, we did try to figure out a way of
20 what's the best defense for him in this particular
21 case.

22 Q So y'all did end up discussing that and was
23 that your trial strategy going into the trial and, if
24 so, did it remain your trial strategy?

25 A You know, we talked about the self-defense.

1 He was pretty adamant about self-defense trial
2 strategy. You can tell based upon the evidence at
3 trial, based upon the atmosphere in the courtroom,
4 the look on the juror's faces that it was not going
5 well for us for those couple of days.

6 Q Let's talk a little bit about what the jury
7 would have been seeing in terms of the State's
8 evidence. Can you give us a brief summary of what it
9 was that the State had to present for their case
10 against the applicant?

11 A Certainly, the State had the expert witness
12 from SLED. They also had the 911 call. They had the
13 statements from my client that he gave to the police
14 officer that particular night. They also had letters
15 that he had written Summer while he was incarcerated
16 that didn't really bode well for us because of some
17 of the statements that he would make to her in terms
18 of, hey, if you'd testify to this, I do believe that
19 it won't be so bad for you.

20 Certainly, that particular information came
21 out through discovery. You know, you had Gary McCall.
22 Our strategy was to indicate that he was an admitted
23 liar. He was grossly intoxicated that particular
24 night. He said he had drank seven beers, took two
25 sips of vodka. But ultimately, in the refrigerator

1 that particular night, there was a half gallon of
2 vodka which suggested to us that he had drank more
3 than what he led us to believe.

4 Q And Mr. McCall being the male victim in
5 this case, correct?

6 A Mr. McCall being the male victim in this
7 case.

8 Q And so we were just talking about the
9 evidence against the applicant. When you said that
10 there was an expert from SLED, was that the DNA
11 expert that talked about the DNA found on the knife?

12 A That was the expert that talked about the
13 DNA on the knife. But that helped us because the DNA
14 expert did not find Mr. Couch's fingerprints on the
15 knife. And we certainly played that up at trial that
16 Mr. Couch's fingerprints were not on the knife, but
17 certainly, his blood was. That was because, you know,
18 he was cut on the hand with the knife.

19 Q Now, you have gone into a little bit of
20 your strategy going in in terms of challenging Mr.
21 McCall's truthfulness and challenging, you know, the
22 lack of fingerprints on the knife. Did you feel like
23 you had ample time to prepare for the trial and to
24 develop your strategies before starting the trial?

25 A I certainly did.

1 **Q** And what did you -- is it correct that your
2 trial strategy going in was self-defense and it
3 morphed as the trial proceeded or is that not an
4 accurate statement?

5 **A** I do believe we had talked about the self-
6 defense going in. And certainly, when it came down to
7 the closing argument that particular day, we talked
8 about what it is that I was going to say.

9 **Q** Let me stop you. When you say we talked, I
10 just want to be really clear on the pronouns. You and
11 the applicant spoke before you gave your closing
12 argument about what you were going to say in your
13 closing argument?

14 **A** That's the "we," yes.

15 **Q** And I'm sorry for interrupting.

16 **A** And certainly, on that particular day, he
17 was charged with attempted murder. Even the court
18 transcript that I indicated to the jury that, yes,
19 he's guilty of something, but he's not guilty of
20 attempted murder. And certainly, based upon our
21 closing arguments, based upon the fight that we put
22 up that particular day, I do believe that Mr. Couch
23 knows that he would not have got a better defense
24 from any other lawyer that day while we were in the
25 courtroom. We fought from the beginning all the way

1 to the end looking for ways to exploit the witnesses
2 and to highlight the reasonable doubt in this
3 particular case that certainly, at the end,
4 benefitted Mr. Couch because of the jury charges that
5 we received as well as the sentence that he -- that
6 he -- that he got.

7 Q Well, let's talk about that sentence. He's
8 charged with -- and I think I have this right --
9 Attempted Murder and ABHAN and Use of a Deadly Weapon
10 During the Commission of a Violent Crime. What does
11 he end up convicted of at the end?

12 A He was charged with Attempted Murder, he
13 was charged with CDV High and Aggravated nature, and
14 the possession of the charge. And ultimately, he
15 ended up being convicted of ABHAN and Possession of a
16 Weapon during the Commission of a Violent Crime, two
17 ABHAN's, I believe, actually.

18 Q And so the ABHAN would have been linked --
19 so one charge for the male victim and one charge for
20 the female victim, that's why we're seeing two, then
21 Attempted Murder and CDVHAN?

22 A That's correct.

23 Q I want to turn to the applicant's
24 allegations. I want to start with the discussion of
25 the directed verdict motion. What -- what -- what

1 were you thinking? What was your strategy in electing
2 to make the DV motion that you made?

3 **A** You know, certainly, based upon the
4 evidence at trial, it was clear that Judge McCauley,
5 at the time, would find enough evidence for the
6 Attempted Murder, the ABHAN, but there was a question
7 in regards to the Possession of a Weapon charge. And
8 certainly, at that particular time, we -- or I made
9 the motion for directed verdict in regards to the
10 Possession of a Weapon.

11 **Q** And I think -- you know, to kind of clear
12 up the confusion because, obviously, you are familiar
13 with the facts and Mr. Couch is familiar with the
14 facts and the Court can see it once they end up
15 reviewing the entire transcript, but there were cut
16 injuries to the victims, but was there an alternative
17 explanation that you were providing other than the
18 knife?

19 **A** Let's say I used to be familiar with the
20 facts. This case took place five years ago. But I do
21 remember, and I read, even looking at the discovery,
22 there were some cuts that he sustained on his person.

23 **Q** And then there were bruises and hits to the
24 face that obviously would have been caused by a
25 knife?

1 **A** Ms. Grant had some bruises to her face.

2 **Q** And so you were thinking that there was a
3 way to challenge that, you know, perhaps we can't
4 dispute the fact that these two victims were injured
5 because we have them testifying and we have photos
6 and we have the doctor's testimony, but we can argue
7 that it wasn't done with a knife?

8 **A** We started out arguing that -- well, not
9 started out, but we argued that Mr. McCall had the
10 knife. It was in his house. And certainly, Mr. Couch,
11 in a struggle with Mr. McCall, obtained that knife, I
12 believe.

13 **Q** Okay. So that's why when you go to the DV
14 motion, that's the charge that you think is going to
15 be most successful in challenging it. Can you cover
16 again for the court why you did not feel like you
17 needed to challenge the other charges on directed
18 verdict?

19 **A** You know, when you look at the elements of
20 the attempted murder, when you look at the elements
21 of the other charges, it was certainly clear, in my
22 mind, that the best shot that we had was possession
23 of a weapons charge. That was enough evidence, based
24 upon Ms. Grant's testimony, Mr. McCall's testimony,
25 Dr. Cromer's testimony that those charges were going

1 to stay.

2 Q Thank you. I think I took it a little bit
3 out of order earlier because we touched on the 911
4 call and why you didn't end up challenging that 911
5 call. Have you read the appellant opinion in this
6 case?

