

**STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA GRIFFITH,

APPELLANT

APPELLATE CASE NO. 2014-000066

AMENDED RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT 5 (photograph)

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1 MR. HYMAN: Judge, she already did testify.

2 MR. HEWITT: Under Rule 801(d), Judge, it's a prior
3 inconsistent statement; it is not hearsay.

4 THE COURT: If it's inconsistent, I'll let, I'll let him
5 -- hear what they say, thank you.

6 MS. LIVESAY: Wouldn't we have to know what statement
7 he's referring to know which one is inconsistent?

8 THE COURT: If it's inconsistent, you've got to say what
9 they first -- where the inconsistency is under the rules.

10 BY MR. HYMAN:

11 Q: If Robert Penna was stabbed in the back would it be
12 inconsistent for Ashley McNeil to say that she applied
13 pressure to his stomach?

14 A: I'd have to look through the report; I don't recall that.

15 Q: Okay. Well, I tell you what, why don't we, we'll come
16 back to Ashley McNeil and we'll move on to Ryan Palmer.

17 A: All right. I do see the section.

18 Q: Okay.

19 A: Okay.

20 Q: On McNeil?

21 A: Yes, on Ashley McNeil. Would you like me to read the
22 paragraph that that's contained in?

23 Q: If, I'm just asking if one, what that says is accurate and
24 if you would ---

25 THE COURT: If you can explain your answer better by

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1 reading it, you may do so. .

2 A: Okay. She said that she had -- that he had been stabbed
3 as well and she -- and was starting to feel lightheaded. She
4 said she helped by putting pressure to his wound. She said
5 that he was stabbed near his ribs. Ashley could not remember
6 his name. I asked her if it was Robert Penna and she recalled
7 that to be his name.

8 BY MR. HYMAN:

9 Q: Okay. Now as far as Ashley, how many times do you think
10 you talked to her?

11 A: I think I just spoke with her one time. I only have one
12 report.

13 Q: How about Ryan Palmer, do you remember speaking with Ryan?

14 A: I spoke with Ryan in person one time and then I had just a
15 couple of short telephone conversations with him trying to get
16 some copies of some pictures that he had.

17 Q: Okay. Now, when you talked with Ryan, did he give you a
18 statement as well?

19 A: Yes, he did.

20 Q: All right. And I'm gonna go -- and it's on page two of
21 your statement. Now Palmer's, Ryan Palmer's statement that he
22 gave on the stand stated that my client, Blake Griffith,
23 pushed Michael Parker. Did he ever tell you that at any
24 point?

25 A: He said that your client pushed ---

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CARMEN MUREDDU - DIRECT BY HYMAN

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1 Q: Michael Parker.

2 A: --- Michael Parker? Ryan said that D.J. shoved Griffith
3 back away from him and Ryan threw a punch at Griffith.

4 Q: So that would be inconsistent with him saying that my
5 client pushed Parker and then he punched my client, correct?

6 A: Correct.

7 Q: Okay. So, it was his statement to you that D.J.
8 Houghtaling pushed my client and then he threw it and then
9 that Ryan Palmer threw a punch at my client?

10 A: Yes.

11 Q: Did you happen to interview Michael Parker?

12 A: Yes, I did.

13 Q: Do you remember your interview with Michael?

14 A: Yes.

15 Q: Was it a, a good interview, was he -- did he want to talk
16 to you?

17 A: I felt he was very helpful.

18 Q: Okay. Now in Michael's, did he tell you that Griffith had
19 pushed him?

20 A: He said that Parker said that he shoved Brown, the taller
21 guy, on the shoulder and asked him did he have a problem.
22 Parker said that Ryan and Griffith immediately started to
23 fight and that this caused a shift in people pushing towards
24 him, Parker, is who he meant. It was just Ryan and Griffith
25 fighting initially and D.J. was right behind or next to them

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- 1 at that time. Brown tried to get into that fight. Parker
2 said that he then went at Brown and started to fight with him
3 in defense of Ryan.
- 4 Q: So, in Parker's statement to you, Michael Parker said that
5 he shoved Brown and said, what's your problem, have you got a
6 problem?
- 7 A: He said he went at Brown because Ryan was his friend and
8 there was gonna be two on him basically.
- 9 Q: Prior to that though?
- 10 A: Prior to that?
- 11 Q: It said Parker said that he shoved Brown, the taller guy,
12 and asked him if he had a problem?
- 13 A: Right.
- 14 Q: So at nowhere in there does Parker say anything about my
15 client pushing him?
- 16 A: No.
- 17 Q: So if he said that when, in his testimony, that would be
18 inconsistent with what he told you?
- 19 A: Yes, inconsistent with what he told me.
- 20 Q: Okay. Now did you interview Robert Penna?
- 21 A: Yes.
- 22 Q: When you interviewed Robert Penna, did he say anything to
23 you about my client stabbing him?
- 24 A: No.
- 25 Q: Did Michael Parker say anything about my client stabbing

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CARMEN MUREDDU - DIRECT BY HYMAN

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- 1 or cutting anybody?
- 2 A: No.
- 3 Q: Did Ryan Palmer tell you about my client cutting or
- 4 stabbing anyone, Ryan Palmer?
- 5 A: Ryan Palmer, no.
- 6 Q: In fact, who did Ryan Palmer tell you who cut him?
- 7 A: The tall guy with the closely shaved head.
- 8 Q: Did you interview anybody in your entire investigation
- 9 that said they saw my client cut or stab anybody?
- 10 A: My interview with your client,
- 11 Q: That, but anybody that as far as victims or anything like
- 12 that?
- 13 A: No.
- 14 Q: Okay. And your interview with my client, the person in
- 15 regards to that, was it any victim; was it a victim that we're
- 16 here today for?
- 17 A: Not the ones that are here tonight for, no.
- 18 Q: Gotcha. And again, Robert Penna never at any point told
- 19 you that my client cut him or stabbed him?
- 20 A: No.
- 21 Q: When you did these interviews, did you tell them to tell
- 22 you the whole truth?
- 23 A: I did.
- 24 Q: Okay. And do you think that was what they were doing?
- 25 A: I thought they were.

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1 Q: All right. And if they came up with something now that's
2 completely different than that, that would be very
3 inconsistent with what they told you?

4 A: I don't know what they've said now, but if it's anything
5 other than what they told me, I would consider it ---

6 Q: Well, if Robert Penna said that my client stabbed D.J. and
7 stabbed him, that would be completely inconsistent with what
8 he has told you, correct?

9 A: That would be because he said he couldn't really remember.

10 Q: In fact, he said he couldn't remember much at all?

11 A: No.

12 MR. HYMAN: No further questions.

13 THE COURT: You may examine.

14 CROSS EXAMINATION OF CARMEN MUREDDU BY MS. LIVESAY:

15 Q: Ms. Mureddu, you were investigating this case for our
16 office, the Solicitor's office?

17 A: Yes.

18 Q: Okay. Now, would you say that this was a limited
19 investigation?

20 A: My portion of it?

21 Q: Uh-huh (affirmative response).

22 A: Yes, ma'am.

23 Q: Did you go out on the crime scene the night that it
24 happened?

25 A: No.

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 Q: Okay. Now, Mr. Hyman asked you distinctly about three of
2 the victims or three of the witnesses that you interviewed.
3 Three of them were Ryan Palmer, Michael Parker and Robert
4 Penna?

5 A: Yes.

6 Q: In their statements, did any of them say that just Blakely
7 Brown approached them?

8 A: No, they said that both Blakely Brown and Griffith
9 approached them.

10 Q: Okay. At any point in talking to them, did they ever say
11 anything else other than two guys approached us, Blakely Brown
12 and Blake Griffith?

13 A: Like other guys approaching?

14 Q: Uh-huh (affirmative response).

15 A: No, just those two.

16 Q: Okay. Now, did they ever tell you anything other than
17 these two guys approached us?

18 A: No, they were consistent that it was the two guys.

19 Q: Okay.

20 A: That approached them in an area at the bar.

21 Q: Okay. And about how many people did you interview as part
22 of, part of your report; do you know?

23 A: I've got fourteen pages here. I think it's eighteen
24 people.

25 Q: How many?

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 A: Eighteen.

2 Q: Eighteen people. Did any one of those eighteen people
3 ever say that Robert Palmer, I'm sorry, Ryan Palmer or Robert
4 Penna or D.J. ever approached Blake Griffith and Blakely
5 Brown?

6 A: No.

7 MR. HEWITT: Judge, I'm gonna object to anybody that's
8 not been a witness; that's hearsay.

9 THE COURT: No, sir, this is a, you're -- Mr. Hyman
10 inquired as to her statement, as to the statement allegedly
11 made by these folks. She's asking the same thing about the
12 same statement. She's entitled to do that. You're the one
13 that started it. Go ahead.

14 MR. HYMAN: Judge, there's quite a few people she's
15 referring to that did not testify earlier.

16 THE COURT: I understand that, but you want, you wanted
17 her to think about what's in the statement and she's entitled
18 to go into it. Go ahead.

19 MS. LIVESAY: Thank you.

20 BY MS. LIVESAY:

21 Q: So none of, nobody ever said that these boys approached
22 the Defendants?

23 A: No.

24 Q: Okay. In fact, the one consistency was the Defendants
25 approached the victims?

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 A: Yes.

2 Q: Now Mr. Hyman asked you about Ashley McNeil's statement;
3 is that right?

4 A: Yes.

5 Q: Okay. Now, did Ashley McNeil tell you in, on October 6th,
6 2010?

7 A: Yes.

8 Q: Did she tell you that she saw somebody that night with a
9 knife in their hand?

10 A: I believe she did, but let me find it. Ashley said that
11 about five to ten minutes before the stabbing, she saw the
12 shorter one with, with dark hair holding a knife, showing it
13 and waving it near his belt. It was not directed at anyone
14 and just appeared that he was showing that he had one. Ashley
15 said that she reported this to a bouncer, but does not think
16 that anything was done about it. She said that she does not
17 think ---

18 Q: I'm sorry, Ms. Mureddu, let me cut you off real quick
19 because I'm asking you real, because I don't want us to get to
20 far involved. Did, did you put in your report that she told
21 you that about five to ten minutes before the stabbing, she
22 saw the shorter one with the dark hair holding a knife showing
23 it and waving it near his belt?

24 A: Yes, she did.

25 Q: Okay. And was the understanding when you were talking to

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 all of these people that the shorter one was Blake Griffith
2 and the taller one was Blake Brown?

3 A: Right, that's how we would differentiate.

4 Q: Okay. Now, did anybody tell you that you interviewed that
5 they saw Blake Brown have a knife out prior to this fight; can
6 you recall?

7 A: I recall that one of these witnesses, and I had to go
8 through it, saw Blake Brown motioning to something under, you
9 know like implying and making threats and I believe that it
10 was Ryan Palmer that told me that, but I can verify if you
11 want me to look at the report.

12 Q: You're not sure, but you remember somebody said he was
13 motioning ---

14 A: Motioning as if he had some type of a weapon and, you
15 know, a knife or a gun or something hidden and it was
16 considered a threat or felt it was a threat.

17 Q: Okay. So you interviewed somebody that saw Blake Brown
18 motioning and you interviewed somebody that saw Blake Griffith
19 actually had it out waving a knife around?

20 A: Yes.

21 Q: Okay. Now, do you remember ever interviewing a guy named
22 Klevis?

23 A: Yes.

24 Q: Okay. And did you interview him around that same time,
25 October of 2010, we say October -- I'm assuming all of these

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 were done about the same time, but I don't see a date on his.

2 A: Yes, if it's from the following date they're all
3 consistent.

4 Q: Okay. And did Klevis tell you back in 2010 that he had
5 been in an altercation, walked outside or been escorted
6 outside and two guys approached him trying to get involved in
7 the fight?

8 A: Yes, he said that after his altercation, two guys came up
9 to him and told him that they had his back and that they could
10 help him.

11 Q: Okay. And he told you ---

12 THE COURT: Now confine your cross examination on those
13 issues as to the individuals that Mr. Hyman talked about?

14 MS. LIVESAY: Okay, I will, Your Honor.

15 BY MS. LIVESAY:

16 Q: And that was back in 2010?

17 A: Yes.

18 Q: Okay. Now, Ms. Mureddu, when you did these interviews, is
19 this a report kinda of the summary of your conversations
20 regarding these witnesses?

21 A: It's a summary of their exact statements, yes.

22 Q: Okay.

23 A: Their words.

24 Q: Okay. But this is not a transcript; is that correct?

25 A: It's not a transcript.

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CARMEN MUREDDU - CROSS BY LIVESAY

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1 Q: Okay. And it's not their written statement?

2 A: It's not their written statement.

3 Q: Let me ask you one more question, Ms. Mureddu. Did you --
4 you interviewed Kenneth Muth; is that correct?

5 A: Yes.

6 Q: If you don't mind, in that last paragraph on twelve, page
7 twelve, could you tell us who Kenneth Muth described to you
8 that he was chasing down that street that night?

9 A: He says that he made contact with the suspect Griffith and
10 told him that he wanted to talk to him. The subject
11 immediately started running and Ken was chasing him. He said
12 that the subject was wearing a white tank top and yellow board
13 shorts.

14 Q: Okay. And he was -- what was he wearing, a white tank top
15 and yellow shorts?

16 A: Yellow board shorts.

17 Q: Okay. And did he say he noticed anything?

18 A: He said he noticed that the suspect was grabbing at his
19 pocket and he became concerned that he may have a weapon or
20 something. So he stopped at that point and apparently jumped
21 into a taxi and hung on to the door of the taxi while they
22 followed him, just started a pursuit of him.

23 MS. LIVESAY: Okay. No further statements, no further
24 questions, Your Honor.

25 MR. HYMAN: Just real quick on redirect.

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CARMEN MUREDDU - REDIRECT BY HYMAN

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1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION OF CARMEN MUREDDU BY MR. HYMAN:

3 Q: If somebody would have told you that they saw a knife,
4 would you have reported that in this, in your investigative
5 report?

6 A: Yes.

7 Q: Now did Klevis Horanlli at any time tell you that he saw
8 the knife when those guys went outside and talked to him?

9 A: No, he said that he motioned to something, but he didn't
10 -- let me find it. He said that, that the subjects stated
11 that they had his back and that they would come help him.
12 Klevis said that one of the men reached under his shirt while
13 making these statements in a manner insinuating that they had
14 a knife or gun hidden under the shirt. Klevis thought this to
15 be very strange since did not know them and said it was scary
16 that they were offering to help fight people they did not
17 know.

18 Q: Now, Klevis testified today that Blake Brown approached
19 him and offered help and said that Blake Brown brandished a
20 knife and showed it to him. The brandishing of the knife in
21 that case is that a little different than what he told you?

22 A: No, because he used the word insinuating that they had a
23 knife hidden under the shirt. He was making the statement in
24 a manner insinuating, pointing that there would be something
25 hidden under the shirt.

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1 Q: But not actually pulling out the knife?

2 A: He did not tell me that.

3 Q: Okay. So, that would be inconsistent?

4 A: Yes.

5 Q: Now as far as, as Ms. McNeil goes, if she testified that
6 she told a bouncer and then that, well, we told a bouncer and
7 then later testified, well, no, I didn't tell the bouncer; is
8 that inconsistent with what she said to you?

9 A: Yes.

10 MR. HYMAN: Okay. No further questions.

11 THE COURT: All right. You may come down. Thank you.

12 Do you need this witness to remain in, under your
13 subpoena?

14 MR. HYMAN: No, Your Honor.

15 MR. SPRATLIN: The State doesn't either, Your Honor.

16 BY THE COURT:

17 THE COURT: All right. Call your next witness.

18 MR. HEWITT: Judge, what we'd like to do at this point is
19 we have a fairly extensive proffer we'd like to offer that we
20 think will last the rest of the day and I can say that with
21 reasonable certainty. So if, it's obviously up to you, but we
22 think we'll have, we have an extensive proffer that will take
23 us till 6 o'clock.

24 THE COURT: All right. Given that then I don't want the
25 Jury to be waiting all that time and I thank you for alerting

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1 **(January 9, 2014 - 10:28 A.M.)**

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the Jury.)

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

5 MS. LIVESAY: Yes, sir.

6 THE COURT: Defense ready?

7 MR. HYMAN: Yes, Your Honor.

8 THE COURT: Has the courtroom been cleared with the
9 appropriate folks in accordance with my understanding?

10 MR. HYMAN: Yes, Your Honor, the only people left are my
11 staff and a few attorneys in the back.

12 THE COURT: You have no objection to the family
13 remaining?

14 MR. HYMAN: Well, they went ahead and left as well,
15 Judge.

16 THE COURT: Okay.

17 MR. SPRATLIN: And for the State, Your Honor, the only
18 ones left are the two victims in the case as well as the, the
19 deceased victim's mother.

20 THE COURT: All right. Mr. Axelrod, does that reply with
21 your request?

22 LAW CLERK: He's not in the courtroom.

23 MR. SPRATLIN: I did ask Mr. Axelrod and he said that was

24 ---

25 THE COURT: What happened, I left him outside; nobody let

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BY THE COURT

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1 him in?

2 MS. LIVESAY: He's let in, Your Honor.

3 THE COURT: Well just leave him out, that's fine. He did
4 not wish to be present?

5 MR. HEWITT: I think he's with his client, Your Honor.

6 MR. HYMAN: He's getting his client, Judge.

7 THE COURT: I'm not ready for the Jury yet.

8 (REPORTER'S NOTE: Mr. Axelrod enters courtroom.)

9 MR. AXELROD: Judge, would you like my client now?

10 THE COURT: Yes, sir.

11 MR. AXELROD: Okay.

12 THE COURT: I've been waiting for him since 9:30.

13 All right. I want the record to reflect that the next
14 witness is being called outside of the presence of the Jury.

15 Swear the witness.

16 CLERK: Please raise your right hand and place your left
17 hand on the Bible.

18 BLAKELY KALEN BROWN, HAVING BEEN

19 SWORN TESTIFIES AS FOLLOWS:

20 THE COURT: I want the record to also reflect that this
21 witness was initially a Codefendant involved in the case which
22 we are trying, represented by Attorney Axelrod, who is in the
23 court and present as we speak.

24 All right, sir, and you're calling, Mr. Hyman, this
25 witness?

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BLAKELY KALEN BROWN - PROFFER DIRECT BY HYMAN

1 MR. HYMAN: Your Honor, I am calling Blakely Kalen Brown.

2 THE COURT: All right, sir. Proceed please outside the
3 presence of the Jury at this moment.

4 PROFFER DIRECT EXAMINATION OF BLAKELY KALEN BROWN BY MR.

5 HYMAN:

6 Q: Mr. Brown, will you state your full name for the record?

7 A: Blakely Kalen Brown.

8 Q: And are you willing to testify in court today?

9 A: I want to invoke my Fifth Amendment.

10 MR. HYMAN: No further questions, Judge.

11 BY THE COURT:

12 THE COURT: All right. Then let's let -- Mr. Axelrod,
13 for the record, you as his attorney, you want to give me a
14 basis for this too?

15 MR. AXELROD: Yes, sir, Your Honor. It's my
16 understanding that he still has several charges. He has a
17 conspiracy charge. I believe he as an assault and battery
18 with intent to kill charge against two or three people, two
19 other people and, Your Honor, it's our ---

20 THE COURT: Arising out of this incident we're trying
21 today?

22 MR. AXELROD: Yes, sir, Your Honor, it's all out of the
23 same incident and, Your Honor, he has already pled to the
24 accessory after the fact. They've held the sentencing in
25 abeyance, but because the State was unwilling to dismiss the

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BLAKELY KALEN BROWN - PROFFER DIRECT BY HYMAN

1 other charges, the companion charges that his testimony, he
2 could, he could, he could cause damage to himself by
3 testifying today. We think it's proper for him to invoke his
4 Fifth ---

5 THE COURT: I do too, given the fact that there are
6 pending charges arising out of the incident that we are
7 presently trying.

8 MR. AXELROD: Because he could incriminate himself.

9 THE COURT: I conclude that his statement made by him to
10 take the Fifth Amendment is appropriate. You may come down.

11 MR. AXELROD: And, Your Honor, I would ask that my client
12 be sent back to the jail and relieve me from being here today?

13 THE COURT: Any objection to that?

14 MR. HYMAN: I don't have any objection.

15 THE COURT: All right, sir. Take him back.

16 Mr. Hyman, you understand that it would be improper to
17 require him to testify on the issues in this case?

18 MR. HYMAN: No, I understand, Judge. I certainly
19 understand.

20 THE COURT: All right. We ready for the Jury?

21 MR. HYMAN: Judge, we are, but do you want to go ahead
22 and, and allow the people that were outside the courtroom to
23 come back in and then we'll ---

24 THE COURT: As they're coming in let the Jury come on
25 back.

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1 (REPORTER'S NOTE: Jury enters courtroom. 10:35 A.M.)

2 THE COURT: Good morning, Mr. Foreman, ladies and
3 gentlemen. I certainly apologize for the delay. It was just
4 necessary awaiting a witnesses' arrival, but I do appreciate
5 the fact that you were here at 9:30 ready to go. I always
6 want a jury to know that I fully understand that your time is
7 important too and this Court will not waste it at any time. I
8 would not want my Jury to think that we were outside smoking
9 cigarettes and telling a joke and keeping you waiting. I
10 realize that that ham biscuit provided won't last all day, but
11 I do appreciate your services.

12 Call your witness.

13 MR. HYMAN: Your Honor, the Defense calls Detective Neil
14 Frebowitz.

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

17 NEIL FREBOWITZ, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: Please state your full name and spell your last
20 name.

21 MR. FREBOWITZ: Yes, ma'am. Detective Neil Frebowitz, F-
22 R-E-B-O-W-I-T-Z.

23 DIRECT EXAMINATION OF NEIL FREBOWITZ BY MR. HYMAN:

24 Q: Good morning, Detective Frebowitz; good to see you.

25 A: Good morning, sir.

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1 Q: Now, were you involved as the lead investigator on a case
2 back in 2009 involving a possible homicide at the Afterdeck?

3 A: Yes, sir; I was.

4 Q: Now can you tell me what your involvement was?

5 A: Yes, sir. My involvement started around 3 o'clock in the
6 morning. I was one of the on-call detectives. I received a
7 phone call at my home from the supervisor advising there had
8 been a stabbing at a bar, the Afterdeck and I responded
9 directly from my home.

10 Q: Do you remember what supervisor that was that advised you?

11 A: I do believe it was Sergeant, at the time, Sergeant
12 Squires.

13 Q: Okay. And approximately what time did you arrive at the
14 Afterdeck?

15 A: Approximately 3:30, 3:45.

16 Q: And can you explain your arrival at the Afterdeck kind of
17 what was going on?

18 A: Sure. It's, I think we've already described what it looks
19 like on the outside, so I don't have to go through that again
20 I hope, but it was still relatively chaotic. The term I'd use
21 was disorganized. The crime scene had not been fully
22 established. And what I mean by fully established is homicide
23 detectives would call it a frozen zone, where nothing moves,
24 nothing comes in, nothing goes out except law enforcement and
25 EMS personnel and anybody who would enter or exit would be

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1 cataloged somehow. That hadn't yet been established.

2 Q: Now, and you knew that by, how do you do that, how do you
3 freeze a zone; do you rope it off, do you set up stakes, what
4 do you do?

5 A: Just like you'd see in maybe the first forty-eight, they'd
6 take police crime tape, you know, as long as it the things
7 that had to be, as broad as it had to be, if they needed to
8 tape the parking the lot, the street, whatever they needed,
9 that could have been done.

10 Q: And when you got there, I think you said it was at 3:45;
11 is that right?

12 A: Approximately 3:30, 3:45.

13 Q: 3:30 or 3:45, that's approximately an hour and a half, an
14 hour and forty five after the incident, but was there still
15 people around the crime scene who were not police related?

16 A: Yes, sir; I believe so.

17 Q: Do you know who these people were or where they worked?

18 A: I believe some were witnesses waiting to be interviewed.

19 There were some personnel in plain clothes that I think
20 might've been EMS, but I, I didn't have access to the log at
21 that time. I didn't know who was coming and going.

22 Q: Did you happen to notice any issues with the crime scene?

23 A: Yes, sir. As soon as I pulled up, I was instantaneously
24 struck by the smell of bleach. Shortly after I pulled up, the
25 crime scene technician showed up, Investigator Deal, and he,

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1 we actually had a conversation and I said, do you smell
2 bleach, and where's it coming from, because obviously bleach
3 would deteriorate blood. And walked inside the Afterdeck
4 building itself and there were, I guess they were club
5 personnel attempting to clean the crime scene, clean up the
6 blood.

7 Q: Now, is that what you want?

8 A: No, sir.

9 Q: What would you have preferred?

10 A: I think the frozen zone speaks for itself. When I get to
11 a scene, I want it to look exactly like the first officer
12 found it.

13 Q: Okay. And why do you like it like that?

14 A: Well, the evidence needs to be collected. We only get one
15 chance to do it. We want pristine evidence. We don't want it
16 obliterated, we don't want it deteriorated and we don't want
17 it altered in any way.

18 Q: And was that the case in this case?

19 A: I don't know.

20 Q: Because there wasn't a frozen scene?

21 A: I don't know what was there before I got there.

22 Q: Right. Now were, were you aware for your investigation
23 how many people were there that night or an approximate amount
24 of people?

25 A: Inside?

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- 1 Q: Inside the Afterdeck, inside the club?
- 2 A: The only any descriptive, the descriptions people told me
3 it was packed.
- 4 Q: Packed?
- 5 A: Yes.
- 6 Q: Would that be two hundred to four hundred or possible
7 more?
- 8 A: The room was almost this size, maybe a little bit smaller
9 so sure.
- 10 Q: Okay. Now, in your investigations and let me get back --
11 How long have you been a detective?
- 12 A: With County Police, five years.
- 13 Q: And how about prior to that?
- 14 A: I retired from Washington, D.C. Metro Police Department
15 after twenty-five years.
- 16 Q: Were you a Homicide Detective there as well?
- 17 A: No, I was a Patrol Supervisor Commander.
- 18 Q: Okay. Approximately, how many investigations, homicide
19 investigations do you think you've been a part of?
- 20 A: Either as a first responder or actually a lead
21 investigator, well over a hundred.
- 22 Q: Now and again, were you the lead investigator on this?
- 23 A: I was, sir.
- 24 Q: Okay. And as being the lead investigator, did you
25 consider this a good crime scene?

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NEIL FREBOWITZ - DIRECT BY HYMAN

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1 A: No, sir; I did not.

2 Q: Okay. Now, when you got there and again, I think it was
3 your testimony that you smelled bleach. It was obvious
4 somebody had mopped up some of the crime scene. Could that
5 blood that was left or that was mopped up, could it have
6 helped you in any way?

7 A: It could have, absolutely.

8 Q: Could you have used that blood to determine splatter or
9 anything like that?

10 A: Well, I couldn't have, but I'm sure my crime scene techs
11 might have been able to tell if it -- and it's spatter and not
12 splatter.

13 Q: I'm sorry, sir, spatter. You see I wouldn't be able to do
14 that either. As far as your investigation, did you interview
15 witnesses?

16 A: We did.

17 Q: Can you tell me the demeanor of the witnesses that you
18 interviewed?

19 A: The majority of them obviously had been drinking. I
20 smelled alcohol on their breath. Some were intoxicated and
21 some had just been drinking.

22 Q: Okay. Did you find that some were very intoxicated?

23 A: I didn't interview any that were very intoxicated, but I
24 know that the other investigators and uniformed patrol
25 officers told me there were, there were intoxicated folks on

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1 their arrival.

2 Q: Okay. Now, did you happen to interview anybody that
3 worked there that seemed intoxicated?

4 A: No, sir.

5 Q: No. Now as far as the witnesses that you interviewed, did
6 they seem disorganized; did they seem credible; how did they
7 seem to you?

8 A: Well, two of the witnesses particularly seemed very
9 credible.

10 Q: Okay. And did any of them seem not credible to you?

11 A: I only really interviewed as far as witnesses, my victims
12 ---

13 Q: Uh-huh (affirmative response).

14 A: Two, the two ladies that were with the Defendant and the
15 Codefendant, and they seemed very credible to me.

16 Q: Now, did you -- and as far as after you interviewed these
17 witnesses, did you stay at the Afterdeck, did you leave, where
18 did you go?

19 A: I left.

20 Q: And where did you go after that?

21 A: We got information that Blakely Brown, the Codefendant,
22 and I was trying to facilitate an escape from the jurisdiction
23 and I was looking for him.

24 Q: Okay. And did you find him?

25 A: We did.

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1 Q: And where did y'all find him?

2 A: He was at this townhouse in North Myrtle or a vacation
3 home in North Myrtle Beach attempting to go back home wherever
4 that was.

5 Q: Okay. Now, was he with anyone?

6 A: His, excuse me, his mother.

7 Q: Through your investigation, did you find any other places
8 he had been prior to, to the townhouse or wherever it was that
9 y'all found him?

10 A: Yes, sir.

11 Q: And where was that?

12 A: He had initially run from the scene. He had made a phone
13 call and been picked up by his mother. I believe he drove
14 past the scene at least one other time before trying to go
15 home.

16 Q: Now, this is Brown, not ---

17 A: This is, this is the other fellow.

18 Q: Now, are you aware if Brown at any time went to his
19 mother's home?

20 A: His mother's home? There was, I think, a vacation rental
21 property they were sharing in North Myrtle Beach. I don't
22 know where she lived.

23 Q: Gotcha. Now, were on the scene when they actually caught
24 Brown?

25 A: I am the one who arrested Brown.

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1 Q: Okay. And did you take him into booking or did someone
2 else do that?

3 A: Who?

4 Q: Brown.

5 A: We took him back to the police department for an
6 interview.

7 Q: Okay. Gotcha. Are you aware if photographs were taken of
8 Brown or anything like that?

9 A: I'm not aware.

10 Q: Okay. After booking, after he was arrested, after all of
11 that, did you just leave with the case or did you maintain, I
12 guess, work on this case?

13 A: I continued to work on the case.

14 Q: As far as continuing to work on the case, did you happen
15 to do anything in, and when were you notified that someone had
16 died?

17 A: Almost immediately upon my arrival, one of the uniformed
18 patrol officers had responded to the hospital and I received
19 the word from that uniformed patrol officer that the victim
20 had succumbed to his wound.

21 Q: Now as a detective and as the lead investigator on this,
22 do you have any duties after that once you're notified as far
23 as family or anything like that?

24 A: Yes, sir, I do.

25 Q: And what is your duty with that?

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1 A: If it, many times as a lead detective, you want to be the
2 one to make the notification and there's a lot of reasons for
3 that. One is to see how the family is going to react because
4 you don't always have a suspect right off-the-bat and you just
5 want to make sure that they're not involved and there's an
6 appropriate and inappropriate way for people to react. In
7 this particular case I wasn't able to make the original
8 notification, but I certainly wanted to meet the family and I
9 did so later that day.

10 Q: Anything seem unusual about that?

11 A: They were very gracious. They were ---

12 MS. LIVESAY: Your Honor, I'm not sure how this is
13 relevant, his conversation with the victim's family.

14 THE COURT: I don't either. I sustain that.

15 MR. HYMAN: Judge, may I, may we approach.

16 THE COURT: You're gonna have to tell me why it's
17 relevant to any issue I this case, the victim's family?

18 (REPORTER'S NOTE: A bench conference was held off the record
19 in the presence of the Jury but out of hearing of the Jury.)

20 BY MR. HYMAN:

21 Q: Disregard my last question. Now did you investigate any
22 other scenes other than the Afterdeck involving this crime,
23 any other crime scenes?

24 A: Where we arrested Mr. Brown, that actually was a limited
25 crime scene and we performed a limited investigation of that

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1 scene.