7 A Not recently, I haven't, but I did at one
8 point.

9 Q Did you, in fact, try to do anything with
10 the spousal immunity and with the female victim's
11 testimony?

12 A I mean, we had a discussion about that in
13 court that particular day. The judge ruled that she
14 could testify.

15 Q So you did object to it and in the judge's
16 discretion, he allows it in, correct?

17 A Yes.

18 Q And then we've touched on the self-defense
19 and why you changed your strategy and then also while
20 you ended up arguing in closing for a lesser included
21 after discussing that with your client, correct?

22 A That's correct.

23 MS. VALENZUELA: Your Honor, may I just
24 have one brief moment.

25 BY MS. VALENZUELA:

1 **Q** Mr. Rosemond, there was one more thing. Mr.
2 Couch argues that you should have objected to the
3 doctor's testimony regarding his opinion that the
4 female victim's or that the victim's injuries were
5 caused by a knife. Can you explain to the Court what
6 your strategy was in not objecting to that testimony?

7 **A** Dr. Cromer has been an emergency physician
8 for in excess of 15 years. Based upon his experience,
9 based upon the proximity of the wound to Mr. McCall's
10 eye as well as the carotid artery, I do not think it
11 rose to a level of speculation when it comes to that
12 testimony.

13 **Q** In fact, in his testimony, did he, when
14 asked, did he say that a cut could have been caused
15 by either a punch or a knife?

16 **A** I do believe I read that in the transcript.

17 **Q** But the evidence of a knife was not limited
18 to this doctor, correct? There was actually a knife
19 that was found at the scene of the crime. That knife
20 had the defendant's blood on it, although arguably it
21 didn't have the fingerprints on it, so there was
22 separate evidence for the jury to consider aside from
23 this one statement from the doctor that a cut could
24 have been caused by a knife?

25 **A** Not only was there a knife, there was a

1 smashed coffee pot that was there that someone was
2 either struck with in regards to any injuries. There
3 was a very physical altercation that took place that
4 night.

5 **Q** Aside from his testimony, there was still
6 -- part of the evidence was the knife, the blood with
7 DNA on the knife, then there was, at least in the
8 initial statements, statements by the victims that
9 they had seen a knife or believed a knife had been
10 used on them the night of the incident?

11 **A** As I look at the statements, yes, that is
12 correct.

13 **Q** Please answer any questions opposing
14 counsel has for you.

15 **THE COURT:** Mr. Ariail?

16 **MR. ARIAIL:** Yes, Your Honor. Thank you.
17 May it please the Court.

18 **CROSS-EXAMINATION**

19 **BY MR. ARIAIL:**

20 **Q** Mr. Rosemond, how are you doing today?

21 **A** I'm well. How about yourself?

22 **Q** I'm trying to go through and answer a
23 question for my client at the same time. Maybe you
24 can help me with this. My understanding was
25 Possession of a Weapon charge was in regards to Mr.

1 McCall for the knife, not for Summer. Do you remember
2 that?

3 A I think you're correct.

4 MR. COUCH: No.

5 THE COURT: No, sir. No, sir. I'm going to
6 let your attorney speak to you before he
7 finishes up, but you can't just blurt out.

8 BY MS. VALENZUELA:

9 Q I'm looking at the charge right now. I'm
10 trying to make sure. My understanding from her was it
11 was the coffee pot. She was getting assaulted by the
12 coffee pot was the CDV High and Aggravated?

13 A That -- that's what I remember. I mean, I
14 remember the coffee pot and Summer. I remember the
15 knife and going to Mr. McCall because he's the one
16 that had that laceration that went from his ear all
17 the way down his face probably about six or seven
18 inches where he was slashed.

19 Q Okay. I'm looking right here. It's on page
20 338.

21 THE COURT: Mr. Ariail, I think your
22 client wants to say something.

23 MR. ARIAIL: Okay. I'll talk to him real
24 quick.

25 THE COURT: Yeah.

1 (WHEREUPON, Mr. Ariail consults with Mr. Couch.)

2 **THE WITNESS:** It's on the indictment.

3 **BY MR. ARIAIL:**

4 **Q** Okay. So the High and Aggravated in regards
5 the -- the knife in regards to that. Let me go
6 through real quick. Your strategy, I want to go
7 through and understand exactly the discussion with
8 him. I know, kind of more from a self-defense --
9 y'all start out with self-defense, is that correct?

10 **A** It started out as that was certainly an
11 option that he was very adamant about.

12 **Q** Okay.

13 **A** It -- certainly, when you're in another
14 man's home when you've been drinking, he's been
15 drinking, whenever he says to me he woke up and he
16 sees his girlfriend kissing this guy in the home,
17 that's very hard to align with a self-defense
18 strategy.

19 **Q** My other question, you know, this tape, did
20 you discuss with him the impact that the tape was
21 going to have on self-defense with him, I guess?

22 **A** I mean, he and I spent a considerable
23 amount of time together. Ultimately, even from the
24 beginning, this case had trial written all over it.
25 He was not considering taking any pleas, so we sit --

1 we spent a considerable amount of time developing our
2 strategy, going over witnesses' statements. So when I
3 went back to look through this thing, it was either I
4 perhaps either took my laptop with me or put it on
5 something that I could portably take it with me to
6 the jail so he could hear it.

7 Q Okay.

8 A But I just can't say for certainty that I
9 took it.

10 Q Okay. And from what I understand on the --

11 THE COURT: Put your hand down. I'll let
12 him know.

13 BY MR. ARIAIL:

14 Q The 911 tape was -- it was a pretty graphic
15 altercation involving him, is that -- involving
16 someone on this tape?

17 A Every time you heard that smack, you heard
18 it.

19 Q Okay. Now, his question, did you see any
20 means to be able to suppress this tape based on
21 nobody really able to be identified on the call as to
22 who was there?

23 A I did not. I do believe that most, if not
24 all, judges would have let that 911 tape in.

25 Q Okay. Did you discuss with him -- I know

1 one of his big things today is that's not -- nobody
2 authenticated the tape. Nobody could prove that was
3 my voice. Nobody could prove that was Summer on the
4 tape. Any of those issues. Did you go over that with
5 him and have a discussion with him about that?

6 A I look at my trial outline that I created.
7 Certainly, there was a portion on here that we would
8 have talked about. It's under the strong parts, weak
9 parts. The weak parts that we went over was the 911
10 tape and how bad it was. Now, I've seen worse 911
11 tapes, but for this particular case, it was pretty,
12 pretty bad.

13 Q Let's just take the 911 tape out. Even if
14 that's suppressed and you get that out, do you, based
15 on the testimony and the other evidence there, do you
16 think that he was going to be convicted of these
17 things?

18 A I thought he would be convicted of these
19 things.

20 Q With that aside, you didn't believe that
21 the 911 tape was the -- I guess was the nail in the
22 coffin, so to speak?

23 A No, I think it was not very helpful to us,
24 but I think it was moreso the conversation with
25 Summer Grant and McCall as well as the disfigurement

1 on Mr. McCall's face. There was some photographs in
2 there that showed Summer Grant with some bruises,
3 maybe two black eyes. But certainly knowing that, I
4 have to figure out how not to allow my client to
5 spend the rest of his life in jail or 30 years in
6 jail.

7 Q Now, the doctor -- he's got an issue that
8 the doctor speculated about whether or not someone
9 could have died from this type injury. Do you see any
10 way that you could try to keep that out?

11 A He was an expert witness under 702.
12 Certainly, he can testify to that.

13 Q Okay. Did you talk with him about a
14 forensic -- not a forensic expert, but an expert
15 coming in to contradict Dr. Cromer?

16 A The first time I heard of that was today.

17 Q Did he raise that to you or did you think
18 that's an option?

19 A No, he did not raise that to me. And Number
20 2, I didn't necessarily think that was an option.

21 Q Okay.

22 A A viable option, put it that way.

23 Q I noticed that you clearly put in evidence
24 in this case which I think were his statement and
25 then there were two other things, I think. It was

1 either statements of the co -- of the victims. What
2 was the reason for putting his statement in? I guess
3 my question to you is, did you believe that putting
4 his statement in was going to help your self-defense
5 claim, I guess.

6 **A** I was actually looking to see whether or
7 not, in fact, I put that statement in.

8 **Q** I've got the -- it looks like it was put in
9 263, if I'm not mistaken.

10 **A** That would have been myself right there.

11 **Q** Okay. And you put it in during, I think,
12 Officer Wilbanks -- she's the one that took the
13 statement, correct?

14 **A** So essentially, we had pointed out that
15 there were inconsistencies on McCall's statements.
16 And even at trial, we had pointed out that he really
17 didn't tell the truth. On Mr. Couch's statement, that
18 when he says that he came to me and kicked me, it was
19 moreso to indicate to the court -- to the jury that
20 Mr. McCall was not telling the truth.

21 **Q** Okay. I guess, did you have a discussion
22 with him -- clearly, he didn't testify. Did you have
23 a discussion with him about what it would mean if you
24 put his statement in rather than calling him to
25 testify?

1 **A** I can't tell you whether or not we talked
2 about that particular subject right there. We did
3 talk about him testifying. We talked about that
4 before trial. We talked about that in the midst of
5 trial. Certainly, that would not have went well for
6 us.

7 **(WHEREUPON, Mr. Ariail consults with Mr. Couch.)**

8 **MR. ARIAIL:** Okay. And he's brought out on
9 page 301 of the transcript, apparently the
10 possession of a weapon during the violent crime,
11 Judge McCauley's charge only applies to Summer
12 and not to Gary McCall. I just want to bring
13 that to the Court's reference.

14 **THE COURT:** And as I said, I'll read the
15 transcript in its entirety.

16 **(WHEREUPON, Mr. Ariail consults with Mr. Couch.)**

17 **BY MR. ARIAIL:**

18 **Q** Did you see any way that you could have
19 gotten the statements of Ms. Grant or Mr. McCall
20 excluded?

21 **A** It was their statement. Certainly, they
22 have a right to tell the jury in terms of what they
23 felt that particular night.

24 **MR. ARIAIL:** Your Honor, I have no further
25 questions.

1 **THE COURT:** All right.

2 Any --

3 **MS. VALENZUELA:** Just one -- I'm sorry --

4 **THE COURT:** No, I was going to say
5 anything on redirect.

6 **MS. VALENZUELA:** -- on redirect.

7 **REDIRECT EXAMINATION**

8 **BY MS. VALENZUELA:**

9 **Q** On Mr. McCall's statement, were you
10 pointing out earlier that part of the benefit of his
11 statement was that you were able to impeach or share
12 that he was not telling the truth, specifically with
13 the part about, like, kicking the defendant out the
14 door or something along those lines?

15 **A** Yes, that's the impeaching part of that
16 statement right there. It's in the transcript. I
17 forgot where I read it at this morning. But even as I
18 look at Mr. McCall's voluntary statement for that
19 particular night, there are some things in there that
20 myself and Mr. Couch felt like just weren't true.

21 **Q** And that helped you because you were trying
22 to use the fact that Mr. McCall wasn't trying to tell
23 the truth to support your defense?

24 **A** That's correct.

25 **Q** So you wanted his statement in as part of

1 your strategy?

2 **A** I do think that anytime you're able to show
3 a jury that someone did not tell the truth, I think
4 it helps us and it can help Mr. Couch.

5 **Q** And then going to the statement of the
6 victim, you -- the State ended up moving to admit
7 that under 613. You ended up objecting to that,
8 correct? That's where the Court -- what the Court
9 ended up ruling against you on the victim's
10 statement?

11 **A** If you hand me the page number, I'll look.

12 **Q** Sure. Page 115.

13 **A** That is correct. We did object to the
14 admission of that under 613(b). Unfortunately, the
15 Court didn't agree with us, but it was admitted.

16 **Q** That was pages 114 and 115. Thank you very
17 much. Thank you, Your Honor.

18 **MR. ARIAIL:** Your Honor, I have no
19 recross.

20 **THE COURT:** All right. You can step down.
21 Thank you.

22 **MS. VALENZUELA:** No further witnesses.

23 **THE COURT:** All right. Mr. Couch, I just
24 want to say to you, I know you -- well, I'll
25 just say this. Mr. Ariail knows that this

1 hearing today was just to highlight some points
2 for me, bring out your main points. And he did
3 that, but these details that you want to look me
4 at, I'm going to look at those. I'm going to
5 look at those. You do not worry about that in
6 any way.

7 Mr. Ariail did exactly what needed to be
8 done today, and that was to highlight your
9 arguments and to get you to talk about those
10 arguments a little bit. He did do that, and to
11 cross-examine the witness for the State. He did
12 do that.

13 I don't know how soon I'll rule on this
14 case. I have an entire transcript to read and a
15 few things. I'm going to take this matter under
16 advisement, but I will notify you as soon as
17 I've made a decision in this case. That's going
18 to be made -- it's already been made a part of
19 the record. Are you asking for a copy of it? Is
20 that what you're wanting or you just want me to
21 look at it?

22 **MR. COUCH:** Yes, ma'am.

23 **THE COURT:** You don't -- listen, you don't
24 worry one bit. I'm not going to forget -- I'm
25 not going to forget what you've written. Very

1 few times do I get something where somebody's
2 written up their arguments for me like that. So
3 I certainly am going to read that and it's made
4 an exhibit and I will review it. Don't you
5 worry. I will not forget it. Okay. All right.

6 **MR. COUCH:** Well, can I get a copy of it?

7 **THE COURT:** You want to get a copy of it?

8 **MR. COUCH:** Yeah.

9 **THE COURT:** Can you make a copy of it? You
10 don't mind?.

11 They're going to make a copy of it for you.
12 Thank you so much. Before we leave, we're going
13 to get you one.

14 **MR. ARIAIL:** Can I get one also? Sorry.

15

16

17

18 **(WHEREUPON, the proceedings conclude at**
19 approximately 11:47 a.m.)