2 Q: Do you remember if you found anything at that crime scene?

3 A: I believe one of the other investigators displayed a small
4 pocket knife that he had recovered from the vicinity of Mr.
5 Brown.

6 Q: Do you know if this is the pocket knife that they found?

7 A: It's green; it does appear to be, sir.

8 Q: Okay. And again it's your testimony that as far as rating
9 the crime scene, would you say that it was not a good crime
10 scene?

11 A: It was not.

12 MR. HYMAN: No further questions, Your Honor.

13 THE COURT: Thank you, Mr. Hyman.

14 MS. LIVESAY: Thank you, Your Honor, just a few.

15 CROSS EXAMINATION OF NEIL FREBOWITZ BY MS. LIVESAY:

16 Q: Detective Frebowitz, how long were out there that -- that
17 night between going to the Afterdeck and going to the beach
18 house?

19 A: Less than an hour.

20 Q: Okay. And that includes apprehending Blake Brown?

21 A: That's correct, ma'am.

22 Q: Okay. During that time, did you ever see Blake Griffith?

23 A: No, ma'am.

24 Q: Did you see him at the Afterdeck?

25 A: No, ma'am.

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1 Q: Did you see him at the beach house?

2 A: No, ma'am.

3 Q: Okay. Now, you talked a little bit with Mr. Hyman about
4 Blake Brown contacting one of the girls and said that I'm
5 gonna be at the beach house?

6 A: Yes, ma'am; that's correct.

7 Q: Did you know Blake Griffith had also contacted one of
8 those girls saying that he was gonna be at the beach house?

9 A: No, ma'am.

10 Q: Okay. So, you just were not aware that that ever
11 happened?

12 A: No, ma'am.

13 Q: Okay.

14 A: They were, at the time it was relatively confusing because
15 of these fellows are known as Blake and these young ladies
16 were discussing Blake, they were interchanging them. It took
17 a little bit of time to figure out which Blake was Blake.

18 Q: Okay. And was it Rusty Crocker that went and got Blake
19 Brown?

20 A: Well, I went with Rusty Crocker to get Blake Brown.

21 Q: Okay. So, you weren't aware that earlier that night
22 Sergeant Chatfield had sent somebody to that beach house
23 looking for Blake Griffith because he had called?

24 A: No, ma'am, I wasn't aware of that at all.

25 Q: And are you aware that that incident is in Detective

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1 Troxell's report?

2 A: I did see that in the report.

3 Q: Okay. So you did see that Blake Griffith had made contact
4 with that girl, told her that she was -- he was at the beach
5 house?

6 A: I saw Troxell's report that said that Chatfield ---

7 Q: Okay.

8 A: --- indicated.

9 Q: Had gone to get Blake Griffith?

10 A: Yes, ma'am.

11 Q: And he wasn't there?

12 A: I don't believe so.

13 Q: Okay. Now, who is Tim Troxell now at the police?

14 A: He's now a Sergeant in charge of investigations.

15 Q: Okay. Now Mr. Hyman asked you a little bit about crime
16 scene at the bar; is that correct?

17 A: Yes, ma'am.

18 Q: Okay. And what are you normally looking for at the crime
19 scene?

20 A: We're looking for biological evidence. First and foremost
21 physical evidence; fingerprints, DNA, blood, if it's a sex
22 crime, semen and other serology and fluids. But then you're
23 looking for witnesses, witness statements, crime scene techs
24 will take measurements, they'll take, they'll document re --
25 basically be able to reconstruct the crime scene in it's

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1 entirety.

2 Q: Okay. Would the bleach on the ground, would not have
3 affected collecting witness statements or drawing diagrams,
4 would it?

5 A: No, ma'am.

6 Q: Okay. What is the only thing that would affect?

7 A: It would have affected the positive identification of who
8 may have been injured and bled on the scene.

9 Q: Okay. So blood evidence?

10 A: Blood evidence, yes, ma'am.

11 Q: Especially in a stabbing; is that correct?

12 A: Yes, ma'am.

13 Q: Okay. So, did you see Blake Griffith at some point during
14 the investigation?

15 A: Yes, ma'am.

16 Q: Okay. I'm gonna show you what's been marked as State's
17 Number Forty-seven in evidence, Forty-five and Forty-four.
18 That's State's Number Forty-seven there; do you know who that
19 is?

20 A: Yes, ma'am.

21 Q: Who is that?

22 A: That's the Defendant.

23 Q: Okay. Does he look like he's bleeding from anywhere?

24 A: No, ma'am.

25 Q: That's a face shot. I'm gonna show you what's State's

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- 1 Evidence Number Forty-five; you know who that is?
- 2 A: Yes, ma'am.
- 3 Q: Who is that?
- 4 A: That appears from the back to be Blake Griffith.
- 5 Q: Okay. Does it look like he's bleeding from anywhere?
- 6 A: No, ma'am.
- 7 Q: I'm gonna show you what's been marked as State's Evidence
- 8 Number Forty-four; who is that?
- 9 A: Again, the Defendant.
- 10 Q: Okay. And does he look like he was bleeding from
- 11 anywhere?
- 12 A: No, ma'am.
- 13 Q: So even if there was bleach on the ground and they had
- 14 started cleaning up the crime scene, there wouldn't have been
- 15 any blood to collect from this Defendant anyway, would there?
- 16 A: That's correct.
- 17 Q: Okay. So, anything regarding collecting any evidence from
- 18 Blake Griffith as DNA wouldn't have been collected because
- 19 there was none to collect.
- 20 A: There was none to collect.
- 21 Q: Okay. So it certainly didn't impair any investigation as
- 22 to this Defendant?
- 23 A: No, ma'am, not at all.
- 24 Q: Now, as part of your investigation, did you figure out who
- 25 was injured and bleeding?

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1 A: Yes, ma'am.

2 Q: Okay. Could you please tell the Jury and the Court who
3 those people were?

4 A: Yes, ma'am. The victims were David Houghtaling, Robert
5 Penna, Ryan Palmer were apparently injured.

6 Q: Okay. So, if there was any DNA to collect, it was only on
7 these victims?

8 A: That's correct.

9 Q: Okay. So, the only part of the investigation that was
10 impaired was finding these boys' blood at the scene?

11 A: Yes, ma'am.

12 Q: Okay. Now, you're aware of the injuries they suffered?

13 A: Yes, ma'am.

14 Q: Okay. Now, would have any blood been at the scene told
15 you anything about their injuries?

16 A: No, ma'am.

17 Q: Now, you said you interviewed or took some statements from
18 witnesses at the scene; is that correct?

19 A: That's correct.

20 Q: Okay. Have you got your case file with you?

21 A: I do.

22 Q: Okay. Do you mind taking a quick look at those voluntary
23 statements?

24 A: Actually, I don't have those written statements with me.

25 MS. LIVESAY: Okay. Your Honor, I'll show him a copy of

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1 mine, if you don't mind to refresh his memory?

2 THE COURT: You may. Mr. Hyman's advised and has copies
3 of these statements.

4 MR. HYMAN: I have no objection, Your Honor.

5 THE COURT: Okay. Go ahead. Thank you, Mr. Hyman.

6 BY MS. LIVESAY:

7 Q: If you don't mind, take a quick breeze through those,
8 Detective.

9 A: Yes, ma'am. Yes, ma'am.

10 Q: Thank you. Now are those the statements that people
11 handwrote for you?

12 A: Well, they, they handwrote -- not necessarily for -- it
13 looks like some might've been taken at the hospital; some
14 might've been taken before my arrival.

15 Q: Okay. But those people are, these statements, the people
16 were not so impaired that they could not give you a statement;
17 is that correct?

18 A: They wrote statements.

19 Q: Okay. And these, these are actually their handwritten
20 statements?

21 A: That's correct.

22 Q: Okay. So, they were not so drunk they could not do a
23 handwritten statement?

24 A: Yes, ma'am.

25 Q: Now you collected one knife; is that correct?

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- 1 A: One knife was collected, yes, ma'am.
- 2 Q: That you saw?
- 3 A: Yes, ma'am.
- 4 Q: I know you didn't collect it; you saw it?
- 5 A: Yes, ma'am.
- 6 Q: And this is the knife?
- 7 A: It appears to be.
- 8 Q: Okay. And this is the green, you tell me, is this the
- 9 green Mossy Oak? You can take it out if you need to.
- 10 A: Yeah, it's a green, I'm not a big knife guy, but it's a
- 11 green pocket knife with a pretty sharp blade.
- 12 Q: Okay. Now, you also took a picture of another knife; is
- 13 that correct?
- 14 A: Yes, ma'am, I did.
- 15 Q: Okay. Did you -- is it this knife you took a picture of?
- 16 A: No, ma'am.
- 17 Q: Okay. Now I'm showing you now what's been marked as
- 18 State's Evidence Number Fourteen?
- 19 A: Yes, ma'am.
- 20 Q: You recognize that knife?
- 21 A: I do.
- 22 Q: Okay. Now tell the Jury where you took a picture of that
- 23 knife?
- 24 A: At the Red Hot Shoppe.
- 25 Q: And why did you take a picture of this knife?

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NEIL FREBOWITZ - CROSS BY LIVESAY

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- 1 A: After interviewing the ladies that were there that night
2 with the Defendants, she described that they had gone to the
3 Red Hot Shoppe to specifically to obtain a knife. The next
4 stop was the Red Hot Shoppe. I interviewed the clerk, who
5 remembered the fellows. After he looked at the video tape and
6 was able to identify the people, went right to the knife case
7 and displayed the exact -- actually he said it was the very
8 next knife on the very next -- on the same shelf that had the
9 same model numbers and, and description. We opened it. He
10 said it was identical to the knife he had sold.
- 11 Q: Okay. So these are definitely two different knives?
- 12 A: Absolutely.
- 13 Q: Okay. And this one was collected off Blakely Brown?
- 14 A: Yes, ma'am.
- 15 Q: And this was never collected?
- 16 A: It was never collected.
- 17 Q: Now, did you learn through Joe Beeson who purchased this
18 knife?
- 19 A: I did.
- 20 Q: Who was that?
- 21 A: The Defendant.
- 22 Q: Okay. Blake Griffith purchased this knife?
- 23 A: Blake Griffith, yes, ma'am.
- 24 Q: The one that was never found?
- 25 A: The one knife that was never found.

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NEIL FREBOWITZ - CROSS BY LIVESAY

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1 Q: Now you had, you were the lead investigator; is that
2 correct?

3 A: Yes, ma'am.

4 Q: Okay. And so it was your responsibility to take the
5 warrants out through this particular case; is that correct?

6 A: Yes, ma'am.

7 Q: Okay. If you don't mind, tell the Jury what warrants you
8 took out for Blake Griffith?

9 A: Yes, ma'am. I took one warrant out and I wouldn't want to
10 bore them with the warrant numbers, but I charged Blake
11 Griffith with murder one count, and two accounts of assault
12 and battery with intent to kill for the assault on the other
13 two fellows.

14 Q: Okay. And what warrants did you take out for Blakely
15 Brown?

16 A: Just one for murder.

17 Q: Okay. And were these warrants taken out after you
18 completed your investigation?

19 A: After I developed probable cause to believe that they had
20 committed the crime.

21 Q: And when I say you're the lead investigator, that means
22 you have access to the entire file, whatever information
23 anyone collected that night, crime scene, another detective
24 and road officers?

25 A: Yes, ma'am.

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NEIL FREBOWITZ - REDIRECT BY HYMAN

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1 MS. LIVESAY: No further questions for this witness, Your
2 Honor.

3 THE COURT: All right. Any further redirect?

4 MR. HYMAN: Yes, Your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION OF NEIL FREBOWITZ BY MR. HYMAN:

7 Q: Now you had said that an intact crime scene may have not
8 showed you blood or anything from this guy, but would an
9 intact crime scene possibly showed you -- I'm gonna hold up
10 what it's called State's Exhibit Number Twelve -- would it
11 have possibly showed you where a fight took place, where it
12 developed or anything like that?

13 A: Yes, sir.

14 Q: So, if one person was stabbed here and then here and here,
15 it would show that?

16 A: It would show us blood, possibly show a blood trail. It
17 could show where the initial pooling of blood would probably
18 have been or would have expected it to be found and if the
19 blood trail had gone in a certain direction, if people had
20 gone in different directions, different shoes people were
21 wearing and get photographs and pictures of shoes to tell who
22 was on the scene and you can match them up later.

23 Q: Well, if somebody was fighting in one area and blood ended
24 up in another area, they may not have been involved in that;
25 is that correct; if there were multiple fights?

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NEIL FREBOWITZ - REDIRECT BY HYMAN

1 A: It would show that they weren't necessarily a portion of
2 that particular crime scene at the time there was blood on the
3 floor.

4 Q: In that portion of what may be considered the dance floor?

5 A: The dance floor.

6 Q: Okay. Now, did you get a warrant for my client for
7 conspiracy?

8 A: No. No, sir.

9 MR. HYMAN: Court's indulgence.

10 No further questions, Your Honor.

11 THE COURT: All right. You may come down.

12 A: Thank you, Your Honor.

13 THE COURT: Thank you.

14 You desire that this witness remain in the courtroom?

15 MR. HYMAN: No, Your Honor.

16 THE COURT: How about the State?

17 MS. LIVESAY: That's fine, Your Honor.

18 THE COURT: Okay. You are excused.

19 Next witness please.

20 MR. HYMAN: Your Honor, the Defense would call Kacie
21 Henry.

22 THE COURT: All right, sir. Have the witness come
23 around.

24 MR. HYMAN: Your Honor, I believe they're getting her.
25 Our witnesses are in a different room.

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KACIE HENRY - DIRECT BY HYMAN

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1 THE COURT: I understand.

2 MR. HYMAN: Your Honor, may I step out and tell my
3 investigator who we need?

4 THE COURT: Sure.

5 CLERK: Please raise your right hand and place your left
6 hand on the Bible?

7 KACIE HENRY, HAVING BEEN SWORN

8 TESTIFIES AS FOLLOWS:

9 CLERK: Please state your full name and spell your last
10 name?

11 MS. HENRY: Kacie Henry, K-A-C-I-E H-E-N-R-Y.

12 MR. HYMAN: May I begin, Your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION OF KACIE HENRY BY MR. HYMAN:

15 Q: Good morning, Ms. Henry, how are you doing?

16 A: Doing all right.

17 Q: Now, you've already stated your name for the record. Do
18 you mind telling the Jury where you're from?

19 A: Greenville.

20 Q: Okay. And I'm gonna ask you to kind of scoot up a little
21 bit so the Court Reporter can get all this down. Thank you.

22 Now how long have you lived in Greenville?

23 A: My whole life.

24 Q: Your whole life. Now do you know my client, Mr. Blake
25 Griffith?

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- 1 A: Yes.
- 2 Q: And do you happen to know his Codefendant, Mr. Blakely
- 3 Kalen Brown?
- 4 A: Yes.
- 5 Q: And how do you know Mr. Brown?
- 6 A: We used to date.
- 7 Q: At what point did you date?
- 8 A: It was after all the stuff went on.
- 9 Q: Okay. So, was that 2010, 2011, 2012?
- 10 A: I mean, it was right after this stuff happened. So
- 11 whatever year that was.
- 12 Q: And the stuff happened, are you referring the arrest?
- 13 A: To what, yeah. When he came back to Greenville, we were
- 14 dating then.
- 15 Q: Okay. At any point, did you live with him; did he live
- 16 with you?
- 17 A: He stayed with me.
- 18 Q: He stayed with you. How long did he stay with you?
- 19 A: For a month or so.
- 20 Q: Okay.
- 21 A: Maybe more.
- 22 Q: Now, were you aware when he was staying with you of, of
- 23 his arrest and what he had been charged with?
- 24 A: Yes.
- 25 Q: And again, this is Blakely Brown, not Blakely Griffith?

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1 A: Right.

2 Q: Okay. Now did he ever happen to talk about his arrest?

3 MR. SPRATLIN: Your Honor, I'm gonna object to this line
4 of questioning; it's hearsay.

5 THE COURT: Yes, sir.

6 MR. HYMAN: Your Honor, it's ---

7 MR. HEWITT: Under Rule 804(b)(3), Your Honor, this is a
8 statement against interest, it is ---

9 THE COURT: Wait a minute. Let's let the Jury step out
10 please.

11 (REPORTER'S NOTE: Jury exits courtroom. 11:06 A.M. The
12 following takes place outside the presence of the Jury.)

13 BY THE COURT:

14 THE COURT: Mr. Brown's not a Defendant in this case.

15 MR. HEWITT: That's exactly right, Your Honor. I, I
16 don't want to cut off Mr. Spratlin if he wants to do his
17 objection or if it's just hearsay then I'll handle that.

18 MR. SPRATLIN: Your Honor, my objection is hearsay. Mr.
19 Brown is not a Defendant in this case. Mr. Brown has not
20 testified in this case. So, any statement he made is an out-
21 of-court statement I assume being offered for the truth of the
22 matter asserted, which would qualify as hearsay and
23 permissible here in Court.

24 MR. HEWITT: Okay, he's exactly correct, it is hearsay,
25 but under Rule 804(b)(3), it is a statement against interest,

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BY THE COURT

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1 A: Uh-huh (affirmative response).

2 THE COURT: Because it's hearsay. I am going to permit
3 you to say that Brown, if this is true, said he did the
4 stabbing; you understand, but you're not gonna set up any
5 self-defense for Brown or anybody else through this hearsay
6 testimony.

7 A: Okay.

8 THE COURT: You understand?

9 A: Yes, sir.

10 THE COURT: Follow my rule closely now.

11 A: Okay.

12 THE COURT: Bring the Jury in.

13 Wait a minute, before we go, how about the -- should we
14 deal with these other witnesses you go on the same issue.

15 MR. HYMAN: Judge, I just sent my investigator to
16 admonish them to make sure they do not bring up self-defense.

17 THE COURT: No, I think whatever Brown's name has come up
18 all over this place here, I think that's appropriate, in
19 fairness to everybody.

20 All right. Bring my Jury in.

21 (REPORTER'S NOTE: Jury enters courtroom. 11:17 A.M.)

22 MR. HYMAN: Your Honor, may I proceed?

23 THE COURT: You may.

24 MR. HYMAN: Thank you.

25 CONTINUATION OF DIRECT EXAMINATION OF KACIE HENRY BY MR.

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KACIE HENRY - DIRECT BY HYMAN

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1 HYMAN:

2 Q: Ms. Henry, I'm not real sure where we were when we left
3 off, but I believe that you had stated you were from
4 Greenville and that you were the girlfriend of Blakely Brown;
5 is that correct?

6 A: Yes.

7 Q: Did Mr. Brown live with you at some point when you were in
8 Greenville?

9 A: Yes.

10 Q: Okay. And did you and Blakely Brown speak about this
11 incident that occurred at the Afterdeck?

12 A: Yes.

13 Q: Did Blakely Brown ever tell you that he stabbed someone?

14 A: Yes, he did.

15 Q: How many people did he tell you that he stabbed?

16 A: Three.

17 Q: Did he tell you that he stabbed the young man that died?

18 A: Yes, he did.

19 Q: Did he ever tell you that my client did the stabbing?

20 A: No.

21 Q: So he freely admitted to you that he stabbed the boy that
22 died?

23 A: Yes.

24 Q: As well as the other two young men?

25 A: Yes, he did.

State v. Griffith
KACIE HENRY - CROSS BY LIVESAY

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1 Q: Did he tell you that just once?

2 A: No, it was more than once.

3 Q: How many times do you think he may have told you that?

4 A: I'm, he would talk about it, I mean five, six, seven, I
5 mean it could've been more.

6 Q: Okay. Do you know my client?

7 A: Yes.

8 Q: How long have you known my client?

9 A: For a couple of years, I mean, yes.

10 Q: As far as, as you knowing my client, if you're friends
11 with my client, would that affect your testimony here at all?

12 A: No.

13 Q: Is what you're telling me the truth?

14 A: Yes.

15 Q: Would you get up here and lie for my client?

16 A: No.

17 Q: Okay. Thank you.

18 MR. HYMAN: No further questions, Your Honor.

19 THE COURT: You care to examine?

20 MS. LIVESAY: Thank you.

21 CROSS EXAMINATION OF KACIE HENRY BY MS. LIVESAY:

22 Q: What's your last name?

23 A: Henry.

24 Q: Ms. Henry. Now, you dated Blakely Brown when?

25 A: Right after all this stuff went on.

State v. Griffith
KACIE HENRY - CROSS BY LIVESAY

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1 Q: Right after he got out for murder?

2 A: Yeah, when he left here or whatever, they had came to my
3 house.

4 Q: Okay. One more time, he left Greenville ---

5 A: No, he left the beach and had came ---

6 Q: Where are you from?

7 A: Greenville.

8 Q: Okay. So, when he left the beach when?

9 A: I don't know but it was right after everything happened.

10 He came to Greenville with some friends and they had came to
11 my house.

12 Q: Okay. So it was after he got out of jail for murder?

13 A: Yes.

14 Q: Okay. Had you met him before then?

15 A: No.

16 Q: Okay. Did you know that at one point him and Blake
17 Griffith lived together?

18 A: No.

19 Q: Okay. You didn't know that Blake Griffith used to stay
20 with, I'm sorry, Blake Brown used to stay with Blake Griffith?

21 A: No.

22 Q: Okay. Did you know that he was charged for murder?

23 A: Yes.

24 Q: Okay. And, and you thought -- so how long did y'all date?

25 A: I mean, a couple of months.

State v. Griffith
KACIE HENRY - CROSS BY LIVESAY

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- 1 Q: A couple of months. Okay. And when did he, he told you
2 this just within a couple of months?
- 3 A: Yes.
- 4 Q: Okay. Now, would you say you were closer to Blake Griffith
5 and his family or Blake Brown and his family?
- 6 A: I mean, I know both sides and it's not ---
- 7 Q: What's Blake Brown's momma's name?
- 8 A: I don't know what her name is.
- 9 Q: You don't know her name?
- 10 A: No.
- 11 Q: Blake Brown, you don't know his mom's name?
- 12 A: No, I only met her a couple of times.
- 13 Q: So you wouldn't consider ---
- 14 A: She lives in Columbia.
- 15 Q: Right. So, you wouldn't consider a real close
16 relationship with that family?
- 17 A: He didn't have very much family. They weren't really ever
18 around.
- 19 Q: He didn't have very much family?
- 20 A: The times that I saw him when he was in Columbia ---
- 21 Q: Uh-huh (affirmative response).
- 22 A: I met his mom a couple of times there ---
- 23 Q: Okay.
- 24 A: --- and if he was in Greenville, his grandma lived there,
25 but ---

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KACIE HENRY - CROSS BY LIVESAY

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- 1 Q: What is her name?
- 2 A: I don't know. I mean, I only met them a few times.
- 3 Q: So, you were not close enough to him to know his mom's
- 4 name?
- 5 A: Because they were never around.
- 6 Q: So, you never met his mom?
- 7 A: No, I did meet his mom, but they were around very few
- 8 times.
- 9 Q: Okay.
- 10 A: I mean, I knew her name then, but I don't, I wouldn't ---
- 11 Q: Would you say a few times is a few -- within two months a
- 12 few times is not ---
- 13 A: We were friends also.
- 14 Q: Okay.
- 15 A: Before we were dating, we were friends.
- 16 Q: You were friends when because you said you were dating him
- 17 right when he got out of jail?
- 18 A: I mean he came to Greenville. We hung out for a while and
- 19 then we started dating.
- 20 Q: So, you did not start dating just a couple of weeks after
- 21 he got out of jail?
- 22 A: No, not, it was in that timeframe, yeah.
- 23 Q: Okay.
- 24 A: But it was, I mean ---
- 25 Q: Okay. I'm just, I'm just trying to get the timeline

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KACIE HENRY - CROSS BY LIVESAY

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1 straight.

2 A: Oh, yeah, I understand.

3 Q: So, within a couple of weeks of him getting out of jail,
4 y'all are dating?

5 A: Uh-huh (affirmative response).

6 Q: And y'all are dating for two months?

7 A: Or more, yeah. It was around that time.

8 Q: Okay. So you were friends with him, what a week?

9 A: Maybe, I mean, I don't know what exactly how long, I mean
10 ---

11 Q: Okay.

12 A: It's been ---

13 Q: You cannot remember his mom's name, but he -- but yet he
14 confided in you all this information?

15 A: Yeah, because he was never around his mom or anybody else.

16 Q: But you met his mom, didn't you?

17 A: I did when I went to Columbia to see him.

18 Q: Okay. So was he around when you met his mom?

19 A: She wasn't -- when he came to Greenville, his mom was in
20 Columbia.

21 Q: Okay.

22 A: So, it was later on, a month later when I went to Columbia
23 and met his mom.

24 Q: Okay. Did you go with him to meet his mom?

25 A: No, I drove up there. He was up there. He had left and

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KACIE HENRY - CROSS BY LIVESAY

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- 1 went up there.
- 2 Q: So, you went to meet him and his mom?
- 3 A: No, I went to meet him. He had his own house and we had
- 4 went by his mom's house.
- 5 Q: Okay. So, he was close enough to her when you came down,
- 6 y'all went by and saw his mom?
- 7 A: Yes.
- 8 Q: Okay. Now how close are you to Blake Griffith and his
- 9 family?
- 10 A: I mean, I know them too.
- 11 Q: Okay. What is his momma's name?
- 12 A: I know her name.
- 13 Q: What is her name?
- 14 A: It's Sherrie.
- 15 Q: Okay. And are y'all pretty close?
- 16 A: I mean, it's not, I'm not any closer with them than
- 17 anybody else. I don't really hang out with anyone.
- 18 Q: You don't really hang -- well, y'all are friends on
- 19 Facebook, right?
- 20 A: Yeah, I'm friends with a lot of people on Facebook.
- 21 Q: Are you friend with Blake Brown's mom on Facebook?
- 22 A: I think his grandma is my friend on Facebook, actually.
- 23 Q: What's her name?
- 24 A: I don't know what her name is, but as you see, I have over
- 25 a thousand friends.

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1 Q: So you don't know what her name is, and you don't know
2 what his momma's name is?

3 A: No.

4 Q: Let me, let me show you something.

5 Can I approach this witness, Your Honor?

6 THE COURT: Sure.

7 MS. LIVESAY: Let me show it to Mr. Hyman first.

8 MR. HYMAN: Your Honor, I'm gonna object to what she's
9 trying to show her.

10 THE COURT: What is it you're trying to show?

11 MS. LIVESAY: It's a Facebook message ---

12 MR. HYMAN: Judge, before ---

13 MS. LIVESAY: --- between her and Sherrie Griffith.

14 MR. HYMAN: Judge, I've already objected to it.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of the Jury but out of hearing of the Jury.)

17 THE COURT: It all of which is for the Jury's
18 consideration. They're the finders of fact in the case.

19 BY MS. LIVESAY:

20 Q: Now you're Kacie Brown; is that right?

21 A: No, I'm Kacie Henry.

22 Q: I'm sorry, Kacie Henry?

23 A: Uh-huh (affirmative response).

24 Q: Okay. And what is Blake Brown's mom's name?

25 A: I told you I didn't know.

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KACIE HENRY - CROSS BY LIVESAY

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- 1 Q: Okay. What is Blake Griffith's mom's name?
- 2 A: Sherrie.
- 3 Q: Okay. Now, if you don't mind, I want you to look at this.
- 4 Is that a message from Sherrie Griffith to you?
- 5 A: That's what it looks like, yeah.
- 6 Q: Okay. And when was the date on that?
- 7 A: 2012.
- 8 Q: Okay. And who is, who's in the picture when she sends it
- 9 to you?
- 10 A: Well, you know, when profile pictures change, it changes
- 11 so...
- 12 Q: Well, who -- do you know who that is in that profile
- 13 picture?
- 14 A: Yeah, I know that's Blake.
- 15 Q: Blake Griffith?
- 16 A: Yeah, I mean that's ---
- 17 Q: Now, what does the message say?
- 18 A: It says Happy Birthday, I hope it's fabulous, love you.
- 19 Q: Okay. So, in [REDACTED] [REDACTED] [REDACTED], his mom writes you
- 20 happy birthday, I hope it's fabulous, I love you?
- 21 A: Okay.
- 22 Q: So, y'all must have a pretty good relationship, would you
- 23 say?
- 24 A: I mean who doesn't write on Facebook?
- 25 Q: And that was September 2012 so that was what, just a year

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KACIE HENRY - CROSS BY LIVESAY

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1 ago?

2 A: Uh-huh (affirmative response).

3 Q: Okay. Now, have you ever talked to Blake Griffith about
4 the murder case?

5 A: No.

6 Q: Okay. Never?

7 A: No.

8 Q: Have you ever talked to his mom about it?

9 A: No.

10 Q: Okay. If you don't mind me asking then how did his
11 attorney become aware of this statement because you never gave
12 it to any police officer, did you?

13 MR. HYMAN: Your Honor, I'm gonna object.

14 THE COURT: Well, no, sir, that's -- this is cross
15 examination now.

16 A: Because I knew about it. I mean, we, everybody shares
17 mutual friends.

18 Q: Okay.

19 A: So, you know...

20 Q: Okay. So, somehow you shared it with Blake Griffith and
21 his mom?

22 A: I don't, I don't, I don't know how it got, I know that I
23 got a subpoena to Court.

24 Q: Okay.

25 A: So, it might have been somebody ---

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KACIE HENRY - CROSS BY LIVESAY

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1 MR. HEWITT: Your Honor, can we take a time out in this
2 line of questioning just for one second. I need to confer
3 with my co-counsel real quick?

4 THE COURT: We can take, you can stop a minute, but I'm
5 gonna let this cross examining continue.

6 MR. HEWITT: I understand. I just want to make sure
7 we're not getting into a potentially dangerous area.

8 THE COURT: I'm not. I'll take care of that. Limit your
9 cross examination now.

10 MS. LIVESAY: I will, Your Honor.

11 THE COURT: Okay. Proceed.

12 BY MS. LIVESAY:

13 Q: Now, when did -- what year did he tell you this?

14 A: I don't know, I don't remember exactly what year. I know
15 that it was right after everything happened. So, whatever
16 year it was that it happened.

17 Q: Okay.

18 A: I mean, I don't keep up with the year.

19 Q: What year did it happen?

20 A: I don't remember what year it happened. I know it was a
21 few years back, but I mean, I don't have ---

22 Q: Okay.

23 A: --- a date.

24 Q: Okay. Not even a year?

25 A: I mean, why would I keep up with what year I dated some

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KACIE HENRY - CROSS BY LIVESAY

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1 random dude or did -- I don't understand why I would have a
2 date for that.

3 Q: I don't. Let me ask you, do a lot of people confide in
4 you that they killed somebody or stabbed three people?

5 A: No, but I'm really trustworthy so they would..

6 Q: Nothing about that triggers your memory as to when he told
7 you that or what year the incident happened?

8 A: I mean, I don't, I just know that it was right after he
9 had came home. I mean, you know what year it is.

10 Q: Okay. But do you?

11 A: No, why would I -- I don't know why I would keep up with
12 the year for that.

13 Q: Okay. Okay. Do you know where it happened at?

14 A: At the beach.

15 Q: Okay. Okay. Now, so you don't know what year he told you
16 that he stabbed three people?

17 A: No, I don't; huh-uh (negative response).

18 Q: Okay. Okay. Now I'm -- I'm gonna go ahead and tell you
19 it was back in 2009.

20 A: Okay. It was sometime, yeah.

21 Q: Okay. Did you ever tell a police officer that he confided
22 this information to you?

23 A: No.

24 Q: Okay. Have you told -- you knew it happened at the beach?

25 A: Yes.

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KACIE HENRY - CROSS BY LIVESAY

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- 1 Q: Myrtle Beach?
- 2 A: Yes.
- 3 Q: Okay. Did you ever contact anybody in the Solicitor's
- 4 office and let them know he confided?
- 5 A: No, I don't know why I would do that.
- 6 Q: Okay. You were subpoenaed to Court; is that right?
- 7 A: Uh-huh (affirmative response).
- 8 Q: So, you've been here all week?
- 9 A: No.
- 10 Q: When did you get here?
- 11 A: Yesterday.
- 12 Q: You got here yesterday. Were you here at the courthouse?
- 13 A: Yes.
- 14 Q: Okay. You were here at the courthouse. Did you see
- 15 people with that badge around their neck here while you were
- 16 here?
- 17 A: I don't, I didn't -- I was in a room. I didn't...
- 18 Q: Okay. Well, when you walked through, did you see somebody
- 19 in a uniform like that?
- 20 A: Possibly.
- 21 Q: Okay. When you walked through this courthouse, you saw a
- 22 Sheriff; is that correct?
- 23 A: Yeah, maybe, probably, yeah.
- 24 Q: Did you ever confide anybody at that point this
- 25 information that you knew?