20

21

22

23

24

25

CERTIFICATE

73

1

2

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth 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 case, relative to appeal, in the Court of Common Pleas for Walhalla, South Carolina, on this 30th day of April, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth 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 case, relative to appeal, in the Court of Common Pleas for Walhalla, South Carolina, on this 30th day of April, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Michael L. Couch, SCDC # 282654,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-37-0433

ORDER OF DISMISSAL

FILED OCONEE COUNTY, SC
CLERK OF COURT
2017 JAN 20 A 8:45

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 29, 2014, and amended on via letter dated October 29, 2015. Respondent filed a Return on or about October 29, 2014. An evidentiary hearing into the matter was convened on October 24, 2016, at the Oconee County Courthouse. Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Johanna C. Valenzuela.

Applicant and Applicant's trial counsel, E. Delane Rosemond, Esquire, testified at the hearing on October 24, 2016. This Court also had before it all relevant pleadings and documents, the Clerk of Court records for Oconee County, the South Carolina Department of Corrections' records, the transcript of Applicant's trial, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In May 2011, the Oconee County Grand Jury indicted Applicant for Attempted Murder (2011-GS-37-0391), Criminal Domestic Violence of a High and Aggravated Nature (CDVHAN) (2011-GS-37-0403), and Possession of a Weapon during a Violent Crime (2011-GS-37-0404). R. Delane Rosemond,

Esquire, represented Applicant. On October 19, 2011, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty of Assault and Battery of a High and Aggravated Nature (ABHAN) as a lesser included offense to Attempted Murder, CDVHAN, and Possession of a Weapon during the Commission of a Violent Crime. Judge Macaulay sentenced Applicant as follows:

- Twenty (20) years for ABHAN with five (5) years of probation upon the service of fifteen (15) years,
- Ten (10) years for CDVHAN with five (5) years of probation upon the service of five (5) years,
- Five (5) years for Poss. of a Weapon during the Comm. of a Violent Crime.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the SCCID Division of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on July 10, 2013. State v. Couch, Op. No. 2013-UP-313 (S.C. Ct. App. filed October 31, 2012). The remittitur was returned to the circuit court on August 16, 2013.

SUMMARY OF TESTIMONY

Applicant and his trial counsel, E. Delane Rosemond, Esquire, testified at trial. According to Applicant, his counsel was ineffective for failing to argue for a directed verdict based on neither victim testifying as to the knife; failing to object to the 911 call being admitted into evidence; for failing to prevent the female victim in the case from testifying in the trial and not preserving the argument of spousal immunity; for failing to object to expert witness testimony that a knife could have caused victim's injuries; for failing to argue self-defense; and for stating that Applicant "may be guilty of something" during his closing argument.

Directed Verdict

Applicant testified his counsel was deficient for failing to argue for directed verdict when neither victim testified to Applicant being in possession of a knife. Applicant acknowledged the female victim gave a written statement after the incident indicating Applicant had a knife in his hand, but Applicant noted the female victim admitted at trial that when she wrote the statement, she was taking Lortab. Applicant claimed the female victim did not observe Applicant cut the male victim. Applicant claims the doctor's testimony about the cut being done by a knife was purely speculative.

Trial counsel testified he did move for a directed verdict on the weapon charge because it was the best shot to undermine the other charges. Trial counsel testified the charge only applied to the female victim and not the male victim's charges.

911 Call

Applicant argued his counsel was ineffective for failing to object to the 911 call on the basis that no one's voice was ever identified on the call and the call was prejudicial to him. Applicant claimed he had no knowledge of the 911 call prior to going to trial.

Trial counsel noted that while his trial notes did not specifically state that he had played the 911 call for Applicant, he believes he would have played the call for him. Trial counsel's notes, specifically his trial outline, indicate he was aware the 911 call was of concern. Trial counsel explained, however, that he did not see a way to challenge the 911 call being entered as evidence.

Female Victim

Applicant testified his attorney should have explained to the female victim that she could use the Fifth Amendment to prevent her from having to testify. Applicant also argued that even

though his Trial Counsel did object on the basis of spousal immunity, that he still believed Trial Counsel was ineffective for failing to preserve the issue for appellate review.

Trial counsel testified he did object and the issue was preserved.

Expert Witness

Applicant claims his counsel was ineffective for not objecting to the expert witness testifying as to his opinion that victim's injuries could have been caused by a knife. Trial Counsel explained he saw no reason to object because he believed the witness, having been qualified as an expert, could testify as to his opinion.

Self-Defense

Applicant claims he believed trial strategy was to focus on self-defense, and he was surprised by his trial counsel abandoning that argument in closing argument.

Trial counsel explained that he and Applicant had discussed self-defense as a primary trial strategy, but as testimony developed throughout the trial it became apparent that self-defense was not going to be successful. Applicant was in one of the victims' homes, he was drinking, and he gave a written statement in which he claimed he woke up to see the female victim kissing the male victim, all of which was hard to align with self-defense. Trial counsel noted that prior to closing argument, he and Applicant discussed what trial counsel planned to argue in closing argument.

Closing Argument

Applicant argues his counsel was disloyal for stating in closing argument that Applicant was "guilty of something."

Trial counsel stated he and Applicant had discussed this strategy prior to closing arguments. Trial counsel also noted he was successful in getting the Court to charge Assault and

Battery, Third Degree, and ultimately, ensuring Applicant was only convicted of the lesser included charge of Assault and Battery of a High and Aggravated Nature instead of Attempted Murder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. Furthermore, this Court has had the opportunity to observe the witnesses presented at the hearing, and closely pass upon all witnesses' credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S.Ct. at 2064). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Directed Verdict

Applicant testified his counsel was deficient for failing to argue for directed verdict when neither victim testified as to client being possession of a knife. Applicant acknowledged the female victim gave a written statement after the incident indicating Applicant had a knife in his hand, but Applicant noted the female victim admitted at trial that, when she wrote the statement, she was taking Lortab. Applicant claimed the female victim did not observe Applicant cut the male victim. Applicant claims the doctor's testimony about the cut being done by a knife was purely speculative.

Trial counsel testified he did move for a directed verdict on the weapon charge because it was the best shot to undermine the other charges. Trial counsel testified the charge only applied to the female victim and not the male victim's charges. The trial transcript shows trial counsel did move for a directed verdict on Applicant's possession of a weapon charge, but when the State pointed out that the female victim's written statement was in evidence and that it identified Applicant having a knife the night of the event, along with the doctor's testimony as to victim's injuries, the Court denied the motion. (Tr. pp. 283-86.)

Applicant has failed to prove counsel was deficient or that he suffered any prejudice.

911 Call

Applicant argued his counsel was ineffective for failing to object to the 911 call on the basis that no one's voice was ever identified on the call and the call was prejudicial to him. Applicant claimed he had no knowledge of the 911 call prior to going to trial.

Trial counsel noted that while his trial notes did not specifically state that he had played the 911 call for Applicant, he believes he would have played the call for him. Trial counsel's notes, specifically his trial outline, indicate he was aware the 911 call was of concern. Trial counsel explained, however, that he did not see a way to challenge the 911 call being entered as evidence.

Applicant has failed to prove counsel was deficient or that he suffered any prejudice.

Female Victim

Applicant testified that his attorney should have explained to the female victim that she could use the Fifth Amendment to prevent her from having to testify. Applicant also argued that even though his Trial Counsel did object on the basis of spousal immunity, that he still believed Trial Counsel was ineffective for failing to preserve the issue for appellate review.

Applicant has not shown how the victim would have used the Fifth Amendment to avoid testifying and has not offered any proof she would have voluntarily used the Fifth Amendment to avoid testifying. Further, Trial Counsel had no duty to explain to the victim what her constitutional rights were.

As to the claim of spousal immunity, the Court of Appeals ruled on that matter, holding that it was the trial court's discretion to overrule Trial Counsel's objection. The Court of Appeals decision does not cite to any law suggesting it is holding Applicant's convictions or sentences

were being affirmed due to Trial Counsel's failure to preserve an issue for appeal. Applicant has not presented any evidence that Trial Counsel failed to preserve the issue for appeal.

Expert Witness

Applicant claims his counsel was ineffective for not objecting to the expert witness testifying as to his opinion that victim's injuries could have been caused by a knife. Trial Counsel explained he saw no reason to object because he believed the witness, having been qualified as an expert, could testify as to his opinion. The trial transcript shows the witness was qualified as an expert (Tr. p. 265) and that he testified that the injuries could have been caused by a knife or by a fist. (Tr. p. 270 ("And you can get cuts from punches but you can also get cuts from knives as well. That seemed a fairly smooth cut," which would be "fairly consistent with a cut with a knife.").)

Self-Defense and Closing Argument

Applicant claims he believed trial strategy was to focus on self-defense, and he was surprised by his trial counsel abandoning that argument in closing argument. Applicant also argues his counsel was disloyal for stating in closing argument that Applicant was "guilty of something."

Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d, 529 (1992).

Further, a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's

challenged conduct, and to evaluate the conduct from counsel's perspective at the time. State v. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985) (citing Strickland v. Washington, 104 S.Ct. 2052, 890 L.E.2d 674 (1984)). Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the range of reasonable professional assistance. Id.

Here, trial counsel explained that he and Applicant had discussed self-defense as a primary trial strategy, but as testimony developed throughout the trial it became apparent that self-defense was not going to be successful. Trial counsel noted that he and Applicant discussed what trial counsel planned to argue in closing argument before closing argument. Further, trial counsel was successful in getting the Court to charge Assault and Battery, Third Degree, and ultimately, getting Applicant convicted of the lesser included charge of Assault and Battery of a High and Aggravated Nature instead of Attempted Murder. Applicant has failed to prove counsel was deficient or that he suffered any prejudice.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test: that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland: that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

Therefore, having reviewed the pleadings, considered the applicable law, reflected upon the testimony and evidence at trial, and considered the arguments of counsel, this Court finds Applicant is not entitled to relief.

Overwhelming Evidence

Furthermore, any alleged error was harmless and therefore did not cause Applicant any prejudice because of the overwhelming evidence presented against him at trial.

Where there is overwhelming evidence of guilt, representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); see also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the Petitioner's guilt in Ford was overwhelming and the South Carolina Supreme Court held that the Petitioner failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

Applicant can prove no resulting prejudice. Despite backing away from her statement at trial, the female victim gave a statement the night of the attack that identified Applicant as the one who attacked her with a knife. The male victim testified Applicant attacked him. The 911 call recorded the sounds of an attack from the address where Applicant was later arrested. Photographs and testimony by the treating physician showed the extensive injuries to both victims. Applicant also gave a written statement. Applicant's DNA was found on the hilt of the knife, which was collected from the scene.

Applicant was not prejudiced by any alleged deficiency by trial counsel because there was overwhelming evidence of Applicant's guilt.

CONCLUSION

Based on all the foregoing, this 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.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

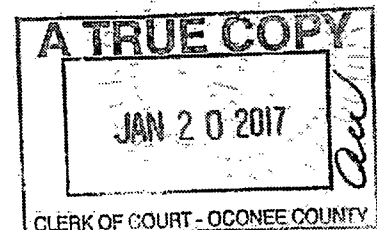
1. That the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


 LETITIA H. VERDIN
 Presiding Judge
 Tenth Judicial Circuit

FILED OCOREE COUNTY, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2017 JAN 20 A 8:45

12/28/16 (date)
Greenville South Carolina



DOCKET NO. 2011GS37 00391

WITNESSES

MATT PATTERSON, Walhalla Police Dept.

Paul Harris
PAUL HARRIS

ITNESSES

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

MAY 16 2011

Term

FILED OCONEE, SC
DEVELOPMENTAL
CLERK OF COURT

2011 MAY 18 P 12:37

ARREST WARRANT NUMBER

Direct: 2011GS3700391

THE STATE

VS.

Michael Lamar Couch

ACTION OF GRAND JURY

True Bill

Denise B. Hudson

Foreperson of Grand Jury

Date: 5/16/2011 MAY 16 2011

BLS

VERDICT

*Guilty assault & Battery of
a high & aggravated nature*

Foreperson of Petit Jury

Date: 10/19/11

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

ENTERED
COMPUTER

477

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on MAY 16 2011, the Grand Jurors of
Oconee County present upon their oath:

Attempted Murder

That **Michael Lamar Couch** did in Oconee on or about **February 16, 2011**, did unlawfully with
malice aforethought, either expressed or implied, and with the intent to kill, attempted to kill
Garry McCall, to wit: the defendant did attack **Garry McCall, Jr.** with a knife, cutting him about
the head and face. This is in violation of 16-3-29 of the South Carolina Code of Laws (1976) as
amended.

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


ASSISTANT SOLICITOR

DOCKET NO. 2011GS37-00403

WITNESSES

MATT PATTERSON, Walhalla Police Dept.

PAUL HARRIS

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

MAY 16 2011

Term

ARREST WARRANT NUMBER

H665572

THE STATE

VS.

Michael Lamar Couch

ACTION OF GRAND JURY

True Bill

BLS

Indictment for

Criminal Domestic Violence Of A High And
Aggravated Nature

SC Code: 16-25-0065

CDR Code: 2988

VERDICT

Guilty CDV/HAN

Foreperson of Petit Jury

Date:

10/19/11

2011 MAY 18 P 12:38

FILED OCONEE, SC
BEVERLY L. WHITFIELD
CLERK OF COURT

ENTERED
COMPUTER

479

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on MAY 16 2011, the Grand Jurors of
Oconee County present upon their oath:

Criminal Domestic Violence Of A High And Aggravated Nature

That Michael Lamar Couch did in Oconee County, South Carolina on or about February 16, 2011, cause, offer, or attempt to cause physical harm or injury to Summer Grant, a household or family member, with present ability under circumstances reasonably creating fear or imminent peril. Michael Lamar Couch intentionally committed an assault and battery which involved the use of a deadly weapon, or resulted in serious bodily injury and/or assault, with or without an accompanying battery, which would reasonably cause fear of imminent serious bodily injury or death, to wit: the defendant did strick the victim in the head with a glass coffee pot. All in violation of Sections 16-25-65, 16-25-20 and 17-25-30, *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

DOCKET NO. 2011GS37 00404

TPES

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

MAY 16 2011
Term

THE STATE

vs.