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KACIE HENRY - CROSS BY LIVESAY

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1 A: Why would I do that? Why would I just walk up to someone

2 ---

3 THE COURT: Wait a minute. Please, you, you answer the
4 questions, please.

5 A: Okay.

6 THE COURT: Don't ask them. Thank you.

7 BY MS. LIVESAY:

8 Q: I'm just, I guess my question is, is, you know, we've got
9 law enforcement people that you can report this information
10 to, or prosecutor's office you can report it to. We've had
11 investigators investigating it for a while, but yet the only
12 person that's held this information for this long is Blake
13 Griffith and his attorney?

14 A: That's got -- I mean, that has nothing to do with me. I,
15 I, I, this happened years ago. If I was gonna go tell an
16 officer, then I would've done it then.

17 Q: Right, but you didn't, did you?

18 A: No, I did not.

19 Q: You told somebody?

20 A: I might've, yeah. I mean, yeah, I mean I told somebody
21 but I don't -- I didn't tell on him, I mean...

22 Q: You didn't tell on him?

23 A: I mean, I didn't tell an officer or something on him.

24 MR. HYMAN: Your Honor, it's been asked and answered over
25 and over and over.

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KACIE HENRY - CROSS BY LIVESAY

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1 THE COURT: I think so.

2 MS. LIVESAY: Thank you, Your Honor.

3 THE COURT: I agree with you.

4 BY MS. LIVESAY:

5 Q: But somehow you did tell the woman that's Facebooking you,
6 I love you; you told her that Blake Brown told you that,
7 didn't you?

8 A: No, what does this have to do with her ---

9 THE COURT: Wait a minute. Now, I've done told you,
10 ma'am. You must follow our rules. Your, your rule is to
11 answer her questions. Please do so and I say that most
12 respectfully.

13 A: Okay. But so what are you asking me?

14 BY MS. LIVESAY:

15 Q: The only person, this has been going on since 2009?

16 A: Okay.

17 Q: Okay. See this lady with the blonde hair with the iPad;
18 she's been investigating this.

19 A: Okay.

20 Q: The police department -- before you took the stand, the
21 lead investigator came up here and testified.

22 A: Okay.

23 Q: We've had several officers testify. In fact Mr. Hyman
24 called Carmen Mureddu, another investigator from our office,
25 who's been investigating it. All these people have been

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KACIE HENRY - CROSS BY LIVESAY

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1 investigating it but yet, we don't hear this statement from
2 you until today and apparently nobody else has heard it except
3 for Blake Griffith and his crowd?

4 A: Okay. But that was my -- I mean, the -- we're all mutual
5 friends. Everybody has a mutual friend that says something to
6 somebody, I mean, you would know that.

7 Q: And you came down here yesterday?

8 A: Yeah.

9 Q: Okay. If you don't mind, where did you stay?

10 A: At a hotel.

11 Q: Okay. Did you pay for that room or somebody paid for it
12 for you?

13 A: We paid for it.

14 THE COURT: Does that conclude your examination?

15 MR. SPRATLIN: Beg the Court's indulgence, Your Honor.

16 BY MS. LIVESAY:

17 Q: How often do you talk to Blake Griffith?

18 A: Not a lot.

19 Q: How often?

20 MR. HYMAN: Your Honor, asked and answered.

21 THE COURT: No, sir. I'll permit it.

22 A: Not a lot. Like I said, I'm very at-home. I don't really
23 associate with that many people.

24 BY MS. LIVESAY:

25 Q: Okay. And do you still keep in touch with Blake Brown and

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KACIE HENRY - REDIRECT BY HYMAN

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1 his family?

2 A: Blake's been in jail.

3 Q: Okay. How about before that?

4 A: I talked to them for a long time, but then me and Blake
5 Brown broke up and we didn't talk. I mean, we got in a big
6 fuss and it was over. That's just how it is when you break up
7 with somebody.

8 Q: You mean y'all's relationship was over or just your whole
9 friendship?

10 A: Our friendship, I mean, you know, we broke up and it was
11 the whole thing was over.

12 MS. LIVESAY: No further questions, Your Honor.

13 THE COURT: All right. You may come down.

14 MR. HYMAN: Your Honor, just one quick thing on redirect?

15 THE COURT: Your witness now.

16 MR. HYMAN: Thank you, Judge.

17 REDIRECT EXAMINATION OF KACIE HENRY BY MR. HYMAN:

18 Q: Does the fact that Sherrie Griffith sent you a happy
19 birthday note on Facebook have anything to do with you
20 testifying today?

21 A: No.

22 Q: Would that sway you in any way?

23 A: Not at all.

24 Q: Is what you're saying here today the truth?

25 A: Yes, it is.

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BY THE COURT

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1 Q: Did you hear it come out of Blakely Brown's mouth?

2 A: Yes, I did.

3 THE COURT: All right. You may come down. Thank you.

4 Next witness, please.

5 Gentlemen, come forward now. Come forward.

6 (REPORTER'S NOTE: A bench conference was held off the record
7 in the presence of the Jury but out of hearing of the Jury.)

8 BY THE COURT:

9 THE COURT: All right. Let you go to the jury room
10 please.

11 (REPORTER'S NOTE: Jury exits courtroom. 11:36 A.M. The
12 following takes place outside the presence of the Jury.)

13 THE COURT: Yes, ma'am.

14 MS. LIVESAY: Your Honor, the testimony so far has been
15 that Blake Griffith and Blakely Brown were together the entire
16 time.

17 THE COURT: I understand.

18 MS. LIVESAY: This is a hand to one, hand to all.

19 THE COURT: I understand that and they gonna be -- I
20 understand that.

21 MS. LIVESAY: Third-party guilt would be saying neither
22 Blake Brown or Blake Griffith did it, but this other guy that
23 I introduced a picture of into evidence did it. That's third-
24 party guilt. We are saying that both Blake Brown and Blake
25 Griffith are guilty under hand to one, hand to all.

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BY THE COURT

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1 THE COURT: I understand, but they're saying Blake Brown
2 did it. Let me say -- let me tell you what the rule is. The
3 rule is that third-party guilt is very carefully considered
4 before it ever comes into the trial of a case. However, the
5 rule further says if there is some basis for permitting third-
6 party guilty, it is admissible for the Jury's consideration.
7 Now there is ample evidence in this record that Brown
8 initiated this controversy. I agree with you that the
9 testimony that Griffith stayed right with him the whole time,
10 but given the previous testimony, that Brown instigated the
11 whole thing, it is appropriate for these statements to come in
12 on that narrow issue. No self-defense is coming in by these
13 witnesses. It's just Blake Brown's admission.

14 MS. LIVESAY: Your Honor ---

15 THE COURT: Of course, you've produced testimony
16 throughout for the last three days that Blake Brown did all
17 these things, so why you objecting to it now?

18 MS. LIVESAY: Because, well -- but my understanding was
19 is that we have evidence saying that Blake Griffith and Blake
20 Brown both, both ---

21 THE COURT: I understand that. That's for the Jury and
22 I'm gonna charge the hand of one is the hand of all; that's
23 gonna be in the charge, clearly.

24 MS. LIVESAY: Your Honor, my fear is that once we start
25 allowing these string of witnesses to testify as to third-

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1 party guilt, then the Jury is gonna believe there is no hand
2 of one hand of all.

3 THE COURT: Well, I can't tell you what the Jury is gonna
4 believe. I can tell you that under the testimony that you
5 induced, there is a basis for this testimony to come in. Now
6 let the Jury decide whether Brown did it alone or acted alone
7 or where Griffith was with him. There is ample testimony in
8 this case that both of them came outside and stood there while
9 Brown used this offensive language, which the Jury may
10 conclude the hand of one is the hand of all, but that's for
11 the Jury to consider.

12 MS. LIVESAY: I understand that, Your Honor, but my issue
13 is that nobody testified that only Blake Brown walked up to
14 these boys and pulled out a knife.

15 THE COURT: Well, I don't know, but ---

16 MS. LIVESAY: There is no testimony of that.

17 THE COURT: I'm going to let this testimony in on the
18 narrow issue of Blake Brown. You can argue all day long about
19 the other being involved too individually or the hand of one
20 is the hand of all, but the rule is they're permitted to do
21 this if there is a basis for it. And the basis is in your own
22 testimony that he came forward and started the difficulty and
23 said I'm gonna F you and that was your testimony that he did
24 it.

25 MS. LIVESAY: My testimony was that both of them ---

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1 THE COURT: Well, that's for the Jury to decide. I agree
2 with you there's testimony in the, in there that Griffith well
3 may be equally guilty under the hand of one, hand of all. I'm
4 not saying that. There's testimony to that issue for the
5 Jury's consideration.

6 Now how many witnesses do you propose to use as to Blake
7 Brown's admission?

8 MR. HYMAN: Two more, Judge.

9 THE COURT: That's fine. That's fair enough.
10 Bring the Jury in.

11 I want you to admonish them now, I'm not gonna let any
12 Blake Brown self-defense come into this.

13 MR. HYMAN: Judge, would you like for me to bring them in
14 first. I mean ---

15 THE COURT: No, just explain it to them.

16 MR. HYMAN: Okay.

17 THE COURT: Well, yeah, we better and put them up one at
18 a time outside of the presence of the Jury.

19 MR. HYMAN: Well, I'm just saying one, so you can tell
20 him not to or you want me to go tell him that?

21 THE COURT: Put him on the stand and you ask him the
22 questions. You know how to ask a question such that it don't
23 come out. I want to hear both of them outside the presence of
24 the Jury. Bring them in.

25 Now follow my admonitions exactly.

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1 You understand, Counsel, you understand under the rule
2 that third-party guilt as to that individual is admissible,
3 but not as to somebody else.

4 MR. HEWITT: Yes, Your Honor, I understand completely.

5 THE COURT: All right. I just want y'all to follow the
6 rules.

7 Now you understand that under cross examination, listen
8 to me very carefully. Under cross examination, they're
9 entitled to examine the credibility of the witness.

10 MR. HYMAN: I'm not saying that, Judge.

11 THE COURT: I understand.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 CHRISTOPHER BRIAN WHITESIDE, HAVING
15 BEEN SWORN TESTIFIES AS FOLLOWS:

16 CLERK: Please state your full name and spell your last
17 name?

18 MR. WHITESIDE: Christopher Brian Whiteside, W-H-I-T-E-S-
19 I-D-E.

20 PROFFER DIRECT EXAMINATION OF BRIAN CHRISTOPHER WHITESIDE BY
21 MR. HYMAN:

22 Q: Okay, Chris. Chris, tell me where you're from?

23 A: I'm from Traveler's Rest, South Carolina.

24 Q: Okay. And you know my client, Mr. Griffith, right?

25 A: Yes, I do.

State v. Griffith
CHRISTOPHER WHITESIDE - PROFFER DIRECT BY HYMAN

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- 1 Q: Are y'all good friends?
- 2 A: Very close.
- 3 Q: Okay. Did y'all grow up together?
- 4 A: We did.
- 5 Q: Okay. Are you aware of the surroundings about as far as
- 6 what he's been charged with and any circumstances about the
- 7 case and that type stuff?
- 8 A: Yes, I am aware.
- 9 Q: Okay. Do you know his codefendant, Blakely Brown?
- 10 A: I've met him.
- 11 Q: Okay. And where did you meet him?
- 12 A: I met him at a party I was invited to.
- 13 Q: Now where was that party at?
- 14 A: It was at a hotel in Traveler's Rest, the Hampton Inn.
- 15 Q: So, it was that the Hampton Inn at Traveler's Rest?
- 16 A: Yes, sir.
- 17 Q: Okay. At that hotel in Traveler's Rest, did you hear
- 18 Blakely Brown admit to stabbing someone?
- 19 A: I did.
- 20 Q: Did you hear him admit to stabbing three people?
- 21 A: I did.
- 22 Q: Did he admit to killing someone?
- 23 A: Yes.
- 24 Q: Would you testify or lie under oath for him?
- 25 A: I would not.

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CHRISTOPHER WHITESIDE - PROFFER DIRECT BY HYMAN

1 Q: Okay. And in regards to that, has anybody told you how to
2 answer these questions or anything like that?

3 A: No.

4 Q: Is the testimony you're giving your own testimony?

5 A: It is my testimony.

6 Q: Okay. And is it the truth?

7 A: It is the truth.

8 THE COURT: You want to save your cross examination?

9 MS. LIVESAY: Your Honor, are we permitted to cross now
10 or you want to wait until the Jury gets out?

11 THE COURT: Just wait till the Jury gets out.

12 MS. LIVESAY: Okay.

13 THE COURT: Now let's hear the other, he may come down
14 and remain in the courtroom. Let me hear the other witness.

15 MR. HYMAN: Okay. Well, Judge, are you gonna bring him
16 back in front of the ---

17 THE COURT: Yes. I'm gonna hear -- but I want to hear
18 this other witness so I don't have to send the Jury back out.
19 He can come down and remain in the courtroom. Bring the other
20 witness in; tell him to remain in the courtroom.

21 MR. HEWITT: You can stay.

22 MR. HYMAN: The Judge wants you to stay.

23 CLERK: Please raise your right hand and place your left
24 hand on the Bible.

25 THERON NALLEY, HAVING BEEN SWORN

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THERON NALLEY - PROFFER DIRECT BY HYMAN

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1 TESTIFIES AS FOLLOWS:

2 CLERK: Please state your full name and spell your last
3 name?

4 MR. NALLEY: Theron Nalley, N-A-L-L-E-Y.

5 PROFFER DIRECT EXAMINATION OF THERON NALLEY BY MR. HYMAN:

6 Q: Thank you, Theron. Theron, can you tell me where you're
7 from?

8 A: Cowpens, originally. My father is from Cowpens or
9 Greenville area.

10 Q: Where do you live now?

11 A: Around the Traveler's Rest area.

12 Q: Traveler's Rest area. Do you know my client, Mr.
13 Griffith?

14 A: I know of him. I met him a few times.

15 Q: Are y'all good buddies?

16 A: We're friends. I consider him a friend, but not good
17 friends, not best friends.

18 Q: Do you call him every week or anything like that?

19 A: No, ma'am. No, sir.

20 Q: As far as this case, do you know why you're here?

21 A: I do.

22 Q: Do you know an individual named Blakely Brown?

23 A: I've seen him.

24 Q: Okay. Where did you see him at?

25 A: At a hotel party.

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THERON NALLEY - PROFFER DIRECT BY HYMAN

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- 1 Q: Where was that hotel party?
- 2 A: Traveler's Rest.
- 3 Q: Now, do you remember when that was?
- 4 A: I want to say three and a half years ago.
- 5 Q: Do you remember what time of year it was?
- 6 A: Summertime.
- 7 Q: So, three and a half years ago in the summer of 2010; is
- 8 that right?
- 9 A: Yes, sir.
- 10 Q: Okay. Now, in regards to your interaction with him that
- 11 night, you said that again this was at where now?
- 12 A: Traveler's Rest, I think it was Hampton Inn.
- 13 Q: Okay. Was this a party at the hotel?
- 14 A: Yes, sir.
- 15 Q: Okay. Did you hear Blakely Brown talk about stabbing
- 16 anyone?
- 17 A: I did.
- 18 Q: Did you hear him talk about stabbing three people?
- 19 A: I did.
- 20 Q: Did you hear him admit to killing someone?
- 21 A: He said someone died.
- 22 Q: Okay. Did he say that he was the one who did that?
- 23 A: He did.
- 24 Q: Would you stand on this or sit on this jury or witness
- 25 stand and lie for him?

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THERON NALLEY - PROFFER DIRECT BY HYMAN

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1 A: No.

2 Q: Is it true -- is the testimony you're giving today the
3 truth?

4 A: It is the truth.

5 Q: Has anyone told you how to testify?

6 A: I have never been nowhere like this in my life.

7 Q: Okay. Has anyone told you to what to say or anything like
8 that?

9 A: No, I'm nervous.

10 Q: Okay. Thank you.

11 THE COURT: All right, sir. You may come down. Remain
12 in the courtroom. Now we're gonna take these two witnesses.

13 MR. HYMAN: Yes, sir.

14 THE COURT: Now, I caution these witnesses. You may
15 testify as to what, if anything, Blake Brown told you about a
16 killing or stabbing. You are not to get into anything else
17 may have said about any self-defense or anything; you
18 understand that?

19 A: Yes, sir.

20 THE COURT: I'm permitting this testimony only on the
21 narrow issue that allegedly a Codefendant said he did these
22 certain things and that is all I want to hear from you; you
23 understand that?

24 A: Yes, sir.

25 THE COURT: All right. Come down. You want to call the

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1 other witness first?

2 MR. HYMAN: Yes, sir, Your Honor. Your Honor, you gonna
3 bring the Jury in?

4 THE COURT: Yeah, let him come down. He can remain in
5 the courtroom.

6 Bring the Jury in please. And I want the other witness
7 to be careful too as to what I just said.

8 MR. SPRATLIN: Your Honor, the State would prefer that
9 the rule of sequestration apply.

10 THE COURT: Pardon me?

11 MR. SPRATLIN: The rule of sequestration of this witness
12 is ---

13 THE COURT: Tell him to step outside.

14 MR. SPRATLIN: Okay.

15 (REPORTER'S NOTE: Jury enters courtroom. 11:48 A.M.)

16 BY THE COURT:

17 THE COURT: All right. You may call your next witness.

18 Mr. Foreman, ladies and gentlemen, let me say something
19 to you, too. From time to time, there may be an objection to
20 testimony by the State or the Defendant or there may be a
21 request by one or the other to let the Jury step outside so a
22 matter can be heard. Do not hold that against the attorneys
23 who made that request. That is a perfectly permissible
24 procedure and they are just simply calling to my attention
25 some element in the case that may or may not be admissible.

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1 Be assured that at no time are these attorneys or this Court
2 keeping from you any information that you should receive.
3 Thank you.

4 Call your next witness.

5 MR. HYMAN: Your Honor, the Defense would call Chris
6 Whiteside.

7 THE COURT: You may do so.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible?

10 CHRISTOPHER BRIAN WHITESIDE, HAVING
11 BEEN SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Now state your full name and spell your last
13 name?

14 MR. WHITESIDE: Christopher Brian Whiteside, W-H-I-T-E-S-
15 I-D-E.

16 DIRECT EXAMINATION OF CHRISTOPHER BRIAN WHITESIDE BY MR.
17 HYMAN:

18 Q: Thank you, Mr. Whiteside. Can you tell this Jury where
19 you're from?

20 A: I'm from Traveler's Rest, South Carolina.

21 Q: Okay. And in Traveler's Rest -- do you know my client,
22 Mr. Griffith?

23 A: I do.

24 Q: Are y'all friends?

25 A: Very close.

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CHRISTOPHER WHITESIDE - DIRECT BY HYMAN

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1 Q: Very close friends. How long have you known him?

2 A: I've known Blake for twelve years.

3 Q: Okay. Are you aware of the circumstances why you're here?

4 A: I do.

5 Q: Do you know Mr. Griffith's codefendant, Blakely Kalen
6 Brown?

7 A: I've met him once.

8 Q: Okay. Now, can you tell me when you met him?

9 A: I met him -- I got back from Iraq in August of 2009. I
10 got a leave for a month in December and the party was that
11 summer, that first summer that I was back home.

12 Q: So that summer of 2010?

13 A: Yes, sir.

14 Q: Okay. And where did you meet him at?

15 A: I met, I got a call, I received a call to come to a party
16 in Traveler's Rest at a hotel, the Hampton Inn.

17 Q: Okay. And this was at a hotel in Traveler's Rest at the
18 Hampton Inn?

19 A: Yes.

20 Q: Was Mr. Brown there?

21 A: He was there.

22 Q: Okay. Now while you were at that party, had you met Brown
23 prior to that?

24 A: I did not.

25 Q: While you were at that party, did you hear Mr. Brown admit

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CHRISTOPHER WHITESIDE - DIRECT BY HYMAN

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1 to stabbing anyone?

2 A: I did.

3 Q: Did you hear him admit to stabbing three people?

4 A: Yes.

5 Q: Did you hear him say that one of the people he stabbed
6 died?

7 A: I did.

8 Q: Now, I understand you've known my client now for quite
9 some time. That being said, would you stand on this witness
10 stand or sit on this witness stand and lie for him?

11 A: I would not.

12 Q: Okay. Has anybody told you how to answer these questions?

13 A: No.

14 Q: Are you being paid or anything like that for your
15 testimony?

16 A: I'm not being paid.

17 Q: Okay. Is anything that you're saying, anything but the
18 truth?

19 A: This is the only truth.

20 Q: Okay. Any question about what he said that night?

21 A: No.

22 Q: Were there multiple other witnesses there that night that
23 heard him?

24 A: Yes, there was a few people there that I knew personally.

25 MR. HYMAN: Okay. Judge, just one second. No further

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CHRISTOPHER WHITESIDE - CROSS BY LIVESAY

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1 questions, Your Honor.

2 THE COURT: You may cross examine.

3 MS. LIVESAY: Just a few, Your Honor.

4 CROSS EXAMINATION OF CHRISTOPHER BRIAN WHITESIDE BY MS.

5 LIVESAY:

6 Q: Mr. Whiteside, you said you were close friends with Blake
7 Griffith?

8 A: Yes, very close.

9 Q: Okay. How long have y'all been friends?

10 A: For over twelve years.

11 Q: Twelve years. So, it's been way before 2009?

12 A: Yes.

13 Q: Okay. Were y'all close then?

14 A: We were.

15 Q: Okay. So about how old were y'all when you became close
16 friends?

17 A: I'd say about fourteen, thirteen, something like that, we
18 played basketball together.

19 Q: And y'all are close friends?

20 A: Very close, almost like brothers.

21 Q: Okay. And he's a nice guy?

22 A: He's very, he's polite, he's well educated and carries
23 himself very well.

24 Q: Okay. And have you ever heard of him talk about a murder
25 or a stabbing or any sort of violent acts?

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BY THE COURT

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1 A: I have not heard him talk about a violent, violent act.

2 Q: You've never heard him talk about stabbing somebody or do
3 you know what ---

4 MR. HEWITT: Objection, Your Honor, I think we may need
5 to approach?

6 THE COURT: Yes. That's not a ---

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of the Jury but out of hearing of the Jury.)

9 BY THE COURT:

10 THE COURT: Send the jury out please; let them go out.

11 (REPORTER'S NOTE: Jury exits courtroom. 11:54 A.M. The
12 following takes place outside the presence of the Jury.)

13 THE COURT: All right. What is the basis for your
14 inquiry?

15 MS. LIVESAY: Your Honor, because they're close friends
16 and he's telling me that he's never heard Blake Griffith
17 talking about stabbing anybody.

18 THE COURT: Okay.

19 MS. LIVESAY: But the truth is there's sixty-eight videos
20 before this murder happened where Blake Griffith is steady
21 talking about killing somebody and stabbing somebody. They
22 want to put this witness up here who is a close friend of
23 Blake Griffith to talk about that Blake Brown ---

24 THE COURT: I'm not gonna let you get into Blake
25 Griffith's situation, his character ---

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1 MS. LIVESAY: He's the Defendant. We'll get into Blake
2 Brown and he's not even in here.

3 THE COURT: No, sir. I'm limiting this now I told you to
4 third-party evidence. If you want to get into that, you're
5 gonna have to do it some other way. This Defendant's
6 character as of this moment is not in evidence.

7 MS. LIVESAY: I don't want to get his character into
8 evidence.

9 THE COURT: What are you trying to do?

10 MS. LIVESAY: I want to establish how well he knows Blake
11 Griffith. He just said they were close friends. Well, how
12 well do you know him?

13 THE COURT: You can do that, but you're getting ready to
14 go further than that. I'm gonna not let -- I'll let you go
15 into his credibility, that they've been boyhood friends since
16 they were fourteen, that's fine. But you're trying to go
17 further than that.

18 MS. LIVESAY: Well, can I ask him about Blake Griffith's
19 tattoo's then?

20 THE COURT: No. No, I'm not gonna do that.

21 MS. LIVESAY: Your Honor, he's saying he's a close
22 friend. He has opened the door.

23 THE COURT: He's here, now, ma'am, he's here solely on
24 the issue of third-party guilt.

25 MS. LIVESAY: I get that, but he has opened the door.

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BY THE COURT

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1 THE COURT: I'm not going to -- I'm not going to permit
2 you to get into Blake Griffith's tattoo at this time. I'm not
3 gonna do it. You can test his credibility as to friendship
4 and know his mother and grandmother and this, that and the
5 other, but we're not going into Blake Griffith's character.

6 MS. LIVESAY: Well, can I at least ask him would it
7 surprise him if Blake Griffith had said comments that he was
8 gonna stab somebody?

9 MR. HYMAN: Judge, I'm gonna object to that.

10 MS. LIVESAY: Can I at least ask that; he's a close
11 friend. He's already said he's a nice guy; that may change
12 his opinion.

13 THE COURT: What is it you want to ask him?

14 MS. LIVESAY: I want to ask him would it surprise him,
15 since they're such close friends, that Blake Griffith made
16 statements about stabbing people?

17 THE COURT: Oh no, I'm not gonna let you -- you can ask
18 him did Blake Griffith ever make a statement to him, but he
19 can't be surprised as to what Blake Griffith may or may not
20 said to other people. I'm not gonna let you get Blake
21 Griffith's alleged admission in through him. I can't do that.

22 MS. LIVESAY: But we can let Blake Brown's admission come
23 in through him?

24 THE COURT: Yes, ma'am, under third-party guilt, you
25 surely can.

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BY THE COURT

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1 MS. LIVESAY: I guess him talking about stabbing somebody
2 is not a statement against his interest.

3 THE COURT: You can ask him if Blake Griffith ever had
4 made any admission to you, but not, not that Blake Griffith
5 made an admission to somebody else and he's surprised by it;
6 that's a reversible error on its face. Limit your cross
7 examination to his credibility on his statement regarding
8 Blake Brown.

9 MS. LIVESAY: Okay.

10 THE COURT: I cannot let him say he would be surprised if
11 this Defendant made an admission of guilt to somebody else.
12 If that's not rank hearsay on top of hearsay, I never heard of
13 it. Bring the Jury ---

14 MS. LIVESAY: Your Honor.

15 THE COURT: You can't do that. Bring the Jury in.

16 Confine my rule now to what I said it was. You are
17 entitled to ask him simply did Mr. Griffith ever made a
18 statement, you can do that if you want to, but not was he
19 surprised by something else somebody may have heard or said,
20 no.

21 (REPORTER'S NOTE: Jury enters courtroom. 11:59 A.M.)

22 THE COURT: All right. You ready for your cross
23 examination?

24 MS. LIVESAY: Thank you, Your Honor.

25 CONTINUATION OF CROSS EXAMINATION OF BRIAN CHRISTOPHER

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BY THE COURT

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1 WHITESIDE BY MS. LIVESAY:

2 Q: Mr. Whiteside, where do you currently work?

3 A: I travel the East Coast for Food Lion right now.

4 Q: For Food Lion?

5 A: Yes.

6 Q: Now have you ever been in the National Guard or the Army
7 or anything like that?

8 A: Yes, I started in the National Guard and then I
9 transferred into the regular Army.

10 Q: You did start in the National Guard?

11 A: Yes, ma'am.

12 Q: Are you in the National Guard now?

13 A: I am not.

14 Q: You are not?

15 A: No.

16 Q: Why aren't you in the National Guard now?

17 A: Because I wanted to pursue college and not have ---

18 Q: I'm sorry, Mr. Whiteside, you need to speak up a little
19 bit so all of us can hear.

20 A: I wanted to pursue college.

21 Q: And you pursued college where?

22 A: I didn't get to start yet. I've got a job with Food Lion
23 traveling the East Coast now, but I'm looking into getting in
24 school for computer engineering.

25 Q: Okay. But you're not in the National Guard now?

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BY THE COURT

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- 1 A: I am not.
- 2 Q: How long were you in the National Guard?
- 3 A: I was in National Guard for two years.
- 4 Q: Three years?
- 5 A: Two years.
- 6 Q: Okay. Two years?
- 7 A: Yes.
- 8 Q: And it paid for your education?
- 9 A: Yes'.
- 10 Q: Okay. Now, being in the National Guard, when somebody
- 11 gives you information like I've stabbed somebody, I mean,
- 12 wouldn't you tell the police?
- 13 A: Yes, you -- well, it depends on the situation, but yes, if
- 14 I heard someone was stabbed, yes, I would immediately inform
- 15 my chain of command and go ---
- 16 Q: Did you tell the police when Blakely Brown said he stabbed
- 17 somebody?
- 18 A: I did not talk to the police.
- 19 Q: You did not?
- 20 A: No.
- 21 Q: So, you didn't think that was worth telling the police?
- 22 A: I had very limited time constraints due to the military.
- 23 I just got back from Iraq. My family is more important than
- 24 any other thing going on.
- 25 Q: Any of that?

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BY THE COURT

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1 A: Yes.

2 Q: Well, you drove from Greenville down here today or
3 yesterday, didn't you?

4 A: Yes, I did and I worked in North Carolina. I came from
5 North Carolina.

6 Q: Okay. So, just so I'm clear, you didn't have five minutes
7 or ten minute to call the police, but you had -- how long did
8 it take you to get down here?

9 A: Four and a half hours.

10 Q: Okay. But you had four and a half hours to drive down
11 here and tell somebody now that he made that statement?

12 A: Yes.

13 Q: Okay. If you don't mind, who did you tell that he made
14 that statement to?

15 A: I haven't talked about this to anyone.

16 Q: Who?

17 A: I have not talked to anyone about anything had to do with
18 it.

19 Q: Did how did Mr. Hyman know that he had made that statement
20 to you?

21 MR. HEWITT: Judge, I'm gonna object.

22 THE COURT: No, sir, I'm gonna answer -- I'm gonna let
23 that question be said.

24 MR. HEWITT: May I read into the record my concern? I'm
25 afraid it potentially makes Mr. Hyman a witness.

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BY THE COURT

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1 THE COURT: No, sir, it does not make him a witness.

2 MR. HEWITT: Thank you.

3 THE COURT: The question is appropriate. Who else did --
4 she's asked who else did he tell and he can say who he did
5 tell?

6 A: I spoke briefly with Mr. Hyman, Alex Hyman, about what I
7 knew about the first time I met Blakely Brown.

8 BY MS. LIVESAY:

9 Q: Okay. And that's what you told him?

10 A: Yes, ma'am.

11 Q: Okay. But you didn't tell the police or anybody else?

12 A: No.

13 Q: Okay. You didn't think that it was worth telling the
14 police that he confided in you that he stabbed somebody?

15 A: No, ma'am, once I was at the party and I seen Blakely
16 Brown and seen his personality, I needed to get myself away
17 from that environment.

18 Q: Okay. So, you didn't want to be around Blakely Brown's
19 personality and that environment, but you okay being around
20 Blake Griffith and his environment?