Michael Lamar Couch

BLS

Indictment for

Possession Weapon During Violent Crime

SC Code: 16-23-0490
CDR Code: 0549

WITNESSES

MATT PATTERSON, Walhalla Police Dept.

PAUL HARVEY

ARREST WARRANT NUMBER

H665573

ACTION OF GRAND JURY

True Bill

Denise B. Hudson
Foreperson of Grand Jury MAY 16 2011

Date:

VERDICT

Guilty Possession of a
weapon during CVC of
a Violent crime
Foreperson of Petit Jury
Date:

E. J. A.
10-19-11

FILED OCONEE, SC
BEVERLY L. WHITEFIELD
CLERK OF COURT

2011 MAY 18 P 12:38

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on **MAY 16 2011**, the Grand Jurors of Oconee County present upon their oath:

Possession Weapon During Violent Crime

That **Michael Lamar Couch**, did in Oconee County on or about **February 16, 2011**, while committing the crime of Criminal Domestic Violence of a High and Aggravated Nature, a crime of violence, have in his possession a knife, all in violation of Section 16-23-490, 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

Counsel was ineffective for repeatedly lending support to states version of events and asked questions at times, apparently with the intention to weaken his clients case. Examples as follows. . . pg 1

Tr. p. 40 7-11 Counsel states: I think the evidence will show that the incident between Mr. Couch and Ms. Grant took place first, and then Mr. McCall somehow then tried to intervene on that particular altercation, and that is when Mr. McCall sustained a laceration to his face.

Tr. p. 261 Lns. 10-20 My statement says, went to sleep around 12 midnight, woke up around three to go to the bathroom and caught Sommer and Bugger Kissing. I yelled at Bugger, turned, surprised, and pulled his knife and told me that he would hurt me if I tried anything. Well, he come at me with a knife and cut me in two places and kicked me. It happened so fast, I didnt have time to call the law. I got the knife out of his hands while we were tussling. He was cut on his cheek. I acted in self-defense and was not trying to kill this man. Sommer was not cut by a knife. She jumped on my back while me and bugger was fighting, and she did get struck. I was woke up out of my sleep and saw them kissing. I reacted out of self-defense towards Bugger McCall because he pulled a knife on me first and used it.

~~Why would counsel refer to states version of events instead of mine?~~

pg 42 Lns. 14-15 Counsel agrees with states version of events.

pg 47 Lns 6-10 State says that sommer testimony would be that she was holding the coffee-pot in self-defense because Mr. Couch had a knife on her at the time, Neither her testimony or statement says that and lawyer never objects.

pg 79 Lns 11-12 My counsel states "evidence will show that Ms. Grant was somehow hit in the head with a coffee pot."

I never told my counsel that verbally or in my statement

pg 78 Lns. 18-25 Counsel tells jury in introductory argument "You know, you will hear a 9-1-1 tape and you will hear it in a minute. And although it's kind of convulted and kind of jumbled, you will hear what was happening on that porticular day. And I ask you to pay close attention to that tape

because ultimately it's going to become critically important. I ask you,
484 to pay close attention to the testimony of Mr. Meall because it's
going to become critically important,

pg. 306 Lns 11-16 During closing argument Counsel tell jury ~~485~~ 2
"But you heard the 9-1-1 tape. You can use your common sense about what was going on, what was happening on that particular day."

Defense counsels performance was not only ineffective, but counsel abandoned the required duty of loyalty to his client; counsel did not simply make poor strategic choices; he acted with reckless disregard for his clients best interest and at times, apparently with the intention to weaken his clients case.

Implying a clients guilt by repeatedly lending support to the states version of events is virtually tantamount to concession of guilt, and constitutes a failure to oppose the states case with reasonable diligence and therefore violates counsels duty of loyalty to his client.

Duty of loyalty is violated ~~not merely~~ when counsel acts more for the benefit of, and with more apparent sympathy toward the prosecution than the client he is defending. Failed to function in any meaningful sense as the Governments adversary.

Counsels actions were not an exercise of professional judgement. Counsel cannot articulate an informed tactical or strategic decision for ~~ask~~ asking jury to listen to 9-1-1 tape that was more prejudicial than probative for evidence. It was main piece of evidence used to convict me.

Counsel rendered assistance well below the standard of "reasonableness" and professional norms for a criminal defense attorney. His performance was highly deficient. If not for counsels errors the outcome of the trial would have been different.

Cases for reference: Osborn v. Shillinger 861 F.2d 612

Fisher v. Gibson 282 F.3d 1283

Counsel was ineffective for not properly objecting and motioning against 486 prejudicial statements and 911 recording. Statements or recording should not have been allowed and counsel did not do all he could to prevent it from happening to prevent jurors from being prejudicially influenced.

Tr. p. 69 Solicitor admitting to open-line, no caller identified pg 3

Tr. p. 78 Ln. 18-19 Says "You know, you will hear a 9-1-1 tape and you will hear it in a minute."

78 Tr. p. 20-21 Says "You will hear what was happening on that day."

pg 82 Lns 11-12 9-1-1 dispatcher Kerr Says "Couldn't get anybody to the phone."

Tr. p. 85 Lns 24-25 Solicitor moves to admit 9-1-1 tape into evidence

Tr. p. 86 Ln. 2 Counsel makes no objection to 9-1-1 tape being admitted

Tr. p. 87 Ln 3 Does not wish to cross examine Kerr.

Rule 901 Requirement of Authentication of Identification

(a) the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations: By way of illustration only, and not by way of limitation the following are examples of authentication or identification conforming with the requirements of this rule:

(5) Identification of a voice, whether heard first hand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations: Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called or (B) in the case of a business and the conversation related to business reasonably transacted over the telephone.

While record includes evidence that the 9-1-1 telephone call was properly recorded, evidence is lacking as required under Evid. 901 to identify the voice of the person making the call as that of the alleged victim in this case.

Only evidence at trial offered to prove me guilty of the crime of criminal domestic violence was evidence of the unauthenticated 911 telephone recording and admission violated my right to confront witnesses against me as guaranteed by the 6th Amendment to the United States Constitution.

State v. Spiers 7th Dist. Noble No. 04 No 317.

9-1-1 caller not identified
901 requires identification of the voice in a telephone call before
a recording of a telephone call is to be admitted into evidence. 487 pg. 4

Trial counsel erred and abused its discretion by not objecting to the
admittance of this recording into evidence.

Tr. p 306 Lns 11-16 Counsel asks Jury to listen to 9-1-1 tape again.

The admission into evidence of this recording violated Rules 104(b)
901(a)(b) (5)(6) SCRE.

No cell phone was found or collected and put into evidence.

Neither officer Kerr or Sgt. Patterson had any personal knowledge of who made
the cell phone call and there was no evidence linking a cell phone that supposedly made
the call, therefore the officers lacked any personal knowledge of the origin or the
"condition precedent" and the recording should not have been admitted. Also see Rule 602

The 911 recording had a severe impact upon the jury finding me guilty in this
case.