21 A: Yes, we're friends. We're very close and I was invited to
22 a party and I left after twenty minutes after being at the
23 hotel.

24 THE COURT: All right. I think that's sufficient now.

25 MS. LIVESAY: Now just a couple more questions, Your

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BY THE COURT

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- 1 Honor.
- 2 THE COURT: Okay.
- 3 BY MS. LIVESAY:
- 4 Q: Now, did you know that Blake Brown lived with Blake
- 5 Griffith for a while?
- 6 A: I did not know that. I was in, I was deployed to Kansas
- 7 in -- at this time.
- 8 Q: Okay. So you were departed in 2009?
- 9 A: I was in, I just got back from Iraq in '09, in the winter
- 10 of '09.
- 11 Q: When did you -- and you saw Blakely Brown when?
- 12 A: In June or July of the following summer, 2010.
- 13 Q: 2010?
- 14 A: Yes.
- 15 Q: Okay. And where did you see him at?
- 16 A: I saw him at Traveler's Rest, South Carolina at a Hampton
- 17 Inn Hotel.
- 18 Q: And he was hanging out with who?
- 19 A: He was there with Blake and ---
- 20 Q: Blake who?
- 21 A: Blake Griffith.
- 22 Q: Okay.
- 23 A: And he was there with the mother of Blake's child, who
- 24 invited me to the party, she was there. And Darren was also
- 25 there and I brought him with me; he came with me.

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BY THE COURT

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1 Q: So, in 2010 Blake Griffith and Blake Brown were still
2 hanging out together?

3 A: Yes.

4 Q: Okay. Still close friends?

5 A: I'm not sure of that. I had just met him and I didn't
6 know he was living with him, so I don't know how close their
7 relationship was.

8 Q: Okay. But he was at the baby's birthday party?

9 A: I don't know that information. I wasn't at the baby's
10 birthday party.

11 Q: Okay. But when you saw Blake Brown, he was with Blake
12 Griffith?

13 A: Yes.

14 Q: Okay. And he told you, I mean, the first time you meet
15 him, he says I stabbed somebody?

16 A: Yes. He had the attention of a lot of people at the
17 party. He was out to get attention that night. It seemed
18 like that's the first time I met him and was introduced to him
19 and he did talk about that.

20 Q: Okay. And how many people did he tell you he stabbed?

21 A: I'd say three.

22 Q: Okay.

23 A: Around three people and he didn't use the word stabbed, he
24 said poked, I poked three people.

25 Q: So your first time meeting him, out of the blue, he starts

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BY THE COURT

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1 telling you that he stabbed somebody, three people?

2 A: Yes, he was saying that he would -- any of his brothers

3 ---

4 THE COURT: Wait a minute. You're going beyond what I
5 said now.

6 MS. LIVESAY: Your Honor, I'm just asking him what he
7 told him.

8 THE COURT: Well, I don't want to go any further than,
9 than where we said.

10 MS. LIVESAY: I understand, Your Honor.

11 THE COURT: Well, you were going further than I wanted.

12 MS. LIVESAY: Just a couple of more questions.

13 BY MS. LIVESAY:

14 Q: Mr. Whiteside, is that your Facebook page?

15 A: Yes, it is.

16 Q: Now, if you don't mind, are you friends with Blake
17 Griffith on Facebook?

18 A: Yes.

19 Q: And his mom?

20 A: Yes.

21 Q: Okay. And you've been friends with them for a long time?

22 A: Yes, ma'am.

23 Q: Okay. And you're close enough friends with them to drive
24 four and a half hours to tell this Jury what you've told us?

25 A: Yes, I would drive halfway across the country to be there

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1 for the birth of his child.

2 Q: Okay. But this is the first time you've told anybody
3 about this statement, isn't it?

4 A: This is the first time I've talked about this.

5 Q: Okay. Since 2010?

6 A: Yes.

7 Q: Okay. You didn't have any time to tell anybody in 2010?

8 A: I did not have any time.

9 Q: Okay. But now you have all the time in the world to come
10 and tell this statement now?

11 A: Yes, I'm currently out of the military now.

12 Q: Okay. Were you in the courthouse yesterday?

13 A: Yes, I was standing by.

14 Q: Okay. Did you tell anybody yesterday?

15 A: I didn't talk to anyone about the case yesterday or this
16 week or last week.

17 Q: Okay. Did you think that was information that law
18 enforcement would want?

19 A: I figured they would already have this information, that
20 they'd known the severity of what happened.

21 Q: For who?

22 A: I figured that they would already have this -- the police
23 would already have information on this and it's not my job or
24 obligation to be in the middle of it.

25 Q: Well, did you tell the police?

State v. Griffith
CHRISTOPHER WHITESIDE - REDIRECT BY HYMAN

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1 MR. HEWITT: Asked and answered, Judge.

2 THE COURT: Yes, he's answered that.

3 BY MS. LIVESAY:

4 Q: I'm just curious how you would think the police would know
5 if you never told the police.

6 A: My focus wasn't -- I was focused on other things. I'd
7 just got back from Iraq. Okay? My family is important and I
8 was there for -- show you the importance of me and Blake's
9 relationship. Okay. And that's it.

10 Q: So what's important to you is your friendship with Blake
11 Griffith?

12 A: Yes.

13 MS. LIVESAY: No further questions, Your Honor.

14 MR. HYMAN: Just briefly on redirect.

15 REDIRECT EXAMINATION OF BRIAN CHRISTOPHER WHITESIDE BY MR.

16 HYMAN:

17 Q: Does your friendship with Blake mean that you'd sit there
18 and lie for him?

19 A: It does not.

20 Q: Okay. Is what you're telling the absolute truth?

21 A: I am.

22 MR. HYMAN: No further questions, Your Honor.

23 THE COURT: All right. You may come down. Thank you.

24 Call your next witness. Can you call your next witness?

25 MR. HYMAN: Your Honor, the Defense would call Theron

State v. Griffith
THERON NALLEY - DIRECT BY HYMAN

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1 Nalley.

2 CLERK: Please raise your right hand and place your left
3 hand on the Bible?

4 THERON NALLEY, HAVING BEEN SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK: State your full name and spell your last name?

7 MR. NALLEY: Theron Nalley, N-A-L-L-E-Y.

8 DIRECT EXAMINATION OF THERON NALLEY BY MR. HYMAN:

9 Q: Thank you, Theron. You mind telling the Jury where you're
10 from?

11 A: The Greenville area, Greenville, South Carolina.

12 Q: Where are you currently living now?

13 A: Traveler's Rest area.

14 Q: Okay. Now, do you know my client, Blake Griffith?

15 A: I know of him.

16 Q: Okay. Are y'all real close buddies?

17 A: I consider him a friend, but I met you two years ago and I
18 consider you a friend.

19 Q: Well, thank you. Thank you. As far as your dealings with
20 my, my client, you don't call him every day or anything like
21 that?

22 A: No.

23 Q: Just know of him?

24 A: Correct.

25 Q: Okay. Now, do you know of his Codefendant, Blakely Brown?

State v. Griffith
THERON NALLEY - DIRECT BY HYMAN

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- 1 A: I met him one time.
- 2 Q: Okay. And where did you meet him at?
- 3 A: At a hotel party in Traveler's Rest.
- 4 Q: Okay. Now what, what hotel was that; do you remember?
- 5 A: I believe it was a Hampton Inn.
- 6 Q: Do you remember what time, when this was?
- 7 A: Three and a half years ago.
- 8 Q: Okay. Was it winter, fall, spring, summer?
- 9 A: Summertime.
- 10 Q: Summertime. So, three and a half years ago, that would be
- 11 the summer of 2010?
- 12 A: I'd say yes.
- 13 Q: Now, did you meet or was that the first time you'd ever
- 14 seen Blakely Brown?
- 15 A: I didn't meet him and shake his hand. I just -- I went to
- 16 a party with a friend of mine ---
- 17 Q: Okay.
- 18 A: --- Chris, and overheard him say some things.
- 19 Q: Okay. Did you hear him say that he stabbed someone?
- 20 A: I did.
- 21 Q: How many people did you hear him say he stabbed?
- 22 A: Three.
- 23 Q: Did you hear him say he killed someone?
- 24 A: He said someone died; he killed someone.
- 25 Q: Okay. Is any part of your statement anything other than

State v. Griffith
THERON NALLEY - CROSS BY SPRATLIN

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1 the truth?

2 A: I'm telling the truth, yeah.

3 Q: Anybody tell you how to testify or anything like that?

4 A: No.

5 Q: Would the fact that you know my client make you change
6 your testimony in any way?

7 A: No.

8 Q: So, nobody's told you how you need to testify or anything
9 like that?

10 A: No, I'm just answering the questions.

11 Q: Okay. No further questions.

12 THE COURT: All right. Ms. Livesay.

13 MR. SPRATLIN: Thank you, Your Honor.

14 CROSS EXAMINATION OF THERON NALLEY BY MR. SPRATLIN:

15 Q: I'm Martin Spratlin on behalf of the State. Good
16 afternoon, Mr. Nalley. How are you today?

17 A: I'm fine.

18 Q: Just got a couple of questions for you. Now you said you
19 only met Blake Brown once, correct?

20 A: Correct.

21 Q: And that was at that party where he told you he ---

22 A: He didn't tell me.

23 Q: He told -- you overheard?

24 A: He was speaking to someone else.

25 Q: He was speaking to someone else and you heard that?

State v. Griffith
THERON NALLEY - CROSS BY SPRATLIN

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- 1 A: Yes.
- 2 Q: Okay. You said you do know, I think you actually used the
3 word, you know of Blake Griffith?
- 4 A: Correct.
- 5 Q: All right. When's the first time you met Blake Griffith?
- 6 A: I met Blake a while back at the gym; I ran into him.
- 7 Q: How long ago?
- 8 A: I'd say a year ago.
- 9 Q: So, you met Blake Griffith and year ---
- 10 A: I ran into him at the gym.
- 11 Q: You ran into him at the gym. When did you meet Blake
12 Griffith for the first time?
- 13 A: That's when I met him.
- 14 Q: You met him for the first time a year ago?
- 15 A: Yeah.
- 16 Q: Okay. So, you didn't know Blake Griffith back when you
17 were at this hotel party at Traveler's Rest?
- 18 A: No.
- 19 Q: Would it surprise you to know Blake Griffith was present
20 at that hotel party in Traveler's Rest?
- 21 A: He wasn't present.
- 22 Q: He wasn't present. Okay. When was this again, this was
23 three and a half years ago; you didn't even know Blake
24 Griffith?
- 25 A: No.

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THERON NALLEY - CROSS BY SPRATLIN

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1 Q: So, you wouldn't know whether he was present or not?

2 A: Well, I know Christopher Whiteside, who I went to the
3 party with; and Blakely Brown, I guess he was there.

4 Q: Uh-huh (affirmative response). And you're certain Blake
5 Griffith wasn't there?

6 A: No.

7 Q: And you went with Christopher Whiteside who testified
8 earlier in court today?

9 A: Correct.

10 Q: Okay. And a hundred percent sure, you're sure Blake
11 Griffith wasn't there?

12 A: No.

13 Q: Okay. And this was roughly 2010?

14 A: Correct.

15 Q: Traveler's Rest party?

16 A: At a hotel.

17 Q: At a hotel. You went with Christopher Whiteside?

18 A: Correct.

19 Q: Blake Griffith not there?

20 A: No.

21 Q: Okay. Since you just met Blake Griffith -- did you know
22 that he had pending charges for murder, attempted murder and
23 attempted murder for the charges he's on trial for today?

24 A: No.

25 Q: Never knew that?

State v. Griffith
THERON NALLEY - CROSS BY SPRATLIN

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1 A: No.

2 Q: Okay. Now, at the party you were at, you said that Mr.
3 Brown -- you overheard Mr. Brown. What exactly did you
4 overhear Mr. Brown say?

5 THE COURT: Wait a minute now.

6 Q: In regards to -- (TO THE COURT) I'm sorry, Your Honor.
7 I'll clarify that a little bit more in your ruling.

8 THE COURT: All right.

9 Q: Did he say he killed someone or that someone was stabbed?

10 A: He said he killed someone.

11 Q: He said specifically he killed someone?

12 A: Correct.

13 Q: Okay. He didn't say someone was stabbed; didn't say
14 someone died; specifically you remember him saying he killed
15 someone?

16 A: He said he stabbed three people; one person died.

17 Q: So, he didn't say he killed someone; he said stabbed three
18 people, someone died?

19 A: This was three years ago. I mean, word-for-word...

20 Q: Okay. Well, let's talk about three years ago. Where have
21 you been in the three years since this, you overheard this
22 conversation?

23 A: In Greenville.

24 Q: In Greenville. Okay. Now, did you go to the Greenville
25 Police Department at any point during this three years?

State v. Griffith
THERON NALLEY - CROSS BY SPRATLIN

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1 A: No.

2 Q: Did you ever tell any law enforcement officer anywhere
3 that you had heard someone admit to killing someone?

4 A: No.

5 Q: Did you ever call the Greenville prosecutor's office to
6 tell them you heard someone say they killed someone?

7 A: No.

8 Q: Did you ever call our office and say you heard someone
9 kill someone?

10 A: No.

11 Q: Never told anyone?

12 A: No.

13 Q: Not a soul?

14 A: No.

15 Q: Didn't even tell someone in a bar having a drink?

16 A: No.

17 Q: First time you've ever told anybody that you heard someone
18 admit to killing somebody is here in Court today?

19 A: I was subpoenaed here.

20 Q: You were subpoenaed here?

21 A: Yes.

22 Q: Well, you must've told somebody if we -- if they knew that
23 you were gonna come in and say that he killed somebody?

24 A: I was told to come here because I was at the party.

25 Q: Told to come here because you were at the party?

State v. Griffith
THERON NALLEY - CROSS BY SPRATLIN

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- 1 A: Correct.
- 2 Q: So, you're saying to us that you've never told anybody
- 3 before sitting right here in this witness chair?
- 4 A: I talked to Mr. Whiteside about it when I left.
- 5 Q: So you did talk to somebody?
- 6 A: Christopher Whiteside, between the two of us, yeah.
- 7 Q: Okay. Did you talk to the Defense lawyer in this case?
- 8 A: I thought the guy was an idiot.
- 9 Q: You thought Christopher Whiteside was an idiot?
- 10 A: No.
- 11 Q: Okay.
- 12 A: The Brown.
- 13 Q: All right. You thought Brown was an idiot?
- 14 A: Yes.
- 15 Q: All right. Did you ever talk to Mr. Hyman, the Defense
- 16 attorney in this case, and tell him that you overheard Blake
- 17 Brown say he killed someone?
- 18 A: No, I never thought I would be at Myrtle Beach in court.
- 19 Q: You never thought so?
- 20 A: No.
- 21 Q: Never had a conversation, no one ever asked you what you
- 22 were gonna testify about?
- 23 A: No.
- 24 Q: They just put you on the stand?
- 25 A: I was told to come down here to tell you what I heard.

State v. Griffith
THERON NALLEY - REDIRECT BY HYMAN

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1 Q: Just put you on the stand, nobody ever talked to anybody,
2 never discussed it?

3 THE COURT: No, sir, he said he was told; that was he
4 said.

5 MR. SPRATLIN: Yes, sir.

6 BY MR. SPRATLIN:

7 Q: Okay. And again, three and a half years ago you, you
8 overheard this conversation?

9 A: Correct.

10 Q: Didn't tell anyone?

11 A: I thought he -- you know, he thought he was somebody like
12 he thought he was a gang banger. You hear people say stuff
13 all the time. I didn't know the guy was telling the truth.

14 Q: So, you didn't think he was telling the truth at the time?

15 A: I really didn't care.

16 Q: You didn't care?

17 A: Not really.

18 Q: Someone admits to you that they kill somebody and you
19 don't care?

20 A: (No response.)

21 MR. SPRATLIN: No further questions.

22 MR. HYMAN: Your Honor, just briefly.

23 REDIRECT EXAMINATION OF THERON NALLEY BY MR. HYMAN:

24 Q: Did I subpoena you down here?

25 A: Yes.

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THERON NALLEY - RECROSS BY SPRATLIN

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1 Q: Have you and I ever met before yesterday?

2 A: No, I got a phone call last week, which I ignored.

3 Q: Did you talk to me for the first time yesterday?

4 A: Yes.

5 Q: Anything you're telling this Jury today, is any of it not
6 your own testimony?

7 A: I'm telling the truth.

8 Q: Okay. Any reason you have to lie for this guy?

9 A: No.

10 MR. SPRATLIN: One brief follow-up, Your Honor?

11 MR. HYMAN: I'm not ---

12 BY MR. HYMAN:

13 Q: Before coming down here, did you know Kacie Henry, a girl
14 named Kacie Henry?

15 A: No.

16 Q: Okay.

17 MR. SPRATLIN: Real briefly, Your Honor, two questions.

18 RECROSS EXAMINATION OF THERON NALLEY BY MR. SPRATLIN:

19 Q: Now, you just testified that you talked with Alex Hyman
20 yesterday?

21 A: Talked to who?

22 Q: Talked to -- met with Mr. Hyman yesterday?

23 A: He wanted me in his office yesterday morning.

24 Q: And you were there?

25 A: Yes, I do what I'm told. I'm here.

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THERON NALLEY - RECROSS BY SPRATLIN

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- 1 Q: You do what you're told. And as far as your relationship
2 with the Defendant in this case, you just testified that you
3 would never lie for him. You said you ran into him a year ago
4 at the gym, correct?
- 5 A: Correct.
- 6 Q: So, y'all have been going to the same gym regularly,
7 right?
- 8 A: I don't -- I don't train at -- I'm a sponsored athlete. I
9 train in Spartanburg.
- 10 Q: Train in Spartanburg?
- 11 A: Yeah.
- 12 Q: Have you ever worked out with the Defendant before?
- 13 A: No.
- 14 Q: Never worked out a single time at the gym with him?
- 15 A: Not with him, no.
- 16 Q: Well ---
- 17 A: I'm sorry, but he's not really on my level at the gym.
- 18 Q: Been at the same gym with him?
- 19 A: Been at the same gym, yeah.
- 20 Q: How many times have you been at the same gym with him
21 working out?
- 22 A: Three or four times.
- 23 Q: Three or four times only?
- 24 A: Yes.
- 25 Q: Okay. But again, you did meet with Mr. Hyman tomorrow ---

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BY THE COURT

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1 A: Tomorrow?

2 Q: --- or yesterday; you met with Mr. Hyman yesterday?

3 A: Yesterday, yes, sir.

4 Q: Okay. So, when you said earlier that this is the first
5 time you've talked to anybody; that you never talked to
6 anybody before coming into this witness chair, you did
7 actually meet with Mr. Hyman yesterday?

8 A: You're trying to confuse -- I'm getting confused.

9 Q: Okay. I understand. Thank you.

10 THE COURT: All right. You may come down. Thank you,
11 sir.

12 A: Am I done?

13 THE COURT: This witness may be excused from his
14 subpoena.

15 Call your next witness please.

16 MR. HYMAN: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 (REPORTER'S NOTE: A bench conference was held off the record
19 in the presence of the Jury but out of hearing of the Jury.)

20 BY THE COURT:

21 THE COURT: All right. I'll let you go to the jury room
22 just a few minutes. I'll be calling you back very shortly.
23 Thank you.

24 MR. HYMAN: Judge, you want to go ahead and excuse them
25 for lunch?

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BY THE COURT

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1 the Court that it raises no inference against you. You have
2 the absolute right to testify; you understand that?

3 MR. GRIFFITH: Yes, sir.

4 THE COURT: Do you have any questions about what I have
5 said to you?

6 MR. GRIFFITH: No, sir.

7 THE COURT: Obviously, you will discuss it with the
8 distinguished counsel here during the lunch break. But
9 remember, the ultimate decision is yours and yours alone; you
10 understand that?

11 MR. GRIFFITH: Yes, sir.

12 BY THE COURT:

13 THE COURT: This Court will accept whatever decision you
14 make.

15 Now, Counsel, do you have any further additional inquiry
16 that I need to make of him?

17 MR. HEWITT: No, Your Honor.

18 THE COURT: Do you?

19 MR. HYMAN: No, Your Honor.

20 THE COURT: All right, sir. Discuss with him over lunch
21 that important issue. And as I understand it, if he
22 testifies, that will be the last witness?

23 MR. HYMAN: Yes, Your Honor, that is our expectation.

24 THE COURT: Then my expectation would be that we can
25 argue and charge in this case this afternoon?

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BY THE COURT

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1 MR. HYMAN: Yes, Your Honor.

2 THE COURT: You agree with that?

3 MR. HEWITT: Yes, Your Honor, absolutely.

4 MR. SPRATLIN: Your Honor, there may be a short rebuttal
5 from the State.

6 THE COURT: Sir?

7 MR. SPRATLIN: There may be a short rebuttal.

8 THE COURT: I understand that, but I mean it's subject to
9 any rebuttal we got and if the rebuttal is too long, we want
10 argue and charge this afternoon. Thank you so much.

11 MR. HYMAN: Thank you, Judge.

12 MR. HEWITT: Thank you, Your Honor.

13 THE COURT: All right. Before we adjourn, how about,
14 Counsel, y'all meet with me in my chambers. I want to discuss
15 requests to charge with you. Meet me in my Chambers.

16 Thank you.

17 (RECESS - 12:25 P.M.)

18 *****OFF THE RECORD*****

19 (On the Record - 2:56 P.M.)

20 (REPORTER'S NOTE: The following takes place outside the
21 presence of the Jury.)

22 THE COURT: All right. Prior to the recess, we had a, an
23 inquiry with regards to the Defendant's right to testify or
24 not to testify. Has that been resolved, Mr. Hyman?

25 MR. HYMAN: Yes, Your Honor.

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1 THE COURT: And what is his decision?

2 MR. HYMAN: Your Honor, he will not be testifying.

3 THE COURT: Have him stand.

4 Mr. Griffith, I'm advised by your attorneys that it is
5 your decision not to testify; is that correct?

6 MR. GRIFFITH: Yes, sir.

7 THE COURT: Sir?

8 MR. GRIFFITH: Yes, sir.

9 THE COURT: It is yours now, not, obviously you would
10 consult with them, but the ultimate decision is yours and
11 you'll understand that you have a right to testify and right
12 not to testify; you understand that?

13 MR. GRIFFITH: Yes, sir.

14 THE COURT: Sir? Okay. Thank you. I accept that.

15 All right. As I understand it, there is one other
16 witness for the Defense; is that correct?

17 MR. HYMAN: Your Honor, it's not for the Defense. We
18 rest.

19 THE COURT: Sir?

20 MR. HYMAN: The Defense rests, Your Honor.

21 THE COURT: Okay. Then I'm gonna bring the Jury out and
22 you may rest and -- is there gonna be any reply?

23 MS. LIVESAY: Yes, sir, one witness in reply.

24 THE COURT: All right, sir.

25 MR. HYMAN: Your Honor, do we need to note our objection

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BY THE COURT

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1 to this witness before the Jury is out? .

2 THE COURT: Well, let me hear, let me hear, let's make a
3 complete record please. What is this witness, apparently they
4 have some rejection to, name the witness and tell me the basis
5 for the reply testimony?

6 MS. LIVESAY: Your Honor, the name of our witness is
7 Kayla Houck or Houck. We'll be calling her to reply to the
8 Defense's case as to third-party guilt.

9 THE COURT: And what position did she have, was she an
10 investigator or what in this case?

11 MS. LIVESAY: She is a lay witness that talked with Blake
12 Griffith about this incident.

13 THE COURT: Why was she a lay witness talking to the
14 Defendant, Blake Griffith?

15 MS. LIVESAY: I'm sorry, Your Honor?

16 THE COURT: Why was she a lay witness, why was she
17 talking to him?

18 MS. LIVESAY: She, she was a witness that he talked to
19 just days after he got out of jail.

20 THE COURT: I gotcha.

21 MS. LIVESAY: And I'll be narrowing the testimony just as
22 to that conversation.

23 THE COURT: And what proposed testimony does she elicit,
24 please?

25 MS. LIVESAY: She will be saying that Blake Griffith told

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BY THE COURT

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1 her that he stabbed the deceased boy.

2 THE COURT: This, I assume, is in reply to the three
3 witnesses who testified for the Defense alleging that Brown
4 made that assertion that he had done it; is that correct?

5 MS. LIVESAY: Yes, sir, Your Honor.

6 THE COURT: Now what's your objection to this, please?

7 MR. HEWITT: Our objection, Your Honor, is that is in
8 clear violation of your sequestration order. That's it.

9 THE COURT: How do you want to address the sequestration
10 order?

11 MS. LIVESAY: Your Honor, she will not be testifying from
12 our standpoint from, for any factual purposes at all. My
13 understanding was we sequestered the witnesses to make sure
14 their stories don't match up, which is why we allowed Mr.
15 Griffith's parents to stay in the courtroom because they were
16 not fact witnesses. We are not using her as a fact witness.
17 We are using her solely to reply to the Defense's case
18 regarding the statements that Blake Griffith made.

19 THE COURT: Yes, sir?

20 MR. HEWITT: Your Honor, I think the, that we obviously
21 have a disagreement about what your sequestration order
22 covered. The record whenever it's developed will settle that,
23 but I am firm in my position that it violates the ---

24 THE COURT: No, sir, I respectfully disagree with you.
25 There's no way that the Defense or the State can anticipate

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1 every piece of evidence that's coming in and there was no way
2 that they could have anticipated that three witnesses were
3 going to state emphatically that the Codefendant Brown
4 admitted that he did the killing. It's clear to me that given
5 the nature of that testimony, that the State is entitled to
6 rebut it by showing that this Defendant, if that's the
7 testimony, admitted that he did it and it's contrary to those
8 three witnesses and they're entitled to do it and it does not
9 violate my sequestration because she is not testifying as to
10 the facts in the case unless you get into it through cross
11 examination and I'm gonna give you wide examination privileges
12 on that issue.

13 All right. Bring the Jury in please.

14 Please rest in the presence of the Jury, Mr. Hyman.

15 After the State rests, I'll excuse the Jury and hear your
16 motions.

17 (REPORTER'S NOTE: Jury enters courtroom. 3:01 P.M.)

18 THE COURT: The Jury is present, Mr. Hyman, you may
19 proceed.

20 MR. HYMAN: Your Honor, the Defense rests.

21 THE COURT: The Defense rests at this time.

22 Is there anything in reply from the State?

23 MS. LIVESAY: Yes, sir, we're gonna call one witness in
24 reply that's gonna be Kayla Houck or Houck.

25 THE COURT: Mr. Foreman and ladies and gentlemen, in this

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

1 case, the State, the Defense has rested, and the Defendant has
2 not testified. Now, I charge you that that is his absolute
3 constitutional right not to testify. That is your right, that
4 is my right. A defendant in a criminal case, does not have to
5 prove a thing. The State has the burden of proving a
6 defendant guilty, if they can, by evidence beyond a reasonable
7 doubt.

8 Now the fact that this Defendant did not testify raises
9 absolutely no adverse inferences against him and the fact that
10 he chose not to testify must not, cannot be used even in your
11 jury room in the deliberations. That was his absolute
12 constitutional right.

13 Proceed with the swearing of the witness.

14 MS. LIVESAY: Thank you, Your Honor.

15 CLERK: Raise your right hand and place your left hand on
16 the Bible.

17 KAYLA HOUCK, HAVING BEEN SWORN

18 TESTIFIES AS FOLLOWS:

19 CLERK: State your full name and spell your last?

20 MS. HOUCK: My full name is Kayla Elizabeth Houck, H-O-U-
21 C-K.

22 REBUTTAL DIRECT EXAMINATION OF KAYLA ELIZABETH HOUCK BY MS.

23 LIVESAY:

24 Q: And, Ms. Houck, how old are you?

25 A: I'm twenty-five.

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

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- 1 Q: And where do you currently live?
- 2 A: Greenville, South Carolina.
- 3 Q: Okay. And have you always lived there?
- 4 A: Since I was six.
- 5 Q: Okay. And do you know the Defendant in this case?
- 6 A: Yes, I do.
- 7 Q: And how do you know the Defendant?
- 8 A: We went to school together.
- 9 Q: Okay. And how long had you known him?
- 10 A: About ten years.
- 11 Q: Okay. And were y'all friends?
- 12 A: Yes.
- 13 Q: Okay. Now, are you familiar with the incident at the
- 14 Afterdeck?
- 15 A: Yes.
- 16 Q: Okay. And you would, were you there with Marianna Mays
- 17 and Blake Griffith and Blake Brown?
- 18 A: Yes, I was.
- 19 Q: Okay. Did you ever have a conversation with Blake
- 20 Griffith about what happened that night?
- 21 A: Yes, ma'am.
- 22 Q: Okay. And when did you have that conversation with him?
- 23 A: It was two days after he got out of jail when they gave
- 24 him a bond and his parents bonded him out, two days.
- 25 Q: Okay. And if you don't mind, tell the Jury about that

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

1 conversation.

2 A: I went to his house to pick him up. We were going to a
3 shopping center. I rolled down the window. He was very
4 shocked acting. And I said, hey, Blake, and he said I can't
5 -- I can't believe this happened. I'm sorry that I got you
6 guys into this and he said but that I saw the life come out of
7 that guys eyes and he ---

8 Q: He did what?

9 A: He did a motion of falling back and also we had a
10 different discussion about the weapon and he said, quote, that
11 shit is long gone.

12 Q: Now, Kayla, when was the first time you told somebody
13 about that statement?

14 A: About two years after.

15 Q: Okay. And if you don't mind, tell the Jury why you did
16 not tell anybody immediately?

17 A: I was really good friends with his family and honestly I
18 was on the fence whether I wanted to mess that relationship up
19 with them or get involved in something that I necessarily
20 didn't want to be involved in and do the right thing and I
21 chose to do the right thing.

22 Q: Now, had you actually talked to Blake when he was in jail?

23 A: Yes.

24 Q: Okay. So, y'all were that good a friends at that time?

25 A: Yes.

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

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- 1 Q: Okay. Now are you still friends?
- 2 A: No.
- 3 Q: Okay. Now does he still make contact with you?
- 4 A: No.
- 5 Q: Okay. So he has not called you recently?
- 6 A: He does not have my phone number.
- 7 Q: Okay. Now, how long were y'all friends after he told you
- 8 that?
- 9 A: About that long, two years.
- 10 Q: Okay. And why aren't y'all friends now?
- 11 A: I chose to tell what he told me and because of that, the
- 12 friendship was no longer -- we were no longer friends, are no
- 13 longer friends.
- 14 Q: Okay.
- 15 A: And I don't want to friends with a murderer.
- 16 Q: Now, at one point, had y'all ever been romantically
- 17 involved?
- 18 A: Sexually, no.
- 19 Q: Okay. How about any way romantically?
- 20 A: Yes.
- 21 Q: Okay. And when was that?
- 22 A: A couple of times after he got out of jail.
- 23 Q: Okay. And what is -- are you single now, married?
- 24 A: Married.
- 25 Q: Okay. And how long have you been married?

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1 A: Since September 28th, 2013.

2 Q: Okay. And you've met with me and Ginger about this case?

3 A: Yes.

4 Q: Okay. Have you ever talked to Mr. Hyman about the case?

5 A: No.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: Mr. Hyman?

8 REBUTTAL CROSS EXAMINATION OF KAYLA ELIZABETH HOUCK BY MR.

9 HYMAN:

10 Q: Ms. Houck, it's your testimony that you've never talked to
11 me about this case?

12 A: As far as discussing what happened, no.

13 Q: So, you didn't come to the bond hearing when he was first
14 bonded out?

15 A: I did come to the bond hearing.

16 Q: You don't remember sitting down with me for about an hour
17 and a half?

18 A: I do not.

19 Q: Okay. How about phone conversations with me; you don't
20 remember those?

21 A: The most recent was a couple of weeks ago, you called me
22 and Marianna and we both were on the phone with you.

23 Q: So, what you just told her was completely inconsistent?

24 A: I did not discuss the case with you.

25 Q: You sure about that?

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

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1 A: We did not discuss what happened. You asked me if we were
2 shoplifting?
3 Q: Uh-huh (affirmative response).
4 A: And I said no.
5 Q: Okay.
6 A: That is all we talked about about the case.
7 Q: Have you given prior statements?
8 A: To you, yes.
9 Q: Have you given prior statements to the State?
10 A: No.
11 Q: You haven't?
12 A: No.
13 Q: Okay. So, what I have here is a statement where you were
14 interviewed on 10/25/2010 by Carmen Mureddu, 10/25/2010. Now
15 you said you found out ---
16 THE COURT: Let her take a look at it so she can see what
17 you're referring to please.
18 MR. HYMAN: Your Honor, this is an investigative report
19 prepared by Carmen Mureddu on her statement.
20 THE COURT: Well, I'd let her refresh her -- maybe let
21 her refresh her memory and then she can reply as appropriate.
22 You might assist her, identify who Carmen Mureddu was, if you
23 will and ---
24 MR. HYMAN: I believe she knows who Carmen is, Judge.
25 Carmen testified in this case.

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1 BY MR. HYMAN:

2 Q: So you're saying now that you didn't give that to Carmen?

3 A: I did speak with Carmen, yes.

4 Q: But you just said you didn't. Now, anywhere in that
5 statement, did you make any allegation about my client?

6 A: No, I did not.

7 Q: And it's your testimony that you found out about this and
8 my client told you this days after this happened?

9 A: Yes.

10 Q: In September 2009?

11 A: Yes.

12 Q: But yet in 2010 you give a full statement to Carmen
13 Mureddu and don't mention it one time?

14 A: Right.

15 MR. HYMAN: Your Honor, I'd like to have this marked as
16 Defense Exhibit Number Nine.

17 BY THE COURT:

18 THE COURT: You have any objection to that statement?

19 MS. LIVESAY: I object to it going into evidence, Your
20 Honor.

21 THE COURT: Why?

22 MR. HYMAN: It's -- I'm sorry.

23 MS. LIVESAY: Because, because my understanding, Your
24 Honor, that is a statement of this Defendant. He can use it
25 to impeach her. He can't place into evidence any more than I

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

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1 can put a incident report into evidence.

2 THE COURT: I'm not gonna let the statement go into the
3 record.

4 MR. HYMAN: Just one second.

5 MR. HEWITT: Judge, it's a prior statement by the
6 witness. It is not hearsay under the rule.

7 THE COURT: What does it say?

8 MS. LIVESAY: Your Honor, she's on this ---

9 THE COURT: I'm gonna have to let the Jury step outside.
10 I'll have to ---

11 MR. HYMAN: Judge, I can have her read the whole
12 statement into the record.

13 THE COURT: Wait a minute. Sure you would like to, but I
14 want to know what's in it before I do that. I understand your
15 position, but it may or may not mine. She said she gave it to
16 her.

17 (REPORTER'S NOTE: Jury exits courtroom. 3:12 P.M. The
18 following takes place outside the presence of the Jury.)

19 THE COURT: That statement may contain admissible
20 evidence, hearsay evidence, read the statement to me and I'll
21 see ---

22 You got her to elicit that she gave the statement; what
23 else do you want?

24 MR. SPRATLIN: Just for the record, it's not actually a
25 statement; it's a report by Carmen Mureddu. It's not this

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KAYLA HOUCK - REBUTTAL DIRECT BY LIVESAY

1 girl's handwritten statement; it is not this girl's ---

2 THE COURT: That's what I thought. I'm not gonna let a
3 report ---

4 MS. LIVESAY: It's just a summary.

5 THE COURT: I'm not gonna let a report come in by Carmen.

6 MR. HYMAN: Well, then I'm gonna ask her to read it on
7 the stand then.

8 THE COURT: Not if it's a report.

9 MR. HYMAN: Judge, we have been cross examining Ms.
10 Mureddu's report ---

11 THE COURT: Well, what -- read the report for me.

12 MR. HYMAN: Kayla said she talked to Griffith since the
13 incident. She said that he told her that the guys in the bar
14 ran up on them and they had a problem with Brown. Griffith
15 told her he saw Brown stab one guy in the head and he saw
16 Brown pin another down and stab him in his side rib cage area.
17 Griffith said that he got -- he was hit and kicked during the
18 fight. That's what she told their investigator.

19 THE COURT: I'm gonna -- I don't see anything wrong with
20 letting that statement come in. Is that all it says?

21 MR. HYMAN: Judge, this says quite a bit more, but that's
22 the portion that I'm referring to.

23 THE COURT: I'm gonna let you have that portion.

24 Bring the Jury back in. That's fair.

25 MR. SPRATLIN: Your Honor, if I may, before the Jury

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1 comes back in, I think the proper impeachment technique in
2 this would be for Mr. Hyman to actually ask the witness isn't
3 it true that you made this statement to Ms. Mureddu, that you
4 witnessed Blake Brown blah, blah, blah, blah, blah, blah, blah
5 ---

6 THE COURT: No. No, he's asked her did she make a
7 statement and she said yes. I'm gonna let him read what that
8 is and she can say she said it or she didn't say it.

9 MR. SPRATLIN: Yes, sir.

10 THE COURT: Bring the Jury in.

11 Now start, limit yourself. I don't want to go into all
12 her investigative report, just as to her statement.

13 You understand? You heard what I said.

14 MR. HYMAN: I understand.

15 THE COURT: All right. Bring the Jury in.

16 You can ask her if she made -- you can read the statement
17 and ask her if she made it or didn't or why, whatever, however
18 you want to handle it but let's limit it to that, that
19 particular statement and not the rest of the investigative
20 report. Counsel, you understand that, too?

21 MR. HEWITT: Yes, Your Honor, absolutely.

22 THE COURT: All right. That's fair. Bring the Jury
23 back.

24 (REPORTER'S NOTE: Jury enters courtroom. 3:15 P.M.)

25 THE COURT: All right, sir. The Jury is present, you may

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KAYLA HOUCK - REBUTTAL CROSS BY HYMAN

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1 continue, sir.

2 CONTINUATION OF CROSS EXAMINATION OF KAYLA HOUCK BY MR. HYMAN:

3 Q: Kayla, we've established that you gave a statement to
4 Carmen Mureddu. You met with her and talked to her 10/25/2012
5 or 2010?

6 A: I never met with her. This was over the phone.

7 Q: Okay. Well, will you at least concede that you talked
8 with her and that you also gave a statement on the night that
9 this occurred?

10 A: Yes, I did speak with her.

11 Q: Okay. And in Ms. Mureddu's report, she states -- and I'm
12 asking you if this is something that you said. Kayla said
13 that she has talked to Griffith since the incident. She said
14 that he told her that the guys in the bar ran up on them and
15 they had a problem with Brown. Griffith told her that he saw
16 Brown stab one guy in the head and then he saw Brown pin
17 another down and stab him in his side ribcage area. Griffith
18 said that he was hit and kicked during the fight. Is that
19 what you told Carmen Mureddu?

20 A: Yes, because he told me that happened.

21 Q: Okay. Now, you're saying that he told you that happened?

22 A: Yes.

23 Q: But you're also trying to say that he also said that he
24 stabbed this guy?

25 A: He did tell me that.

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KAYLA HOUCK - REBUTTAL REDIRECT BY LIVESAY

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1 Q: Okay. So, you're saying he told you both things?

2 A: Yes.

3 Q: But on 10/25/2010 when you met with the Solicitor's
4 investigator, you told that investigator that Griffith told
5 you that he saw Brown pin a guy down, stab him in his ribcage
6 area and stab a guy in the head?

7 A: He did tell me that.

8 MR. HYMAN: No further questions, Your Honor.

9 THE COURT: All right. Can this witness come down?

10 MR. SPRATLIN: Beg the Court's indulgence?

11 MS. LIVESAY: Just one question, Your Honor.

12 REBUTTAL REDIRECT EXAMINATION OF KAYLA ELIZABETH HOUCK BY MS.

13 LIVESAY:

14 Q: Now, Kayla, you said earlier that you didn't tell us until
15 two years after the incident?

16 A: Yes.

17 Q: And Carmen took that statement in 2010?

18 A: Yes.

19 Q: Okay. So you never tried to tell us anything different
20 today than you told that statement later on after you talked
21 to Carmen?

22 A: Repeat the question.

23 Q: You testified earlier that you told us two years after the
24 incident?

25 A: Yes.

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KAYLA HOUCK - REBUTTAL REDIRECT BY LIVESAY

1 Q: Okay. So, that would have been about 2011; is that right?

2 A: Yes.

3 MR. HYMAN: Objection, leading.

4 BY MS. LIVESAY:

5 Q: You gave that statement to Carmen in 2010; is that
6 correct?

7 A: Yes.

8 Q: Okay. Have you ever tried to tell this Jury anything
9 other than you didn't tell that statement until after?

10 A: No.

11 Q: Now, Mr. Hyman asked you about talking to him and Blake
12 Griffith on the phone; is that right?

13 A: Who is him?

14 Q: Did Blake Griffith and his attorney call you on the phone;
15 is that what you told us earlier?

16 A: As far as two weeks ago, he called Marianna's phone and we
17 both were on the phone with his lawyer. I don't know if Blake
18 was on the phone or not.

19 Q: Okay. But you did talk to his lawyer?

20 A: Yes, he contacted Marianna; Marianna was at my house; we
21 were on speaker and we were both speaking with him.

22 Q: Okay. And at that time, did you answer any questions he
23 had for you?

24 A: The only question he had for me was were we shoplifting
25 and I told him no.

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BY THE COURT

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1 Q: Okay. So he never inquired about this statement or
2 anything else?

3 A: No.

4 Q: Okay. But you answered any questions he had?

5 A: Yes.

6 THE COURT: All right.

7 MS. LIVESAY: No further questions, Your Honor.

8 THE COURT: Can this witness now come down.

9 MR. HYMAN: Yes, sir.

10 THE COURT: You may come down. Thank you.

11 All right. Is there any further reply witnesses?

12 MS. LIVESAY: No further witnesses from the State, Your
13 Honor.

14 THE COURT: All right. That will conclude the taking of
15 all the testimony in the trial of this case.

16 BY THE COURT:

17 All right. Mr. Foreman, ladies and gentlemen, I'm gonna
18 let you go out just a few minutes. When we bring them back,
19 we're gonna have the charge on the law and we'll have
20 summation of Counsel. We'll let you go, I'll be calling you
21 back very shortly now. Thank you. And when you come back,
22 we're gonna have, it'll be about a -- my charge is about a
23 forty-five minute charge on the law. So just be prepared
24 please.

25 Thank you.

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1 (REPORTER'S NOTE: Jury exits courtroom. 3:20 P.M. The
2 following takes place outside the presence of the Jury.)

3 MOTIONS:

4 THE COURT: All right. I'll be glad to hear your motions
5 at this time.

6 MR. HEWITT: Yes, Your Honor, at this time, we would
7 renew all of our previous directed verdict motions.
8 Obviously, we're in a different posture. We have some
9 different evidence, but I think the same arguments that I made
10 previously are still valid. We incorporated them by
11 reference. I fully expect them to be denied, but would draw
12 your attention again to the State v. Lemire case, a Court of
13 Appeals case for 2013 that talks about directed verdict on
14 conspiracy. But again, I understand and respect your earlier
15 ruling. I just want to protect of the record as to that.

16 THE COURT: I understand that and I thank you for your
17 input.

18 Does the State care to reply?

19 MR. SPRATLIN: Your Honor, just very briefly. The
20 standard for directed verdict is that there is no competent
21 evidence in the record of which the Court, on which any
22 reasonable jury could find the Defendant guilty. Obviously,
23 in this case, there's substantial evidence in the record
24 showing the Defendant's guilt, both as a direct participant
25 and also as an accessory under the theory the hand of one is

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MOTIONS

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1 the hand of all. There has been sufficient evidence presented
2 that the Defendant and Codefendant went up to a group of
3 people and caused the death of one of them. Certainly, we
4 have produced evidence of malice that they bought the knife
5 beforehand and have also assaulted the -- or offered to
6 contribute or assist in an assault earlier that night showing
7 a evil part as required by malice to a certain extent. We
8 feel there is plenty of evidence in the record, Your Honor,
9 and would ask respectfully that you deny the record -- deny
10 the request for a directed verdict and I'd also incorporate my
11 earlier argument at the close of the State's case as a
12 response.

13 THE COURT: Well, there is evidence on both sides of the
14 issue, obviously, a plethora of evidence that would associate
15 the Defendant with guilt in the thing. There's also some
16 evidence that Brown was the principal or the only individual.
17 There's evidence contrive of that. In addition to that,
18 there's evidence certainly that under the hand of one is the
19 hand of all and there is sufficient evidence in my view for
20 the Jury's consideration as to each of the indictments. I
21 don't suggest that the evidence is or is not correct. That's
22 not for me to decide, but there's plenty of evidence on both
23 sides of the issue including evidence of self-defense, which
24 will be charged. But Counsel for the Defense, I would conclude
25 that given the totality of the testimony, that it's a question

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CHARGE TO JURY

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1 for the Jury and I'm glad it's their question instead of mine.

2 All right. By agreement of Counsel, I propose to go
3 ahead and charge the Jury prior to summation and that's
4 agreeable to the State and the Defendant as I understand it.
5 Understanding that after the charge, I will excuse the Jury to
6 hear any exceptions or additions.

7 Everybody understand that?

8 MS. LIVESAY: Yes, sir.

9 MR. HYMAN: Yes, Your Honor.

10 THE COURT: Okay. Given the fact that I'm down with a
11 cold, I'm going to let my Law Clerk read my instructions under
12 appropriate instructions to tell the Jury that this is my
13 charge and please accept it as my charge even though I'm gonna
14 let my associate read it for me under the circumstances.

15 Anybody disagree with that?

16 MR. HEWITT: No objection.

17 MR. HYMAN: No, Your Honor.

18 MS. LIVESAY: No, sir, Your Honor.

19 THE COURT: Bring the Jury in.

20 I will recharge again on the failure to testify or the
21 fact that he did not testify.

22 (REPORTER'S NOTE: Jury enters courtroom. 3:26 P.M.)

23 CHARGE TO JURY:

24 THE COURT: Mr. Foreman and ladies and gentlemen of the
25 Jury, you have now heard all of the testimony in this case and

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1 we are now going to have the charges on the law followed by
2 summation of counsel, at which time, I will give you the case
3 for your deliberation.

4 During last evening and during the lunch break, I have
5 prepared the issues with regards to the law in this case.
6 Remembering that you are the finders of the facts and you take
7 the facts as you find them to be and apply it to the law of
8 the case as you think appropriate. Remembering at all times
9 that you, and you alone, are the sole and only finders of the
10 facts.

11 Counsel, I am -- I have introduced my associate and Law
12 Clerk, John McLeod, here. I have asked him to read for me the
13 charges that I have prepared. Please accept his rendition as
14 coming from me. These are my charges and I'm having some
15 difficulty with a cough or bronchitis or whatever it is and he
16 has agreed to deliver this charge, but in every circumstance,
17 you must accept this charge as being my charge upon the law of
18 this case.

19 Now, ordinarily for years we charge the jury after
20 arguments and summation of counsel. And some years ago, a
21 juror stopped me and said, Judge, I wish you had told us what
22 the law was before I heard the arguments of Counsel; I believe
23 I could have understood what they were saying better had I
24 known what the law was with regard to the various issues. And
25 that made sense to me so with consent of counsel in this case,

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1 we're going to charge the law now. And after summation, I'll
2 be back personally with you with some concluding remarks and
3 at that time, I will prepare and explain to you the
4 appropriate verdict forms.

5 Mr. McLeod, will you please now read my rendition of the
6 charges.

7 LAW CLERK: The indictments charge the Defendant with
8 murder, two counts of assault and battery with intent to kill
9 and criminal conspiracy. I remind you that the fact that the
10 Defendant was arrested, charged and indicted in this case is
11 not evidence in this case and cannot be considered by you as
12 evidence of guilt in this case nor does it create any
13 presumption for inference of guilt. This document is simply
14 the formal written instrument, which contains the charges made
15 against the Defendant. It is the formal document by which
16 this case is brought into court.

17 The indictments in this case allege several different
18 offenses against the Defendant. The charges are indictment
19 number one, murder; indictment number two, assault and battery
20 with intent to kill as to Ryan Palmer; indictment number
21 three, assault and battery with intent to kill as to Robert
22 Penna; indictment number four, criminal conspiracy. Each
23 indictment charges a separate and distinct offense. You must
24 decide each indictment separately on the evidence and the law
25 applicable to it uninfluenced by your decision as to any other

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1 indictment. The Defendant may be convicted or acquitted on
2 any or all of the offenses charged. You will be asked to
3 write a separate verdict of guilty or not guilty for each
4 indictment. The Defendant has pled not guilty to this
5 indictment and that plea puts the burden on the State to prove
6 the Defendant guilty.

7 A person charged with committing a criminal offense in
8 South Carolina is never required to prove himself innocent. I
9 charge you that it is an important rule of the law that the
10 Defendant, in a criminal trial, no matter what the seriousness
11 of the charge may be, will always be presumed to be innocent
12 of the crime for which the indictment was issued unless guilt
13 has been proven by evidence satisfying you of that guilt
14 beyond a reasonable doubt.

15 This presumption of innocence does not end when you begin
16 your deliberations, but it accompanies the Defendant
17 throughout the trial until you reach a verdict of guilt based
18 on evidence satisfying you of that guilt beyond a reasonable
19 doubt. The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the Defendant
21 which remains with the Defendant until it has been stripped
22 from the Defendant by evidence satisfying you of the
23 Defendant's guilt beyond a reasonable doubt. The presumption
24 of innocence is not mere legal theory. It is not just a legal
25 phrase. It is a substantial right to which every Defendant is

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CHARGE TO JURY

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1 entitled unless you the Jury are satisfied from the evidence
2 of the Defendant's guilty beyond a reasonable doubt.

3 The State has the burden of proving the Defendant guilty
4 beyond a reasonable doubt. Some of you may have served in
5 jurors in civil cases where you were told that it is only
6 necessary to prove that a fact is more likely true than not
7 true, such as by the greater weight or preponderance of the
8 evidence. In criminal cases, the State's proof must be more
9 powerful than that. It must be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the Defendant's guilty. There are very
12 few things in this world that we know with absolute certainty
13 and in criminal cases, the law does not require proof that
14 overcomes every possible doubt. If based on your
15 consideration of the evidence, you are firmly convinced that
16 the Defendant is guilty of the crime charged you must find the
17 Defendant guilty. If on the other hand, you think there is a
18 real possibility that the Defendant is not guilty, you must
19 give the Defendant the benefit of the doubt and find him not
20 guilty.

21 I remind you that during this trial, you and I have
22 certain duties to perform. As the Trial Judge, it is my
23 responsibility to preside over the trial of this case and I
24 also have the duty to rule on the admissibility of the
25 evidence offered during this trial.

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1 You are to consider only the competent evidence before
2 you. If there was any testimony ordered stricken from the
3 record in this case during this trial, you must disregard that
4 testimony. You are to consider only the testimony which has
5 been presented from this witness stand, any exhibits which
6 have been made a part of the record in this case and any
7 stipulations of counsel.

8 I have the additional duty to charge you the law
9 applicable to this case. As the Presiding Judge, I am the
10 sole judge of the law of this case and it is your duty as
11 jurors to accept and apply the law as I now state it to you.
12 If you already have any idea as to what the law is or what the
13 law ought to be and it does not agree with what I now tell you
14 the law is, you must abandon this idea because you are sworn
15 to accept the law and apply the law exactly as I state it to
16 you.

17 In every case tried in this Court before a jury, the jury
18 becomes the sole and exclusive judge of the facts in a case.
19 A Trial Judge cannot intimate, state, comment on or make any
20 statement to a Trial Jury about the facts in a case. Since
21 you the jury are the sole judge of the facts in this case, you
22 are not to infer from what I have said during the progress of
23 this trial in ruling upon the admissibility of evidence or
24 otherwise or anything that I say now during the course of this
25 instruction to you that I have any opinion about the facts in

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1 this case. The law does not allow me to have an opinion about
2 the facts in this case. This is a matter solely for you, the
3 Jury, to determine.

4 As jurors, it is your duty to determine the effect,
5 value, weight and truth of the evidence presented during this
6 trial. There are two types of evidence which are generally
7 presented during a trial, direct evidence and circumstantial
8 evidence. Direct evidence is the testimony of a person who
9 claims to have actual knowledge of a fact, such as an
10 eyewitness. It is evidence which immediately establishes the
11 main fact to be proved. Circumstantial evidence is proof of a
12 chain of facts and circumstances indicating the existence of a
13 fact. It is evidence which immediately establishes collateral
14 facts from which the main fact may be inferred.
15 Circumstantial evidence is based on inference and not on
16 personal knowledge or observation. The law makes absolutely
17 no distinction between the weight or value to be given to
18 either direct or circumstantial evidence, nor is a greater
19 degree of certainty required of circumstantial evidence than
20 of direct evidence. You should weigh all of the evidence in
21 this case. After weighing all the evidence, if you are not
22 convinced of the guilt of the Defendant beyond a reasonable
23 doubt, you must find the Defendant not guilty.

24 Necessarily, you must determine the credibility of
25 witnesses who have testified in this case. Credibility simply

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1 means believability. It becomes your duty as jurors to
2 analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth. In determining the
4 believability of witnesses who have testified in this case,
5 you may believe one witness over several witnesses or several
6 witnesses over one witness. You may believe a part of the
7 testimony of a witness and reject the remaining part of the
8 testimony of that same witness. You may believe the testimony
9 of a witness in its entirety or reject the testimony of a
10 witness in its entirety. You may consider whether any witness
11 has exhibited to you any interest, bias, prejudice, or other
12 motive in this case. You may also consider the appearance and
13 manner of a witness while on the witness stand.

14 You as jurors are the sole judges of the credibility of
15 the investigation by law enforcement and the weight that the
16 investigation deserves. You should carefully scrutinize all
17 the testimony regarding the investigation by law enforcement
18 and every matter in evidence which goes to the credibility of
19 the investigation. Consider each step taken by law
20 enforcement in their investigation and each step that was not
21 taken. Consider the tactics that law enforcement chose to
22 employ in this case and tactics that they chose not to employ.
23 Consider any bias, prejudice, or motive that may have
24 influenced the investigation in this case. Consider all the
25 actions and inactions that occurred in the investigation of

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1 this case. After making your own judgment, you will give the
2 investigation in this case such credibility, if any, as you
3 may think it deserves.

4 The rules of evidence ordinarily do not permit witnesses
5 to testify to opinions or conclusions. An exception to this
6 rule exists for witnesses we call expert witnesses. A witness
7 who by education and experience has become an expert in some
8 art, science, profession or calling, may state an opinion as
9 to relevant and material matter in which the witness claims to
10 be an expert and they also state reasons for the opinion. You
11 should consider any expert opinion received in evidence in
12 this case and like any other evidence, give it the weight you
13 think it deserves. If you decide that the opinion of an
14 expert witness is not based on sufficient education and
15 experience or if you conclude that the reasons given in
16 support of the opinion are not sound or that the opinion is
17 outweighed by other evidence, you may disregard the opinion
18 entirely. An expert witness' testimony is to be given no
19 greater weight than that of any other witness simply because
20 the witness is an expert. Further, you are not required to
21 accept an expert's opinion even though it is not contradicted.

22 I instruct you and emphasize that the fact that the
23 Defendant did not testify is not a factor to be considered by
24 you in any way in your deliberation and in your consideration
25 on the question of the guilt or the innocence of the

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

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

13 If a crime that's committed by two or more people, who
14 are acting together in committing a crime, the act of one is
15 the act of all. A person who joins with another to commit an
16 unlawful act is criminally responsible for everything done by
17 the other person, which happens as a probable or natural
18 consequence of the acts done in carrying out the common plan
19 and purpose. For example, two people can be guilty of killing
20 another person when only one of the two had a gun. There was
21 only one bullet and only one of the two fired the shot that
22 caused the death. If two or more people are together, acting
23 together, assisting each other in committing the offense, the
24 act of one is the act of all or as it is sometimes stated, the
25 hand of one is the hand of all.

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1 Prior knowledge that a crime is going to be committed
2 without more is not sufficient to make a person guilty of that
3 crime. Mere knowledge that another person is going to commit
4 a crime, even if the Defendant is present when the crime is
5 committed, is not sufficient to convict the Defendant as a
6 principal. Guilt as a principal is shown by actual or
7 constructive presence at the scene as a result of prior
8 arrangement. Therefore a finding of a prior arranged plan or
9 common scheme is necessary for a finding of guilt as a
10 principal. The State must prove beyond a reasonable doubt by
11 competent evidence the theory of the hand of one is the hand
12 of all. A principal in a crime is one who either actually
13 commits the crime or who is present aiding, abetting, or
14 assisting in committing the crime. When a person doesn't act
15 in the presence of and with the assistance of another, the act
16 is done by both. Where two or more acting with a common plan
17 or intent are present at the commission of a crime, it does
18 not matter who actually commits the crime. All are guilty.
19 The hand of one is the hand of all. Present at the commission
20 of a crime means to be sufficiently near to aid and abet and
21 assist in the commission of the crime. However, mere presence
22 at the scene of a crime is not sufficient to convict one as a
23 principal on the theory of aiding and abetting.

24 Intent is also a necessary element. For there must have
25 been a common design or intent to commit the crime and the

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1 crime must have been committed pursuant thereto with the
2 person aiding and abetting by some overt act. Intent means
3 intending the result which actually occurs, not accidentally
4 or involuntarily, involuntary. Intent may be shown by acts
5 and conduct of the Defendant and other circumstances from
6 which you may naturally and reasonably infer intent. The
7 State must prove these elements beyond a reasonable doubt.

8 In order to establish criminal liability, criminal intent
9 is required. For example, the mental state required to be
10 proven by the State for a particular crime might be purpose,
11 intent, knowledge, recklessness, or criminal negligence.
12 Criminal intent must be proven by the State beyond a
13 reasonable doubt. Criminal intent is always a matter that
14 must be determined by the Jury from the circumstances
15 surrounding the situation. There is no way to prove intent to
16 a mathematical certainty. There is no way medical science can
17 dissect a person's brain and determine what the person had in
18 mind. So the law says that criminal intent may be inferred
19 from the circumstances shown to have existed. This is how
20 you make a determination of whether or not the element
21 requiring intent was present. It is not necessary to
22 establish intent by direct and positive evidence, but intent
23 may be established by inference in the same way as any other
24 fact by taking into consideration the acts of the parties and
25 all the facts and circumstances of the case.

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1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the Defendant
3 intended to do based on the circumstances shown to have
4 existed. Criminal intent can arise from action or a failure
5 to act. It may arise from negligence, recklessness or an
6 indifference to duty or to consequences that is considered by
7 the law to be the equivalent of criminal intent.

8 The Defendant is charged with murder. The State must
9 prove beyond a reasonable doubt that the Defendant killed
10 another person with malice aforethought. Malice is hatred,
11 ill will or hostility towards another person. It is the
12 intentional doing of a wrongful act without just cause or
13 excuse and with an intent to inflict an injury or under
14 circumstances that the law will infer, an evil intent. Malice
15 aforethought does not require that malice exists for any
16 particular time before the act is committed, but malice must
17 exist in the mind of the Defendant just before and at the time
18 of the act -- at the time the act is committed. Therefore,
19 there must be a combination of the previous evil intent and
20 the act.

21 Malice aforethought may be expressed or inferred. These
22 terms, expressed and inferred, do not mean different kinds of
23 malice, but merely the manner in which malice may be shown to
24 exist. That is either by direct evidence or by inference from
25 the facts and circumstances which are proved. Express malice

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1 is shown when a person speaks words which express hatred or
2 ill will for another person or when the person prepared
3 beforehand to do the act, which was later accomplished. For
4 example, lying in wait for a person or any other acts of
5 preparation going to show that the deed was within the
6 Defendant's mind would be express malice. Malice may be
7 inferred from conduct showing a total disregard for human
8 life.

9 If you find that the State has failed to prove beyond a
10 reasonable doubt that the Defendant committed murder, you may
11 consider whether the State has proved beyond a reasonable
12 doubt that the Defendant committed voluntary manslaughter.
13 To prove voluntary manslaughter, the State must prove beyond a
14 reasonable doubt that the Defendant took the life of another
15 in the sudden heat of passion based on sufficient legal
16 provocation. Both heat of passion and sufficient legal
17 provocation must be present at the time of the killing to
18 constitute voluntary manslaughter. Sudden heat of passion may
19 for a time affect a person's self-control and temporarily
20 disturb a person's reason. The sudden heat of passion must be
21 the type that would make an ordinary person unable to coolly
22 reflect on his actions and would produce an uncontrollable
23 impulse to do violence.

24 Sufficient legal provocation must be the type that would
25 make a person of ordinary reason and caution become enraged

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1 and lose, and to lose control temporarily. The provocation
2 needed for voluntary manslaughter must come from some act of
3 or related to the victim. Words alone, however, words alone,
4 however vulgar or insulting, are not enough to be legal
5 provocation. Where death is caused by the use of a deadly
6 weapon, the words must be accompanied by some overt act, some
7 over threatening act, which could have produced the heat of
8 passion. The exercise of a legal right, no matter how
9 offensive it is to another, is never sufficient legal
10 provocation for voluntary manslaughter. If the heat of
11 passion has cooled or if there was enough time between the
12 provocation, if any, and the killing for the passion of a
13 reasonable person to cool, the killing would not be voluntary
14 manslaughter. In deciding whether a reasonable person would
15 have had enough time to cool off, you should consider all the
16 circumstances surrounding the killing. You may consider the
17 nature of the provocation, if any, the Defendant's mental and
18 physical state and the circumstances and relationships between
19 the parties.

20 The Defendant has been charged with assault and battery
21 with intent to kill. In order to prove assault and battery
22 with intent to kill, the State must prove beyond a reasonable
23 doubt that the Defendant committed an unlawful act of a
24 violent nature to the person of another with malice
25 aforethought. An assault occurs when a person unlawfully

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1 attempts or offers to commit a violent injury upon another
2 person and had the present ability to complete the attempted
3 injury. An assault is the intentional creation of a
4 reasonable fear of immediate bodily harm. It is not necessary
5 that the attempted injury or harm actually take place. For
6 example, if I walk up to you and when we are within arm's
7 reach, I draw back to hit you; that is an assault.

8 A battery is the unlawful touching of another person by a
9 person who has committed the assault. An unlawful touching
10 can be caused by a part of the accused body or by any object
11 the accused puts in motion. A battery is the completion of
12 the assault by using or applying force to another person,
13 however slight, in a rude, angry, or resentful manner without
14 legal justification for doing so. Using my earlier example,
15 if I carry through the assault by hitting you, that is a
16 battery.

17 Malice is hatred, ill will or hostility towards another
18 person. It is the intentional doing of a wrongful act without
19 just cause or excuse and with an intent to inflict an injury
20 or under circumstances that the law will infer, an evil
21 intent. Malice aforethought does not require that malice
22 exists for any particular time before the act is committed,
23 but malice must exist in the mind of the Defendant just before
24 and at the time of the act is committed. Therefore, there
25 must be a combination of the previous evil intent and the act.