Had counsel objected and challenged the evidence as he should, the prosecutor
bears the burden of establishing on appeal that erroneous admission of evidence was
harmless error. Thus counsel should have tried to preserve this issue for appellate review
by proper objects or even pre-trial motions. Only remedy to avoid prejudice would have
been to had 9-1-1 tape excluded to ensure me right to fair trial. This did not happen
due to counsels error. Counsel cannot articulate an informed tactical or strategic decision
for not challenging prejudicial evidence to at least preserve issue for appeal.

Counsel's performance did not reach the range of competence required of Attorneys in
criminal cases. Turner v. Bess If not for counsels error here, there a reasonable probability
that the outcome of the proceeding would likely have been different. This case should
be reversed for a New trial. Trammel v. U.S. 445 U.S. 40

Statements of alleged victims

References: Toledo v. Green
33 N.E. 3d 581

Tr. P. 118 Ln. 20-21 Grant admits to being on Lortabs before giving statements.

Tr. p 127 Lns 18-23 lawyer asks whether whether things she put in her statement were
true or false and she says that she was not sure what she was doing or thinking.

pg 155 Ln 11 Mcall admits not all of statement is true.

Tr. p 155 Lns. 17-19 Trial counsel introduces Mcalls statement for defense exhibit.

Tr. p 154 2-4 Mcall admits statement isn't true.

Tr. p 162 Ln 17-19 Mcall admits again to putting things in his statement that
wasn't true.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.

Extrinsic Evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such ~~evidence~~ statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

Instead of getting statements excluded under Rule 613(B) he introduced statement for defense exhibit. Trial counsel's failure to properly utilize witness prior inconsistent statements for impeachment purposes constitutes ineffective assistance of counsel.

Drissoll v. Delo, 71 F.3d 701 (8th Cir 1995)

Would ~~have~~ have been better judgement to have them excluded instead of confusing jury with them. They were unreliable, incredible and deserved no weight as proof beyond a reasonable doubt to anything. See also State v. Bottoms 195 S.E.2d 116

Should have also had them excluded under rule 403 SCRE

Inconsistency of statements as ground of impeachment. It is permissible to impeach witness by showing prior statements inconsistent with or contradictory to trial testimony. Mays v. Mays 229 S.E.2d 725, Martin v. Dunlap, 222 S.E. 2d 8

Defense counsel cannot show any tactical or strategic decision why he did not try to have statements excluded when there was a strong arguable basis in law and fact to do so. Here counsel rendered assistance well below the standard of "reasonableness" and professional norms for a criminal defense attorney and the proper functioning of the adversarial trial process. His performance was highly deficient. If not for counsel's errors the outcome of the trial would have likely been different.

Tr. pg. 96 Lns 19 Witness says: um, do I have the right to not testify any further?

Tr. pg 97 Ln. 7 The witness: um, I just ~~do not~~ ~~do not~~ ~~do not~~ ~~do not~~ ~~do not~~ would rather not testify.

Tr. pg 99 Ln 16 The witness: I really don't remember what all I wrote in it, but that's my handwriting.

Tr. pg 100 Lns 15 Tells solicitor that she just rather not answer.
Lns 17 A. I just rather not testify or anything.

Tr. pg 101 Lns 18-25 Tells solicitor repeatedly that she cannot remember what she put in her statement.

Tr. p 103 Ln 9 She denies statement

pg. 106 Lns 21-23 Solicitor ask witness does she recall giving statement She responds It's got my signature on it, I really don't remember what I ~~put~~ wrote in it so I ~~have~~ have to say no. 4896
~~13~~6
pg. 106 Lns 20-22 was asked again does ~~the~~ ~~statement~~ statement accurately reflect what you believe happened that morning? responds with A. Oh, like I said, I'm not even really sure. It's just all a bunch of blur. I mean, it's just - I really don't know what to say.

Counsel should have challenged statement thru proper objections relating to 5th ammendment right to remain silent, Rule 613(B) and most definitely Rule 602 Lack of personal knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

Driscoll v. Delo 71 F3d 701 (8th Cir 1995)

Trial counsels failure to properly utilize witness prior inconsistent statements for impeachment purposes constitutes ineffective assistance of counsel. Also see U.S. v Tucker, Miller v. Wainwright, Byrd v. U.S.

Inconsistency of statements as ground of impeachment

It is permissible to impeach witness by showing prior statements inconsistent with or contradictory to trial testimony
Mays v. Mays, 229 S.E2d 725, Martin v. Dunlap, 222 S.E. 2d 8

Rule 613(B)

at any time to trial court denial of spousal privilege and did not object for not objecting to spousal testimony and did not object at any time to trial court denial of spousal privilege.

Tr.p 96 Ln 19 Witness asks does she have right to not testify any further? Pg 7
Tr.p 96 Ln 21 Court asks if she is exercising a privilege?
Tr.p 96 Ln 22 Witness states yes.

Tr.p 99 Ln. 1-2 My counsel says he wants to wait until stoudemire rests in his direct examination.

Counsel should have objected and informed witness that she could also assert her right to plead the 5th amendment right. She obviously did not want to testify. Counsel's actions were not an exercise of professional judgement.

Tr.p 107 Lns 23-25 The Court denies spousal privilege based on State v. Gowan saying that actions in assaulting the Defendant or the witness are not communications. Spousal Communications Privilege

Section 19-11-30 of the South Carolina Code States:

In any trial inquiry in any suit, action, or proceeding in any court or before any person having, by law or consent of the parties, authority to examine witnesses or hear evidence, no husband or wife may be required to disclose any confidential or, in a criminal proceeding, any communication made by one to the other during their marriage.

Tr.p. 89 Lns 6-11 arguing against privilege

Tr.p 316 Lns 21-22 stated we met definition of household member

Counsel allowed solicitor to have it both ways.

Tr.p 170 Ln 1-3 stating 9-1-1 dispatch received open-line with verbal altercation going on in back of their home.

Tr.p. Ln 17-18 officer Patterson states he did hear verbal altercation going on at 503

~~However~~ Counsel did not object to and challenge Court's denial of spousal privilege not preserving this issue for appellate review. That constitutes ineffective assistance of counsel.

The ~~common~~ record will show that there was much more going on than a physical altercation. Records states there was a verbal altercation going on that is protected under Section 19-11-30 that were allowed as evidence that were not supposed to be allowed in front of the jury.

State v. Gowan does not apply to this case

Defense counsel show any tactical or strategic decision why he did not object to denial of spousal privilege as certainly there was a strong arguable basis in law and fact to do so. Counsel's actions were not an exercise of professional judgment. Counsel rendered assistance well below the stand of "reasonableness" and professional norms for a criminal defense attorney and proper functioning of the adversarial trial process. His performance was highly deficient. If not for counsel's errors, the outcome of the trial would have been different.

pg 18

Strekland v. Washington

Clower v. State 816 N.E.2d 1197

Yokie v. State 773 So.2d 115

Moseley v. Gaskin 15 Rch, 324

... causing arguments, Counsel gave up my Self-Defense defense and told the jury I was guilty of something. Trial counsel admitting to the jury defendants guilt resulted in performance below an objective standard of reasonableness. Pg 9

Tr. p. 309 Lns 10-11 Counsel states "He may be guilty of something else, but it's not attempted murder."

Tr. pg. 311 Ln 9-13 Counsel states "He may be guilty of something else, one of those lesser-includes that your going to hear about. But I submit to you that on Feb. 16th 2011, Michael Couch did not try to Kill Gory Mcall
"Self Defense"

The Defendant does not have to show that he was actually in danger. It is enough that the defendant believed he was in imminent danger, and a reasonable and prudent person of ordinary firmness and courage would have had the same belief. The Defendant has a right to act on appearances even though Defendants beliefs may have been mistaken. Final element of Self-Defense is that the Defendant had no probable way to avoid the Danger or Death or Serious Bodily injury than to act as the Defendant did in a particular circumstance. A defendant has no Duty to retreat if by doing so or being Killed, his doing so, the danger of being killed or suffering serious bodily injury would be increased. A person cannot be required to make an exact calculation as to the degree or the amount of force which may be needed to avoid death or serious bodily injury. The Defendant is justified in defending himself or others and in firing the first shot.

pg. 341 8-10

States: Therefore, in self-defense, the Defendant has the right to use the force needed to avoid death or serious bodily injury.

Trial Counsel Admitting to jury defendants guilt resulted in performance below an objective standard of reasonableness for defense counsel in criminal cases. U.S. v. Swanson 971 F.2d 1513 (11th Cir 1992)

Also see: U.S. v. Byfield 795 F. Supp 468 (D. D.C. 1992)

Lang v. Zant 677 F.2d 792 (11th Cir 1982)

U.S. v. Swanson 943 F.2d 1070 (9th Cir 1991)

Defense counsel's performance was not only ineffective, but counsel abandoned his required Duty of loyalty to his client; counsel did not simply make poor strategic choices; he acted with reckless disregard for my best interest and at times, apparently with the intention to weaken his clients case.

Osborn v. Shillinger 861 F.2d 612 (10th Cir 1988)

Implying a clients guilt by repeatedly lending support to the states version of events is virtually tantamount to a concession of guilt, and constitutes a failure to a concession of guilt, and constitutes a failure to oppose the states case with reasonable diligence and therefore violates counsels duty of loyalty to his client:
Fisher v. Gibson 282 F.3d 1283

If not for counsels errors outcome of trial would have likely been different.

was ineffective for failing to argue for a directed verdict on the possession of a weapon charge. Client's states victim clearly stated Pg 10 that he did not cut her or hold up a knife and threaten her. Defense counsel did not argue these points nor did he object to the doctor's testimony as an unreliable opinion because he was not qualified as a forensic pathologist. Defense counsel failed to argue these points or even a direct verdict upon all charges.

Pg. 137 Ln 17-19 Gary was asked did he see me threaten Sommer with knife, He answered that he didn't see the knife.

Pg. 134 Lns 10-11 Gary was asked what he was cut with. Lns 11 he responded he didn't really see the knife.

Pg. 160 Lns 8-11 was asked about me having a knife while dragging Sommer Lns 11 he stated that A. I didn't see it

Pg 120 Lns 21-25 Sommer stated that I did not cut her with a knife or hold one up and threaten her

Pg 127 18-23 was asked if things she put in her statement were true or false, she states that she can't really tell because she was on Lorazepam. Doesn't know what she was doing or thinking.

Pg 126 Ln 19-21 was asked did she see me hold the knife she A. no I didn't see him hold it

Pg 122 Ln 7-9 Sommer was asked did she see me cut Gary with knife she says no.

To be found guilty of Assault and Battery H/A/N or C/D/U/H/A the State is required to prove beyond a reasonable doubt by credible evidence that Applicant committed an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to their own household member (CPVHAN) S.C. Code § 16-25-65, A person commits (ABHAN) if the person unlawfully injures another person, and great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury S.C. Code § 16-3-600 (B)(1)(a)

Great Bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Tr. p. 278 Ln 25 Dr. Cromer was asked if he was concerned with victim dying and he replied no.

Tr. p. 317 Lns 9-10 Stated: Dr. Cromer stated Injuries were not serious bodily injuries.

Yet, the state was allowed to use their Dr. Cromer's opinion in regards to possession of a knife as expert testimony which prejudicially allowed jury to infer that applicant possessed a knife. Counsel did not object.

Tr.p 123 Lns 8-12 Sommer was asked if the knife belonged to me?
She says no, He don't carry knives around with him.

495

Tr.p 126 Ln 20-21 Q. Did you see him hold the knife?

A. I didn't see him hold it, no, but I seen it on the counter.

Tr.p 127 18-21 Q The stuff that you wrote against Michael that night in your statement, was it true or false? A. To tell you the truth, I can't even -- I mean I can't really tell you. I mean, I was on Lortabs. I mean, my head was all mixed up. I'm not sure what I was doing or thinking.

Tr.p. 160 8-11 was asked again did he see me with knife A. I didn't see it.

Tr.p. 208 Lns. 22-24 Merck was asked did he do any fingerprint analysis on knife? A No, sir, I did not.

Tr.p. 225 Lns 23-25 No finger prints were found on knife.

Tr.p. 235 Lns 5-10 only blood found on knife was mine.

496 My counsel interrupts solicitor and helps him determine Cromer as expert in emergency room care.

Ps 11

Doctor was speculating that cuts were created by a knife (Tr.p 280, Ln 17
Tr.p 281 Ln 20)

The State was only able to present evidence that merely raised conjecture, speculation, and suspicion as the essential elements of the charges in this case State v. Horn 324 S.C. 372, 379, 478 S.E. 2d 289, 293 (1996)

"Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof State v. Cherry 606 S.E.2d 475, 478 (2004)

Counsel's failure to obtain a forensic pathology expert to rebut the state's expert testimony constitutes ineffective ass. of counsel Miller v. Wainwright 998 F.2d 426 (11th Cir 1986)

Counsel's failure to object to prejudicial testimony which was used to inform minds of jury constitutes ineffective assistance of counsel Vela v. Estelle 708 F.2d 994 (5th 1983) Also: Fossick v. State, Mincey v. State, State v. Hinton

Dr. testimony was improper bolstering, and trial ~~court~~ counsel was deficient for failing to object to it or otherwise bring it to the trial court's attention. The case lacked physical evidence and hinged on credibility 415 S.C. 310

Trial counsel was deficient for failing to call a medical expert to challenge state's medical evidence 2. I was prejudiced by my trial counsel's deficiency in failing to call medical expert.

Defense counsel cannot show any tactical or strategic decision why he did not argue for a directed verdict upon all the charges as there was certainly a strong arguable basis in law and fact to do so Stone v. State 363 S.E.2d 903 The verdict here had to be contrary to evidence presented and the confidence in the outcome of the trial was detrimentally undermined thereof. Dutler v. State 334 S.E.2d 813, 814 Counsel's actions were not an exercise of professional judgment Sosebee v. Leeke 362 S.E.2d 22 Here counsel rendered assistance well below the standard of reasonableness and professional norms for a criminal defense attorney. His performance was highly deficient. If not for counsel's errors the outcome of the trial would have likely been different

Strickland v. Washington 461 U.S. 668 (1984)

This case should be reversed.