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1 Malice aforethought may be expressed or inferred. These
2 terms, expressed and inferred, do not mean different kinds of
3 malice, but merely the manner in which malice may be shown to
4 exist. That is either by direct evidence or by inference from
5 the facts and circumstances which are proved. Express malice
6 is shown when a person speaks words, which express hatred or
7 ill will for another or when the person prepared beforehand to
8 do the act, which was later accomplished. For example, lying
9 in wait for a person or any other acts of preparation going to
10 show that the deed was within the Defendant's mind would be
11 express malice. Malice may be inferred from conduct showing a
12 total disregard for human life. If facts are proved beyond a
13 reasonable doubt sufficient to raise an inference of malice to
14 your satisfaction, this inference would simply be an
15 evidentiary fact to be considered by you along with the other
16 evidence in the case and you may give it the weight you decide
17 it should receive.

18 A specific intent to kill is not an element of assault
19 and battery with intent to kill, but there must be a general
20 intent to commit serious bodily injury. Intent means
21 intending the result which actually occurs, not accidentally
22 or involuntary. Intent may be shown by acts and conduct of
23 the Defendant and other circumstances from which you may
24 naturally and reasonably infer intent. Evidence of the
25 character of the assault, the character of the instrument

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1 used, the manner in which it was used, the purpose to be
2 accomplished and the resulting wounds or injuries, may be
3 considered in determining the intent with which the assault
4 was committed. Intent may be inferred when it is demonstrated
5 that the Defendant voluntarily and willfully commits an act,
6 the natural tendency of which is to destroy another's life.

7 The Defendant is charged with conspiracy. The State must
8 prove beyond a reasonable doubt that the Defendant combined
9 with one or more persons for the purpose of committing an
10 unlawful act, or committing a lawful act by unlawful means.
11 There must be a mutual understanding, agreement or common
12 intention and plan. Mere passive knowledge of or consent to
13 the criminal conduct of another is not enough to make a person
14 a conspirator. There must be guilty knowledge and
15 participation. Similarly, the mere fact that the Defendant
16 may have associated with another person or met with another
17 person and discussed common aims and interests does not
18 necessarily establish proof of the existence of a conspiracy
19 or that the Defendant was involved in a conspiracy. On the
20 other hand, it is not necessary that the agreement be a formal
21 one, that it be in writing, that the persons hold a meeting
22 and expressly state the terms of the common plan or that the
23 agreement be stated in words between them. The agreement of a
24 criminal conspiracy may come into being through an implied
25 mutual understanding. The willful, intentional and knowing

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1 adoption by two or more persons of a common plan is
2 sufficient. No overt acts need to be shown to establish a
3 conspiracy. A conspiracy may be shown by circumstantial
4 evidence and the conduct of the parties. In order to convict
5 the Defendant of conspiracy, the State must prove beyond a
6 reasonable doubt not only that the Defendant knew of the
7 unlawful conduct, but that the Defendant agreed to combine
8 with the other person for the purpose of accomplishing the
9 unlawful conduct.

10 The Defendant has raised the defense of self-defense.
11 Self-defense is a complete defense and if it is established,
12 you must find the Defendant not guilty. The State has the
13 burden of disproving self-defense by proof beyond a reasonable
14 doubt. If you have a reasonable doubt of the Defendant's
15 guilt after considering all the evidence including the
16 evidence of self-defense, then you must find the Defendant not
17 guilty. On the other hand, if you have no reasonable doubt of
18 the Defendant's guilt after considering all the evidence,
19 including the evidence of self-defense, then you must find the
20 Defendant guilty.

21 The following elements are required to establish self-
22 defense.. First, the Defendant must be without fault in
23 bringing on the difficulty. If the Defendant's conduct was
24 the type which was reasonably calculated to and did provoke a
25 deadly assault, the Defendant would be at fault in bringing on

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1 the difficulty and would not be entitled to an acquittal based
2 on self-defense. Self-defense is not available to a person
3 who uses language which is so contemptuous that a reasonable
4 person would expect it to bring on a physical encounter in
5 which did actually contribute to the physical encounter. If
6 the Defendant voluntarily participated in mutual combat for
7 purposes other than protection, the killing of the victim
8 would not be self-defense. This is true even if during the
9 combat the Defendant feared death or serious bodily injury.
10 However, if before the killing is committed, the Defendant
11 withdraws and tried in good faith to avoid further conflict
12 and either by word or act makes that fact known to the victim,
13 he would be without fault in bringing on the difficulty. For
14 mutual combat, there must be a mutual intent and willingness
15 to fight. This intent may be shown by the acts and conduct of
16 the parties and the circumstances surrounding the combat. In
17 addition, it must be shown that both parties were armed with a
18 deadly weapon.

19 The second element of self-defense is that the Defendant
20 was actually in imminent danger of death or serious bodily
21 injury or that the Defendant actually believed he was in
22 imminent danger of death or serious bodily injury. If the
23 Defendant was actually in imminent danger, it must be shown
24 that the circumstances would have warranted a person of
25 ordinary firmness and courage to strike the fatal blow to

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1 prevent death or serious bodily injury. If the Defendant
2 believed he was in imminent danger of death or serious bodily
3 injury, it must be shown that a reasonable, prudent person of
4 ordinary firmness and courage would've had the same belief.
5 In deciding whether the Defendant actually was or believed he
6 was in imminent danger of death or serious bodily injury, you
7 should consider all the facts and circumstances surrounding
8 the crime, including the physical condition and
9 characteristics of the Defendant and the victim. The
10 Defendant does not have to show that he was actually in
11 danger. It is enough if the Defendant believed he was in
12 imminent danger and a reasonably prudent person of ordinary
13 firmness and courage would have had the same belief. The
14 Defendant has the right to act on appearances, even though the
15 Defendant's beliefs may have been mistaken. It is for you to
16 decide whether the Defendant's fear of immediate danger of
17 death or serious bodily injury was reasonable and would have
18 been felt by an ordinary person in the same situation.

19 Words accompanied by possible acts may, depending on the
20 circumstances, establish self-defense. The relative sizes,
21 ages and weights of the Defendant and the victim may be
22 considered in deciding the apparent or actual need for force
23 in self-defense and the amount of force needed. Threats made
24 by the victim may be considered in determining whether the
25 Defendant was or believed he was in imminent danger.

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1 The final element of self-defense is that the Defendant
2 had no other probable way to avoid the danger of death or
3 serious bodily injury than to act as the Defendant did in this
4 particular instance. A person cannot be required to make an
5 exact calculation as to the degree or amount of force, which
6 may be needed to avoid death or serious bodily harm.
7 Therefore, in self-defense, the Defendant has the right to use
8 the force needed to avoid death or serious bodily harm. The
9 force used in self-defense does not have to be limited to the
10 degree or amount of force used by the victim. The Defendant
11 has the right to use so much force as appeared to be necessary
12 for complete self-protection and which a person of ordinary
13 reason and firmness would have believed to be needed to
14 prevent death or serious bodily harm. If the Defendant is
15 justified in defending himself or others and in, and in the
16 use of a deadly -- with the use of a deadly weapon, then the
17 Defendant is also justified in a continuing use of that weapon
18 until it is apparent that the danger of death or serious
19 bodily injury has completely ended.

20 There are two possible verdicts which you may find for
21 each indicted charge.

22 THE COURT: I'll explain that to them.

23 LAW CLERK: Okay. Mr. Foreperson, ladies and gentlemen
24 of the Jury, as you retire to begin your deliberation, I wish
25 to express the hope that each of you will be mindful of the

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1 importance of your responsibility. You're not called upon to
2 serve as jurors very often and the proper performance of the
3 duty requires each of you to reach the height of freeing your
4 mind of all improper influences. You and I are acting for the
5 community and that is why we must see to it that the trial is
6 fair and the verdict is just. You have observed that the
7 Presiding Officer of this Court is always addressed as Your
8 Honor. The reason is that this Court is entrusted with the
9 honor of this community, the honor of this state and the honor
10 of this country and in seeking that every case tried here
11 receives fair and impartial justice. Now you, the Jury, take
12 into your care the preservation of the honor of this ,
13 community, the honor of this country and the honor of this
14 state.

15 Now, do not get the idea that I am trying to intimate to
16 you how I might think you should decide this case. As I have
17 already told you, under the laws of the State of South
18 Carolina, you, the Jury, are the sole judge of all questions
19 of fact. It would be highly improper for me to influence you
20 in the performance of that duty. So I'm not trying to tell
21 you what verdict you should not find, but as the Presiding
22 Officer of this Court, I am vitally concerned that whatever
23 verdict you find will be the result of you going into that
24 jury room and confining your consideration to the evidence and
25 the law that you have heard in this courtroom, weighing it

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1 fairly and impartially as I have every confidence that you
2 will.

3 Everyone is entitled to justice in this case, both the
4 State and the Defendant. All are entitled to justice, nothing
5 more, nothing less. You owe no support or sympathy to anyone.
6 The Court is of the confirmed opinion that whatever verdict
7 you will reach will represent truth and justice for all
8 parties involved. Remember your verdict must be unanimous. I
9 will now explain the verdict forms and possible verdicts.

10 THE COURT: Thank you, Mr. McLeod.

11 Mr. Foreman, ladies and gentlemen, please accept Mr.
12 McLeod's rendition as being my charge upon the law on the
13 issues in this case, remembering at all times, that you and
14 you alone are the sole and only finders of the facts in this
15 case, the sole and only judges of the credibility and
16 believability.

17 I'm gonna ask that you take a short break. It was a
18 right lengthy charge. When you return we'll have final
19 summation of distinguished Counsel.

20 At the conclusion, Mr. Foreman, I will have prepared for
21 you the verdict forms as to each of the indictments and I will
22 go over those verdict forms with you at that time.

23 I'm gonna ask you to go to the jury room and relax just a
24 few minutes and come back and we'll have summation and I'll be
25 giving you the case for your deliberation.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom. 4:02 P.M.)

2 BY THE COURT:

3 THE COURT: You may be seated.

4 I apologize for the length of the charge but, given the
5 issues in the case, it was necessary.

6 Are there any exceptions or additions to the charge; what
7 says the State?

8 MS. LIVESAY: No, sir.

9 THE COURT: What says the Defense?

10 MR. HEWITT: Your Honor, we would request that you
11 additionally charge the circumstantial evidence, the charge
12 that's recognized in State v. Logan, it excludes ---

13 THE COURT: I've already charged circumstantial evidence.

14 MR. HEWITT: It has -- it excludes all other
15 possibilities except a reasonable hypothesis of guilt. I will
16 -- being very candid with Your Honor, the Supreme Court has
17 held that it's a discretionary call by you, it's subsumed
18 within the reasonable doubt charge but it's not error for you
19 to charge it if you want to.

20 THE COURT: No, I respectfully decline to do that. I've
21 charged the reasonable doubt on at least five different
22 occasions in my charge and I have given you the circumstantial
23 evidence that has been previously approved by the Courts.
24 So other than that, I assume that the charge is okay?

25 MR. HEWITT: That's correct, Your Honor. We would

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BY THE COURT

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1 request a five-minute recess.

2 THE COURT: Sure.

3 MR. HEWITT: Okay.

4 THE COURT: Take a short recess and get yourself, now as
5 I understand it, you will open for the Defense and it will be
6 followed by the State's conclusion; is that correct?

7 MR. HYMAN: Yes, Your Honor.

8 THE COURT: All right. Take a short break if you need
9 to. I understand that charge was somewhat lengthy. I'm
10 hoping the summation will not be equally as long.

11 (RECESS - 4:09 P.M.)

12 *****OFF THE RECORD*****

13 (On the Record - 4:21 P.M.)

14 THE COURT: All right. All person's present?

15 MS. LIVESAY: Yes.

16 THE COURT: I can't see the State with these giants in
17 front of me.

18 I've received the following communication.

19 LAW CLERK: Your Honor, if we start deliberations tonight
20 and don't complete them, can we resume tomorrow? Thank you.

21 THE COURT: The answer of course is yes. I'm gonna tell
22 them, I'll tell them when they get out here.

23 Are we ready to start?

24 MR. HYMAN: Yes, Your Honor.

25 THE COURT: Bring the Jury in.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury enters courtroom. 4:22 P.M.)

2 THE COURT: Mr. Foreman, ladies and gentlemen, as is
3 proper, I have received your communication and I thank you for
4 that. For scheduling purposes, it seems that we'll have
5 summation for both sides ending somewhat probably around
6 quarter to 5:00 or 5:00; I'm not holding anybody to that. At
7 that time, I'll give you the case for your deliberation. You
8 may deliberate, Mr. Foreman, as long or as short a time
9 tonight as you and your Jury deem appropriate. At any time,
10 when you conclude that in the interest of your job and duty
11 that you would like to go home and come back in the morning,
12 just let me know. That is perfectly acceptable. It is all --
13 also acceptable for you to stay tonight as long as you wish.
14 I leave it to you and your jury to make that determination.
15 Let there be no question about it, that's your call. Okay.

16 MR. FOREMAN: Thank you, sir.

17 THE COURT: All right. Now please make this a part of
18 the record.

19 COURT'S EXHIBIT NUMBER ONE

20 MARKED FOR IDENTIFICATION

21 THE COURT: All right. We'll conclude now in accordance
22 with our rules by Defense Counsel making the first summation
23 and the State making the following summation, after which, I
24 will be discussing with you the forms for the verdict.

25 You may proceed, Mr. Hyman.

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CLOSING BY HYMAN

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1 CLOSING BY MR. HYMAN:

2 MR. HYMAN: Thank you, Your Honor. May it please the
3 Court.

4 I've watched y'all throughout the trial and I appreciate
5 your patience and I appreciate your attentiveness. I've been
6 an attorney on quite a few jury cases sometimes you get cases
7 where jurors are daydreaming and doing things like that and
8 that was obviously not the case. Very, very seldom did I ever
9 see any of you looking at anything other than what was coming
10 from the witness stand and I really appreciate that.

11 I want you to remember something. I want you to remember
12 the number six and the number two because that's what you
13 heard on the witness stand. You heard six -- one, two, three,
14 four, five, six -- and you heard two. From the State's case
15 from the opening till the close, you heard from their
16 witnesses there were six people fighting two people. You
17 heard from the witnesses from the State that they threw the
18 first punch. They threw the first punch.

19 Now, I want to go through some of the State's witnesses
20 because the State's case is absolutely riddled with
21 inconsistencies and that's something you need to take into
22 your deliberations. You need to think about those
23 inconsistencies. Think about Ashley McNeill. Think about
24 Marianna Mays. Marianna Mays was the first person to testify.
25 If you'll remember what she said, she was with my client that

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CLOSING BY HYMAN

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1 night. She was with him when they went to the Red Hot Shoppe.
2 You saw her on video going to the Red Hot Shoppe, looked like
3 they were having a good time, a good time. Her testimony was
4 that they went to the nightclub to have a good time. She said
5 that when she saw him, he was dancing having the time of his
6 life. She said at no point during the entire time that she
7 saw him did she say he looked mean, he looked like he was
8 arguing, looked ready to beat somebody up or anything like
9 that. Now you also remember their testimony after this, the
10 alteration, was that he came to her car. She specifically
11 said I looked him up and down; I got a good look at him. And
12 if you'll remember I said did you see any blood on him. She
13 said no. I said, did you see any on her hand, on his hands;
14 no. Did you see any on that white shirt that he was wearing;
15 no. Did you see any on his shorts that I believe everybody
16 will agree were yellow; no, I didn't see any blood on them. I
17 also asked her, did you see him with a knife; no. Did he have
18 a knife in his hand; no. Did you see a knife out; no. You
19 also remember Marianna testified that minutes before this
20 occurred she called him and said, hey, we want to go and his
21 response was you guys come back in, it's popping in here. You
22 got to ask yourself, does that sound like somebody that's
23 trying to premeditate or to, to come up with some conspiracy
24 to kill somebody. It's popping in here; we're having a great
25 time and y'all need to come back in here. That was moments

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1 before this fight began, moments. You've got to ask yourself,
2 why would he say that? It was her testimony; she's the
3 state's witness. She said he said come on back in; come on
4 back in, we're having a good time; it's popping in here.

5 Look at the State's next witness, Ashley McNeil, riddled
6 with inconsistencies. First she said she's eighteen years old
7 and she's there at 2 o'clock in the morning but she's not
8 drinking at all, not drinking one bit. That was her
9 testimony. She also said that she saw my client with a silver
10 knife, silver knife. Now, through the State's entire case,
11 this is the only knife that they recovered and they keep
12 bringing this knife up. Either one of these look silver; is
13 there any part of these that look silver? She said that there
14 was a silver blade. I submit that her imagination has gotten
15 a little away from her. If you'll listen to what she said,
16 she also said after that we went and told a bouncer. She said
17 she went and told a bouncer actually and then when I cross
18 examined her on it, she said, well, we went and told a
19 bouncer. Then she said well, I, my friend told a bouncer and
20 I said well where's your friend. Oh, she's in Israel; she's
21 not here. I put the bouncer up and what does he say? He
22 says, well I did notice those guys. We asked him, did you
23 notice if any, anybody had knife; no, I didn't see any knife
24 on any of those guys. Did anybody tell you that those guys
25 had a knife; no. If you'll remember, I asked him specifically

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1 what would happen if somebody told you they had a knife; he
2 said we would take care of it immediately. Immediately. But
3 what did he say, he said he saw a fight starting; he said he
4 saw it happen; he said my client and his Codefendant were both
5 involved with it and what was his word; it was a brawl. I
6 said, well how many people were in it? He said it rolled on
7 to the floor, six. I said were there more than six; he said
8 maybe eight. That was the bouncer's testimony. And if you'll
9 remember what else did I ask him? I said is it your training
10 to pull people off that are being the aggressors; he said
11 yeah. He said now we try to break it up, but -- every once in
12 a while if somebody's being too aggressive and we can't do
13 anything with them, we have to grab them and take them out.
14 He said we have to get physical with them. I asked him
15 specifically, did you have to get physical with anybody and
16 what was his response; yes, I did. And I asked him
17 specifically, did you get physical with my client and he said
18 no. I said did you get physical with the other guy that had
19 the wife-beater on; no, it wasn't either one of them. I said,
20 well, why did you get physical with the guy; he said well, he
21 blindsided somebody so I grabbed him and had to throw him on
22 the ground. I submit to you, if you'll remember Michael
23 Parker took the stand and said he got slammed on the ground by
24 a bouncer. He said that. These are all the State's
25 witnesses; these aren't mine. This isn't some fabrication or

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1 something that they'll say that I tried to weave. These are
2 their witnesses, eyewitnesses.

3 If you looked after that, you've got Joseph Beeson.
4 Joseph Beeson was the gentleman that worked at the knife
5 store, the Red Hot Shoppe. What did he say; he said yeah,
6 they came in. Yeah, that's them on the video; yeah, that's
7 them; yeah, they go over here. He said that yes, they came
8 in, said that they acted like they were having a good time
9 joking around. He noticed the girls walked in and took their
10 shoes off, looked around for stuff, I don't know if I'd have
11 taken my shoes off in there, but anyway, still walked around
12 in there and looked like they were having a good time. You
13 noticed also they didn't go in there just to buy a knife.
14 There was a video of the other gentleman, Blakely Brown,
15 buying something else. He didn't say -- there was no
16 testimony whatsoever that they just went in there to buy a
17 knife and you heard Joseph Beeson say I get people coming in
18 to buy knives all the time. He said we got kinda cheap
19 knives; people come in all the time to buy them. People want
20 souvenirs from Myrtle Beach. That's his testimony. I asked
21 him straightforward, did you think those guys were gonna go do
22 anything, no. He said, no, I don't believe so. He said they
23 acted like they were joking and having a good time and the
24 video showed that. The video absolutely showed that they were
25 joking around and having a good time.

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1 Now, I want you to think about the next person who came
2 out. That was Ryan Palmer. Ryan Palmer came out here. He
3 first said when I asked him, I said Ryan, did you have
4 anything to drink that night? Well, I had a little bit before
5 I got there. I said Ryan, did you have anything to drink when
6 you got there; yeah, I had a little bit. I asked him
7 specifically, do you know what your BAC level, that's your
8 Blood Alcohol Concentration Level. I asked him, I said, do
9 you know what it was? Yeah, it was a .03. I said well, the
10 medical records show it was an 11, an 11. The legal limit in
11 South Carolina is .08; he was intoxicated. He was grossly
12 intoxicated but yet he tried to feed you a story about what
13 happened. I submit to you that the story was rebutted by
14 Carmen Mureddu when she came up on the stand. What did he
15 say? He said, well, I shouldered a guy or some type of
16 shoulder type thing and it was the taller guy and later on I
17 told my friends, if you'll remember he said this, I told my
18 buddies watch out for this, watch out. All of his buddies
19 were aware of this. Next thing he testifies to is that my
20 client may or may not have tried to push Michael Parker; I
21 didn't get all that out. He said, well maybe he did; maybe he
22 didn't. Carmen Mureddu says that he absolutely had never said
23 that before, that he had never said that my client tried to
24 push anyone, anybody. In fact, in his prior statement, he
25 said that D.J. Houghtaling had pushed my client and that's

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1 when Ryan Palmer decided to swing at him. Now, Ryan also
2 testifies that well, I was trying to swing at him, but I
3 wasn't trying to blindside him; he was looking this way, but
4 he was looking at me too. That was his testimony. And said
5 he tripped somehow and only hit him at about twenty percent.
6 But if you notice when I said were you trying to blindside him
7 and then he said, well... So, did you mean to hit him twenty
8 percent? What did he say? No. Ryan Palmer, through his own
9 testimony, threw the first punch; through his own testimony
10 threw the first punch. Absolutely through his own testimony,
11 the very first punch of this entire altercation was thrown by
12 Ryan Palmer.

13 Look at Michael Parker. Michael Parker, according to
14 Carmen Mureddu had never said that he had been pushed, never.
15 In fact, Ms. Mureddu, who again I say is the State's
16 investigator. Ms. Mureddu says that in fact when they walk
17 up that Michael Parker shoves Brown on the shoulder and says,
18 what's your problem; what's your problem; you got a problem?
19 That's a little different than supposedly getting pushed. Now
20 according to his statement, he was just saying whoa, whoa, we
21 don't want to do this; we don't want to do this. Again, the
22 investigator stated he has never said that, never said that,
23 never.

24 Next, you have Rob Penna. Rob Penna gets up there and
25 says he does not see a knife in my client's hand, but he knows

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1 that my client stabbed him. When I asked him, I said, well,
2 how do you know that? He said you'll just have to take my
3 word for it. He says he didn't see it and in fact later
4 testified that he did not even know he was stabbed until the
5 whole altercation was over and somebody said, hey, you're
6 bleeding from your back. Never saw a knife in my client's
7 hand. Michael Parker never saw a knife in my client's hand;
8 never saw him swinging it. Ryan Palmer says he saw the knife,
9 but it was not in my client's hand. Ryan Palmer says I know
10 exactly who cut me, absolutely I know who it was; it was
11 Brown. I saw him. That was his testimony. I understand that
12 Rob Penna wants vengeance, I understand that. Carmen Mureddu
13 said that he, he has never told her one time, not one time,
14 that my client stabbed him or that my client stabbed D.J. For
15 years, never said that one time. He meets with the State's
16 investigator and doesn't say that, doesn't say that at all.
17 You've got to ask yourself why, why, now I interviewed Carmen
18 and you heard her. I said, Ms. Mureddu, if somebody was to
19 tell you that, would you have put it in your report?
20 Absolutely. She said, absolutely I would have put that in my
21 report, but it wasn't in your report. You've got to ask
22 yourself, why was that not in the report. Well, because he'd
23 never said it before, never said it before. Obviously, he
24 want's vengeance and unfortunately the only person that he can
25 purport his rage on right now is that man. That man. Brown's

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1 not on trial right now; Griffith is. I submit to you, if
2 Brown was on trial right now, he'd probably be pointing the
3 finger at Brown. I understand that he wants vengeance, I
4 understand that, but this is not the time or the place or
5 anything like that. It's not that.

6 I want you to go back and look at what Kenneth Muth said.
7 Kenneth Muth was the guy who ran out the club and chased him.
8 Kenneth Muth said, I chased him and he ran, he ran out of his
9 flip-flops and he jumped in the water. In fact, Kenneth
10 Muth's direct testimony was it was about a six to eight-foot
11 drop. He ran, jumped in the water six to eight-foot drop in a
12 place he's never been after hearing somebody holler, hey you,
13 come here; get him; get him, that's the guy; get him. He ran.
14 We admit that. We'd admit that he swam across the river. We
15 admit that he was trying his best to get out of there because
16 people were chasing him. He didn't think it was law
17 enforcement chasing him. I will say this -- now, you heard
18 testimony and again this is riddled with inconsistencies.
19 Kenneth Muth says he sees him run around the building and gets
20 in the water and he swims across the water, but somehow an
21 hour later he makes a call from his cell phone trying to tell
22 where, tell the police that he's going to a beach house. I
23 don't know how you do that. Robert Deal testified that his
24 cell phone was ruined; it had been wet. I don't know how you
25 can swim across the Intracoastal Waterway and not get your

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1 cell phone wet. I'm certainly not that good of a swimmer. I
2 submit to you that was another one of the many mistakes of the
3 prosecution in this case.

4 Blake Brown called the police. There's testimony that
5 Blake Brown called the police and told him he was going to the
6 beach house. Where did they pick up Blake Brown? The beach
7 house. My client never called these people and said I'm gonna
8 be at the beach house, never, ever. He couldn't have. His
9 phone was ruined, absolutely ruined.

10 You'll remember next up was SLED. That was when we
11 discussed the DNA evidence. That was when we talked about
12 this knife right here. That was when they took swabs from
13 this knife. They took Buccal swabs from my client as well as
14 Blake Brown. But what did the DNA come back? This knife was
15 found on Brown, not Griffith, Brown. There's DNA -- DNA came
16 back that it had absolute zero match on my client, a hundred
17 percent match on Brown and that there was a partial DNA that
18 was just not enough DNA in order to tell the DNA expert who it
19 was and that was on the blade. Somebody's DNA was on that
20 blade. We know for a fact that Ryan Palmer's DNA was on it;
21 we know that from what Ryan says. Ryan says he got cut. I
22 submit to you there was other DNA on that as well. I submit
23 to you that Blake Brown had plenty of time to go wash that,
24 plenty of time. When they found him he was with his mother.
25 Think about the next statement we heard, Klevis or I think as

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1 he liked to be called, the One Man Party. Now what did Klevis
2 do; what did he bring to the table other than alcoholism. He
3 said he was drunk as hell, but he remembered this and he
4 remembered that. He said what, he said, well, I remember the
5 guy who was tall and he said he had my back. He didn't say a
6 think about this guy other than he also said, well, they had
7 on baggie shirts. Throughout this entire trial, have you
8 heard anybody say anything about my client wearing a baggie
9 shirt; no, no, not one thing.

10 The next person that came up, I don't know if you
11 remember him was Seth Rogers. Klevis couldn't remember him.
12 Klevis said I don't know who Seth Rogers is until they brought
13 him in and then he said, oh, yeah, that's the guy I partied
14 with, Seth Rogers. You remember Klevis had been kicked out
15 for getting in a previous fight. Seth Rogers states what? He
16 says yeah, I was out there. I heard him say that and I heard
17 him say these other things too. I submit to you that Seth
18 Rogers didn't give a statement that night at all, none, did
19 not give one statement the night of the crime. Why not? Why
20 didn't he? Your guess is as good as mine. You also heard
21 from Seth Rogers that allegedly these guys who said we got
22 your back, yet five minutes later Seth walks in, sees his
23 buddy, Vitaly with one of them on the ground in a choke hold
24 and what's Seth's first reaction, not hey, what's going on or
25 hey, I just saw that guy outside. His first reaction is to

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1 put the boots to him. When I asked him how many times he
2 kicked him he said two or three. Was anybody else kicking
3 him; what was his answer? Yeah, there was another guy kicking
4 him.

5 Seth Rogers, Vitaly Ninichuk, we know that they were
6 involved with it. Ryan Palmer, D.J., Rob Penna, we know they
7 were involved with it. Michael Parker. That's six people and
8 Seth Rogers' first reaction is to come in and rather than
9 saying, hey, what's going on is to kick the guy who's being
10 choked on the ground. I submit that they all had that
11 mentality, all of them. All of them, every single one of
12 them.

13 And if you look at who I brought in as Defense witnesses.
14 I brought in their investigator. Why didn't they? Because
15 the investigator showed inconsistencies in the story. I
16 brought in the lead investigator; why didn't they? Why didn't
17 they do that? The lead investigator on a murder, assault and
18 battery with intent to kill, two counts and conspiracy to
19 commit murder; why did they not bring him in? I'm guessing
20 it's because he said the crime scene was atrocious. He said
21 it was a wreck. When I specifically asked him had that whole
22 floor not been mopped with bleach, would you have been able to
23 get more evidence; yes, I absolutely could. I asked him
24 specifically would it show where people were in this fight, I
25 held this up, he said yes, it would. Why didn't they call

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1 him? I don't know. I have no clue why they didn't call him,
2 but I'm assuming it's because again, they don't want you to
3 see these inconsistencies.

4 (I told you in my opening statement there were things that
5 they didn't want you to see and I've tried my best to show you
6 those things. You've seen them. You've seen the
7 inconsistencies. You heard from the stand Jim Chatfield
8 quivering in his voice because he was ashamed of the fact that
9 it took them forty-five minutes. I asked him, I said,
10 Sergeant Chatfield, how long did it take you to get there? It
11 took a long time. How long did it take, thirty minutes,
12 forty-five minutes? Yeah, probably forty-five minutes.
13 Forty-five minutes before the first person arrived on the
14 scene. No wonder they had a bad crime scene. No wonder it
15 was atrocious. There was nobody there to keep people from
16 walking through it; nobody there to keep people from grabbing
17 evidence that may've been left behind; nobody there to keep
18 them from pouring bleach, which he said was the first thing he
19 smelled when he arrived. Neil Frebowitz said the first thing
20 I smelled when I arrived was bleach. I mean, did he seem
21 happy about that? No, he seemed furious about that, but it
22 was done.

23 Look at my other witnesses. I called Kacie Henry. They
24 want to discredit her by saying that she's friends with my
25 client. I'm sorry, I don't get to pick the people that the

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1 Codefendant tells -- admits to. I don't get to pick those
2 people. You know, surely I would rather have picked somebody
3 from France that has no ties to this case, but that's not the
4 case. That's not the case. Does that discredit her and mean
5 that she was lying? Absolutely not, absolutely not. I submit
6 to you, her testimony was actually a little different than the
7 other two guys. She says what he said to me he was at my
8 house and he said it multiple times, multiple times that he
9 was the one who stabbed this guy, that he did what he had to
10 do, he stabbed this guy that died, he stabbed the other two
11 guys. I had to do what I had to do. That's not my client;
12 that's Brown. That's what she says. That's absolutely what
13 she said. I asked her, did anybody tell you how to answer
14 these questions? She said no, no. And they want to discredit
15 her because somebody said happy birthday on Facebook. My
16 birthday's next Monday and I'm assuming I'll probably get a
17 bunch of Facebook messages that say happy birthday. Does that
18 mean I'm close with everybody that does that? Probably not,
19 probably not at all.

20 Look at the other two. You've got Chris, Chris
21 Whiteside, who readily admits that's my boy. He says that's
22 my friend. He says I've known him forever, that's my friend.
23 Does Chris Whiteside look like somebody would lie though?
24 You've got an Army vet, a guy who says he'd just come back
25 from Iraq when he heard all this. Would he lie? No, no.

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1 Says he got out of the National Guard because he wanted to go
2 to college; good for him, that's great. Give credibility
3 where credibility is due. He is a credible witness even if he
4 is his friend, even if he's his friend. That doesn't mean
5 anything. Does that mean any friend he has is gonna lie? No,
6 no.

7 Then look at Theron Nalley, the guy that says he's not in
8 his league lifting weights. Look at Theron, does he look like
9 somebody who wanted to be here? No, he did not. I subpoenaed
10 him. I made him come here. I made him drive from Greenville
11 and come here. He didn't want to be here. He certainly is
12 not good enough friends with him to lie about anything. What
13 did he say? No, I just want to tell the truth; all I want to
14 tell is the truth, that's it. You notice they didn't
15 discredit him a whole lot because they don't really know each
16 other. They don't really know each other.

17 And what the Solicitor is trying to do with you in this
18 case, they want you to find my client guilty of serious
19 crimes, murder, two counts of assault and battery with intent
20 to kill and conspiracy to commit murder. They are trying him
21 for assault and battery with intent to kill when they know for
22 a fact, a fact that he had nothing to do with that. They know
23 for a fact my client did not touch Ryan Palmer. The only part
24 of my client that touched Ryan Palmer was his face when Ryan
25 hit him. They know for a fact. So why is he on trial; why he

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1 is on trial for that; why?

2 You know my client is guilty of something. He's guilty
3 of making bad decisions, bad decisions about who to hang out
4 with; maybe bad decisions about being out at club too long,
5 too late; judging by the Hot Shoppe video, maybe bad decisions
6 about wearing his pants a little too low; he made bad
7 decisions about possibly even being there when a fight
8 occurred. Even if he's standing in this in the front of these
9 guys, maybe he made a bad decision about trying to act to
10 tough when a fight was about to erupt. But I can guarantee
11 you right now, the six people right here were more than
12 willing to accept any type of invitation to fight. Ryan
13 Palmer's own statement was I thought we were getting ready to
14 fight. He threw the first punch. He threw the first punch,
15 the very first punch.

16 I told you in my opening statement that I am extremely
17 remorseful for D.J. Houghtaling's family and his friends. I
18 am. My client is. My client's been dealing with this for
19 four and a half years now. He's prayed and he's cried. He's
20 been dealing with this and it's pretty hard. Cases like this
21 not only affect the victims; they affect the other people
22 involved.

23 I thank you so much for your patience in dealing with
24 this and I think that from judging how attentive y'all have
25 been, that y'all do care about this. Y'all want to make a, a

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1 right decision in this. And I'm telling you right now, based
2 on the evidence, my client did not stab D.J. Houghtaling. He
3 did not stab Rob Penna. He did not stab Ryan Palmer and he
4 did not conspire with Blakely Brown to commit any of these
5 crimes, certainly not a murder, certainly not a murder.

6 I ask you to remember this, Blakely Brown will have his
7 day in court. He'll have a day in court. This is not that
8 day. Whatever feelings you may have towards him about what he
9 possibly did, that's him. That's my client. Through twenty
10 witnesses of the State, twenty, twenty, not a single person
11 put this knife or this knife in his hand or any knife in his
12 hand during a fight. Not one person can say that.

13 I also want you to think about Kayla Houck. Kayla
14 Houck's who they called as a rebuttal witness. Kayla Houck
15 is the girl who testified previously, excuse me, gave previous
16 statements on the night, after the night, and she said, well,
17 I never talked to Blake Griffith's attorney and then she said
18 well, maybe I have. Yeah, maybe I have. Then when I asked
19 her if she talked to Carmen Mureddu; no, I didn't. Then when
20 I asked her again; well, maybe I have. The statements she
21 gave from Carmen Mureddu, she specifically says that he told
22 her that, that he said he saw Brown stab a guy, that he saw --
23 he said that he saw Brown cut a guy across the face. She's
24 not credible at all, not one single bit. She told you, no,
25 he's not my friend anymore; he's not my friend anymore after

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1 this. But yet, after this, she gave a statement to the
2 Solicitor's office that said my guy didn't do it, that Brown
3 did it; multiple inconsistent statements, multiple. My guy
4 didn't do it. He is not guilty and the only truthful verdict
5 that you can bring back is not guilty.

6 Thank you again for your patience. Thank you for being
7 attentive. If you will just give me a second to get out the
8 way I believe Ms. Livesay will start. Thank you.

9 THE COURT: Remove the, remove the ---

10 MS. LIVESAY: Can we take a little break, Your Honor, to
11 give them some time to move these out?

12 THE COURT: No, let's go ahead and get on with it. We've
13 been having enough breaks today. If you need to take just a
14 minute or so to, if you need to take a second, there's no need
15 in sending the Jury back out and back in again.

16 MS. LIVESAY: That's fine. I didn't know how long it was
17 gonna take them, Your Honor.

18 THE COURT: It didn't take long.

19 CLOSING BY MS. LIVESAY:

20 MS. LIVESAY: Ladies and gentlemen of the Jury, again I'm
21 Nancy Livesay. Obviously, I'm a Prosecutor here in the
22 Fifteenth Judicial Circuit. You already heard from me in
23 opening. You've already watched some witness testimony.

24 Now Mr. Hyman wants to tell you that this is not a murder
25 case. I'm gonna show you now why this is a murder case. Now,

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1 when you look at this stuff, this tells you how you know this
2 man right here stuck somebody that night with a knife. You
3 know it when you look at this stuff because you know what's
4 missing? That knife, that knife is missing. Here's his
5 shorts, here's his phone, here is Blake Brown's watch that he
6 had time to get off the floor before he left, here's a stick
7 of gum, here's some sunglasses he was wearing earlier. Now
8 these are all things that were in his pocket, all of them,
9 sticking in his pockets; gum, a lighter and what else? His
10 phone. The only thing that was not in his pocket was a knife
11 that was clipped to his pocket. That knife was just not
12 sitting in that pocket, folks, it was clipped to his pocket,
13 but yet, that's the only thing that's missing. He's still got
14 his phone, still got his gum, had time to grab his friend's
15 watch, but that knife is not here. That's the first step.
16 That's how you know you're sitting on a case for murder
17 because we have a missing weapon. If that knife didn't stick
18 anybody, I can assure you it would still be clipped to this
19 pocket.

20 I want to show you this picture from that night. This is
21 State's Evidence Number Five. I want y'all to get a good
22 look. Those are the same yellow shorts. Those are these
23 shorts right here. That knife was not just jiggling in that
24 pocket. I want you to take a look. It is clipped to that
25 pocket, clipped. That is a metal clip on that knife; that's

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1 what that is. You see it a lot in pocket knives. In fact,
2 you see it on this pocket knife. You see a metal clip. I
3 want y'all to take a look at that clip. There's a clip on
4 this one as well, a metal clip on that knife clipped to his
5 pants. It was clipped to his pants when he walked out of the
6 Red Hot Shoppe because we got a picture of it. We got a still
7 shot and you can watch the surveillance camera, him clipping
8 it to his pocket before he walked out. Then we know it was
9 still with him because it was on his pants.

10 Now, Mr. Hyman wants to tell you my guy never stuck
11 anybody. There's no knife in my guy's hands. That's right
12 because your guy got rid of it. If he didn't stick anybody,
13 he'd still have that knife. Blake Brown still had his knife.
14 Blake Brown ran, but you know what he said, my client's, none
15 of his DNA was on this knife. It wasn't. He never touched
16 this knife. This was not his knife. Don't be fooled by that.
17 Don't think because there's no DNA on this knife, which we've
18 never claimed was Blake Griffith's knife, that he didn't have
19 a knife. Go back there and ask yourself, why don't we have
20 Blake Griffith's knife; why can't we swab that puppy; why
21 can't we swab that handle? Because we do not have it.

22 Now there's something else about this knife I'm gonna hit
23 on very quickly and then I'm gonna move on. He said there's a
24 partial DNA on this blade and you can go back and listen to
25 Matthew Fitts, he's a Forensic Scientist, any of the testimony

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1 you want to hear again, you can listen to it. There is a
2 partial DNA sample, a partial. One partial DNA sample other
3 than Blake Brown's, not three partial DNA samples, one. One
4 other DNA sample was found that night other than Blake Brown.
5 There were three people stabbed that night. They swabbed this
6 knife and they found one partial DNA, not three, one and I'm
7 gonna submit to you the reason they only found one was because
8 they found Ryan Palmer's, that's why. Robert Penna and
9 D.J.'s, there DNA was on this knife. This is the knife it was
10 on. Rest your mind at ease, this is a killing. This is a
11 killing and rest your mind at ease, this boy stuck somebody
12 that night.

13 Now, this is not just a killing. We've got that covered
14 right there. When we're looking at murder, it's a killing of
15 another. That other person was D.J. The other stickings
16 were Ryan Palmer and Robert Penna. There's no doubt three
17 other people were injured. There's no doubt we have a killing
18 of another. Now, what else do you need for murder? The thing
19 you need for murder is not just a killing, but with malice,
20 premeditation. Now, malice can mean reckless disregard, it
21 can mean an evil heart, it can mean premeditation. Now, I'm
22 gonna tell you, we've got premeditation in this case. Now, he
23 wants to tell you my client went to the Red Hot Shoppe, but
24 they were just looking around. Look at that surveillance
25 tape. Do you know what's important on that tape? Those boys

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1 went straight to that knife counter and they were there for a
2 while. They weren't looking around the store. Now, these two
3 girls were looking around the store. Blake Griffith went in
4 there to buy a knife. That's the only item he bought in there
5 was a knife. And I asked Joe Beeson, well, did y'all sell Old
6 Timer Knives, which is like a little pocket knife? Yeah. Did
7 you sell like a K-Swiss knife? Yeah. That's not what he
8 bought. You can go buy a little pocket knife. You can go by
9 one of those little Old Timer Knives, but that's not what he
10 bought. He bought a knife that looks like this. He went in
11 and bought that knife moments, moments before he went to the
12 Afterdeck.

13 Now, I'm gonna back up a little bit even from there
14 because this premeditation and what went on before they got to
15 the Afterdeck, is so key, is so key. What Marianna Mays said
16 that was on that surveillance tape shows you the mood and the
17 demeanor and what was going on that entire trip. These guys
18 came down here with those two girls, okay. Marianna tells
19 you, Sunday night I did the -- now listen to the testimony, I
20 did this little chart, Sunday night these girls go out to eat
21 at 7 o'clock. Blake Griffith is out with Blake Brown. The
22 girls come back, these boys show up later. These guys, Blake
23 Griffith and Blake Brown, they were not studying these girls;
24 they were not down -- even though they rode down there with
25 them, they weren't down here to socialize; they were down here

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1 to start trouble. If you're down here to socialize and have a
2 good time, you're going out to eat with the people that you
3 came with. And then she says Monday morning we get in a big
4 fight and they leave. Later on we finally connect back up and
5 then we go out to dinner. I dropped them back off and then
6 pick them back up to go to the Afterdeck. These boys were not
7 hanging around these girls because that ain't what they came
8 down here for. They came down here to start trouble and get
9 in a fight. That's what they came down here for. They went
10 in there and got that knife before they got to the Afterdeck.
11 Folks, they bought that knife -- he bought that knife at 11:30
12 at night, at 11:30 at night before they're getting ready to go
13 out, that's when he studied buying a knife. They've been here
14 all weekend, all weekend and then all of a sudden, he wants a
15 knife at 11:30 at night. He wants to go to the Red Hot Shoppe
16 and buy a knife. That shows you where his mentality is right
17 there. It's 11:30 at night. This boy is eighteen. You look
18 on that surveillance tape; he's not even around these girls.
19 He ain't studying these girls or any other girl. At 11:30 at
20 night, all he can think about is buying a knife, getting a
21 weapon; that's what he's studying. He ain't studying walking
22 on the beach or going out to eat or riding the Ferris wheel
23 here at Myrtle Beach; all he can be worried about is getting
24 that knife. That's, that's what he's thinking of, that's what
25 I want you to think about. When he's on the way to the

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1 Afterdeck, what is he worried about; what is he thinking
2 about; what is he getting ready for? Being at some bar or
3 sitting around somewhere taking a few drinks. Normally,
4 people go out in the beach, they're drinking, they're going
5 out to eat, they're not going to the Red Hot Shoppe to buy a
6 knife.

7 Now, when he gets to the bar or he gets to the Afterdeck,
8 there's something important there, too. When he first gets
9 there, they're in T-shirts. You see them on the surveillance
10 tape. They're wearing T-shirts, but something changed;
11 something happened when they got to the Afterdeck and I think
12 that's important as well. If you look at those pictures, pay
13 attention to what everybody else is wearing. They're wearing
14 T-shirts and collared shirts, but when they get there, they're
15 wearing T-shirts, but think about what people do when they're
16 getting ready to rumble and fight. Women start taking off
17 their earrings; men start taking off their shirt. I'm gonna
18 submit to you, that's what they were doing. These girls
19 didn't see them take that shirt off because again, they
20 weren't worried about these girls. They want worried about
21 any girl that night. All they could study was getting in
22 trouble.

23 Now he wants to tell you Blake Brown, Blake Brown. Blake
24 Brown was living with Blake Griffith. That's who he was
25 living with. These girls know Blake Griffith. They all live

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1 in Greenville. Blake Brown drove down here with Blake
2 Griffith and his two friends. That's how this went. They
3 stuck together that whole weekend. Blake Griffith didn't go
4 out to eat with these girls. He weren't hanging out with
5 them. He was hanging out with somebody else that had the same
6 interests he did, and that was Blake Brown. That's who he had
7 something in common with. When they walked in, they dressed
8 alike, they looked alike. Take a picture of them in the club;
9 both of them got their hands up. I want y'all to take a look
10 at that. Both of them got their hands up; both of them got
11 their pants down low so you can see their underwear; dressed
12 just alike. Both of them took their T-shirts off. These boys
13 are two of a kind hanging together.

14 Now, they took their shirts off, they were looking for
15 trouble. They had those knives. Now, they went outside to
16 start a fight or to get involved in a fight. Klevis, didn't
17 even know these guys, didn't even know these boys. He's
18 drinking that night and even he, who was impaired, remembers
19 that. That's sticks out in his mind, two thuggish-looking
20 guys. And that's something else. I want you to look back at
21 the testimony. Even Joe Beeson, who sold them the knife, how
22 did he describe them? Thugs. How did the bouncer describe
23 them? Thugs. Every time you heard somebody talk about them,
24 they're thugs. Nobody said I see these two guys walk in and
25 one of them is a thug and the other one seems like -- I can't

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1 believe they're together; I cannot believe they're friends.
2 Nobody says that. Nobody says this tall guy, now he looked
3 like a thug, but the other guy did not. Nobody said that.
4 Everybody testified that they were both thugs. That's the way
5 they were looking. They were there to ask for trouble.
6 Everybody that testified said that, the bouncer, Joe Beeson,
7 all these people leading up to the Afterdeck.
8 Now, Ashley McNeil, they go outside, they're talking to
9 Klevis. They see he's got in a fight. They see this as a way
10 to rumble. Now who all got in the fuss? Listen to the
11 testimony. Blake Brown didn't just walk up to Klevis. Blake
12 Brown and Blake Griffith walked up to Klevis. Who walked up
13 to Seth Rogers? Blake Brown and Blake Griffith walked up to
14 Seth Rogers. And what did Blake Brown say? We are here to
15 basically rumble. We are here to kill somebody tonight and
16 that's what they were there for. They had their knives, they
17 were looking for trouble. Now, Blake Brown and Blake Griffith
18 are standing there, right there together. Blake Brown had
19 said it, but it's not Blake Griffith walked off. He was
20 there. He was waiting for that response. He was waiting to
21 get involved. I'm gonna submit to you if I went to some
22 nightclub and Ginger, she waddled up to Martin and said we're
23 here to kill somebody tonight, I promise you, most reasonable
24 people, which I think I am and I think most reasonable people
25 would act the same way. I would be like I don't know who he

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1 is, but this, this ain't we, you gonna have to get from here.
2 That's why if that's what you're about, you're gonna have to
3 get from here. I don't know who the hell we is, but it ain't
4 right here; this ain't it. I mean, I'd be, who you talking
5 about? But that's not the way Blake Griffith acted. He was
6 standing right there bowed up with his thuggish friend waiting
7 to get in trouble. You didn't see him looking around talking
8 about, Who's we? He already knew who we was. He knew it was
9 him and Blake Brown. And then when they couldn't get in any
10 trouble there, they walked back in the club.

11 Ashley McNeil says I turn around, I see what I -- she's a
12 completely unbiased witness. She don't know these boys. I
13 said you know Robert Penna or Ryan Palmer? No. She gave a
14 statement that night saying she saw a knife. Now, Mr. Hyman
15 was stating she said that the blade was silver. Now, I'm
16 gonna submit to you, in a nightclub full of lights, when that
17 light hit this blade it could have looked silver; I do not
18 know. I know in a nightclub when they're flashing different
19 lights, a lot of things an look a lot of different ways.
20 That's why they do it. But she knew it was a knife. She felt
21 strongly enough about it, she went and told the bouncer. And
22 he noticed, Robert Bullock said, I saw them I knew they wanted
23 trouble. Ken Muth saw them when they got in there, I knew
24 them, I knew they wanted trouble. You got three witnesses
25 right there, I know it, I can tell by their demeanor they're

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1 looking for trouble.

2 They finally got it when they bumped Ryan Palmer. When
3 they bumped Ryan Palmer, they had somebody picked out then.
4 When Ryan Palmer walked back to his friends at that corner,
5 they taunted the heck out of him, taunted him, taunted and
6 taunted him, mean-muggin is what the bouncer said. I saw
7 those boys mean-mugging somebody. Listen to his testimony,
8 Robert Bullock, mean-muggin, kept looking over there. And
9 when these boys finally wouldn't give in and wouldn't walk
10 over there, wouldn't do anything, they then walked over to
11 them. And what happened is Marianna Mays called Blake
12 Griffith, come on Blake, let's go, let's go, let's go; we're
13 in the car, let's go. He didn't want to go. He had already
14 had his target picked out. He was ready to rumble then. He
15 hadn't put all his effort in this to leave then.

16 Now, Mr. Hyman wants to tell you well Ryan Palmer says
17 that he threw the first lick and there's all these
18 discrepancies about who shoved who first. Let me tell you
19 something, folks, these boys were standing right over here,
20 okay, what's important is this is the corner, okay, this is
21 the corner right here. That's where Ryan Palmer and those
22 guys were standing and those boys came and backed them into a
23 corner right in here, right in this area. And Mr. Hyman wants
24 to talk to you and get you into this where you're like oh, who
25 pushed who first, who, who didn't so-and-so trip on that step.

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1 Let me tell you something, folks, don't get bogged down in
2 that crap. Don't do it, because I'm here to tell you, when
3 those, when Blake Griffith and Blake Brown walked up to those
4 boys, that right there started it. They didn't know them.
5 When Robert Penna and Michael Parker said break it up and they
6 wouldn't walk away, that was it right there. That was it.
7 When they walked up, these boys were unarmed staring at them
8 face-to-face, wouldn't walk away, had them cornered, that's
9 what started the fight. Do not get caught up in who pushed
10 who first because when these boys cornered them, that's when
11 it began. That was the first move. Do not get tangled up in
12 this crap about who pushed who first, who took the first lick,
13 don't do it. The first lick was when these two boys went over
14 there and cornered them. That's when the first lick took
15 place and they would not walk away. And when they started it,
16 they ended up cutting three boys. Three boys got cut and
17 Blake Griffith didn't even have so much as a scratch on him,
18 didn't even have a scratch. And Mr. Hyman wants to get up
19 there and squabble over who somebody throwing a punch first or
20 who pushed who first, don't get back up there and get caught
21 up in that, folks. Use your common sense. When those boys
22 walked up and they were ready to rumble, that was the first
23 strike. That was it, when they cornered those boys and they
24 would not walk away. That was it. Now, he wants to squabble
25 about pushing here and there; I don't know, I don't know.

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1 Maybe now we're in a place where because Rob, Ryan Palmer or
2 Robert Penna pushed them, they deserve what they got. Maybe
3 that's where we're at because if these boys fought back, they
4 deserve what they got.

5 Three boys got stabbed, three boys. He wants to put up
6 these props up here of these six people. It was six-on-one,
7 six-on-one, self-defense, self-defense. Okay. For one, they
8 can't claim self-defense because as soon as they walked up and
9 started that trouble, they were at fault. Listen to the
10 judge's instructions. The very first thing in self-defense,
11 you cannot be at all at fault, not even this much. If you are
12 at all at fault of bringing on that altercation, throw your
13 self-defense to the side. You cannot have that defense. And
14 these boys are at fault, so they cannot claim self-defense
15 now. And furthermore, they want to claim self-defense when
16 one boy was stabbed in the back. Think about that. Think
17 about that. You want people to believe that this is self-
18 defense and this boy was stabbed in the back. That's hard to
19 claim self-defense when you were stabbed in the back and the
20 other boy was stabbed in the heart, right here, a death
21 strike. It wasn't some slash; it wasn't some slash on the
22 arm; it wasn't some wild slashing, no. Look at that boy's
23 wound. It was a direct stab wound and, I mean, he didn't have
24 another bruise on him. They want to tell you this is a bar
25 fight, nobody had any bruising, including this Defendant,

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1 except for stab wounds. Those boys went in there looking for
2 a fight and they found one and they cut up three boys, both of
3 them swinging knives in there, both of them. Now, he wants to
4 tell you, you can't put a weapon in my client's hand. Yes,
5 you can. Yes, you can. It was in his pocket and he took it
6 out and Rob Penna tells I looked back, I see D.J. drop. Ryan
7 Palmer tells you, I see Blake Brown stab me. I see the knife
8 coming across. Now listen to this testimony again because
9 it's important. He says, I go to fight this boy, I'm up now,
10 even though I'm bleeding, I'm getting ready, he's done struck
11 at me so I'm getting ready to fight and then it wasn't until I
12 see his hand come across, I see the blade of the knife and
13 that was somebody that this guy had his direct attention
14 looking right at him and he didn't see that blade until it
15 slice right across his fingers. This is a night club. That
16 knife was moving fast, there was a lot of commotion, but don't
17 think that there weren't two knives in that night club. There
18 was this one because we got the picture of it and there was
19 this one and they ain't no doubt both of them were swinging
20 knives and there ain't no doubt both of them stuck people.
21 They were working together. They were there to work together.
22 It's hand to one, hand to all.

23 I want to show you a quick board and then I'll be
24 finishing up. I know y'all have been here all day. Four days
25 of trial, you end up having a lot to summarize at the end. I

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1 pulled this board out because it's important. This case is a
2 hand of one, hand to all case and what that means is we don't
3 have to show you exactly who stabbed who. All we have to show
4 you is they're working together, they're both swinging knives,
5 they're both at fault. Whether Blake Brown threw that blow
6 that killed D.J. or whether Blake Griffith did, it doesn't
7 matter. It doesn't matter who cut Ryan Palmer. It doesn't
8 matter who cut Robert Penna. They were there working together
9 in concert. It's hand of one, hand of all. If me and Martin
10 come in this courtroom and we start shooting weapon, shooting
11 a gun, one person gets shot and dies. Who fired the bullet;
12 who fired the fatal bullet? It doesn't matter, it's hand to
13 one, hand to all. If we go in and rob a store and Martin
14 holds the gun and I'm getting the stuff out of the cash
15 register, bam, the store clerk gets shot. We're both charged
16 with murder. It's hand to one, hand to all. We are working
17 together.

18 Now, the last point I'm gonna make is the fact that he
19 ran. Now not only, he ran twice. The first time he ran to
20 the Jeep and Marianna says get in the Jeep, no. She said did
21 you have something to do with it; listen to her testimony. He
22 said yes. Right then he admits to doing it and takes off
23 running and then the police call him. Well, he calls Marianna
24 and then Chatfield gets on the phone. He says I'll meet you
25 back at the beach house. They go to the beach house; he's not

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1 there. That's time number two. He ran from that scene. He
2 knew what he had done and he took off running. Think when
3 you're back there about a reasonable person. If I'm in there
4 with Martin and Martin takes a knife out and starts stabbing
5 people, how do you think a reasonable person reacts? I sure
6 as heck ain't gonna be like, come on, Martin, let's take off
7 running. I'm gonna immediately, whoa, go do what you got to
8 do, we got to separate here. I'm waiting for the police and
9 if I was the victim and I thought truly I had been jumped on,
10 when Chatfield called me, I'd be like come get me. I have
11 been mobbed, I can't hardly move, come get me, I need the
12 police, but that's not what he did. He had his phone, he was
13 calling Marianna. Listen to the, listen to the tape but he
14 didn't never call 911.

15 I'm telling you, folks, I'm gonna suggest to you when
16 people think they're a victim, they can't call 911 quick
17 enough. They cannot in any situation. This guy never called
18 the police and not only did he not call the police, he ran and
19 they want to say Blake Brown, Blake Brown. Blake Brown went
20 back to the beach house. He weren't that worried. I want you
21 to see the distance that Blake Griffith ran. I mean, this
22 victim, now he's left three people bleeding because he was
23 jumped in such a horrendous mob, but yet, he's the only one
24 that doesn't have a scratch on him. He takes off running --
25 look at this -- up Highway 17, jumps down a six-foot cliff,

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1 swims the Intracoastal Waterway, runs across this golf course
2 that is thirty yards in the woods. He was hiding in here,
3 folks. He didn't want to be found. If he wanted to be found,
4 he would be somewhere along in here outside where somebody
5 could see him. He was hiding from the police. He knew he
6 stuck somebody, but he ran. Not only did he know he stuck, he
7 knew it was bad. He knew it was bad to take off running like
8 that. I mean, they want to tell you everybody was drunk,
9 everybody, this guy definitely won't. I mean, that's a long
10 run there and a swim and then another jog, that's borderline
11 Triathlon right there at 3 o'clock in the morning. I'm gonna
12 submit to you, nobody runs like that and is hiding in the
13 woods unless he knew, unless he knew he stuck somebody and not
14 just that he stuck them but he knew it was bad. He knew it
15 was bad.

16 Now, I'm gonna hit on a few of the things that the
17 Defense put up. I think it's so important to observe what's
18 in the courtroom because it tells you a lot. It tells you a
19 lot by walking into a restaurant, don't put your back to the
20 door. This right here is Blake Griffith and his family. Now
21 I want you to look who's sitting on the front row, two boys on
22 the end. They're sitting with their friend, that's who
23 they're sitting with. Now, what's ironic is that we've been
24 here all week and these boys have this breathtaking
25 information, case breaking, Blake Brown says he stabbed three

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1 people. That's what got me. I mean, not just one, he was in
2 there like a navy seal; he stabbed three people. And this boy
3 just took off because he wanted some exercise. I mean, folks,
4 that's not even believable. That's not even believable.
5 They're here to help their friend out. Now, the second guy
6 tells you I don't have time to tell the police. Why didn't
7 you tell the police, why didn't you -- I don't have time. But
8 he's got four and a half hours to drive down here and now
9 apparently he's got this extra time to sit on the front row to
10 watch this trial. That's unreasonable. That's his friends,
11 which is fine, which is fine. But I want you to go back there
12 and think about it. They came up here and told you Blake
13 Brown, who they don't even know that well, has unveiled this
14 secret to them, this earthshattering comments, but yet they
15 ain't told nobody but apparently Alex Hyman and I guess that
16 boy's momma.

17 Now, I believe I saw the other girl earlier, she may have
18 left but she was sitting over there. Now, I want you to take
19 a look over here. See these two girls on the front row,
20 remember that person testifying; she's in the pink -- stand
21 up, Ms. Mays. Thank you. Sit down. That's the girl that was
22 there that night. That was the girl that saw him running out
23 of the club. That was the girl that heard him say I had
24 something to do with it. That's his friend. That's who
25 brought him down here that time. They were there staying at a

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1 beach house together. That is her friend. They came down
2 here together. But now that happened, she saw him, and look
3 where she's sitting.

4 I want you to go back there and think about this case.
5 It's an important case. It's important to these boys. It's
6 important to D.J.'s mom, that's the lady sitting four over.
7 Would you stand up, Ms. Cathy? It's important to this lady
8 too. It's important to those people.

9 Now, I'm here to tell you, you won't hear -- you've
10 already heard murder, voluntary manslaughter. Voluntary
11 manslaughter, you probably already kinda know what that is I
12 think. That is a killing in the heat of passion. Okay. That
13 is me and Martin got in an argument and I killed him in the
14 heat of passion; that's voluntary manslaughter. And a lot of
15 times, voluntary manslaughter is what you see in a case like
16 this. People get the rumble and one of breaks out a knife or
17 a gun and shoots somebody. That's voluntary manslaughter.
18 But I'm here to tell you, you have murder in this case.
19 You've got premeditation.

20 Now, you're also gonna hear -- you've already heard self-
21 defense. There's four things that they have to have. One is
22 it cannot be their fault. That right there they don't meet.
23 If they don't have all four, they do not qualify for self-
24 defense and they do not. These boys are clearly at fault.
25 Carmen Mureddu told you, I, I, I interviewed eighteen people,

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1 none of them, none of those eighteen people said these boys
2 walked up to anybody, none of eighteen people interviewed,
3 none of them said that.

4 It's a bad case. A boy is dead, one was stabbed in the
5 back and one in the head and two knives did it. They were
6 working together and then they fled the scene. Now Mr.
7 Griffith is over there today with his suit on and his family
8 here. Don't let that fool you, don't. Don't let that fool
9 you. This is a courtroom. People put on their best behavior
10 in the courtroom. I'd be lying if I said I don't put on my
11 best behavior in the courtroom; I do. I do. And he's dressed
12 up trying to put on his best behavior. But I want you to go
13 back there and look at those pictures. That's who Blake
14 Griffith is. That's who he is. He's the one mean-muggin.
15 He's the one talking about him and his buddy gonna kill
16 somebody. Look at those pictures. He took off running
17 because he heard justice knocking. He knew he won't the
18 victim. He was running from what he knew was happening.
19 I'm gonna -- I promise you -- I know I've kept you too long.
20 I'm gonna show you one picture because I think it's important.
21 It's a picture that Mr. Hyman brought in. Do you know where
22 that picture is; is that it right here? Thank you. I'm
23 sorry. I promise y'all this is the last thing. This is
24 Defense Evidence Number One. Does anybody know who the heck
25 this guy is, anybody, anybody who testified, either the, knew

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1 who this guy was? They interviewed -- they put this picture
2 in because in the beginning the description was had a wife-
3 beater and some tattoos. In the beginning they wanted to tell
4 you, who, my client and who knows, this guy could have done
5 it. Put that picture in there and throw that in there, maybe
6 that'll get some attention, maybe that'll catch some traction.
7 That's what they put in first. Then they want to tell you
8 nobody can put the knife in my guy's hand, nobody. Then they
9 want to tell you that but then they want to say, well, if you
10 don't believe that, okay. Okay. You don't believe that and
11 you don't believe whoever this guy is, he's getting a lot of
12 attention this week whoever this guy is, did it, then I'm
13 gonna march six figurines in here and tell you, you don't
14 believe that guy did it and you don't believe that my guy
15 didn't never take a knife out, then these six people jumped
16 them and that's what happened. That's what they want to tell
17 you. Don't get caught up in that. Do not do it. Go back
18 there, think about what you've heard. Use your common sense.
19 This boils down to those boys walking in there with a knife,
20 both of them together swinging them, killed one boy and
21 stabbed these two and then took off running. This is a
22 murder. This is a killing. Do not get tangled up in such
23 crap as that picture. Don't do it. I'm gonna ask you to look
24 at all the evidence. Then I'm gonna ask you to come in and
25 give all I ever asked for which is justice. And I'm gonna

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BY THE COURT

1 submit to you justice today is finding that boy guilty of
2 everything he's charged with. And I know when you look over
3 there, he's young, he's in that suit, nobody saw him with the
4 knife in his hand, but the truth is the only boy that saw a
5 knife in his hand is no longer with us. He's not here to tell
6 you that. That boy lost his life for nothing. I'm asking you
7 to bring justice to this family and to the victims. Thank you
8 for your time.

9 BY THE COURT:

10 THE COURT: Thank you, Ms. Livesay. Thank you, Mr.
11 Hyman.

12 Mr. Foreman, ladies and gentlemen, you've now heard all
13 of the testimony in the trial of this case. You've heard the
14 charges with regards to the law and you've now heard final
15 summation of Counsel. The next step is for you, the Jury, as
16 finders of the facts and the credibility of the witnesses to
17 begin your deliberations.

18 With you in the jury room will be these various matters
19 that I have introduced into the trial of this case. There
20 are, as you are aware, four indictments. I have prepared a
21 verdict form for you as to each indictment. With regards to
22 the indictment for murder, it is first -- and there is no way
23 I can recite these things -- I could've turn them and recite
24 them the other way. With regards to murder, the various form
25 for your consideration is, we find the Defendant guilty of

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BY THE COURT

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1 murder or we find the Defendant guilty of manslaughter or we
2 find the Defendant not guilty.

3 Now with reference to the other three indictments, it is
4 simply we find the Defendant guilty or we find the Defendant
5 not guilty. Whatever your verdict is, you will sign your name
6 to that.

7 Once you have reached a verdict unanimously with
8 reference to the four charges, I then ask that you turn to the
9 indictments, which I also send in, and on the back of it under
10 the word verdict, write whatever your verdict is and sign your
11 name. Let the Bailiffs know and we'll bring you out and
12 accept the verdict.

13 Now with reference to your deliberations this evening,
14 Mr. Foreman, I leave that entirely in your hands and your
15 Jury's hands as to your good judgment. When you retire and I
16 send these matters in, you may begin your deliberations,
17 deliberate as long as you choose, let me know if you're ready
18 to quit; we'll stop and come back in the morning at 9:30. If
19 after you get back there your Jury decides that you've been
20 here long enough and you want to wait until in the morning to
21 begin your deliberations, let me know and I'll call you out
22 and we'll excuse you for this evening. So, what I'm saying to
23 you, when you go back there, you decide if you want to
24 deliberate for a while tonight or as long as you want to or
25 rather stop and come back in the morning. I leave it for you

State v. Griffith
BY THE COURT

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1 to decide.

2 So, you may return to your jury room. I'm gonna sending
3 these matters in for your consideration in just a moment.

4 MR. HEWITT: Your Honor, at this time, we would request a
5 brief instruction that arguments of counsel are not evidence
6 and that the Jury's decision must be based only on the law as
7 you instructed and the evidence they heard.

8 THE COURT: They would understand. I have given you the
9 law with regards to the issues in this case. The attorneys
10 are entitled to interpret the facts as they choose, but the
11 decision is for you as finders of the facts, solely.

12 Thank you.

13 (REPORTER'S NOTE: Jury exits courtroom. 5:38 P.M. The
14 following takes place outside the presence of the Jury.)

15 THE COURT: All right. Come forward, gentlemen, and
16 let's agree on what's going into evidence. And the record
17 will reflect that you've already examined the verdict forms.

18 (REPORTER'S NOTE: Bench conference)

19 THE COURT: All right. Let the record reflect I'm
20 handing Ms. Heather the four indictments and the four verdict
21 forms.

22 All right. Gentlemen, listen to me. Obviously, the two
23 alternates are not going to be in the jury room. I'm gonna
24 bring them out and I'm gonna let them go with the
25 understanding they're not to discuss this case with anyone in

State v. Griffith
BY THE COURT

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1 case somebody gets sick and I need them. Everybody understand
2 that?

3 MR. HYMAN: Yes, Your Honor.

4 MS. LIVESAY: Yes, sir.

5 THE COURT: I'm not gonna keep them here with the Jury,
6 but under, under my instructions. Bring the Jury -- bring my
7 alternates.

8 (REPORTER'S NOTE: Alternate Jurors enter courtroom)

9 THE COURT: You'd rather me bring them back in the
10 morning?

11 MR. HEWITT: The alternates?

12 THE COURT: Yeah.

13 MR. HEWITT: You know, when in doubt, make it stout, I
14 guess it's probably better to do that just in case we need
15 them.

16 THE COURT: I think so. I tell you why. In Florence one
17 time I let them go and just as soon as I let them go, we got a
18 note that one of the juror's daughter's was in the emergency
19 room in an automobile wreck and I'd already let the juror go.
20 One time in Charleston I let the alternate go and thirty
21 minutes later somebody had an epileptic attack on the jury.

22 These are the two alternates?

23 CLERK: Yes, sir.

24 DEPUTY: Yes, sir.

25 THE COURT: I'm going to excuse -- unfortunately, our

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BY THE COURT

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1 rules do not permit an alternate to participate with the
2 twelve jurors unless and until one that has to be excused and
3 bring you up. Now, I'm gonna let you go, but I want you to
4 come back in the morning at 9:30 and I'm gonna provide a
5 comfortable place for them to stay tomorrow and I have to keep
6 you here in the event somebody gets sick or something happens.
7 I hope you understand.

8 ALTERNATE JURORS: Yes, sir.

9 THE COURT: You've been here very patiently for four days
10 and I would not want to excuse you and then somebody has to
11 leave and I have to mistry the case. I hope y'all understand
12 that.

13 JURORS: Yes, sir. We understand.

14 THE COURT: Now don't discuss this case with anyone; let
15 no one discuss it with you, make no independent inquiry and
16 when you come back in the morning, do not join the Jury. The
17 Bailiffs will escort you to an appropriate place for
18 relaxation. Okay.

19 ALTERNATE JUROR 194: So we should come here to third
20 floor?

21 ALTERNATE JUROR 321: Can we stay here this evening until
22 they're done?

23 THE COURT: Sure, but just don't stay with them.

24 ALTERNATE JUROR 321: Yes, sir, we'll be out here.

25 ALTERNATE JUROR 194: Okay.

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BY THE COURT

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1 THE COURT: There's not, they may stay here. That's
2 fine, I'll be glad to have you.

3 ALTERNATE JUROR 321: Thank you, sir.

4 THE COURT: Thank you. You may sit there in the
5 alternates chair if you care to.

6 Dana, put them back in a place where they can be in
7 private.

8 BAILIFF: Okay.

9 THE COURT: And list, Dana, anytime I bring the Jury out,
10 if any, for further instructions, I want to bring the
11 alternates out too.

12 BALIFF: Okay.

13 THE COURT: And at the time of rendition of a verdict,
14 I'd like to have the alternates at that moment join the Jury.
15 I want to keep you in case I need you.

16 ALTERNATE JUROR 321: Yes, sir.

17 ALTERNATE JUROR 194: We're here.

18 THE COURT: All right. Be seated please. Now you
19 lawyers stick around because we're liable to be getting
20 requests.

21 MR. HYMAN: Judge, I'm just packing this stuff up; that's
22 all.

23 THE COURT: I understand. The Jury may have some
24 request.

25 MR. SPRATLIN: Yes, sir.

State v. Griffith
VERDICT OF JURY

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1 THE COURT: All right.

2 (REPORTER'S NOTE: Deliberations begin. 5:58 P.M.)

3 (RECESS 5:58 P.M.)

4 *****OFF THE RECORD*****

5 (On the Record - 6:22 P.M.)

6 THE COURT: Any outbursts or conversation of any kind, if
7 I hear that somebody's going to jail tonight. I understand
8 this may impact on somebody. I don't have any idea what the
9 verdict is, but please listen to me. I demand absolute
10 decorum in my courtroom.

11 Bring the Jury in.

12 (REPORTER'S NOTE: Jury enters courtroom. 6:24 P.M.)

13 VERDICT OF JURY:

14 THE COURT: The alternates obviously was not in the jury
15 room during the deliberation, but I'm having them rejoin for
16 the presentation of the verdict.

17 Mr. Foreman, I have been advised by the Bailiff that you
18 and your distinguished Jury has reached a unanimous verdict
19 with regard to these indictments; is that correct?

20 MR. FOREMAN: Yes, sir, Your Honor.

21 THE COURT: If this verdict be the unanimous verdict of
22 all twelve, please signify by raising your right hand? The
23 record will reflect that everybody has so certified.

24 Ms. Heather, accept the verdict forms and hand them to
25 me.

State v. Griffith
POLLING OF JURY

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1 CLERK: Indictment Number 2009-GS-26-4833, State of South
2 Carolina, County of Horry versus Joshua Griffith, we, the Jury
3 unanimously find the Defendant, Joshua Griffith, guilty of
4 murder.

5 Indictment Number 2013-GS-26-3198, State of South
6 Carolina, County of Horry versus Joshua Griffith, we, the Jury
7 unanimously find the Defendant, Joshua Griffith, guilty of
8 criminal conspiracy.

9 Indictment Number 2009-GS-26-4835, State of South
10 Carolina, County of Horry versus Joshua Griffith, we, the Jury
11 unanimously find the Defendant, Joshua Griffith, guilty of
12 assault and battery with intent to kill.

13 Indictment Number 2009-GS-26-4834, State of South
14 Carolina, County of Horry versus Joshua Griffith, we, the Jury
15 unanimously find the Defendant, Joshua Griffith, guilty of
16 assault and battery with intent to kill dated January 9th,
17 2014 signed by foreperson, Christopher Watts.

18 THE COURT: Does the Defendant desire polling of the
19 Jury?

20 MR. HEWITT: Yes, Your Honor.

21 THE COURT: Poll the Jury.

22 POLLING OF JURY:

23 CLERK: When I call your juror number, if you will please
24 stand.

25 273, is this your verdict?

State v. Griffith
BY THE COURT

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1 death of a young man and the serious injuries to two more.
2 These sort of things have to be brought to the light of day in
3 a forum such as this. Hopefully that this trial and these
4 verdicts will somehow maybe stop another tragic happening as
5 it was on this occasion.

6 I want to tell you, Mr. Foreman and ladies and gentlemen
7 that I've been on the bench now thirty years and I've seen
8 many jurors. I was particularly impressed with the way that
9 you dealt with this jury -- with this fact situation for the
10 last four days. At all times, you have been intense, you've
11 been listening, you've been involved and I was very much
12 appreciative of that fact and I thank you for your services in
13 this case. State of South Carolina, County of Horry, and the
14 people of South Carolina and this Judge are indebted to you
15 for your services this week in this, a most serious case.

16 You are now excused for the day and for the week. Please
17 go to your jury room. I'm gonna step in there and speak to
18 you just a moment please. I'll be there in just a second.

19 (REPORTER'S NOTE: Jury exits courtroom. 6:32 P.M.)

20 THE COURT: All right. Gentlemen, we've had a long and
21 hard day. I will hear any post-trial motions in the morning
22 at 10 o'clock at which time I will give sentencing.

23 Can you be ready for your post-trial motions in the
24 morning?

25 MR. HEWITT: Yes, Your Honor, we can be ready for them

State v. Griffith
MOTIONS

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1 **(January 10, 2014)**

2 MOTIONS:

3 THE COURT: Is the State ready for the hearing of post-
4 trial motions?

5 MR. SPRATLIN: Yes, sir, Your Honor.

6 THE COURT: All right. State the case for the record,
7 please, Solicitor.

8 MS. LIVESAY: Yes, sir, Your Honor, we'll put all the
9 indictments as well. The first indictment is for murder,
10 2009-GS-26-04833. The second is for ABWIK ending in 04835.
11 The third is for ABWIK ending 04834. The last indictment is
12 for conspiracy 2013-GS-26-03198, Your Honor.

13 THE COURT: Thank you. The record will reflect that this
14 case trial began this past Monday whatever the day was,
15 concluded last evening in a verdict of guilty by the Jury as
16 to all four counts being tried, to wit, murder, assault and
17 battery with intent to kill, two ABWICKs and one conspiracy,
18 the Jury having rendered a verdict of guilty as to each
19 indictment and that is the issue we are here for at this time
20 for post-trial motions by the Defendant, Blake Griffith.

21 Be glad to hear from you, sir?

22 MR. HEWITT: Thank you, Your Honor, may it please the
23 Court. Blake Hewitt, one of the attorneys for the Defendant.
24 Judge, I understand why we're -- the posture that we're in in
25 these proceedings and the standard that you'll be applying to

State v. Griffith
MOTIONS

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1 these motions. I would just ask simply that you allow me to
2 read this into the record?

3 THE COURT: Surely.

4 MR. HEWITT: Judge, at this time, we'd move for a new
5 trial and renew our earlier motions that there was not
6 sufficient evidence on malice or conspiracy to submit this
7 case to the Jury. Your Honor and I have the obvious
8 disagreement of what constitutes direct evidence and
9 circumstantial evidence and while I respect and understand
10 Your Honor's position, I believe I am correct that there was
11 not sufficient circumstantial evidence to submit and send this
12 case to the Jury.

13 Judge we also move for a new trial based on Your Honor's
14 ruling that our proffered testimony that related to the
15 deceased, his friends and their previous instances of violent
16 conduct. Your Honor ruled, it was my understanding, that this
17 evidence was not relevant as I'm sure you expect, I obviously
18 disagree, and I was frankly shocked that the State chose to
19 cast its lot with this group of young men. The State knows
20 that the Get Wrecked Hate Crew is a fight club and several
21 portions of the State's closing argument did not conform to
22 the law of this State. That's not an opinion; that's a fact.

23 Finally, Your Honor, we move for a new trial based on
24 Your Honor's ruling that allowed the State's reply witness,
25 which we believe violated the Court's sequestration order and

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MOTIONS

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1 was not responsive to the evidence that we presented in our
2 client's defense because we presented evidence that Blakely
3 Brown stabbed the deceased, we believe Your Honor should have
4 limited any testimony to whether anyone made statements that
5 were inconsistent with Blakely Brown's statement.

6 Your Honor, I presented you when we made directed verdict
7 motions with three cases, four cases, all of which involved
8 criminal convictions rendered by a jury that were reversed on
9 appeal. I don't know whether that is the -- whether that
10 result is destined for this case but I am confident that the
11 arguments I have made were not just because they were arguable
12 but I believed fully and faithfully in them and in that
13 respect, my conscious is clear.

14 THE COURT: In that respect, so is mine, but I thank you
15 for your position.

16 Be glad to hear any rebuttal from the State?

17 MR. SPRATLIN: Yes, sir, Your Honor, just real briefly.
18 The standard as far as what's simply another directed verdict
19 motion on behalf of the Defense, it is no competent evidence
20 in the record be it circumstantial, be it direct evidence.
21 Clearly, Your Honor, there is some direct evidence that the
22 Defendant bought a knife and took the knife to the club that
23 night. There's also substantial circumstantial evidence that
24 shows that the Defendant did in fact cut and stab the victims
25 in this case. Furthermore, Your Honor, the theory of hand of

State v. Griffith
MOTIONS

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1 all, hand of all, the actions of the Codefendant, which is --
2 there is ample evidence in the record that the Codefendant did
3 wrong that night and did crimes that night. In the theory of
4 hand of one, hand of all, there is evidence in the record that
5 the Jury could've found the two acted in concert and that the
6 hand of one was in fact the hand of all. And so any action on
7 behalf of the codefendant could be inferred to the Defendant
8 in this case. So, Your Honor, as far as the fact, as far as
9 the Defense's contingent that there is no evidence -- that
10 there was insufficient evidence that this case should never
11 have been submitted to the Jury, the State simply does not
12 feel that is the case, that there was substantial evidence,
13 substantial circumstantial evidence and direct evidence
14 showing the Defendant's guilt and that it was properly
15 submitted to the Jury. And, in fact, the Jury, a reasonable
16 jury, did in fact conclude there was enough evidence to
17 convict the Defendant of murder beyond a reasonable doubt.

18 Regarding the motion for a new trial, Your Honor, I
19 believe the ruling of the Court was proper that the Get
20 Wrecked Hate Crew was irrelevant testimony. It was victim
21 character testimony. There was no relevance to it that night.
22 In fact, they were unable to prove that anyone else in Get
23 Wrecked Hate Crew was even there that night besides D.J.
24 Furthermore, Your Honor, Defense's own expert under proffer
25 admitted that this was not in fact a criminal gang, had not

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MOTIONS

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1 been recognized as a criminal gang by the South Carolina Law
2 Enforcement Division, had not been recognized as a criminal
3 gang by the Federal Bureau of Investigation.

4 And, Your Honor, furthermore, there's been no evidence
5 regarding any sort of self-defense claim in this case, that
6 the Defendant had any knowledge of Get Wrecked Hate Crew, had
7 any kind of foundation for Get Wrecked Hate Crew, and that is
8 why the State alleges it was completely improper and
9 irrelevant to this case and that's why the Court agreed.

10 Lastly, Your Honor, with regard to the Defense's
11 assertion that Your Honor erred in allowing the reply witness
12 to testify. Rebuttal is in fact in the discretion of the
13 Court, Your Honor. I do believe that it was a proper rebuttal
14 having Ms. Houck testify that the Defendant had admitted to
15 her that he had done the killing because, Your Honor, there
16 was evidence presented in the Defense's case that the
17 Codefendant had been the stabber. In fact, the statement of
18 the Codefendant was introduced into the record on the
19 Defense's case in chief. I believe the State was entitled to
20 rebut the same with the statement of the Defendant.

21 Thank you, Your Honor, that's all I have on the motions.

22 THE COURT: I certainly respect the positions of the
23 Defendant's Counsel and the position of the State. I listened
24 very carefully to the testimony throughout and there was a
25 plethora of evidence, if believed by the Jury, to render the

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MOTIONS

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1 verdict of guilty as to all counts that they did. By way of
2 observation, even if the victim deceased was a member of some
3 kind of club or organization, there was absolutely no evidence
4 of any kind in that record that these unfortunate victims were
5 in some sort of concerted mayhem effort to, to, to be
6 displayed. There was just no evidence of any gang activity,
7 any Get Wrecked activity, any concerted activity. The only
8 evidence was that one was killed by knife, that two were
9 injured and that the only folks that had a knife was the
10 Defendant and his Codefendant Brown.

11 Over the years, I've tried many cases of this kind, but
12 in all the years of my experience, this is the first time that
13 I ever saw a Defendant in preparation for the mayhem going to
14 buy a knife at 9:30 at night and then go to the Afterdeck. If
15 that's not premeditation, I never heard of it. In addition to
16 that, there was obvious premeditation if believed by the Jury
17 as to the actions of both of them.

18 MR. HEWITT: Judge, I understand and respect your ruling.
19 I just want my objection noted for the record.

20 THE COURT: And I note that and I appreciate that fact
21 and thank you for that.

22 MR. HEWITT: Thank you, Your Honor.

23 THE COURT: As I said at the conclusion of the case
24 yesterday, the case was very professionally tried by both
25 Defense Counsel and the State. The questions of fact was for

State v. Griffith
BY LIVESAY

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1 the Jury and they were, and they were charged on the law and
2 there was no exceptions to the law as charged. I conclude
3 that the decision, whether we agree with it or not, was one
4 for twelve folks.

5 Over the years I've found from experience, even if I
6 disagree with twelve jurors sometimes -- I didn't in this
7 case; it was their decision -- but I'd often thought you know
8 if I think one way and twelve folks looking to find the truth
9 thinks another, the facts are they're right and maybe I'm
10 wrong. But we had twelve excellent jurors who were attentive
11 throughout the trial and it was their call to make and they
12 made it. The verdicts will stand as indicated and I thank you
13 for your positions, both of you.

14 All right. What's next please?

15 BY MS. LIVESAY:

16 MS. LIVESAY: At this time, do you wish to hear from the
17 victims' families?

18 THE COURT: Yes, let me hear further from the State
19 first?

20 MS. LIVESAY: Do you want to hear further on the
21 Defendant's motion or are you ready to start the sentencing
22 phase?

23 THE COURT: There's nothing further from the Defendant's
24 motion that I know of.

25 MS. LIVESAY: Okay. Your Honor, the only ---

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BY HYMAN

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1 please, ma'am?

2 MS. HOUGHTALING: It's just a personal gift. It's just a
3 little tribute to my son and my husband from an organization
4 called Ground Zero to read at your leisure.

5 THE COURT: Thank you so much. I just want the record to
6 reflect what it was.

7 Anything further from the victims?

8 MS. LIVESAY: Nothing further from the State, Your Honor.

9 THE COURT: Gentlemen for the Defense, I would be glad to
10 hear from you?

11 BY MR. HYMAN:

12 MR. HYMAN: Your Honor, just briefly. Your Honor, as
13 you've heard extensively over the past -- today's the fifth
14 day. Judge, my client is Joshua Blake Griffith. He's twenty-
15 three years old. Judge, his family and his friends have, have
16 been here in support him this entire time. You know as well
17 as I do quite often people come into this courtroom without
18 friends, without family in support of them. My client is
19 blessed enough to have that type of support. He's always had
20 that. He comes from a good family, Judge. I think there's
21 ample evidence to show that while he made bad decisions, he
22 maintains his innocence. Judge, while the Jury found him
23 guilty, he still maintains that he did not stab the young man
24 that died or stab anyone involved in this. Now, Judge,
25 obviously a jury found him guilty of that and I understand

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BY HYMAN

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1 that and I respect the Jury's verdict on that. Judge, we just
2 ask today that you take into account all the facts that were
3 put in evidence. Judge, I understand under the verdict that
4 was given the minimum mandatory on a murder charge is thirty
5 years. We have had somewhat of a, a pre-trial conference in
6 your chambers and I, I thank you for allowing us to do that.
7 Judge, I just ask that he be given the minimum mandatory on
8 that of thirty years.

9 Judge, I also want to, to let the Court know he has been
10 on ankle monitoring, GPS home detention since this crime
11 occurred. I had his family figure out what they had to pay
12 and he included, what they've paid and it's roughly \$29,000
13 over the past four and a half years in order to, to keep him
14 on ankle monitoring. Now, there is case law in the State of
15 South Carolina that says it is up to the Judge and it's his
16 discretion as to whether or not a Defendant be given credit
17 for that. Judge, I just ask that in this case, again, he has
18 shown up for Court every single time. He's never not shown up
19 for Court. He came here, he professed his innocence, even
20 when you allowed him to, to stay out on bond during the trial,
21 which I know is normally against what you normally do. He
22 knew he was here for trial. He came every single day knowing
23 that he may be found guilty. Judge, I just ask that he be
24 given credit for that time that he was placed on ankle
25 monitoring when he was on home detention. And, Judge, given

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SENTENCE OF THE COURT

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1 the facts, I think the facts, if believed, you can certainly,
2 you can certainly believe that maybe my client didn't kill
3 these people. Maybe the Jury found/him guilty under hand of
4 one, hand of all. We concede that. We understand that. We
5 understand the Jury's verdict. Judge, I would just ask that
6 you give the minimum sentence of thirty years on this and he
7 be given credit for the time under your discretion that he's
8 been on ankle monitoring. Thank you, Your Honor.

9 THE COURT: Thank you. Mr. Hewitt, is there anything you
10 care to add, sir?

11 MR. HEWITT: Nothing, Your Honor, thank you.

12 THE COURT: All right. Did any of the families of the
13 Defendant wish to be heard?

14 MR. HYMAN: Judge, I'm not sure about that. They're all
15 here. I did speak with them before and said that I would
16 speak on behalf of the family. I, I think that being said, I
17 am speaking on behalf. Obviously, he has a quite a bit of
18 family and friends here in support of him.

19 THE COURT: I understand.

20 MR. HYMAN: I think that speaks for itself.

21 THE COURT: It's not necessary.

22 SENTENCE OF THE COURT:

23 Well, my comment obviously is that this is a tragic
24 event. So tragic for the loss of D.J. and the injury to the
25 other victims, but also so tragic for this Defendant and his

State v. Griffith
SENTENCE OF THE COURT

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1 family.

2 MR. HYMAN: Yes, Your Honor.

3 THE COURT: As you are fully aware, when one is convicted
4 of murder, the law is clear in that it mandates either life
5 imprisonment or a period of time in my discretion not to be
6 less than thirty years. That is the law of this state. Of
7 course, I can give him more than thirty years or I can give
8 him life in prison. It's been my experience, however, that
9 given the young man's age, that a period of incarceration is
10 better than life imprisonment because it gives them some hope,
11 some day of being free. My experience is that those who have
12 life imprisonment without the possibility of being paroled
13 become incorrigible with no hope for redemption, no hope for
14 parole.

15 And so it is that in cases of this kind particularly in a
16 younger man, I give the sentence of life imprisonment.
17 I concur with your recommendation that the sentence in this
18 case of the minimum requirement of statute be given to him and
19 I'm going to give him credit for the time that he's been on
20 ankle monitoring. The statute permits me to do that in my
21 discretion. Again, because of his young age, it doesn't
22 detract from the seriousness of the crime for which he was
23 convicted of murder, but I'm going to give him credit for the
24 time that he served on ankle management and I want you to
25 calculate that so it can be made a part of my sentence.

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SENTENCE OF THE COURT

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1 While he was also convicted of three other charges, I
2 conclude for the reasons just stated that while those charges
3 are extremely serious, that my sentence in those regards will
4 be concurrent to each other and concurrent to the sentence I
5 impose for the conviction of murder.

6 Have the Defendant stand.

7 Mr. Griffith, I have a responsibility to sentence you in
8 accordance with the law made and provided for an individual
9 who has been convicted of murder as you were. I take no
10 delight in having to sentence you to this sentence required by
11 law, but I do need to tell you that this was about as
12 senseless killing as I've seen in my years on the bench in
13 that there is a total inference that this mayhem resulting in
14 the death was premeditated in that at 9:30 at night, you went
15 and bought a knife to get ready. Now that's for the Jury to
16 consider, not me, but the facts are that just prior to going
17 to that and being confronted with this mayhem, you bought a
18 knife. There's no evidence in the record that anybody had a
19 knife except you and the Codefendant Brown, who'll pay for his
20 actions also. As I say to you, I'm required by law to give
21 the minimum mandatory sentence in accordance with the request
22 of your distinguished Counsel, I'm going to do that for you.
23 It doesn't detract from the statement that these facts show
24 absolute senseless killing, so unnecessary. Again, I tell you
25 and your family and I've been impressed with the fact that

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SENTENCE OF THE COURT

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1 your family stood there throughout the trial and handled
2 themselves in a very decent way under certain bad
3 circumstances and I congratulate the family for their decorum
4 during the trial of this case and for the family of the
5 victims.

6 Therefore, in accordance with the verdict of the Jury
7 regarding the indictment for murder, it is the judgment and
8 sentence of this Court that you be confined in the State
9 Penitentiary for a period of thirty years. Under the
10 discretion provided to me by such statute, made and provided,
11 it is the judgment of this Court, using my discretion, that
12 you be given credit for every day that you have been on ankle
13 monitoring.

14 With regards to the assault and battery, as to each
15 indictment, it is the sentence and judgment of this Court that
16 you be confined for a period of ten years as to each
17 indictment to run concurrently and that concurrently will run
18 concurrently with the sentence previously imposed upon your
19 conviction for murder.

20 With regards to your conviction upon the indictment of
21 conspiracy, it is the sentence and judgment of this Court that
22 you be confined for a period of five years. That is
23 concurrent with all of the three sentences previously imposed.

24 Given your youth, this is the first time that I have
25 exercised my discretion with regard to giving you credit for

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SENTENCE OF THE COURT

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1 your ankle monitoring. For the reasons stated, I specifically
2 do that in this case. Thank you.

3 MR. HYMAN: Thank you, Judge.

4 THE COURT: All right. Is there anything further in
5 regards to this case against Blake Griffith?

6 MS. LIVESAY: Nothing further from the State, Your Honor.

7 THE COURT: All right. Let's deal with the second one.

8 (ADJOURNED - 11:15)

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25 END OF DAY FIVE.

26

DOCKET NO. 2009-GS-26- 4833

WITNESSES

Neal Febowitz Horry County Police Department

The State of South Carolina
County of Horry

Jimmy A. Richardson, II
09H03726

COURT OF GENERAL SESSIONS

December, 2009 TERM

ARREST WARRANT NUMBER

J323740

CDR: 0116 16-03-0010, 0020

DOA: 9/8/2009

THE STATE

vs.

Joshua Griffith
W/M

Greenville, SC 29609

DOB:

SSN:

ATTORNEY: Hyman, B. Alex

Indictment for

Murder

J. Gregory Hembree, Solicitor

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 08 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date:

1/9/14

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on December 3, 2009, the Grand Jurors of Horry County present upon their oath:

MURDER**CDR: 0116 16-03-0010,0020**

That Joshua Griffith did in Horry County, on or about September 8, 2009, willfully, feloniously, and intentionally kill the victim, Andrew Houghtailing, with malice aforethought, either express or implied, by means of stabbing him with a knife, and the victim did die as a proximate result thereof on or about September 8, 2009 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Neal Freibowitz Horry County Police Department

DOCKET NO. 2009-GS-26- 4834

The State of South Carolina

County of Horry

Jimmy A. Richardson, II
09H03726

COURT OF GENERAL SESSIONS

December, 2009 TERM

ARREST WARRANT NUMBER

J323741

CDR: 0014 16-03-0620

DOA: 9/8/2009

THE STATE

vs.

Joshua Griffith
W/M

Greenville, SC 29609

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Hyman, B. Alex

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 08 2009

VERDICT

Guilty

Indictment for

Assault & Battery With Intent to Kill

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

1/9/14

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on December 3, 2009, the Grand Jurors of Horry County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL**CDR: 0014 16-03-0620**

That Joshua Griffith did in Horry County on or about September 8, 2009, commit an unlawful act of violent injury to the victim, Ryan J. Palmer, with malice, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2009-GS-26- 4835

WITNESSES

Neal Frepowitz Horry County Police Department

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**The State of South Carolina
County of Horry**

Jimmy A. Richardson, II
09H03726

COURT OF GENERAL SESSIONS

December, 2009 TERM

ARREST WARRANT NUMBER

J323743

CDR: 0014 16-03-0620

DOA: 9/8/2009

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Joshua Griffith

W/M

Greenville, SC 29609

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Hyman, B. Alex

Foreperson of Grand Jury

Date:

DEC 08 2009

VERDICT

Guilty

Indictment for

Assault and Battery With Intent to Kill

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

1/9/14

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

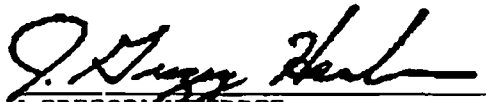
INDICTMENT

At a Court of General Sessions, convened on December 3, 2009, the Grand Jurors of Horry County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL**CDR: 0014 16-03-0620**

That Joshua Griffith did in Horry County on or about September 8, 2009, commit an unlawful act of violent injury to the victim, Robert Penna, with malice, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Neal Frehowitz Horry County Police Department

DOCKET NO. 2013-GS-26-03198

**The State of South Carolina
County of Horry**

Nancy Livesay

09H03726

COURT OF GENERAL SESSIONS

AUGUST, 2013 TERM

ARREST WARRANT NUMBER

2013GS2603198

CDR: 0049 16-17-0410

DOA: 9/8/2009

THE STATE

vs.

Joshua Griffith
W/ M

Greenville, SC 29609

DOB: [REDACTED]

SSN: [REDACTED]

ACTION OF GRAND JURY

Foreperson of Grand Jury Date: *[Signature]* AUG 22 2013

VERDICT

Guilty

ATTORNEY: Hyman, B. Alex

**Indictment for
CRIMINAL CONSPIRACY**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Chris Watts
Foreperson of Petit Jury
Date: 11/9/14

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

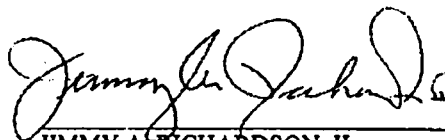
At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Horry County present upon their oath:

CRIMINAL CONSPIRACY

CDR: 0049 16-17-0410

That Joshua Griffith did in Horry County on or about September 8, 2009 combine with Blakely Brown, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Murder, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

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

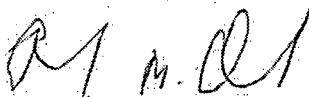


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 24th, 2016



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT