

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2016-002556
Case No. 2014-CP-46-1307

RECEIVED
FEB 26 2018
SC Court of Appeals

Russell Shane Carter, ... Respondent-Appellant,

v.

Bruce Bryant, as Representative for the
Office of the York County Sheriff, ... Appellant-Respondent.

RECORD ON APPEAL - VOLUME I OF II

Andrew F. Lindemann, #13030
LINDEMANN, DAVIS & HUGHES, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

*Counsel for Appellant-Respondent
Bruce Bryant, as Representative for
the Office of the York County Sheriff*

J. Christopher Mills, #9067
J. CHRISTOPHER MILLS, LLC
Post Office Box 8475
Columbia, South Carolina 29202
(803) 748-9533

*Counsel for Respondent-Appellant
Russell Shane Carter*

Robert D. Garfield, #6557
CROWE LAFAYE, L.L.C.
500 Taylor Street, Suite 401
Post Office Box 1149
Columbia, South Carolina 29202
(803) 724-5729

*Counsel for Appellant-Respondent
Bruce Bryant, as Representative for
the Office of the York County Sheriff*

Alex T. Postic, #6959
LAW OFFICES OF ALEX POSTIC
Post Office Box 11926
Columbia, South Carolina 29211
(803) 771-8081

*Counsel for Respondent-Appellant
Russell Shane Carter*

INDEX

Volume I

Order Denying Defendant's Post-Trial Motions, filed December 5, 2016	1
Judgment, filed November 10, 2016.....	4
Verdict Form, filed November 10, 2016.....	6
Complaint, filed April 24, 2014.....	7
Answer, filed August 1, 2014	12
Defendant's Motion for Judgment Notwithstanding Verdict, or alternatively, Motion for New Trial Absolute, filed November 18, 2016, with attachment.....	17
Exhibit A - Plaintiff's Responses to Defendant's First Set of Interrogatories.....	27
Plaintiff's Response to Defense Post-Trial Motions Pursuant to S.C.R.CP. Rules 50 and 55, filed December 5, 2016.....	35
Trial Transcript	44
Russell Shane Carter	
Direct Examination by Mr. Postic.....	48
Cross-Examination by Mr. Garfield.....	118
Cross-Examination by Mr. Garfield -- Proffered Testimony.....	128
Cross-Examination by Mr. Garfield -- Continued	130
Re-Direct Examination by Mr. Postic.....	159

Dawn Carter

Direct Examination by Mr. Postic.....	174
Cross-Examination by Mr. Garfield.....	199
Re-Direct Examination by Mr. Postic	202

Jonathan Reed

Deposition Published.....	204

Jay Phillips

Direct Examination by Mr. Mills -- Proffered Testimony	235
Cross-Examination by Mr. Garfield -- Proffered Testimony.....	265
Defendant's Motion for a Directed Verdict	297

Volume II

Officer Kevin Gwinn

Direct Examination by Mr. Garfield	312
Cross-Examination by Mr. Mills.....	342
Continued Cross-Examination by Mr. Mills.....	357
Continued Cross-Examination by Mr. Mills.....	378
Re-Direct Examination by Mr. Garfield	387
Re-Cross-Examination by Mr. Mills.....	389

Sergeant Lee Wright

Direct Examination by Mr. Garfield	397
Cross-Examination by Mr. Mills.....	420
Re-Direct Examination by Mr. Garfield	453
Re-Cross-Examination by Mr. Mills.....	464

Judge Leon Yard

Direct Examination by Mr. Garfield	472
Cross-Examination by Mr. Mills.....	491

Eli Baxter Springs

Direct Examination by Mr. Garfield	499
Cross-Examination by Mr. Mills.....	511
Closing Argument by Mr. Mills	529
Charge on the Law.....	530
Verdict	551
Plaintiff's Exhibit #1	557
Plaintiff's Exhibit #2	558
Plaintiff's Exhibit #3	559
Plaintiff's Exhibit #5a.....	561
Plaintiff's Exhibit #5b	563
Plaintiff's Exhibit #5c.....	565

Plaintiff's Exhibit #5d	567
Plaintiff's Exhibit #5e.....	569
Plaintiff's Exhibit #6	571
Plaintiff's Exhibit #8a.....	573
Plaintiff's Exhibit #8b	575
Plaintiff's Exhibit #8c.....	577
Plaintiff's Exhibit #9a.....	579
Plaintiff's Exhibit #9b	580
Defendant's Exhibit #1	586
Defendant's Exhibit #2	588
Defendant's Exhibit #3	590
Defendant's Exhibit #4	592
Defendant's Exhibit #5	594
Defendant's Exhibit #6	596
Defendant's Exhibit #7	598
Defendant's Exhibit #8	600
Defendant's Exhibit #9	602
Defendant's Exhibit #10.....	604
Defendant's Exhibit #11	606
Defendant's Exhibit #12.....	608

Defendant's Exhibit #13	610
Defendant's Exhibit #14	612
Defendant's Exhibit #15	614
Defendant's Exhibit #16	616
Defendant's Exhibit #17	618
Defendant's Exhibit #18	620
Defendant's Exhibit #19	622
Defendant's Exhibit #20	624
Defendant's Exhibit #21	626
Defendant's Exhibit #22	628
Defendant's Exhibit #23	630
Defendant's Exhibit #24	632
Defendant's Exhibit #25	634
Defendant's Exhibit #26	636
Defendant's Exhibit #27	638
Court's Exhibit #1	640
Court's Exhibit #3	641
Certificate of Counsel	
Certificate of Compliance	

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Russell Shane Carter,

Plaintiff,

v.

Bruce Bryant, as representative for the
Office of the York County Sheriff,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-46-1307

ORDER

FILED-RECEIVED
2016 DEC -5 AM 9:11
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The above was tried before the undersigned and a jury on November 9, 2016. The jury returned a verdict for the Plaintiff in the amount of \$150,000.00. Defendant has timely filed the following Post-Trial motion:

Notice of Motion and Motion for Judgment Notwithstanding
Verdict, or Alternatively, Motion for New Trial Absolute

Defendant notes Rules 50 and 59, SCRPC, as predicate rules for the motion. The motion sets forth 19 grounds in support of the motion.

Grounds numbered 1, 2, 7, and 15 go to the sufficiency of the evidence. At the appropriate stages of the trial, when ruling on Defendant's directed verdict motions, the undersigned ruled Plaintiff had introduced sufficient evidence to support his cause of action for malicious prosecution. The undersigned weighed the evidence of record presented by Plaintiff and denied Defendant's motions for directed verdict. The undersigned felt during trial, and now continues to feel, that Plaintiff's evidence was sufficient for the case to be submitted to the jury.

Grounds numbered 3, 4, 5, and 6 assert Defendant is entitled to a judgment notwithstanding the verdict based on provisions of the South Carolina Torts Claim Act (Section

15-78-60, South Carolina Code of Laws, 1976, as amended). At trial, the undersigned reviewed the various exceptions to the waiver of governmental immunity set forth in the four numbered grounds. Upon such review, the undersigned deemed the exceptions did not bar Plaintiff's cause of action for malicious prosecution. The undersigned continues to believe the exceptions do not apply under the facts here present.

Grounds numbered 8, 10, 11, and 14 address the introduction of the evidence at trial. Reception of evidence is a matter dealt with at the time of the introduction of the evidence. If these are claims of incorrect evidentiary rulings, they are matters for direct appeal.

Ground number 9 simply lacks any legal basis.

Grounds numbered 12, 13, and 16 assert the Court gave an incorrect charge to the jury. These are grounds for direct appeal.

Ground number 17 asks the Court to grant a new trial pursuant to the thirteenth juror doctrine. The Court finds no reason to do so.

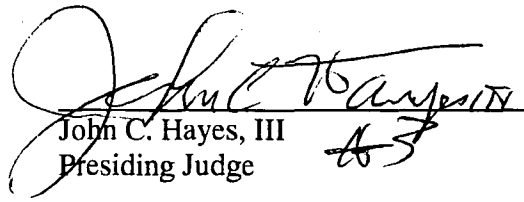
Ground number 18 asserts an improper argument to the jury by Plaintiff's counsel. This is a matter for direct appeal.

Ground number 19 asserts the verdict is grossly excessive and is based on caprice, passion, prejudice, partiality, or other improper motives. The undersigned finds that the verdict is not grossly excessive and does not shock the conscience. Further, the amount of the verdict does not substantiate the assertion that same was a result of caprice, passion, prejudice, partiality, or other improper motives.

Wherefore, Defendant's motions set forth hereinabove are denied.



IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

December 1st, 2016
York, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FILED-RECEIVED FORM 4
2016 NOV 10 AM 10:47
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4601307

Russell Shane Carter

Bruce Bryant Representative

Sheriffs Department
York County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **SEE ATTACHED VERDICT FORM(S)**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Russell Shane Carter	Bruce Bryant Representative	\$ 150,000.00
Russell Shane Carter	Sheriffs Department York County	\$ 150,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

John C. Hayes, III.
Circuit Court Judge

2049

Judge Code

Date

11/9/16

For Clerk of Court Office Use Only

This judgment was entered on November 10, 2016, and a copy mailed first class or placed in the appropriate attorney's box on November 10, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

John Christopher Mills PO Box 8475 Columbia, SC 29202
Alexandre Thomas Postic PO Box 11926 Columbia, SC
29211

Robert David Garfield PO Box 8568 Columbia, SC
29202-8568
Heather Langley Mouzon 1675-2A York Highway York, SC
29745

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: Wanda Nelson

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Russell Shane Carter,)
Plaintiff,)
v.)

Bruce Bryant, as representative for)
the Office of the York County)
Sheriff,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-46-01307

VERDICT FORM

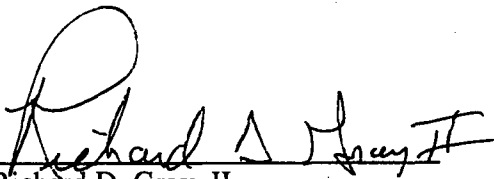
FILED-RECEIVED
2016 NOV 10 AM 10:47
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

X

We, the Jury, find for the Plaintiff against the Defendant as to Malicious Prosecution in the amount of actual damages totaling:

\$ ONE - Hundred Fifty Thousand and no/100

We, the Jury, find for Defendant.


Richard D. Gray, II
Foreperson

November 9, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

In the Court of Common Pleas
for the Sixteenth Judicial Circuit

Case No.

2014CP46C1307

Russell Shane Carter,)

Plaintiff,
v.)

Bruce Bryant, as representative for the)
Office of the York County Sheriff's)

Defendant.)

Complaint

Jury Trial Demanded

FILED-RECEIVED
2014 APR 24 PM 12:17
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

The Plaintiff, by and through his undersigned attorney, respectfully alleges the following against the Defendants:

Preface

This complaint alleges the state common law tort claim of false arrest and malicious prosecution pursuant to the South Carolina Tort Claims Act, against the York County Sheriff's Office based on the acts and omissions of Deputy Gwinn in arresting and prosecuting Plaintiff without probable cause on the charge of Assault and Battery of a High and Aggravated Nature.

Parties

1. The plaintiff, Russell Shane Carter, is a resident of York County, South Carolina.
2. The defendant, York County Sheriff's Office, is an agency organized by York County, a political subdivision of South Carolina. It is the appropriate party defendant pursuant to S.C. Code Ann § 15-78-70, which makes the employing agency statutorily liable for the acts and omissions of its officers acting in the course and scope of their official duties. York County Sheriff's Office is sued under a common law for the acts of

Deputy Gwinn in arresting and prosecuting Plaintiff for Assault and Battery of a High and Aggravated Nature.

Jurisdiction

3. The Plaintiff brings his state law claims pursuant to the South Carolina Tort Claims Act, *S.C. Code Ann. §1-78-10 et seq.* The incident that gives rise to this action occurred in York County.

Statement of Facts

4. In April of 2012, in addition to his regular job, Plaintiff Russell Shane Carter was the maintenance man for a number of properties in York County, including his own residence. On or about April 25, 2012, there had been issues with the well drying up at a couple of these properties. When Plaintiff Carter arrived home that evening, there did not appear to be any problem with the water system.

5. Unbeknownst to Plaintiff Carter, an individual named Michael Faile had been visiting Plaintiff's neighbor who lived on a property maintained by Carter. Faile was not a resident of any of these properties and Plaintiff Carter did not know Faile at this time.

6. At approximately 10:00pm that evening, the water went out again. Shortly thereafter, Faile began banging on Plaintiff's door. Plaintiff, who lives at home with his wife, their four (4) little girls, and his 86-year-old grandmother, jumped up and looked out the window to see who was there.

7. Plaintiff yelled out "Who is it?!" He heard muffled voices on his porch. Plaintiff had a bat near the front door which he grabbed for protection and he opened the door. Faile started yelling at him in an aggressive tone asking "What's wrong with the water?!" Plaintiff asked Faile who he was. When he did not get an answer, he informed Faile that

he was not the landlord and that he (Faile) was trespassing and he needed to leave his property.

8. Faile, becoming more aggressive, continued to ask him what was wrong with the water and wanted him to fix it right then. Plaintiff kept insisting that Faile leave his property. Plaintiff, being afraid for his and his families' safety, told Faile that he would look at the water, but he needed to leave his property.

9. Plaintiff then yelled for his wife to call the police. At that time, Faile opened Carter's screen door. Plaintiff took one step onto his porch to prevent Faile from entering his home. At that point Faile began punching Plaintiff in the face. Acting in self defense and out of fear for the safety of his family Plaintiff fended Faile off with the bat by striking him. They struggled off of the porch and into the yard. Faile continued to kick and strike Plaintiff, and Plaintiff continued to strike Faile with the bat until Faile rolled over onto his stomach and stopped attacking him. Plaintiff held Faile at bay until the police arrived.

10. Once there, Deputy Gwinn sent Plaintiff inside while they questioned Faile. Plaintiff came outside with a camera phone. Deputy Gwinn told him he could not take photographs and grabbed his phone. Plaintiff was then handcuffed and put in the back of the patrol car.

11. Deputy Gwinn began asking Plaintiff questions about the altercation with Faile. When Plaintiff asked Deputy Gwinn "Am I not within my rights to protect my home because of the Castle Doctrine?", Deputy Gwinn replied, "No, that does not apply here. That is in Florida or somewhere in the lower part of the State, but not here."

12. Deputy Gwinn let Plaintiff go that night. The next day he went to the Magistrate and swore out a warrant for Plaintiff's arrest for Assault and Battery of High and Aggravated Nature.

13. When Plaintiff got out on bond, he hired a criminal defense attorney, Alex Postic, to represent him. Mr. Postic sent a copy of the Defense of Habitation and the Castle Doctrine to the prosecutor, E.B. Springs. Upon receipt, Mr. Springs dismissed the charge stating that he was "convinced Mr. Carter's actions....were within the law."

Legal Theories of Recovery

For a First Cause of Action

False Arrest against the York County Sheriff's Office
pursuant to the SCTCA

The allegations set forth above are repeated as if included herein.

14. The Office of the York County Sheriff's Department is vicariously liable for the acts of Deputy Gwinn acting within the course and scope of his employment. The acts and omissions of the deputy in arresting plaintiff on the charges of Assault and Battery of High and Aggravated Nature was without probable cause or lawful authority constituting the tort of false arrest. As a direct and proximate result Plaintiff incurred attorney fees, physical and emotional damage.

For a Second Cause of Action

Malicious Prosecution against the York County
Sheriff Office pursuant to the SCTCA

The allegations set forth above are repeated as if included herein.

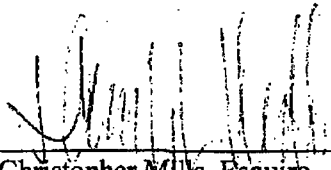
15. The Office of the York Sheriff is vicariously liable for the acts of Deputy Gwinn acting within the course and scope of his employment in prosecuting Plaintiff in General Sessions court on the criminal charge of Assault and Battery of High and Aggravated Nature constitutes the tort of malicious prosecution. Plaintiff alleges

- 1) There was the institution and continuation of original judicial proceedings by the arrest and prosecution on the criminal charges of Assault and Battery of High and Aggravated Nature;
- 2) by, or at the insistence of Deputy Gwinn;
- 3) the termination of the criminal proceedings in the Plaintiff's favor for reasons consistent with innocence;
- 4) the prosecution was done with implied malice for want of probable cause;
- 5) there was not probable cause for the arrest; and
- 6) Plaintiff suffered emotional and financial damage.

Prayer for Relief

Wherefore, having fully set forth the grounds of his complaint, Plaintiff asks this court to award compensatory damages in an appropriate amount, costs of this action and for such other relief as this court deems just and proper.

Respectfully submitted this the 24th day of April, 2014, in Columbia, South Carolina.



J. Christopher Mills, Esquire
P.O. Box 8475
Columbia, South Carolina 29202
Telephone: 803-748-9533
Facsimile: 803-753-9123
Email: chris@chrismillslaw.com

Alex Thomas Postic, Esquire
1830 Marion Street
Columbia, South Carolina
803-771-8081 (office)

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2014 AUG -1 3 PM 1:09

C/A No.: 2014-CP-46-1307

DAVID HAMILTON
C.C.C.P. & G/S.
YORK COUNTY, SC

Russell Shane Carter,

Plaintiff,

v.

Bruce Bryant, as representative for
the Office of the York County Sheriff's,

Defendant.

ANSWER

(Jury Trial Requested)

The Defendant Bruce Bryant, as representative for the Office of the York County Sheriff answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. The Defendant is immune from suit pursuant to pertinent portions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically, § 15-78-60 (1), (2), (3), (4), (5), (6), (20), and (23).

FOR A THIRD DEFENSE

3. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
4. The allegations set forth in the Preface are denied as stated, except to the extent that Plaintiff alleges that he has brought various causes of action in this civil

ADG
#1

action. The Defendant denies that any of Plaintiff's causes of action with respect to the Defendant or his employees are meritorious.

5. That as to Paragraph One (1), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, denies this paragraph and demands strict proof thereof.

6. As to the first sentence of Paragraph Two (2), the Defendant Sheriff alleges that he is a constitutional officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina. Further responding, the Defendant admits that he is the duly elected Sheriff of York County and upon information and belief that all times herein his officers were acting within the course and scope of their employment and official duties as deputies. As to the second sentence of Paragraph Two (2), the Defendant alleges upon information and belief that Plaintiff has set forth legal conclusions which can neither be admitted nor denied and, therefore, the Defendant craves reference to the terms and conditions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.* as to its applicability to this action. The allegations set forth in the third sentence of Paragraph Two (2) are denied, except to the extent that Plaintiff alleges that he has brought various causes of action in this civil action and is seeking damages. The Defendant further denies that any of Plaintiff's causes of action are meritorious. Except as stated herein, the Defendant denies this paragraph as stated and demands strict proof thereof.

7. The first sentence of Paragraph Three (3) is jurisdictional in nature, can neither be admitted nor denied, and the Defendant craves reference thereto. The Defendant further craves reference to the Constitution of South Carolina and the South

ADG
#2

Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*, as to its applicability to this action. The second sentence of Paragraph Three (3) is admitted upon information and belief.

8. That as to Paragraphs Four (4), Five (5), Six (6), Seven (7), Eight (8), and Nine (9), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, denies these paragraphs and demands strict proof thereof.

9. That as to Paragraphs Ten (10) and Eleven (11), the Defendant only admits upon information and belief that Deputy K. Gwinn with the York County Sheriff's Office was dispatched to the incident location. Upon arrival, he observed Mr. Faile laying on the porch area and actively bleeding from his head. Deputy Gwynn notified dispatch to summon an Emergency Medical Services unit relative to a head injury. Further responding, Deputy Gwynn then conducted an investigation, including but not limited to taking statements from the adults who were present and possessed information regarding the relevant events. At some point during his investigation, Deputy Gwynn placed Plaintiff in investigatory detention. Except as stated herein, the Defendant denies these paragraphs as stated and demands strict proof thereof.

10. That as to the first sentence of Paragraph Twelve (12), the Defendant admits same upon information and belief. That as to the second sentence of Paragraph Twelve (12), the Defendant only admits upon information and belief that on April 26, 2012, Deputy Kavin Gwinn personally went to York County Magistrate Judge Leon E. Yard. Further responding, Judge Yard reviewed the investigative file pertaining to the relevant events and considered the facts presented to him by Deputy Gwinn. As a

Mr
#3

result, Judge Yard found that probable cause existed with respect to Plaintiff 's arrest and issued Arrest Warrant M-604594 for Assault and Battery of a High and Aggravated Nature. The Defendant further craves reference to the exact contents of the arrest warrant for the most accurate evidence of what is contained therein. Except as stated herein, the Defendant denies the second sentence of Paragraph Twelve (12), and demands strict proof thereof.

11. That as to the first two sentences of Paragraph Thirteen (13), the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same, and therefore, denies same and demands strict proof thereof. That as to the third sentence of Paragraph Thirteen (13), the Defendant denies same as stated and demands strict proof thereof. The Defendant craves reference to the official Solicitor's records for the most accurate information of what is contained therein.

12. Any and all allegations inconsistent with the foregoing are denied. Further, and that as to the prayer of the Complaint, the Defendant asserts that Plaintiff is not entitled to the relief requested in the Complaint, or any other relief against the Defendant.

FOR A FOURTH DEFENSE

13. The Defendant alleges that it is immune from suit and liability under the doctrine of sovereign immunity.

FOR A FIFTH DEFENSE

14. The Defendant alleges upon information and belief that at all times herein that the Defendant's employees were acting within the course and scope of their employment in a discretionary manner, in good faith, without bad faith or malicious

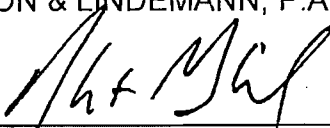
ADK
#4

motives in the performance of their official duties, and therefore, the Defendant is immune from suit.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant Bruce Bryant, as representative for the Office of the York County Sheriff prays that same be dismissed with prejudice and for such other and further relief as the Court deems just and presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY:


ROBERT D. GARFIELD
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: (803) 806-8222
F: (803) 806-8855
rgarfield@dml-law.com

*Counsel for Defendant
Bruce Bryant, as representative for
the Office of the York County Sheriff*

Columbia, South Carolina

July 25, 2014

ADG
#5

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) Civil Action Number: 2014-CP-46-1307

Russell Shane Carter,
Plaintiff,

v.

Bruce Bryant, as representative for
the Office of the York County Sheriff,
Defendant.

FILED-RECEIVED
2016 NOV 18 AM 10:19
DAVID HAMILTON
C.C. CLERK
YORK COUNTY, SC

NOTICE OF MOTION AND MOTION FOR JUDGMENT
NOTWITHSTANDING VERDICT, OR ALTERNATIVELY,
MOTION FOR NEW TRIAL ABSOLUTE

TO: THE HONORABLE JOHN C. HAYES, III

J. CHRISTOPHER MILLS, ESQ. AND ALEX T. POSTIC, ESQ., COUNSEL FOR
PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant, Bruce Bryant, as representative for the Office of the York County Sheriff, hereby moves before the Honorable John C. Hayes, III at the Moss Justice Center, York, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 50, SCRPC, and Rule 59, SCRPC, granting a judgment notwithstanding the verdict, or alternatively, a new trial absolute.

The Defendant's motion is based upon the following grounds:

1. The Defendant is entitled to judgment notwithstanding the verdict because there was no evidence to support a finding that probable cause was lacking for Plaintiff's arrest. Based upon the testimony of both Plaintiff and Deputy Gwinn, upon Gwinn's arrival,

126
#1

he observed Plaintiff standing over Mr. Faile holding a Louisville Slugger aluminum baseball bat. Meanwhile, Faile was not moving; was curled up on the porch below Plaintiff; covered in blood; bleeding from his head; and obviously in need of emergency medical attention. At that moment, Plaintiff exclaimed to Gwinn: "I beat him as bad as I could and if he moved again, I would crack his f*cking head open." Subsequently, Gwinn visited Faile at the hospital and noted that his head appeared to be "swollen" and "sunken in parts with bruises all over his body." Numerous pictures taken of Faile at the hospital and introduced as defense exhibits were consistent with Plaintiff having admitted to striking him at least eight times about his head and body with the bat. See, *Mack v. Lott*, 415 S.C. 22, 780 S.E.2d 761, 761 (2015) ("the proper standard for determining probable cause is an objective standard; that is, whether the facts known to the arresting officer at the time of the arrest, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause."); see also, *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("An officer may arrest an individual without violating the Fourth Amendment if there is probable cause to believe that the offender has committed even a very minor criminal offense in the officer's presence.") The evidence is undisputed that probable cause existed for Gwinn to effectuate either a warrantless arrest or proceed to the magistrate and pursue a warrant for Assault and Battery of a High and Aggravated Nature ("ABHAN").

2. The Defendant moves for a judgment notwithstanding the verdict because there was no evidence to support a finding that the charges terminated in his favor were consistent with innocence. "Where an accused establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained." See, *McKenney v. Jack Eckerd Co.*, 304 S.C. 21, 402 S.E.2d 887, 888 (1991). Here, Plaintiff introduced no evidence that the charge was *nolle prossed* for any reasons consistent with his innocence. Instead, the charge was dismissed

because the assistant solicitor acknowledged that Plaintiff had a legal defense at the General Sessions trial or an immunity from criminal prosecution by way of the Protection of Persons and Property Act. (e.g., per E.B. Springs' testimony: "I did find as a prosecutor assigned to this case that he did have a defense and I dismissed it based upon that ... He was not innocent. No. He beat this man ... He did take the actions of ABHAN ... Then it becomes a question of whether he had a defense or not.") Thus, the existence of an immunity from prosecution does not render Plaintiff innocent nor rejects the existence of probable cause.

3. The Defendant is entitled to a judgment notwithstanding the verdict because as an exception to the waiver of immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(1),(3), a governmental entity is not liable for a loss resulting from judicial action or the execution of the order of any court, respectively. Magistrate Judge Leon Yard, who had served on the summary bench for over 18 years, testified that in considering probable cause, *inter alia*, he read the full narrative within Gwynn's police report as well as written statements of Plaintiff and his wife. In so doing, he fully considered and took into account Plaintiff's contention that his actions were taken in defense of himself, his family, and/or his residence. (e.g., Yard's testimony that, "I would say if one man is standing over another man lying on the ground, swinging a bat, that's not defending himself.") Thus, Judge Yard formulated the opinion that probable cause existed for ABHAN stemming from Plaintiff having struck Faile with an aluminum bat multiple times, resulting in Faile suffering visible injuries and necessitating emergency transport to Piedmont Medical Center. (e.g., Yard's testimony, reflecting upon Plaintiff's recitation of events: "I will continue beating you until you stop moving, that's what got me.")

4. The Defendant is entitled to a judgment notwithstanding the verdict because as an exception to the waiver of immunity pursuant to the South Carolina Tort Claims Act,

ADU
#3

S.C. Code Ann. § 15-78-60(4), a governmental entity is not liable for a loss resulting from the failure to enforce any law. Much of the testimony and evidence propounded by Plaintiff involved deputies' failure to apply and enforce the provisions of the Protection of Persons and Property Act ("Castle Doctrine Statute"), S.C. Code Ann. § 16-11-410, *et. seq.*, the full statute of which was charged to the jury. To the extent that the Sheriff's deputies failed to apply and enforce the provisions of the Castle Doctrine Statute, the Defendant is entitled to absolute sovereign immunity.

5. The Defendant is entitled to a judgment notwithstanding the verdict because as an exception to the waiver of immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(5), a governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by a governmental employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental employee. Much of the testimony and evidence presented by Plaintiff centered on, *inter alia*, the deputies exercising poor judgment in the course of their investigation; weighing competing alternatives of arresting Plaintiff while declining to pursue charges against Faile; proceeding to a magistrate with evidence versus effectuating a warrantless arrest; and the failure to pursue a follow-up investigation. All of these alleged actions or inactions constitute an immune function and the Sheriff should enjoy immunity from suit.

6. The Defendant is entitled to a judgment notwithstanding the verdict because as an exception to the waiver of immunity pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(23), a governmental entity is not liable for a loss resulting from the institution or prosecution of any judicial proceeding. An element of the cause of action for malicious prosecution is the institution of criminal proceedings. See, e.g., *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128, 131 (2014). That element falls squarely within the

scope of § 15-78-60(23). Pursuant to the Tort Claims Act, no civil action may be taken against a governmental entity on the basis of an employee instituting a judicial proceeding. Accordingly, since a criminal proceeding is a judicial proceeding, the government cannot be sued for instituting a criminal proceeding. In *McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013), Federal Judge Joseph F. Anderson, Jr. ruled that a malicious prosecution claim was barred by Section 15-78-60(23). Judge Anderson agreed that "McCoy's cause of action for malicious prosecution plainly falls within this express exception." 929 F.Supp.2d at 567, n. 10. Consequently, the Defendant Sheriff should be afforded absolute sovereign immunity for a malicious prosecution claim.

7. The Defendant is entitled to judgment notwithstanding the verdict because there was no evidence to support a finding that Plaintiff had sustained a physical injury whereas in both Plaintiff's Complaint and his testimony at trial, Plaintiff alleged and conceded that he suffered no physical injury based upon the effectuation of his arrest or undergoing prosecution. Since there was no evidence of any physical manifestation of the emotional injury, pursuant to *Jefferson-Pilot Fire & Casualty Co. v. Sunbelt Beer Distributors, Inc.*, 839 F. Supp. 376 (D.S.C. 1993) and *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), Plaintiff's claim for emotional injury should fail as a matter of law.

8. The Defendant moves for a new trial absolute due to Plaintiff's counsel's improper cross-examination of defense witness Sgt. Lee Wright by introducing facts clearly not in evidence. Specifically, counsel for Plaintiff directly asked Wright whether he considered the fact that Faile had been previously convicted of felony drug distribution or trafficking. Such a presumptive fact impugning the character and credibility of Faile was significant in the jury's assessing the credibility of Plaintiff and Faile. Moreover, such information had not been previously elicited by any witness; was wholly unsupported by the

record; and Faile was never called as a fact witness by either party. The effect of counsel's commentary was unduly prejudicial as the jury was thereafter placed under a misguided impression which could not be reasonably disregarded in deliberations.

9. The Defendant moves for a new trial absolute due to the Court's failing to apprise the jury that the false arrest claim had been dismissed at the directed verdict stage at the conclusion of Plaintiff's case. While the jury was ultimately instructed by the Court not to deliberate as to false arrest as part of the Court's closing charges (*i.e.*, the existence of a facially valid warrant and the arrest being effectuated pursuant to lawful authority), the delay of such instruction until after the Defendant rested permitted Plaintiff's counsel to address and attack the validity of the arrest warrant; the appropriateness of the magistrate's actions in eliciting testimony from the affiant Gwinn; and whether Gwinn was properly and timely sworn by the magistrate. This potentially caused juror confusion and resulted in prejudice to Defendant.

10. The Defendant moves for a new trial absolute due to the Court's allowing testimony and evidence concerning the Defendant's policies and procedure in that this agency's internal guidelines for investigations and pursuing an arrest warrant were not material to the facts of the case nor relevant as to the issue of probable cause. See, Pl. Exh 10. By way of explanation, police internal guidelines contain a strict professional standard, oftentimes a higher standard than legal thresholds. Moreover, negligence was not pled as a cause of action and therefore professional standards of care for law enforcement was not an issue for the jury. Thus, introduction of these guidelines and impeachment of witnesses with respect to its contents presuppose a higher legal standard of care and confuse the jury as to which facts they should deliberate upon.

11. The Defendant moves for a new trial absolute due to the Court's precluding testimony and evidence concerning Plaintiff not having pursued an administrative complaint

with the Defendant's Professional Standards division. That the Court permitted full testimonial and physical evidence as to the agency's administrative guidelines and that failures by its employees would be subject to internal disciplinary action, the Court should similarly have permitted testimony and/or evidence whether Plaintiff availed himself of the administrative remedies and further, such that the deputies' supervisors could properly review Gwinn and other deputies' performance in the course of their official duties.

12. The Defendant is entitled to a new trial absolute due to His Honor declining to charge the jury with respect to the Defendant's Request to Charge No. 8: "I charge you that the pertinent question here was not whether Plaintiff was guilty of a crime, but merely whether probable cause existed to arrest him. Evidence required to establish guilt is not necessary to authorize an arrest. In other words, a finding of probable cause may be based upon less evidence than would be necessary to support a conviction." See, *Lapp v S.C. Department of Motor Vehicles*, 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010); see also, *Summersell v. S.C. Dep't of Pub. Safety*, 334 S.C. 357, 368-69, 513 S.E.2d 619, 625 (Ct. App. 1999); *Henry v. United States*, 361 U.S. 98, 102, (1959). Given that the Court charged the jury as to the Castle Doctrine as well as evidence of a dismissal of the charge by a General Sessions prosecutor prior to the trial of his criminal case for which a higher legal threshold (i.e., beyond a reasonable doubt) was applicable, the failure to fully delineate these standards in light of the lower probable cause standard created jury confusion.

13. The Defendant is entitled to a new trial absolute due to His Honor declining to charge the jury with respect to *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656, 659 (Ct. App. 2005) and *Devenpeck v. Alford*, 543 U.S. 146, 153, 125 S.Ct. 588, 593-594 (2004).

14. The Defendant moves for a new trial absolute due to the Court permitting Plaintiff to testify and introduce evidence that he had incurred or was responsible for

AD6
#7

7

\$17,500 in criminal defense attorney fees in light of a purported letter from Counsel Postic from the calendar year 2012 and that which was never identified or produced in discovery, nor properly authenticated. In Plaintiff's discovery responses dated September 28, 2015, he itemized his damages thusly: *"Plaintiff suffered a loss of his liberty while he was in jail, as well as damages in the amount of \$5,000 payment to his criminal defense attorney, \$1,000 payment for bond."* See, Exh. A. Such was complicated by the fact that the attorney examining Plaintiff on this point was Attorney Postic himself, the author of said correspondence and the counselor for whom the legal fees were owed. This constituted an unfair surprise to the undersigned for which the Defendant was heretofore not in a position to make inquiries of Plaintiff during the course of discovery, compounded by the fact that Attorney Postic had become a material witness to this litigation.

15. The Court should grant a new trial absolute because the record is devoid of evidence in which to support the verdict. Plaintiff only presented evidence of being detained overnight in the detention center, payment of \$1,000 bond, and actual payment of \$5,000 in legal expenses. The evidence was otherwise limited to emotional harm and that which there was no evidence of medical treatment, evaluation, or health care. Therefore, in light of the evidence, or rather the lack thereof, the verdict was clearly excessive and should be set aside.

16. The Defendant is entitled to a new trial absolute due to His Honor having charged the jury that damages are recoverable based upon evidence of an emotional injury, which is inconsistent with *Jefferson-Pilot* and *Kinard, supra*, and as a consequence, a new trial absolute is warranted.

17. The Defendant moves for a new trial absolute based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been

termed a granting of a new trial upon the facts." See, *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." *Id.* As discussed above, the Defendant submits that the evidence presented in this case does not support nor justify the jury's verdict. Plaintiff did not present evidence to support a verdict of \$150,000 in actual damages. As a result, a new trial absolute should be granted.

18. The Defendant moves for a new trial absolute due to Plaintiff's counsel's improper recommendation during his closing statement that the jury, in considering damages, should "send a message" by way of its verdict. Such a comment was improper and rose to the level of arousing juror passion or prejudice.

19. The Defendant is entitled to a new trial absolute because the verdict is grossly excessive based on the nature of the evidence of damages presented. Since there was clearly a lack of evidence throughout trial to support the jury's verdict, the verdict was clearly based on caprice, passion, prejudice, partiality, or other improper motives.

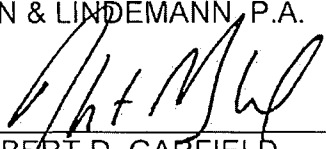
[Signature block on following page]

106
#9

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:



ROBERT D. GARFIELD
ANDREW F. LINDEMANN
1611 Devonshire Drive
Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Defendant

Columbia, South Carolina

November 17, 2016

ORAL ARGUMENT REQUESTED

ADG
#10

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)

) Civil Action Number: 2014-CP-46-1307
)

Russell Shane Carter,

Plaintiff,

v.

Bruce Bryant, as representative for
the Office of the York County Sheriff,

Defendant.

**EXHIBIT A – PLAINTIFF’S RESPONSES TO
DEFENDANT’S FIRST SET OF INTERROGATORIES**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Russell Shane Carter,	)	Case No. 2014-CP-46-1307
	)	
Plaintiff,	)	
v.	)	
	)	
Bruce Bryant, as Representative for	)	PLAINTIFF'S RESPONSES TO DEFENDANT'S
The Office of the York County	)	FIRST SET OF INTERROGATORIES
Sheriff,	)	
	)	
Defendants.	)	
	)	

TO: ROBERT GARFIELD, ESQUIRE. ATTORNEY FOR DEFENDANT SHERIFF BRYANT:

The Plaintiff, by and through his undersigned attorneys and pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, respectfully submits the following Responses to the Defendant's First Set of Interrogatories.

I. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: Plaintiff adopts Defendant's witnesses and names the following:

- (a) Russell Shane Carter
3001 Leslie Hwy.
Rock Hill, SC

Mr. Carter is the Plaintiff in this action and is expected to testify as to the events which give rise to this lawsuit.

- (b) Dawn O. Carter
3001 Leslie Hwy.
Rock Hill, SC

Mrs. Carter is the wife of Plaintiff and she is a witness to the incident which is subject to this lawsuit. She is expected to testify as to her observations of the events which give rise to this lawsuit.

- (c) Deputy Kevin Gwinn
c/o York County Sheriff's Department
York, SC

Deputy Gwinn responded to the scene at Plaintiff's residence on the night of April 25, 2012 and is expected to testify as to his observations, his interviews with Plaintiff and the witnesses, the evidence and conversations provided to the magistrate for the warrant, and any such other information he may have regarding the events which give rise to this lawsuit.

- (d) Deputy Reed
c/o York County Sheriff's Department
York, SC

Upon information and belief, Deputy Reed responded to the scene at Plaintiff's residence on the night of April 25, 2012 and is expected to testify as to his observations, his interviews with Plaintiff and the witnesses, the evidence and conversations provided to the magistrate for the warrant, and any such other information he may have regarding the events which give rise to this lawsuit.

- (e) Deputy Wright
c/o York County Sheriff's Department
York, SC

Upon information and belief, Deputy Wright responded to the scene at Plaintiff's residence on the night of April 25, 2012 and is expected to testify as to his observations, his interviews with Plaintiff and the witnesses, the evidence and conversations provided to the magistrate for the warrant, and any such other information he may have regarding the events which give rise to this lawsuit.

- (f) Michael Faile
(address unknown)

Mr. Faile was present at the scene on the night of April 25, 2012 and is expected to testify as to the events which led to his encounter with Plaintiff, as well as the encounter with Plaintiff and any such other information he may have regarding the events which give rise to this lawsuit.

- (g) Mr. Blackmon
(current address unknown)

Mr. Blackmon was a witness to the incident which occurred on April 25, 2012 and is expected to testify as to the events which give rise to this lawsuit.

- (h) The Honorable Leon Yard
Moss Justice Center

York, SC

Judge Yard is the Magistrate who signed off on the warrant which led to the arrest of the Plaintiff. He is expected to testify as to his conversations with law enforcement, his review of any and all evidence of the incident, his communications with individuals regarding this case, his affidavit, and his decision to sign the warrant which led to the arrest of the Plaintiff, any such other information he may have regarding the events which give rise to this lawsuit.

- (i) Travis Carter
Address Unknown

Mr. Carter is the brother of the Plaintiff and is expected to testify as to his knowledge of the warrant leading to his arrest and any such other information he may have regarding the events which give rise to this lawsuit.

- (j) Any unknown witnesses at the scene who are yet to be identified.
- (k) Any unknown deputies and law enforcement officials who are yet to be identified.
- (l) EMS personnel who arrived at the scene and are expected to testify as to their observations and any information he may have regarding the events which give rise to this lawsuit.

Plaintiff reserves the right to supplement this response.

2. Please provide the social security number and month, date, and year of birth for the Plaintiff.

ANSWER: SSN [REDACTED] DOB [REDACTED]

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in this case.

ANSWER: Plaintiff is in possession of the following documents:

- (a) 911 audio tape;
- (b) In-car videos of law enforcement on the scene;
- (c) The contents of the criminal discovery file which include:
 - a. Case Report Summary of Gwinn
 - b. Warrant for arrest
 - c. Evidence Inventory Sheet
 - d. Handwritten statement by Shane Carter
 - e. Handwritten statement by Dawn O. Carter
 - f. Rap sheet
 - g. Incident Report

- (d) Email transmission from E.B. Springs to Alex Postic regarding Mr. Carter's criminal charges;
- (e) CAD Report

4. In cases involving personal injury, set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER: Not applicable

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: Not applicable

6. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: Plaintiff suffered a loss of his liberty while he was in jail, as well as damages in the amount of \$5,000 payment to his criminal defense attorney, \$1,000 payment for bond.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Please see responses to Interrogatory No. 1.

8. Please identify in complete detail each person whom the Plaintiff expects to call as an expert witness at the trial stating as to each such person:

- (a) Name, occupation, title, business address, area of specialization, if any, and professional relationship to the Plaintiff.

- (b) The manner in which such person became familiar with the facts of this case.

ANSWER: Plaintiff has not retained an expert at this time. Plaintiff reserves the right to supplement this response in the event one is retained.

9. As to each person the Plaintiff has identified or intends to identify as an expert witness in this matter, state in full detail:

- (a) The subject matter or area in which such person is to testify.
- (b) The substance of the facts and opinions in which such person is to testify.
- (c) A summary of the grounds or basis for each opinion and fact.
- (d) A list of books, treatises, articles, and other works which such person regards as authoritative on the subject matter on which he is expected to testify.

ANSWER: Plaintiff has not retained an expert at this time. Plaintiff reserves the right to supplement this response in the event one is retained.

10. Please set forth Plaintiff's employment history within the previous ten (10) years, and for each position or employment, please set forth:

- (a) Name and address for each employer;
- (b) The job title, nature, and duties of the employment;
- (c) The name of Plaintiff's immediate supervisor;
- (d) The dates of employment; and
- (e) The reason that Plaintiff left that employment.

ANSWER: Samuels Strapping, 2001-2007 as a Machine Operator. Supervisor Mike Langley – they left and went back to Ohio; Boggs Paving, 2007-2012 as a Machine Operator-Foreman, Supervisor Scott Knight – to switch jobs for insurance for the family; 2012-present Thyssen Krupp – Machine Operator – Supervisor Mike Heath.

11. Please set forth Plaintiff's prior arrest history, and for each incident, please set forth:

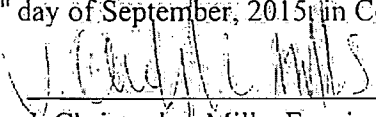
- (a) The date of the action;
- (b) The arresting law enforcement agency and jurisdiction in which each such action was filed, charged or indictment was made;
- (c) A description of the nature of each action;
- (d) The result and final disposition of each action (e.g., guilty plea, trial and sentencing information, etc.).

ANSWER: Plaintiff's rap sheet is in the possession of the Defendant as it was made a part of the discovery in his criminal case. Plaintiff's counsel has attached that rap sheet to these responses.

12. State the name, web address, and user names for all blogs, online forums, and social networking websites that Plaintiff has belonged or had membership to from 2005 to the present.

ANSWER: Plaintiff has a Facebook page. His username is Shane Carter.

Respectfully submitted, this the 28th day of September, 2015, in Columbia, SC.


J. Christopher Mills, Esquire

P.O. Box 8475

Columbia, South Carolina 29202

Telephone: 803-748-9533

Facsimile: 803-753-9123

Email: chris@chrismillslaw.com

Alex Thomas Postic, Esquire

1830 Marion Street

Columbia, South Carolina

803-771-8081 (office)

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF YORK

In the Court of Common Pleas

Case No. 2014-CP-46-1307

Russell Shane Carter

Plaintiff,

v.

Bruce Bryant, as representative for the
Office of the York County Sheriff's

Defendant.

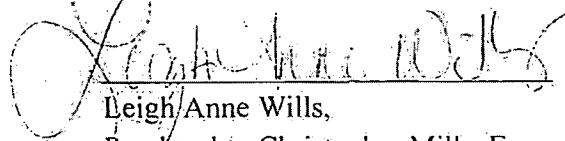
CERTIFICATE OF SERVICE

I, the undersigned employee of Christopher Mills, attorney for the plaintiff, certify that I have served the foregoing documents on all parties in the above-captioned matter, by emailing them and mailing a copy of the same via United States Mail, postage prepaid and return address clearly affixed, to the following addresses:

Robby Garfield, Esquire
Davidson & Lindeman, PA
PO Box 8568
Columbia, SC 29202

DOCUMENTS:

PLAINTIFF'S RESPONSE TO
INTERROGATORIES



Leigh Anne Wills,
Paralegal to Christopher Mills, Esq.
J. Christopher Mills, LLC
Post Office Box 8475
Columbia, SC 29202
(803) 748-9533
(803) 753-9123 (Fax)
leighanne@chrismillslaw.com

DATED: September 28, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

In the Court of Common Pleas
for the Sixteenth Judicial Circuit

Case No. 2014-CP-46-1307

Russell Shane Carter,)
Plaintiff,)
v.)
Bruce Bryant, as representative)
for the Office of the York County)
Sheriff,)
Defendant.)

Plaintiff's Response to Defense Post-Trial Motions
Pursuant S.C.R.C.P. Rules 50 and 55

DAVID HAMILTON
S.C.R.C.P. 2.65
YORK COUNTY, SC

FILED-RECEIVED
2016 DEC -5 AM 11:33

Standard of Review

The York County Sheriff's Department moves for a judgment notwithstanding the verdict or alternatively a new trial on no less than 19 separate grounds. Despite the quantitative volume of the motion, all grounds raised lack qualitative substance and should be denied in total. In deciding these motions, the court is guided by a deferential standard in upholding the jury's verdict. "In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt." *Strange v. South Carolina Dep't. of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct.App.1989). For issues involving exceptions to the South Carolina Tort Claims Act (SCTCA), "The burden of establishing a limitation upon liability or an exception to

the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke*, 336 S.C. at 373, 393 (1999).

Argument

Plaintiff will respond to each ground raised in the Defendant's Motion in turn.

1. The Defendant's suggestion that there was no evidence to support a jury's finding of lack of probable cause is patently wrong. Mr. and Mrs. Carter's testimony, the 911 tape, videos from the incident scene, the dismissal sheet and other exhibits provided evidence from which a jury could determine the deputies did not have probable cause to seek a warrant against Mr. Carter for ABHAN. Under S.C. law, "probable cause is a question of fact for the jury." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965).

2. The charge of ABHAN was dismissed for reasons consistent with innocence, thereby meeting the required element of malicious prosecution. In *McKenney v. Jack Eckerd Co.*, 304 S.C. 21, 22, 402 S.E.2d 887, 888 (1991), the Court held "where an accused establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained." Plaintiff introduced the dismissal sheet, which indicated the charges were dismissed "because all of Mr. Carter's actions were within the law." Additionally, Assistant Solicitor E.B. Springs acknowledged he sent an email to Carter's defense counsel, wherein he wrote that he was personally convinced that Mr. Carter's actions, while brutal and violent, were within the law. Under S.C. law, unless the evidence leads to a single conclusion, the issue is one for the jury to decide. A jury could reasonably conclude that the dismissal of the charge (prior to preliminary hearing or a grand jury indictment) because the Defendant's actions were within the law is a dismissal "which implies or are consistent with

innocence”.

3. As noted in the preface, the burden is on the Defendant to establish an exception to liability under the SCTCA. The Defendant cites no case law to support its position and, therefore, fails to meet that burden. By way of further response, the exceptions to liability found in SCTCA 15-78-60 (1) (3) are inapplicable to the claims for arrest without probable cause.

Exception (1) was rejected in *Faile v. South Carolina Dept of Juvenile Justice*, 350 S.C. 315, 326 (2002), where the court characterized this exception as a carry-over from common law judicial immunity. The specific question before the court was whether a probation agent could be held liable for improper placement of a juvenile, or whether he was protected by judicial immunity because a court order later acknowledged the placement. In rejecting its application, the court noted, “Just as police officers are not granted absolute immunity when they apply for arrest warrants, probation officers generally are not immune in performing their enforcement duties.” See *Gant, supra*; *Acevedo v. Pima County Adult Prob. Dep’t*, 142 Ariz. 319, 690 P.2d 38 (1984)(holding that supervision of probationers is an administrative task, unconnected with the performance of a judicial function) *Faile* at 326-7. See also, *Proctor v. Dept of Health and Environmental Control* 368 SC 279, 628 S.E. 2d 496 (Ct App. 2006)(rejecting application of exception to action of DHEC characterizing the exception as quasi-judicial).

Exception (3) applicability to securing a warrant was rejected in *Gist v. Berkeley County Sheriff’s Dept.*, 336 S.C. 611, 521 S.E.2d 163 (S.C. App. 1999).

The trial court also held the Sheriff’s Department could not be held liable for damages for false arrest because a magistrate issued a warrant for Gist’s arrest. This holding is erroneous. The Tort Claims Act states a governmental entity is not liable for a loss resulting from the “execution, enforcement, or implementation of the orders of any court or execution, enforcement or lawful

implementation of any process....” S.C. Code Ann. § 15-78-60(3) (Supp.1998). In this case, however, the Sheriff's Department's liability does not arise from the “execution, enforcement, or implementation” of the magistrate's order. It arises from allegedly securing the warrant without probable cause. Therefore, the Sheriff's Department is not shielded from liability by the arrest warrant.

Gist at 166-167.

4. As noted in the preface, the burden is on the Defendant to establish an exception to liability of the SCTCA. The Defendant cites no case law to support its position and, therefore, fails to meet that burden. By way of further response, Exception 4 does not apply because the basis of liability was not a failure to enforce the Castle Doctrine, but for not having probable cause to believe Carter committed ABHAN. See, *Clark v. S.C. Dep't of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct.App.2002).

5. As noted in the preface, the burden is on the Defendant to establish an exception to liability to the SCTCA. The Defendant cites no case law to support its position and, therefore, fails to meet that burden. By way of further response, Exception 5 does not apply because applying for a warrant is an operational function, and not a discretionary one under the S.C.T.C.A. In *Clark v. S.C. Dep't of Public Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct.App.2002) the court observed:

Moreover, we question whether the discretionary immunity provision is applicable to this case in any event. Some jurisdictions determine whether an act is discretionary by considering if it can best be described as planning or operational. In this case, we believe the function of the Department's employees in carrying out a general pursuit policy is operational in nature and is not the type of discretionary act contemplated in the Tort Claims Act. The fact that the employees had to make decisions or exercise some judgment in their activities is not determinative. To read the exception that broadly would encompass virtually all traffic stops made by the Department's employees, as they all involve some degree of decision-making, but they are not the type of discretionary act envisioned under the Tort Claims Act.

Clark, 353 S.C. at 305-06, 578 S.E.2d at 23 (footnotes omitted).

6. Exception 23 does not apply because the language of the SCTCA exception is not identical language to the element of malicious prosecution. The element of malicious prosecution of “institution or continuation of original judicial proceeding, either civil or criminal” does not share the identical language of the immunity provision “(23) institution or prosecution of any judicial or administrative proceeding.” Judicial and administrative hearing is not the same as a criminal proceeding. The exception only applies to administrative hearings or judicial misconduct or inquires, i.e. another variation of prosecutorial immunity. The exemption applies to governmental agencies other investigations conducted by administrators in matters outside the context of criminal and civil law. Otherwise, it would simply be redundant to exceptions 1, 2, and 3.

Defendant cites *McCoy v. City of Columbia* regarding this exception, arguing Judge Joseph Anderson found this exception applied to a malicious prosecution claim against the City. Judge Anderson’s Order held that all of the plaintiff’s state law claims failed because there was probable cause to arrest. In dicta, in Footnote 10, the court did agree with the finding in Magistrate West’s Report and Recommendation and adopted “her discussion of the issue.” However, a review of that Recommendation shows the Magistrate provided no legal analysis in finding the application of the exception simply equating the immunity with the element of malicious prosecution. In fact, the immunity provision does not apply.

7. The Court charged the jury (without objection) that they could consider the loss of liberty, injury to reputation, character, health, mental and/or physical pain and suffering, general impairment of social standing, fright, nervousness, indignity, humiliation, embarrassment, hardship, discomfort, bodily pain and mental anguish. Damages may also include attorney fees.

The Court advised the jury that the decision to value these damages were in their discretion. Mr. Carter testified to his loss of liberty, the attorney fees incurred, humiliation, embarrassment, fear, and mental anguish. All of these damages are properly awarded as compensation in a malicious prosecution action. See, *Jones v. Ingles Supermarket, Inc.* 293 S.C. 490, 361 S.E. 2d 775 (Ct. App. 1987). The Defendant's citation to *Jefferson Pilot Fire & Casualty Co v Sunbelt Beer Distributors, Inc* 839 F. Supp. 376 (DSC 1993), a case dealing with insurance coverage for bodily injury, is inapplicable to this issue. Likewise, the citation to *Kinard v. Augusta Sash & Door Co.*, 336 SE2d 465 (1985), a case discussing the parameters of a cause of action for intentional infliction of emotion distress is inapplicable to a claim for malicious prosecution.

8. The defense has cited no case law to support its position. The court effectively dealt with this issue at trial. Plaintiff's counsel asked Officer Wright if he would be surprised to know that Mr. Faile had a long criminal record. An immediate objection was made, and no response was elicited. The objection to this single question on Mr. Faile's prior criminal record was sustained. The court then gave the jury curative instruction to disregard the question. The defense counsel did not object to the insufficiency of this instruction. Regardless, the follow up questions established the harmlessness of the original question. The court allowed counsel to ask whether Officer Wright was aware of Mr. Faile's prior record. Officer Wright testified he did not know if Mr. Faile had a prior record. He further testified it would not matter to his assessment of probable cause to arrest Mr. Carter. No objection was posed to these questions and the topic was not discussed further.

9. The jury was appropriately advised that the false arrest claim was dismissed. The Court properly advised the jury during its charge on the law before the time of deliberation. Instructing a jury on what not to consider is a recipe for juror confusion. Further, to have given such an

unwarranted charge on legal matters prior to jury deliberations would have been premature and given undue emphasis where none was due.

10. Evidence of YCSO policies was committed to the Court's sound discretion. They were not entered as exhibits, but were used on cross examination to show Defendant's awareness of proper procedures in obtaining a warrant and assessing probable cause. The Defendant has not provided any authority that this was improper. Case law holds introduction of law enforcement policies to place law enforcement actions into perspective is proper. See, *Clark v SC Dept. of Public Safety, supra*.

11. The Court did allow cross examination on the failure of Mr. Carter to file an internal affairs complaint. When the defense tried to elicit further testimony on direct examination of Officer Wright about the inner workings of the Internal Affairs Department, the Court properly ruled that process was irrelevant to the issues involved in a malicious prosecution action.

12. Defendant has challenged the denial of their request to charge dealing with probable cause. The jury charge as a whole properly appraised the jury on the relevant factors in determining whether there was a lack of probable cause to arrest. The Court specifically charged that their guilt or innocence is not the issue on probable cause, and that it requires more than mere suspicion. The Court charged all other probable cause definitions as requested by the defense.

13. The Defendant's argument that they are entitled to a new trial due to His Honor declining to charge the jury with respect to *Jackson v. City of Abbyville* and *Davenpeck v. Alford*, eludes Plaintiff's counsel. The holdings of *Jackson v. City of Abbyville* and *Davenpeck v. Alford* are inapplicable to the facts of this case. There was no other criminal charge the Defendant claimed that Mr. Carter could have been charged with, other than ABHAN.

14. There was no error in the request for attorney fees as an element of damage. Mr. Carter testified extensively on his obligation regarding his criminal defense attorney fees, explaining he paid a \$5,000.00 retainer and still owed \$12,500.00 per agreement. He testified he paid a bond of \$1,000.00. Mr. Garfield extensively cross-examined Mr. Carter on this issue. The jury weighed the evidence accordingly.

15. As argued earlier, the intangible damages coupled with out of pocket damages supports the jury's verdict. The intangible injuries flow directly from a malicious prosecution and have been recognized in common law. There is no requirement of medical treatment, evaluation or health care.

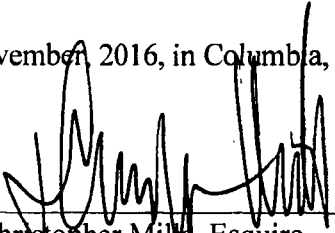
16. As discussed earlier, the Court's charge on damages adequately supported the jury's award to Mr. Carter. Emotional injury is a proper consideration of damage in a malicious prosecution action.

17. The Court properly charged the jury on liability and damages. These matters were in the sound discretion of the jury. Evidence of damages to Mr. Carter was significant and supports the jury's award. There is no basis to suggest that the court should exercise the extraordinary remedy as the "thirteenth juror", and reverse the considered judgment of twelve citizens of York County.

18. During the trial, in response to Mr. Garfield's argument that Mr. Carter was sending a message by using a bat to defend himself, Plaintiff's counsel suggested if any message was to be sent, it should be sent to the Defendant with the jury's verdict. Defense counsel objected immediately, and the court sustained the objection. Counsel then directed the jury to base its verdict on the evidence.

19. The amount of the verdict reflected the jury's assessment of the damage suffered by Mr. Carter. A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). The circuit court should grant a new trial absolute on the excessiveness of the verdict, only if the amount is so grossly inadequate or excessive as to shock the conscience of the court, and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *Id.* at 379-80, 426 S.E.2d at 805. See *Swicegood v. Lott*, 379 S.C. 346, 379 6654 S.E. 2d 211(2008) (Upholding \$150,000 verdict on abuse of process claim against Richland County Sheriff).

Respectfully submitted this 30th day of November, 2016, in Columbia, South Carolina.



J. Christopher Mills, Esquire
P.O. Box 8475
Columbia, South Carolina 29202
Telephone: 803-748-9533
Facsimile: 803-753-9123
Email: chris@chrismillslaw.com

Alex Postic, Esquire
1830 Marion Street
Columbia, South Carolina 29201
Telephone: 803-771-8081
Email: apostic@bellsouth.net

ATTORNEYS FOR THE PLAINTIFF

State of South Carolina.,)
)
)
)
County of York.)

In the Common Pleas
Court of York
Case No. 2014-CP-46-01307

Russell Shane Carter.,)
)
Plaintiff.,)
)
-vs-)
)
Bruce Bryant, Representative.,)
for the Office of the)
York County Sheriff.,)
)
Defendant.)

Transcript of Record

November 7-9, 2016
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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

Mr. John Christopher Mills
PO Box 8475
Columbia, SC 29202
chris@chrismillslaw.com
803.748.9533

Mr. Alexandre Thomas Postic
PO Box 11926
Columbia, SC 29211
apostic@bellsouth.net
803.771.8081
Attorneys for the Plaintiff

ORIGINAL

Mr. Robert David Garfield
Davidson & Lindemann, PA
PO Box 8568
Columbia, SC 29202-8568
rgarfield@dml-law.com
803.806.8222
Attorney for the Defendant Sheriff

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Opening Statements	Mr. Mills	P.37-46
	Mr. Garfield	P.47-52
Russell Shane Carter	Mr. Postic	P.53-109
		P.117-123
		P.164-170
	Mr. Garfield	P.123-132
(Proffered Testimony)		P.133-134
		P.135-164
Dawn Carter	Mr. Postic	P.179-203
		P.207
	Mr. Garfield	P.204-207
Officer Jonathan Reed Deposition Read into the Record		
		P.209-235
John Jay Phillips	Mr. Mills	P.241-271
(Deposition)		P.298-299
	Mr. Garfield	P.271-297
Officer Kevin Gwinn	Mr. Garfield	P.317-347
		P.393-395
	Mr. Mills	P.348-356
		P.363-379
		P.384-391
		P.395-397

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Sergeant Lee Wright	Mr. Mills	P.403-426
		P.459-470
Judge Leon Yard	Mr. Garfield.	P.478-497
	Mr. Mills	P.497-505
Eli Baxter Springs	Mr. Garfield.	P.505-517
	Mr. Mills	P.517-520
Closing Statements	Mr. Mills	P.535-556
		P.557-570
	Mr. Garfield.	P.570-574
Charge on the Law		P.574-589
Verdict		P.595
Court Reporter's Certificate Page.		P.601
Jury Voir Dire/Batson Sheet		P.602
Clerk of Court's Random Strike Sheet		P.603-604

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Pl.1	Warrant		P.108
Pl.2	Videos (Gwinn X2; Wright X2, Reed . . .		P.173
Pl.3	Dismissal/Disposition Sheet		pP.122
Pl.4	Email by EB Springs		NOT ENTERED
Pl.5	Photos of Property - Porch		
	A, B, C, D, E.		P.65-66
Pl.6	Photos of Shane Carter.		P.65-66
Pl.7	Photos of Michael Faile		NOT ENTERED.
Pl.8	Google Earth of Prop., A, B, C. . . .		P.65-66
Pl.9	911 tape/CAD Report - A, B.		P.65-66
Pl.9(B)	Substitution CAD Report		P.399
Pl.10	YCSO Investigative Policy.		NOT ENETERED
Def.1-21	Colored Photos		P.334
Def.22-27	Colored Photos		P.339
Ct.1	Case Summary Report.		P.403
Ct.2	Plaintiff's Request to Charge (1-3) . .		P.523
Ct.3	Defendant's Request to Charge #8 . . .		P.523
Ct.4	Jury note @ 04:44 pm.		P.594
Ct.5	Jury note @ 04:55 pm.		P.594

REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK
COUNTY CLERK OF COURT'S OFFICE.

1 (WHEREUPON, RUSSELL SHANE
2 CARTER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 DIRECT EXAMINATION

5 RUSSELL SHANE CARTER BY MR. POSTIC:

6 Q. Shane, can you hear me okay?

7 A. Yes, sir.

8 Q. Okay. And I'm going to stay back here, just to make
9 sure that the whole jury hears you. Okay?

10 A. Yes, sir.

11 Q. That's the way I do it. What's your full name?

12 A. Russell Shane Carter.

13 Q. Okay.

14 MR. POETIC: Maybe get that microphone a little bit
15 closer to you.

16 MADAM COURT REPORTER: It won't move. I'm sorry, it
17 won't move.

18 MR. CARTER: That's okay. I'll speak up.

19 (WITNESS ATTEMPTS TO MOVE WITNESS BOX CHAIR.)

20 MADAM COURT REPORTER: The chair won't move.

21 MR. CARTER: The chair don't move either.

22 A. Russell Shane Carter.

23 Q. Thank you. And do you go by Russell, or what do you
24 go by?

25 A. I go by Shane. I -- my grandpa -- I don't know why

1 they gave me the name Russell to be hones with you. Shane
2 Carter.

3 Q. Anybody ever call you Russell?

4 A. First day of school, every year.

5 Q. Okay. And where are you from?

6 A. Rock Hill, South Carolina.

7 Q. How old are you?

8 A. I am forty-three.

9 Q. What year were you born in?

10 A. 1973.

11 Q. Okay.

12 A. 8/17/73.

13 Q. What part of Rock Hill did you --

14 A. The old York County General Hospital.

15 Q. Okay.

16 A. And I was raised up on both sides of town, went to
17 both high schools.

18 Q. How far did you go in school?

19 A. Hum. Well, I got my GED later, but I went, I believe
20 it was tenth or eleventh grade.

21 Q. Okay. And did you -- did you go to work right away
22 after that, or?

23 A. Yes, sir. Yes, sir. I --

24 Q. What kind of jobs did you -- so, what year would that
25 be, about?

1 A. I'd say '91, '92. 1992.

2 Q. Okay.

3 A. And as for jobs, I started landscaping, doing heavy
4 equipment, until I got a family later. Mainly
5 construction, stuff like that.

6 Q. Okay. And before we get to your family life, you do
7 have one criminal conviction on your record; is that
8 correct?

9 A. Yes, sir, I do.

10 Q. All right.

11 A. I have a trafficking cocaine charge back when I was
12 twenty-nine years old. I was living wrong, and single,
13 didn't have children. Thank God I got -- I got a blessing
14 of that first child and changed my life. I hope to live to
15 be the man that they deserve from that day, forward. Still
16 -- I'm still punished today.

17 Q. Well --

18 A. I'm here and I'm changed.

19 Q. I understand that. And Shane, let's just -- I'm going
20 to try to keep you on track.

21 A. Yes, sir.

22 Q. I know you well ---

23 A. Yeah.

24 Q. --- but the jury doesn't, and then you like to ---

25 A. Okay. Got you.

1 Q --- go on a little bit. So, you -- Tell us a little
2 bit about that record. Like, what was the events that led
3 to it, just briefly? Nothing too lengthy.

4 A. A friend of mine, well I thought he was a friend of
5 mine, he got in trouble, and in order to get out of
6 trouble, they told him if he got somebody else in trouble,
7 he wouldn't have to go to prison. And -- and
8 unfortunately, I helped -- I -- I introduced him to
9 somebody else that I knew, after being called. But I was
10 guilty, y'all. I did it. I fell for it. I did the time,
11 and my family still suffers from it.

12 Q. Shane, did you -- So, you accepted responsibility for
13 it. You didn't ask for a trial, or anything like that?

14 A. No, sir, I -- no, sir, I was guilty.

15 Q. All right.

16 A. They had it on camera and all of it. It was pretty
17 open and shut.

18 Q. Okay. And by the way, do you remember the judge who
19 you pled guilty in front of?

20 A. It was this great man right here ---

21 Q. Okay.

22 (WITNESS INDICATED TOWARD THE COURT.)

23 A. --- who accepted my plea. Changed my life. Thank
24 you.

25 Q. Shane, tell us a little bit about how it did change

1 your life.

2 A. Well, to be honest with you, prison, it informed me
3 how bad it was. I know I never want to be there again. I
4 found out that most people in there need mental hospital
5 more than criminal punishment, in my opinion. My child
6 being born, Dawn blessed me with my first child, that's
7 what -- that's what changed my life.

8 Q. Who'd Dawn?

9 A. It's my wife, Dawn Carter.

10 Q. How many kids do you all have together?

11 A. Today, I got four.

12 Q. Okay.

13 A. During that time I had four too. During the night of
14 that incident she was eight months pregnant.

15 Q. Yes. And we'll get to the incident. I'm just getting
16 a little bit of background here for this jury ---

17 A. Okay. Yes, sir.

18 Q. --- so they know about you. So, what you're saying is
19 that, after this event that we've talked about, you cleaned
20 up your act?

21 A. Yes, sir.

22 Q. And --

23 A. I totally changed, you know. I found -- I don't want
24 to go religious on you all, but I did, you know. I had
25 children. I stopped messing -- going out and living wild

1 and worked every day.

2 Q. What kind of work have you done since -- since you got
3 out?

4 A. I left construction. I had worked. During that time
5 I was still doing construction after I got out of -- I went
6 indoors and started working with metal, because I had
7 worked in my grandfather's metal field since I was twelve
8 every summer. So, now, I weld, and I'm a fabricator,
9 basically. I work for a steel plant. Its always been. I
10 got insurance for my family so I can stay out of the
11 weather. And -- and my past is still punishing me. You
12 know, I could have had a couple better jobs, but because of
13 my record, I wasn't able to get those.

14 Q. All right, Shane. And let's get into your family.
15 What -- you've got how many -- you've got four children,
16 you already said. And --

17 A. Four daughters.

18 Q. Four daughters. How old is the oldest, and what's her
19 name?

20 A. She's twelve, and her name is Cailey Raines Carter.

21 Q. Twelve years old.

22 A. And --

23 Q. Okay. And then, you've got -- what's next?

24 A. Three years and a day later, I got Carlee Cheyenne
25 Carter. She's nine years old of course. And then, I have

1 Kelsey May Carter, who is seven-years-old.

2 Q. Okay.

3 A. And then, the baby is Carmen Faye Carter.

4 Q. How old is Carmen?

5 A. She is, today, four years old.

6 Q. Okay. All girls?

7 A. All girls.

8 Q. Are you going to try for the boy?

9 A. No, I'm pretty much --

10 Q. I was just kidding. Just kidding.

11 A. I've been blessed. I've got my hands full.

12 Q. Let's move on. And does Dawn work?

13 A. No, sir.

14 Q. Okay. She's got --

15 A. She -- she helps at the church, so.

16 Q. She has -- And where do you go to church?

17 A. Catawba Baptist Church.

18 Q. Okay. And you kind of alluded to that, that as you
19 grew up, you started getting more involved in church; is
20 that correct?

21 A. Yes, sir. I was raised right, I just didn't always
22 live right.

23 Q. And I am going to show you a couple of pictures here,
24 Shane, if I can get my A/V guy to get us on board here.

25 MR. POSTIC: Let's see. Please wait.

1 Q. All right. I'm going to show you some pictures.
2 These are pre-marked exhibits. All right. I guess I can't
3 stand it front of it, or no, I can.

4 Do you recognize that, Shane?

5 A. Yes, sir, I do. That's three thousand and one Leslie

6 --

7 THE COURT: Make sure the jury can see.

8 MR. POSTIC: I'm so sorry. Thank you, your Honor.

9 A. That's 3001 Lesslie Highway. That's the old Benson
10 house

11 Q. And so, your house is -- That's your house right
12 there, the porch right there?

13 A. Yep. That is the house I stayed in during that time.

14 Q. Okay.

15 A. Yes, sir.

16 Q. And the incident date, does it look different than it
17 did on the incident date in 2012? The property.

18 A. No, sir.

19 Q. Okay.

20 A. Well, yes, sir. There was -- there was trailers.

21 Q. Yes.

22 A. There would have been -- there would have been two
23 trailers there, and one, if you're standing on that front
24 porch, maybe two -- eleven o'clock from there, maybe fifty
25 yards out, to the far-right of the picture.

1 Q. Okay. I'm going to show you another. So, this is --
2 this is going to be Plaintiff's Eight (B) pre-marked.

3 MR. POSTIC: Do you have any objection to --

4 Q. And this is Plaintiff's Eight (B). This is Plaintiff's
5 Eighty (C). This is about the same thing, but it's a
6 little different. Can you tell us how that one's different
7 from the other one that I showed you?

8 A. I believe I see the trailer back there, and a couple
9 of cars.

10 Q. Yes.

11 A. And the trailer to the right that I was trying to
12 describe, off to the far-right.

13 Q. Okay. And I'm skipping ahead a tiny bit, Shane, to
14 the night of the incident, because we were talking about
15 the neighbors. So, this is your house?

16 A. Yes, sir.

17 Q. Okay. And that's your front porch?

18 A. Yes, sir.

19 Q. Okay. And so, the neighbors that are in question that
20 came to your house, where were they?

21 A. They was the far corner. Yeah.

22 Q. This one over here?

23 A. Yes, sir.

24 Q. Okay. And we'll get to your interactions with them in
25 a minute.

1 MR. POSTIC: Yeah, that would be better.

2 THE COURT: Do you want the lights down? Thank you.

3 MR. POSTIC: Thank you.

4 Q. All right. And I'm going to show you this, which has
5 also been pre-marked, sorry, as Exhibit Eight (A).

6 What does that show you, Shane?

7 A. It shows me the other trailer and a better view of the
8 trailer that's in question.

9 Q. Okay. So, that would be this trailer back here?

10 A. Yes, sir. Yes, sir.

11 Q. Okay. And this would be your home?

12 A. Yes, sir.

13 Q. Okay. And on the date in question, who lived there?

14 A. At which -- at -- at the trailer --

15 Q. At your house. I'm sorry.

16 A. At my house. Okay. That would have been all four of
17 the children that I said ---

18 Q. Yes.

19 A. --- if we're considering the baby that she was
20 pregnant with.

21 Q. Right.

22 A. Then, my grandmother, who had raised me. And in turn,
23 when she got older, she was able to come stay with me. And
24 then --

25 Q. How old was she at the time of this incident?

1 A. She was eighty-seven.
2 Q. Okay.
3 A. What's her name?
4 Q. Her name was Margaret Raines.
5 Q. Okay. And she's passed on?
6 A. Yes, sir.
7 Q. Okay.
8 A. Unfortunately.
9 Q. And oh, from the audio sounds, did you all have a dog
10 ---
11 A. Yes.
12 Q. --- or was that the neighbor's dog?
13 A. That was my first baby. It's a female boxer.
14 Q. Okay.
15 A. And a couple guinea pigs. I got Noah's Ark.
16 Q. Okay. All right. I'm going to show you Five (B).
17 What is this, Shane?
18 A. That's my front door.
19 Q. Okay.
20 A. At that time.
21 Q. Okay. All right. Are these windows clear or are they
22 smoked out?
23 A. They're smoked out. You can't see through them.
24 Q. You can't see either way, one way or the other?
25 A. No, sir. And unfortunately, the porch light is also

1 out.

2 Q. Okay. We'll get to that later.

3 MR. MILLS: Your Honor, make sure I can get the screen
4 full out.

5 MR. POSTIC: Thank you.

6 Q. And Shane, I'm going to show you what's been marked
7 here as Five (D). Do you recognize this?

8 A. Yes, sir. That's the walkway and the steps leading to
9 the same door, and the ---

10 Q. Okay.

11 A. --- covered porch.

12 Q. How far would you say this distance is right here?

13 A. I would say -- I'd say nine foot, eight to nine foot.

14 Q. Okay.

15 A. And the steps three to four.

16 Q. This is Five (C), Shane. And what does that depict?

17 A. That depicts about the amount of area that I had the
18 door open that night.

19 Q. Okay.

20 A. Communicating with the stranger on my front porch, and
21 how I was standing at that time.

22 Q. Okay. Except that you were in your boxers and tee
23 shirt, or just boxers?

24 A. Just boxers.

25 Q. Okay. All right. And that, sir?

1 A. That's the side view. That's the side view of the
2 porch's step.

3 Q. So, the door is right about where my pen is?

4 A. Yes, sir.

5 Q. Okay. And the front walkway is about there?

6 A. Yes, sir.

7 Q. I'm sorry. This one is marked Five (B).

8 And finally, Five (A).

9 A. That's how the door would have looked that night,
10 before -- before it was knocked on. The screen door was
11 further too.

12 Q. Okay. And my understanding is -- and that's -- that's
13 -- all these pictures correctly depict your home?

14 A. Yes, sir.

15 Q. All right. And I'm going to turn this on mute.

16 MR. POSTIC: And I can get the lights.

17 And I'm going to enter these into evidence, Mr.
18 Garfield.

19 MR. GARFIELD: Just one moment. The ones that Mr.
20 Postic is presenting is without objection.

21 THE COURT: In without objection.

22 MR. POSTIC: Thank you. And that includes the 911
23 recording. I may use them as we go on.

24 (WHEREUPON, STATE'S EXHIBIT NUMBERS FIVE (A,B,C); SIX;
25 EIGHT (A,B,C): NINE, IDENTIFIED AND MARKED, RECEIVED INTO

1 EVIDENCE.)

2 BY MR. POSTIC:

3 Q. Okay. So, let's talk about these neighbors. Explain
4 the property itself. What is the -- what -- is it an
5 acreage, or how much -- how much land are we talking about?

6 A. Okay. It's seven acres. There's about three -- The
7 old home site, once upon a time the whole side there
8 belonged to that. It's the old Benson house. It's about a
9 hundred -- hundred years old house. It's a nice home, but
10 it's -- let's see. It was a trailer park once upon a time.
11 The -- the former owners before my friend bought it. His
12 dad was failing sorry to put it plainly, he had bought that
13 through his inheritance. During this time, he lost -- he
14 had lost that for not paying taxes on it. Another man
15 bought the property.

16 Q. Well, let's just -- And I'm sorry.

17 A. Yeah.

18 Q. Didn't need the history of York County.

19 A. Okay.

20 Q. Just shortly, what -- The property was about seven
21 acres.

22 A. Yes, sir.

23 Q. And how many homes were on that property?

24 A. At that time, there was the home, and --

25 Q. The home, being the home you lived in?

1 A. Yes. The brick house, and like four trailers. One of
2 'em was unoccupied. It tore down. The other was being
3 tore down, and the other people also, actually everything
4 other than the brick house was supposed to go. I had
5 served papers. Do you want me to go into that?

6 Q. Sure.

7 A. There was eviction papers done, tried to be served two
8 years prior to this guy, Mr. Blackwelder, when the property
9 was the original owner. He refused to answer the door.
10 It's hard to evict somebody. It was actually his trailer,
11 but it was on a lot that he was supposed to be paying rent
12 on. He had stayed there a couple of years, a few years,
13 and didn't pay nothing. Well, kept calling York County to
14 serve 'em. They wouldn't. They have to actually
15 physically answer the door.

16 Well, when the new owner got the land, that pretty
17 much, I was out of it, you know. But the other guy said he
18 was going to get it out. What winded up resulting was, he
19 bought the guy's trailer to finally get him out of -- off
20 the land. And --

21 Q. Okay. And that's -- And so in 2012 the only people
22 living there are in one trailer, or two trailers? The time
23 of this incident.

24 A. I -- Yeah. I believe one.

25 Q. Okay. All right. And tell us, just -- you mentioned

1 that you tried to evict the owner of that trailer, and that
2 was -- and you said his name was Blackwelder?

3 A. Yes. Steven Alexander Blackwelder.

4 Q. Okay. And were there any other previous inci -- or
5 prior incidences before this ---

6 A. Yes.

7 Q. --- before the case that we're talking about today?

8 A. Yes.

9 Q. Just briefly, Shane, not to go into too much.

10 A. Okay. Well, I had had to get him arrested. He
11 threatened me. He threatened my life and my family's life.
12 And so, I did -- I did the right thing. I called the
13 police department. He got charged with simple assault and
14 I got it documented. And told to not come back on the
15 property, on their property, until he was gone.

16 Q. And that was Blackwelder?

17 A. Yes, that was Blackwelder.

18 Q. Okay. And you --

19 A. In --

20 Q. So, you guys aren't going over to each other's houses.
21 It's not a very friendly relationship?

22 A. Well, he came over after that and left a threatening
23 note that we have, you know, afterwards, and left it on the
24 front door, about one o'clock in the morning, or, what I
25 believe to be him. I did not actually see him, but I don't

1 know who else could have --

2 Q. And that was -- But that's still before this incident
3 on April 25th ---

4 A. Yes, sir.

5 Q. --- 2012?

6 A. Yes, sir.

7 Q. All right. And all I wanted you to mention was just,
8 not a friendly relationship.

9 A. Yeah. Not -- not friendly at all. I didn't want to
10 deal with him.

11 Q. Okay.

12 A. I couldn't on a business level or personally.

13 Q. All right. So, let's -- let's move on to April 25,
14 2012. You remember that day?

15 A. Yes, sir, unfortunately.

16 Q. Okay. And let's set the scene here. So, do you
17 remember if that was a work day for you?

18 A. Yes, sir.

19 Q. And do you remember where you were working at the
20 time?

21 A. Yes. I was at Boggs Paving, the actual job site. I
22 don't -- I don't recall where we was at that day.

23 Q. What did you do for Boggs Paving?

24 A. I ran a pipe and concrete crew, and I'd help on
25 grading crews.

1 Q. So, fixing roads?

2 A. Yes, sir. Yes, sir.

3 Q. And what sort of hours were you working?

4 A. Well, back -- it just depended on the work. Usually,
5 in the summertime six in the morning to -- to a good eight
6 at night. It just depended. Some nights, if we had to do
7 highways or interstates, I might go in at night and work
8 all night into the morning.

9 Q. Do you remember -- do you remember how late you worked
10 that day, by any chance?

11 A. Yes, sir, I actually do. It was somewhere around six
12 because I had gotten a call that the water was acting up
13 and that the points kept burning up on the well. I done --
14 I done replaced the pump several times and then several
15 different things on the plumbing and paid other people to
16 actually come fix it. But I hurried home and got it going
17 so it was like six. We ate dinner that night. I laid down
18 in my boxers with -- with my second oldest child, when the
19 banging on the door started.

20 Q. And that's your child who is nine now.

21 A. Yes.

22 Q. Was five at the time?

23 A. Yes, sir.

24 Q. Okay. And so, what time would you say that was?

25 A. I want to say it was more closer to eleven. It was,

1 you know, they say that -- you all have said earlier ten to
2 ten fifteen.

3 Q. Okay.

4 A. But I was thinking it was around eleven.

5 Q. All right. And were you -- so, you were still awake?

6 A. I was just about to pass out. Me and her was
7 cuddling.

8 Q. And you hear bang, bang.

9 A. I hear a lot of it, yeah.

10 Q. Okay. Tell us about that. Tell us about that, Shane.

11 A. Well, I thought it was -- I thought it was police
12 officers, to be honest with you.

13 Q. Why would you think that?

14 A. Because he banged kind of loud. It was louder than
15 that. And most time, don't nobody knock on your door like
16 that unless it's -- they're coming in, or it's the police.
17 And -- and when I heard that, I was like, it's an
18 emergency, you know. Somebody's dying, or it's the police.
19 So, I jumped straight up. I jumped straight up, went to
20 the door to actually try to brace the door, because I was
21 thinking somebody's coming in. It was to that point.

22 Q. Did you ask who it was?

23 A. Yes, sir, I did. I asked -- I asked the man in a
24 shouting manner a couple times, and I couldn't hear him
25 between my boxer barking. Dawn had gotten -- gotten up

1 from the bed with my grandmother -- She was in the other
2 bedroom -- And I asked who it was, and I couldn't hear a
3 response.

4 Q. And did you try to see who it was?

5 A. Yes, sir. So, I was at the door, and then the bay
6 window, if you all can recall seeing the picture, there's a
7 big picture window. So, I slid around to the window and
8 opened it up, cracked it, to see who was on the front porch
9 and that's when I seen that they was -- had to be really
10 close to the door, right on top of the door. And I'm like
11 -- And so, I started -- Do you want me to carry on --

12 Q. Well, let's -- Dnd do you have a peephole in your
13 door, too?

14 A. What's that? A peephole? Yeah, I got a peephole.
15 Yes, sir.

16 Q. Okay. Did you see -- did you try to look for the
17 person --

18 A. Yes, sir. But unfortunately, -- and I should have
19 fixed this a long time ago -- the porch light was no good,
20 so I couldn't see. It was late at night. It's in the
21 country, and so there's no seeing out of the peephole.

22 Q. And what is this -- what is this person -- Well,
23 before we get to, you know -- Well sure, what is this
24 person saying to you?

25 A. He's -- At that point, I couldn't hear anything.

1 Q. Okay.

2 A. And so, or I hear something muffled. And the only
3 thing I did y'all, I take that back, I'm like because I'm
4 yelling like, who is it, you know, what do you want? Who
5 is it? And they won't tell me and so I'm like, -- and I
6 heard water -- I'm like, what are you? And so, I slid back
7 over -- Well, I -- I told them at this point, I was like,
8 back up so I can see you. I was like, back up let me see
9 you. Who are you? I said, get off the porch. And so,
10 that's when they came in the -- in the view. When they
11 backed up and got off the porch then I went to the door and
12 I cracked it.

13 Q. So, rather than crack this thing back up, they stood
14 right -- they walked away from the door to down here,
15 Shane?

16 A. Yes, sir. All the way into the walkway.

17 Q. Okay. And so, at that point, what did you do?

18 A. I cracked the door open, like the exhibit showed.

19 Q. Okay. And how -- how open would you say that you
20 opened the door?

21 A. Enough to where, if I had to retreat back into it, you
22 know, I opened it up maybe like ---

23 Q. So, about ---

24 A. --- eight to ten --

25 Q. --- about as much as you have in that picture?

1 A. Exactly, in that exhibit.

2 Q. Okay.

3 A. Just enough to get out, to see who it is, and what
4 they wanted. Like, because I didn't know. I been ask many
5 times. I didn't know --

6 Q. Okay. And so, you opened it, and did you see this
7 gentleman?

8 A. I seen -- I seen a gentleman.

9 Q. Okay.

10 A. Standing like a distance --

11 Q. I know like where -

12 A. Yeah, standing --

13 THE COURT: Whoa, whoa. Try to talk one at a time.
14 Ms. Nelson can only take down one at a time, and we
15 have to have a good record.

16 MR. POSTIC: Okay.

17 THE COURT: So, just wait until the other is through.

18 MR. POSTIC: Yes, your Honor.

19 MR. CARTER: Okay. I'm sorry.

20 BY MR. POSTIC:

21 A. He's maybe where you -- where you are from me ---

22 Q. Okay.

23 A. --- right now.

24 Q. Okay.

25 A. And I seen a silhouette then, so I was like, -- I was

1 like, who are you. I'm like, who are you, and what do you
2 want? Well, I asked first. I asked a couple times, who
3 are you, and they wouldn't tell me who they were. And
4 then, all he did say is, he was like, I want my water. And
5 I was like, well what do you -- what do you mean? I was
6 like, wait, who are you? He was like, what's wrong with
7 the water?

8 So then, I realized that he was asking me about the
9 well water. And to be honest with you, he sounded just --
10 in the same dialect, if you hear his voice, it's the guy
11 from next door. So, I'm like, look, I was like, who are
12 you? I never got his name. So, -- so, I told him right
13 then, I was like, listen, I'm not -- I'm not your landlord.
14 I don't have a lease agreement with you. You know, I'm
15 like, you got -- you got to go. You're trespassing. It's
16 -- it's eleven o'clock at night. You got to get out of
17 here.

18 Once again, he was, I want -- I want my water. What's
19 wrong with the water? I'm like, I don't know. I said, I
20 don't know you, who are you? I said, you need to leave.
21 And then I detected an odor of alcohol. And I was like,
22 you know, I can't really communicate with this guy.
23 Ordering him around ain't gonna do nothing. So, I told
24 him, I said, I tell you what, I said, I'll look at it.
25 I'll go check it out, but you got to go. My dog's still

1 barking in the background. My grandma's asleep. My whole
2 household's asleep. And plus --

3 Q. Is your wife asleep?

4 A. No.

5 Q. Was Dawn asleep?

6 A. She had done got up.

7 Q. Okay.

8 A. But she was laid down.

9 Q. Was she --

10 A. Plus, it was dark --

11 Q. Where was she when you were at the door?

12 A. She was behind me somewhere. I don't know. I didn't
13 -- I didn't take my eyes off this guy, because another
14 reason it's eleven o'clock at night. You won't tell me who
15 you are. It's dark. I can't see nothing, and there's a
16 reason you're not telling me who you are, you know. What -
17 - And so, then -- then, I tried to coach him. I said,
18 listen, I'll go check -- I'll see -- I'll find out about
19 the water, but it's late. You got to go, you know. It'll
20 be on before tomorrow.

21 And -- and he was like, why don't you come out here
22 and look at it with me? I'm like, I'm not -- I'm not a
23 plumber, and he's definitely not a plumber. He has no
24 right to be on me. I said, look, man, you are trespassing.
25 What you need to do is go home. I said, if you got a

1 problem, I said, call York County Sheriff's Department.
 2 You know, there's your solution. I can't deal with him,
 3 call them. I don't want to deal with him. I just want to
 4 go back inside my house. And -- and he was like, no, won't
 5 you -- won't you come out, and that's when I turned, like
 6 Mr. Mills told you all earlier, slightly, and I told Dawn,
 7 I said, Dawn, I said, call York County Sheriff's
 8 Department, please, you know. And -- You want me --

9 Q. Yeah, keep going.

10 A. So, that's where -- when I turned back around, he had
 11 moved from where he was earlier, where you was
 12 demonstrating. He had cut the distance. He had came up on
 13 the porch, and had placed his hand on the screen door,
 14 which had been opened by him initially.

15 Q. So, this picture right here, of you at the screen
 16 door, ---

17 A. It --

18 Q. --- he gets up there. So, I was going to ask you, is
 19 that screen door stayed open?

20 A. Yeah. Unfortunately, the chain, the spring behind it
 21 isn't on. You can close it, you can latch it, but once
 22 it's open, there's no spring recognition.

23 Q. Okay. So, there's no spring recognition??

24 A. Yeah. The spring's ---

25 Q. On that.

1 A. --- the spring is gone.

2 Q. All right. So, --

3 A. So, it was exactly like that.

4 Q. So, it was exactly like that. And where is he holding

5 onto the screen door, Shane?

6 A. Okay. He is -- he is --

7 Q. Where would you say he was standing?

8 A. Right --

9 Q. About right where that is? Pointing right there?

10 A. No, actually a little bit further towards -- towards

11 the yard.

12 Q. Towards the yard.

13 A. Yes, sir. A little bit further. I would say about

14 right there at this point.

15 Q. Okay.

16 A. He's a pretty good-sized guy, but he's got his arm

17 extended, and he's holding onto the side of the screen

18 door.

19 Q. Right there?

20 A. And he's talking, you know. And I -- that's when I

21 looked at him. I was like, -- that's when -- During this

22 process, Dawn had, after, like he said earlier, Dawn had

23 gone around and have a bat behind the door. She -- I had

24 forgot we even had it there. She had gotten it and brung

25 it around, and placed it in my right hand. Well, my

1 shoulders, just like I'm standing there, you can't see it,
2 but my -- half my body's exposed, and I'm hiding this bat.
3 One, why? I'm scared. I don't know what this guy's got.
4 I don't know what his intentions are. I know I couldn't
5 get him off my porch. I gotten him off my porch. I
6 couldn't get him out of my yard. He knows the Sheriff
7 Department's on the way.

8 But he looked at me just like that distance, he looked
9 at me, he said, what you got? He said, you got a gun? He
10 said, you going to shoot me? Well, y'all, that's when this
11 whole situation really escalated to what Mr. Garfield said,
12 violent. Yes, it took it to a whole nother level of
13 violence, because now I'm thinking this man is looking for
14 an excuse to kill me, looking for an excuse to, if he --
15 I'm thinking, do you have a gun or a knife. You're at my
16 house. I can't get you away. You're trying to coax me out
17 of my house. You just asked me if I had a -- and I told
18 him -- please excuse my language, because I don't --
19 because it's not nice, but I'm going to tell you all word
20 for word, maybe document what I said. No. I said no. Now
21 you gonna -- you got to get the hell off my porch. Get the
22 fuck out of here right this minute, you know. The time for
23 playing is gone. I done told you to leave. I done been
24 nice to him. I done asked him to leave. He won't leave.
25 I don't know who he is. I can't see anything. I don't

1 know if he's got a gun, knife, or whatever.

2 But I do know -- and I'm scared. Okay? This wasn't
3 an act of violence where I want to hit anybody with
4 nothing. But if I got an eight-month-old pregnant chi --
5 wife standing behind me, I don't know if he's going to
6 start shooting, what his intentions are, and I don't want
7 to find out, or. But he's got to go. And I did have my
8 bat in my hand. Never taken a bat to fight in my life, but
9 I do. But when -- During that time, he's got a hold of my
10 door. I reached up to the top of my screen door to grab my
11 screen door to close it. I stepped maybe twelve inches out
12 with my left foot. My right foot's still inside. My
13 body's still inside my doorway, not that that really
14 matters anyway, but they've made a big issue about that.

15 Q. Well, let me ask you this. Let me slow down. And
16 again, where you are.

17 A. Yeah.

18 Q. So, you're scared. Why don't you -- why don't -- why
19 can't you close that door?

20 A. Because he's actually placed his hand in the door.

21 Q. In the screen door.

22 A. He's holding the door.

23 Q. I understand now ---

24 A. Yes.

25 Q. --- one the screen door, but what about the actual

1 door?

2 A. The door that -- I'm standing in it.

3 Q. Okay.

4 A. I'm standing in the doorway, you know.

5 Q. So, how close is he, Shane? Is he about as close as I
6 am to you now?

7 A. Yes.

8 MR. GARFIELD: Objections. Sort of very little
9 leading, your Honor.

10 THE COURT: Yeah, that's leading.

11 A. Okay. Well you ask me that question and I can tell
12 you.

13 Q. No, no, no.

14 THE COURT: Wait just a minute. He's gonna start
15 over.

16 A. Okay.

17 BY MR. POSTIC:

18 Q. How close was he to you?

19 A. Well, --

20 Q. Well, just stop me when I'm as close as --

21 A. Well, I'd say -- I'd say a good four foot. He was
22 close enough -- now -- when he hit me, he was close enough
23 to -- he was maybe six-one, six-two -- he was close enough
24 to -- that much right there. Because that's what happened.
25 So, when I took a step, I closed that gap. He's standing

1 like if you look at that picture. I'd say it was four and
2 a half foot. When I took my step to grab a hold the top of
3 my door, because I done told him he had to get the hell off
4 my porch, and I meant it, leave. I grab hold of the top of
5 my door.

6 Q. He's got the -- his right hand on this door?

7 A. Yes.

8 Q. Sorry.

9 A. He's like this. When I grabbed right there, I got one
10 hand behind the doorway, and -- and I'm concealing this
11 bat, and I got my left hand up here. And that's when --
12 Thank God I had enough strength that he didn't take me
13 completely out right then, because he hit me with a right
14 cross.

15 Q. Where did he hit you? On my body, how did he hit you?

16 A. Well, there's a picture that he's got right there.

17 Q. Hold on. Just show me -- show me on my body how he
18 did it.

19 A. He hit me, and it caught me at my brow, my -- my left
20 brow.

21 Q. Okay.

22 A. Right there. Because he hit me -- Luckily
23 hypothetically, he didn't hit me in the jaw.

24 Q. Okay.

25 A. But --

1 Q. But he hit you where?

2 A. He hit me ---

3 Q. And how did he --

4 A. --- right there on the side of the head?

5 Q. What happened after he hit you? You fell back?

6 A. When he hit me, I went back into the -- into the
7 house. And that's -- that's when the violence started,
8 because I had no choice.

9 Q. Did he -- How many times did he hit you?

10 A. Well, he hit me that time, and when I went back out
11 the house, we -- we kind of --

12 Can I step down and show them?

13 THE COURT: Yes, sir.

14 (WITNESS LEAVES WITNESS STAND.)

15 A. When he hit me, he hit me -- Now I'm in the doorway,
16 and he hit me. So, instantly, I said, oh, my God, you
17 know, this is on. I'm fighting for my life. This ain't
18 for no prize. This ain't for no trophies. This is to
19 protect my family. We went out onto the porch.

20 Q. Uh-huh.

21 A. We went around. Bam! He pushed me up against the
22 banisters and was about to throw me over. Then, he hit me,
23 I know at least two more times. That's why his hands look
24 like that in that picture. The hands didn't get beat on a
25 bad. It was from the side of my head. He hit me two more

1 times really hard in the temple, that I know of, you know.
2 Because what was going through my mind, y'all, I had a bat
3 in my hand. I can't let go of the bat. He takes the bat
4 from me, I'm thinking he's going to kill me with it. I
5 also think, at any time he could cut me, he's got a knife,
6 or he's got a gun. And this man come over to my house in
7 the middle of the night, demanding that I give him water,
8 demanding that I listen to him, and trying to trick me out
9 of my house at night, after I've done had his friend locked
10 up. He came over there on a mission.

11 And I had this bat. I'm in his -- I'm at his will.
12 He's bamming on me. That's when I started hitting him, and
13 that injury happened in the back of his head from me
14 because the only place I could hit him and get him off of
15 me was swinging this bat up, and I did. And I -- and they
16 -- they're going to tell you about how many times it was,
17 and they're going to ask me over and over, how many times
18 did you hit him? I hit him until -- until the threat
19 persists, until he give up.

20 Q. Well, let me ask you this. And this is good. Sit
21 down.

22 (WITNESS RETURNS TO WITNESS STAND.)

23 Q. I -- So, I think we've got, he's coming at you. You
24 wrestle until you fall into the ---

25 A. Yes.

1 Q. --- this is ---

2 A. The banister.

3 Q. --- the banister. And you're hitting him with the bat
4 to get him off of you?

5 A. Yes. Yes, sir.

6 Q. And at some point, there's some distance between the
7 two of you?

8 A. Yes, sir.

9 Q. Okay. And at this point, is he telling you to stop,
10 or to -- What is he saying to you?

11 A. Well, after we got up on the banister, and I finally
12 connected a few times, I was able to gain some space. And
13 y'all, I'm swinging as fast and as hard as I can, and I'm
14 backing up, because he's still coming forward. It's like a
15 bad nightmare. Unfortunately, we don't have the toxicology
16 reports because this is not natural. This is not -- normal
17 -- normal people cannot take this and keep coming at you,
18 aggressively, like it ain't phasing him. I'm hitting this
19 man as hard as I can with a ball bat.

20 MR. GRIFFITH: Your Honor, I'm just going to object.

21 THE COURT: Yeah.

22 MR. GRIFFITH: This is --

23 THE COURT: Just don't go into what it would take to
24 face someone and all that.

25 RUSSELL CARTER: Well, what happened.

1 THE COURT: That would take some kind of scientist or
2 somebody that's an expert. So, just stick to the factual
3 stuff, not opinions.

4 MR. POSTIC: Shush, Shane.

5 I'm sorry, I wasn't shushing you, Judge.

6 Q. Shane, I just -- there's no need to speculate. You're
7 not allowed to speculate as to things that you don't know.
8 Just, what we need right now is what happened ---

9 A. Yeah.

10 Q. --- and you're observing.

11 A. That's -- I'm sorry.

12 Q. Observations.

13 A. I'm sorry, y'all.

14 Q. That's okay.

15 A. Okay.

16 Q. So --

17 A. You was asking about the space.

18 Q. I was asking you about the space, and I was asking you
19 whether he continued to go forward, into you?

20 A. Yes, he -- he backed me -- he backed me up by still
21 coming forward, as he's being struck by this ball bat.

22 Can I show them actual what happened then?

23 THE COURT: You can step down, yes.

24 A. Cool.

25 (WITNESS LEAVES WITNESS STAND.)

1 A. So, as I'm being backed up, -- now, we went from here
2 to here, and now I'm backing up, hitting him, and he's
3 coming forward, towards that door. That picture that Y'all
4 seen of the banister down there, that's enclosed. I'm
5 going like this, and I'm still, as fast and as hard,
6 however many times being hit, he -- he's still coming
7 forward 'til he'd done worked around to where Alex is.

8 Now, if you take Alex is there, here's the front door.
9 The door's open, y'all. She's on the phone to 911. My
10 pregnant wife comes through the door. What have I done?
11 I've let this man get in between me and her. I -- and that
12 -- and I'm really scared, because how could I do that? How
13 can I allow that? And I'm also thinking, at any time this
14 guy has got -- I don't know what he has, and I don't want
15 to find out. Well, the blows caught up to him.

16 MR. GARFIELD: Your Honor, objection. This is beyond
17 the scope of the original question. It's --

18 THE COURT: All right. Let's --

19 MR. POSTIC: Okay.

20 THE COURT: -- he's going to ask you another question.

21 MR. POSTIC: Yes. Thank you.

22 (WITNESS RETURNS TO WITNESS STAND.)

23 BY MR. POSTIC:

24 Q. So, at this point, let me just -- I may be going back
25 in time, in your statement. But you -- you stated that he

1 was between -- he was between you and the open door to your
2 home?

3 A. Yes, sir.

4 Q. Okay. What did you do next?

5 A. Well, that's when --

6 Q. Go ahead. Just say it.

7 A. Yeah. That's when the amount of blows, I reckon, I'm
8 not a doctor or whatever, caught up to him. Well, he fell.
9 He fell. So, once again --

10 Q. He fell.

11 A. He fell. He hit the ground.

12 Q. And so, what did you do? Go around him?

13 A. He fell, he hit the ground. I went to position myself
14 to the right.

15 (WITNESS LEAVES WITNESS STAND.)

16 Q. So, this is the door back over here.

17 A. And to get -- and to get on top of him, to make sure
18 he didn't move any more. But I didn't make it that far,
19 y'all. I started to go this way, and he started kicking,
20 up-kicking.

21 Q. Okay.

22 A. And he started kicking --

23 Q. Okay. He's on his back and kicking?

24 A. He's kicking hard. And he's kicking me. So, what did
25 I do? I had a bat. I'm hitting him. I'm thinking, still,

1 he could get a knife, gun, whatever. I stepped back. I
2 started hitting him in his legs, in order to stop kicking
3 me.

4 (WITNESS RETURNS TO WITNESS STAND.)

5 Q. Okay. And what -- So, what did you tell him at that
6 point?

7 A. When he -- he stopped. He said -- he said these words
8 exactly, he said, please stop hitting me. I was like, I
9 told him, I said, roll over. And now, y'all, I'm really --
10 you're going to hear these tapes. I'm not proud of it, but
11 I'm worked up, and my adrenaline has gone through the roof.
12 And I screamed at him, and I said, roll over on your
13 stomach. Place your hands flat on the concrete to where I
14 can see them, and don't -- don't you move. And I said some
15 words that I wouldn't want you all to hear, but I'll --

16 Q. Okay. That -- and so, --

17 A. That's what happened.

18 Q. At that point, what happened next?

19 A. Never again was he hit. He complied, and --

20 Q. Did you hit -- so, you -- you -- what you're saying is
21 ---

22 A. It was over.

23 Q. --- you never hit him again ---

24 A. You know, it was over.

25 Q. --- until --

1 A. He stopped. He complied, and -- and I stood over top
2 of him with the ball bat in order to -- in order to make
3 sure he didn't come out, and it was done.

4 Q. Okay. And at that point, so, when -- Where were you
5 when the police came?

6 A. I was in that same position.

7 Q. On your front porch?

8 A. Yes, sir.

9 Q. He's on the side -- he's on -- he's on the floor?

10 A. He's beside the door, like, he's beside the door,
11 about eight to ten inches from the door, being up the
12 doorway open and maybe from the wall about six inches. And
13 I know I had heard that I had -- his allegations was, I
14 went off the porch to hit him.

15 MR. GARFIELD: Objection, your Honor.

16 THE COURT: Don't go into what we call hearsay.

17 A. Huh?

18 BY MR. POSTIC:

19 Q. Shane, Shane. I'll ask the questions.

20 A. Okay. Okay.

21 Q. I know you're eager to have your day in court.

22 A. Yes, sir. Yes, sir.

23 Q. Just, I'm going to ask the questions, and you answer
24 my questions.

25 A. Okay.

1 Q. Okay?

2 A. Yes, sir.

3 Q. All right. Okay. We're good. So, he's here; is that
4 correct?

5 A. Yes, sir.

6 Q. Right in here?

7 A. Yes, sir.

8 Q. Okay. So, he's -- he's on the ground, and you're over
9 him, and the police are what, coming up your stairs?

10 A. Yes, sir.

11 Q. So, -- Thank you.

12 He's there, Shane?

13 A. Yes, sir. Yes, sir, he is.

14 Q. Okay. And you're standing --

15 MR. GARFIELD: Objection. This is all leading.

16 THE COURT: Yes, that is a leading question.

17 BY MR. POSTIC:

18 Q. Please tell me where you're standing, Shane. I'm
19 sorry.

20 A. Okay. I'm not -- He's there, and at this point, I'm
21 still, like I said, about right there, where that white
22 post to the left -- to the main column.

23 Q. This way?

24 A. I'm like -- I'm like, right in front of it, because
25 that way, the police could come, you know. I wouldn't have

1 my back to them. I was keeping my eyes on him.

2 Q. Okay. And I had, just while we're -- while I have
3 this on and the lights are down, I had this up earlier.
4 But do you recognize this picture?

5 A. Yes, sir.

6 Q. Okay. This has been marked as Plaintiff's Exhibit
7 Six. And what does that depict?

8 A. That's from his initial blow.

9 Q. Right here over the eye?

10 A. Yes, sir. If you'll see, my blood -- my eye's got
11 blood in it where he hit me pretty good. I'm glad he
12 didn't knock me out.

13 Q. Okay.

14 MR. POSTIC: Thank you, Madam Clerk.

15 Q. Okay. So, the police come up, and let's go through
16 that. And again, just -- just try to stay -- stay to the
17 facts.

18 A. Yes, sir.

19 Q. And explain one step at a time. Okay?

20 A. Okay.

21 Q. Who was on the scene when they get there?

22 A. Officer Kevin Gwinn.

23 Q. Kevin -- excuse me, repeat it.

24 A. Officer Kevin Gwinn.

25 Q. Okay. He's the first officer there?

1 A. That I seen, yes, sir.

2 Q. Okay. And what does he do?

3 A. He comes up and -- He kind of don't pay attention to
4 me. He comes up, and he takes his nightstick. Now, at
5 this time, it's like this guy's playing dead or something.
6 He's gone --

7 MR. GARFIELD: Objection, your Honor. Can't
8 speculate.

9 THE COURT: Well, he said like he's dead.

10 MR. GARFIELD: Okay.

11 A. Except like playing.

12 THE COURT: I overrule the objection.

13 BY MR. POSTIC:

14 Q. You can -- It's fine.

15 A. Okay. He's laying there motionless, and -- and
16 Officer Gwinn reaches down, picks up on him a little bit.
17 He don't move and he picks up on him a little bit more.
18 And he steps back, and he kind of looks at me, and he was
19 like -- Takes my bat and then he orders me inside the
20 house.

21 Q. Okay. All right. And so, at that point, what do you
22 do? Go inside your house?

23 A. Yes, sir.

24 Q. And wait until you talk to him, or what do you do
25 next?

1 A. I went in. I'm talking to Dawn, and I'm thinking
2 about it. I'm like, you know what? They're going to take
3 this guy off to jail. I don't know who he is. I don't
4 know what he looks like. I've never seen this guy's face
5 in my life. I was still -- I didn't know who he was. To
6 be honest with you, until today, never seen a picture of
7 him, you know. And that's a pretty scary thing, also.

8 Q. Okay.

9 A. For me.

10 Q. So, what did you do about that?

11 A. I took -- I took my phone, and I went out, and I said,
12 -- She said, what you doing? I said, I'm going to go take
13 a picture of him. So, I went to the doorway. I snapped a
14 picture. It didn't do no good. His back was turned.
15 Because I still wanted to know who was this at my house.
16 Why did this happen, who was this, you know.

17 Q. Okay. And so -- And then, you go back inside at that
18 point?

19 A. Yeah. Well, yeah, because it -- it upset Officer
20 Gwinn.

21 Q. Okay. And tell us what happens next.

22 A. Then he makes some comment. He orders me back inside.
23 He restrains me. He restrains me --

24 Q. Who is he?

25 A. Officer Gwinn.

1 Q. And how does he restrain you?

2 A. He put me in his car, in my boxers, handcuffed.

3 Q. Okay.

4 A. And he starts -- he asked me many questions, all of
5 them ---

6 Q. Does he ask you if this was your home?

7 A. --- what's going on. I can't quite recall. I think
8 so, but I can't -- I can't -- I can't give a definite
9 answer on that.

10 Q. Does he ask you about the events that led up to this
11 incident?

12 A. No, sir.

13 Q. What does he ask you?

14 A. Well, -- well, we were interrupted at that time. And
15 you'll hear during the tape that this other guy was coming
16 into my property, the other guy that had been kicked --
17 told -- that I had arrested before. This all happened real
18 simultaneous. You know, it sounds like you got a lot of
19 time, but there was a lot going on. As soon as the police
20 came up, this guy came around the corner. So, come to find
21 out, there was two men out there on my property. And I'm
22 -- and he comes around the corner, asking me, what -- what
23 did I do to him. What did you do to him, Shane? What did
24 you do to him?

25 Q. Who is that person?

1 A. Steven Blackwelder.

2 Q. Okay.

3 A. Saying --

4 Q. So, that's the person that -- and just ---

5 A. That's the --

6 Q. --- to repeat what you said before was that person --

7 A. Yeah, that's the person who had threatened my family's

8 life, and my children's life. Yeah. You know, I had him

9 arrested for it. It was documented. That's the one that

10 left threatening notes on my door, that if I had problems

11 with him, deal with him like a man. You know, at one

12 o'clock in the morning, was harassing me. That's the one I

13 had seeked relief from. That's the one that was flipping

14 my wife off every time at the stores, still does.

15 Q. Okay. Let's -- and I -- So, who did you end up

16 telling what happened? You say this person interrupted

17 you, but did you, at some point, --

18 A. I told the -- I told the deputies that was there. I

19 was like, he is trespassing.

20 Q. And did you -- did you -- I'm talking about, did you

21 tell him about the incident?

22 A. Yes.

23 Q. Okay. Did you tell them who Blackwelder was, and who

24 -- and about those previous issues with the neighbors?

25 A. Yes. Yes, sir.

1 Q. Okay. Did they ask you about the water situation?

2 A. Yes.

3 Q. Okay. And then, did you ex -- did you tell them about
4 how you tried to get him off of your property?

5 A. Yes, sir.

6 Q. And did you tell them --

7 MR. GARFIELD: Objection. All this is leading.

8 THE COURT: Yeah. Rephrase your questions. You have
9 gotten into a pattern of leading.

10 MR. POSTIC: And I was just -- I can't help it. I'm
11 sorry, Judge. I'll . . .

12 Q. Did you tell him?

13 A. I give them all of the information, Alex.

14 Q. Okay. All right. The same information.

15 MR. POSTIC: You got me rattled. Beg the Court's
16 indulgence just one minute.

17 Q. What did they ask you to do in the back seat of the
18 car?

19 A. In the back seat of the car.

20 Q. Did you do anything else? Did you --

21 A. Yeah. Yeah. I informed them, and I questioned them,
22 was I not protected under South Carolina Persons And
23 Property Act. And --

24 Can I tell them what I was told since it's okay?

25 THE COURT: I think he ask you what you told the

1 officer. You tell us what you told the officer.

2 A. Okay. And this is what I --

3 Q. Okay. Just tell us -- it doesn't matter.

4 A. Okay. Yeah.

5 Q. Just tell us how things went.

6 A. Okay. I told -- I told the off -- I questioned the

7 officer if I wasn't -- wasn't protected under the law.

8 Q. What was his response?

9 A. His response was that that law might be down in

10 Florida but that law ain't up here. He said, that law

11 might -- they might have that law in the lower state, but

12 we don't have that law, that state law, up here. He didn't

13 say state law. He said, we don't have that law in the

14 upper state. He said, not here.

15 Q. Did you end up going to jail that night?

16 A. Yes, sir. I was charged. No. No, sir.

17 Q. That night?

18 A. No, sir. That night, I didn't.

19 Q. What did they tell you they were gonna do?

20 A. They said that they was going to investigate and let

21 me know the next day. If I needed to turn myself in, I'd

22 know around four or five o'clock that afternoon.

23 Q. All right. And what did you say to them?

24 A. I asked them -- Well, I asked them what they would

25 have done, what should I had done because I was really

1 confused. I didn't have -- I didn't feel like I didn't
2 have an option. I asked them what was the right thing.

3 Q. What was their response?

4 A. That I should have went back inside my house, that I
5 had called them, and that they were on the way.

6 Q. Did you explain to them why you could not go back into
7 you house, like you did to us today?

8 A. Yes. That option wasn't on the table. That option --

9 Q. What do you mean, that option wasn't on the table?

10 A. Well, when -- when somebody comes and -- and once he
11 punched me, and I was going -- I was in my house, going
12 into my house, well, I couldn't -- I couldn't do nothing
13 else. I could have took it and risked my family's injuries
14 or taken my further injury; or -- or I could have fought to
15 protect my house. I -- I don't -- I don't know of no other
16 way to put it, and I wish it was somebody else.

17 Q. I --

18 A. I wish it was a deputy. That way it --

19 Q. Shane, did you -- when he punched you, you were -- did
20 go into your house to fight?

21 A. Yes.

22 Q. Did you tell the police that?

23 A. Yes, sir. They asked me -- they really questioned me
24 many times. Actually, to be honest with you, every
25 question they asked me right from the get-go, I felt like,

1 or was leading to where if I -- if I answered it, it felt
2 like they was trying to incriminate me. They asked me, did
3 you step out of your house, and I told them I took a step
4 out of my house. I took a step out of my house when I
5 grabbed the door to the left with my left hand. My screen
6 door, to close it. Why I tried to close the screen door?
7 I don't know. I close my door. I was trying to close my
8 door and diffuse the situation. I don't -- I don't know
9 what, you know, hindsight's twenty-twenty.

10 Q. What do you mean by you were trying to diffuse the
11 situation?

12 A. Well, like I said, when I had smelled alcohol on him,
13 I didn't know what kind of drugs, alcohol, or what it was.
14 It's a hypothetical. I still don't -- I'd like to have
15 known. I wish I knew and you all knew. But I didn't get
16 that option.

17 Q. What do you mean by you were trying to diffuse the
18 situation?

19 A. I told -- I told him -- I called -- first, I asked my
20 wife to call the York County Sheriff's Department. That's
21 not the actions of somebody that's trying to beat up on
22 somebody. I called them. I had her call them. He knew
23 the solution was there. I had done give him another
24 solution.

25 MR. GARFIELD: Objection, your Honor to what someone

1 else knew --- calls for speculation.

2 THE COURT: Yeah. I sustain --

3 MR. GARFIELD: --- calls for speculation.

4 THE COURT: I sustain the objection. Disregard that
5 testimony.

6 BY MR. POSTIC:

7 Q. Do you understand? I was just asking --

8 A. No, I don't. I thought --

9 Q. -- if -- what you meant by diffusing.

10 A. Can I --

11 Q. That's fine. Don't worry about it.

12 A. Could I answer this? There was another reason -- a
13 way that diffuse -- when -- if he was looking to come find
14 out about his water, I had assured him that I would
15 honestly go out there and check again and look, even though
16 it was eleven o'clock at night. But I was not going out
17 there with a stranger in the middle of the night.
18 Especially after --

19 Q. Shane.

20 A. Yeah.

21 Q. I am -- I understand. Let's move on to the next day.

22 A. Okay.

23 Q. When did you find out what -- what the police had done
24 with their case?

25 A. It -- I think it was around four thirty or five

1 o'clock, Officer Kevin Gwinn called me and asked me to turn
2 myself in. I asked him what I was being arrested for and
3 he said assault and battery of a high and aggravated
4 nature. That is what you call this almost --

5 Is that attempted murder, your Honor?

6 MR. POSTIC: Shane.

7 THE COURT: You can't ask me.

8 MR. CARTER: All right.

9 THE COURT: You just answer the questions he's asking.

10 MR. CARTER: Okay.

11 BY MR. POSTIC:

12 Q. Shane, he -- and then, when you -- so, what did you do
13 with that? Did you just run to Mexico?

14 A. No, sir. No, sir. I -- I -- I called my wife and
15 told her that I was sorry, you know. I was going to have
16 to turn myself in and go to jail.

17 Q. Okay. And so, did you -- Where did you go to turn
18 yourself in?

19 A. Just -- Moss Justice Center. Here. Right down there.

20 Q. And tell us about that process. Were you given a
21 warrant on that day?

22 A. I -- I don't -- I don't recall to be honest with you.

23 Q. I'm going to hand this up to you.

24 A. I was pretty fraught.

25 Q. Let me know if you recognize this.

1 A. Actually, yeah. It was not by them three officers,
2 but I met with a guy, I believe. I believe so.

3 Q. Does that look like the document that was given to
4 you, Shane?

5 A. Maybe when I left. I don't remember. I was getting
6 booked.

7 Q. Have you ever -- have you ever seen this document
8 before?

9 A. Probably. If I have, I don't -- I don't -- I couldn't
10 -- I can't honestly say.

11 Q. Okay. So, tell us about what that means, to turn
12 yourself in.

13 A. Well, it's not a good feeling going back to jail and
14 messing up again, doing something wrong.

15 Q. What's that?

16 A. It's very humiliating.

17 Q. Okay.

18 A. It's humiliating to my family. I'm scared. I'm
19 scared. I'm scared, because now I've got to leave my wife
20 at the house.

21 Q. I was going to ask you about that.

22 A. I got to leave my pregnant wife at the house, with a
23 guy that I had just viciously had to defend, viciously
24 injured. And his -- and I had done been told that night
25 that -- by another guy that was on my property that -- that

1 he was going to get me; he was going to retaliate. That
2 was Mr. Steven Blackwelder.

3 MR. GARFIELD: Objection, your Honor.

4 THE COURT: You don't know --

5 MR. CARTER: He said it.

6 THE COURT: You don't know what he was going to do.
7 You can tell what you think might happen, but you --

8 MR. CARTER: What about --

9 THE COURT: --- can't affirmatively say he was going
10 to -- somebody else was going to do something.

11 MR. CARTER: What he had said --

12 THE COURT: Well, let him help. He'll kind of guide
13 you through the questions. Just ---

14 MR. CARTER: Okay.

15 THE COURT: --- if you'll answer his questions, you'll
16 be okay.

17 MR. CARTER: All right.

18 MR. POSTIC: Thank you. Thank you, your Honor.

19 Thank you, Shane.

20 And again, I know you're eager to get it out. Just
21 let me ask the questions. Okay?

22 A. Okay.

23 Q. Okay? All right. Did the police know -- Did you tell
24 the police how this -- the -- that you thought that this
25 guy was connected to your neighbors?

1 A. Yes, sir.

2 Q. Okay. And when you turned yourself in, who was left
3 at your house?

4 A. In my household?

5 Q. Yes.

6 A. It was my grandmother, eighty-six years old; my wife;
7 my dog and my unborn child and my three small girls,
8 daughters.

9 Q. Okay. And did you -- When you turned yourself in, the
10 process, tell us -- What I meant about the process is, are
11 you -- did you put on a jumpsuit?

12 A. Yes, sir.

13 Q. And did you have to give your fingerprints?

14 A. Yes, sir.

15 MR. GARFIELD: Objection. This is all leading.

16 MR. POSTIC: It's yes or no, and he can't answer yes
17 or no, your HONOR.

18 THE COURT: Well, no, that's a leading question.

19 MR. POSTIC: Okay.

20 THE COURT: I sustain the objection.

21 MR. CARTER: Please ask me and I can --

22 THE COURT: I know, and I stopped him. He's going to
23 go on to something else.

24 MR. CARTER: You don't have to lead. I know this one.

25

1 I'll never forget it.

2 MR. POSTIC: Thank you, Shane.

3 Q. Tell us -- tell us about turning yourself in.

4 A. Okay. You get -- you get to come up here. You get to
5 get naked. You get to get searched, body -- body searched.
6 You get to put on an orange jumpsuit, and you get to go to
7 a holding cell with about seven other, or eight other
8 gentlemen. You get to get your fingerprints. You get to
9 get your pictures taken. You get to go stay downstairs in
10 like a -- what you put your dog in, a kennel. And hard
11 concrete floors. And then, the fact that I had to come in
12 that night, the magistrate wasn't there, Mr. Yard. He
13 wasn't there, so I couldn't -- to get bonded. So, that was
14 --

15 Q. What time was your bond hearing?

16 A. About -- I believe my hearing was over in the middle
17 of the night, or in the morning. It was actually -- by the
18 time I left, it was the next afternoon, for a fact.

19 THE COURT: I'm going to ask Ms. Straight, see if
20 there's somebody hammering or something.

21 MR. POSTIC: Yes, your Honor.

22 THE COURT: I'm going to ask her to see if they can
23 stop it. Hope they can stop it.

24 MR. POSTIC: Do I need to pause my examination?

25 THE COURT: No, go ahead now.

1 MR. POSTIC: Thank you, your Honor.

2 Q. Your bond hearing was the next day, you said?

3 A. Yes, sir.

4 Q. Okay. And what time did you finally get out of the
5 Moss Justice Center?

6 A. About three thirty in the afternoon.

7 Q. Okay. And I'm going to show you this document again,
8 because I just realized, or co-counsel and I. Do you -- Do
9 you remember signing this document?

10 A. No, sir. That's not -- that's not my handwriting.
11 That's not my signature.

12 Q. Oh, I'm sorry. it's not your handwriting, but do you
13 notice where it says -- Can you read what it says under
14 Return?

15 A. Steven Ramsey.

16 THE COURT: You need to speak up so we can hear you.

17 Q. A copy.

18 A. Oh. A copy. A copy was delivered. So, I must have,
19 y'all.

20 Q. Okay.

21 A. They probably give me that on the way out the door
22 that day.

23 MR. POSTIC: Do you have any objection to this
24 warrant?

25 MR. GARFIELD: Just one moment, your Honor.

1 THE COURT: All right.

2 (PAUSE.)

3 MR. GARFIELD: Without objection, admitted into
4 evidence. Thank you.

5 THE COURT: In, without objection.

6 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER ONE, IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 MR. POSTIC: Thank you so much, Mr. Garfield.

9 Q. I'm going to show you Plaintiff's Exhibit One, Number
10 One.

11 THE COURT: My light turner-offer is out, so.

12 MR. POSTIC: Okay.

13 Q. So, do you remember seeing this document, now that --
14 or, do you know what this document is, Shane?

15 A. I know what the document is. Yes, sir.

16 Q. Okay. What is it, Shane?

17 A. I think it's search warrant. Arrest warrant
18 affidavit, is what they call it?

19 Q. Yes.

20 A. That's what's on the top of it.

21 Q. Okay. And I'm going to hand it to you, and I'd like
22 you to read what's in the body of the warrant. Okay?

23 A. Okay. Yes, sir.

24 Q. Right there.

25 A. Okay. You want me to read it out loud?

1 Q. Yes. Please read it out loud.

2 A. Okay. "On April 25, 2012, in the County of York, one
3 Russell Shane Carter did willfully and unlawfully violate
4 South Carolina laws by striking Michael Robin Faile about
5 the head and body with an aluminum baseball bat, causing
6 physical injuries that required medical attention. The
7 victim was transported to Piedmont Medical Center in Rock
8 Hill by EMS. Probable cause based on police investigation.
9 Report Number 2012-00013457."

10 Q. And what was the charge that you were charged with?

11 A. Assault and batter of a high and aggravated nature.

12 Q. Do you know what kind of charge that is?

13 A. It's a -- told it was a twenty- to thirty-year
14 sentence. It's a felony, right? I mean, I shouldn't ask
15 him. I believe it's a felony, is what I was told. And I
16 believe -- I've been told that it's what used to be called
17 assault --

18 MR. GARFIELD: Objection, your Honor. I'd like a
19 curative instruction, if I may.

20 THE COURT: All right. Let's -- I'm going to let the
21 jury -- this is a good time to take a break anyway, so,
22 we'll let you go to the jury room, and we'll take up a
23 legal matter. You can go to the jury room.

24 (JURY EXITS COURTROOM AT 03:52 P.M.)

25 THE COURT: All right, Mr. Garfield.

1 MR. GARFIELD: Sir, I'm waiting for that ---

2 THE COURT: It's slow.

3 MR. GARFIELD: --- ever so slowly. It's a catch up
4 coming out. If I'm correct, assault and battery of a high
5 and aggravated nature is common law. I note on the --

6 MR. POSTIC: No, it's been changed.

7 MR. GARFIELD: Back in 2012, it was a common law ---

8 THE COURT: All right.

9 MR. GARFIELD: --- I think it carried up to ten years,
10 and a misdemeanor.

11 THE COURT: It is.

12 MR. GARFIELD: But it -- although it came under the
13 new assault scheme, that may be different, but for him to
14 just to assume it's a felony --

15 THE COURT: Well, let's do this. We're going to take
16 a break. Look it up.

17 MR. GARFIELD: I did.

18 THE COURT: Well, just -- Just look it up, and show me
19 something, and we'll take a break. Thank you.

20 MR. GARFIELD: Thank you, Judge.

21 THE COURT: You can step down and use the restroom,
22 have some water. Don't discuss with your -- don't discuss
23 your testimony with the attorney or your wife, or anybody
24 else.

25 MR. CARTER: I don't know and somebody asks me what I

1 think?

2 THE COURT: No. Nobody's going to ask you.

3 MR. CARTER: No. I ain't saying now.

4 (COURT IN RECESS AT 03:53 P.M.)

5 (COURT BACK IN SESSION AT 04:12 P.M.)

6 THE COURT: All right. Did we straighten that out?

7 MR. GARFIELD: I think we did. I had to learn
8 something. It was a, looked like in 2011 they recodified
9 it and made it a -- I think Mr. Carter said a thirty-year
10 felony. I think it's a twenty-year felony. But it's just
11 hearsay, and just kind of didn't know where that was going
12 to keep going but for.

13 THE COURT: Well I think he even testified to what he
14 -- what he thought he was facing.

15 MR. POSTIC: Yes, sir.

16 THE COURT: And I think he can testify to that. But
17 then, we -- I don't know where we'd go after that, so.

18 MR. MILLS: Its essentially why we can --- I have no
19 problem if the Court wants to say the law is, you face --

20 MR. POSTIC: However you want to -- actually, I'd
21 rather it just came from you, Judge, if you wanted to just
22 do a curative instruction. I -- I'll withdraw it, because
23 it really cuts both ways. I mean, it --

24 THE COURT: We'll just go on, and if you want to
25 correct it on cross.

1 MR. GARFIELD: There was one other issue before we get
2 the jury out.

3 THE COURT: All right.

4 MR. GARFIELD: Just for -- for economy's sake, I
5 figured ---

6 THE COURT: Okay.

7 MR. GARFIELD: --- it would be the best time just to
8 bring it up. I've -- Mr. Postic, correct me if I'm wrong,
9 but there will be a -- part of his damages, he's alleging
10 that he had to pay a criminal defense lawyer. And that's
11 been a source of a little bit of confusion, and if he asks
12 that, I'm not going to have another chance to address it.

13 In the discovery responses, your Honor, he asked them
14 the normal, standard interrogatories about damages to date.

15 "Answer: Plaintiff suffered a loss of his liberty
16 while he was in jail, as well as his damages in the amount
17 of Five Thousand Dollars. Payment to his criminal defense
18 lawyer, a Thousand Dollar payment for bond."

19 That was served on us, and we went with that
20 assumption all through discovery, and even trying to value
21 the case in terms of settlement, but we were provided that
22 September 28, 2015. Mr. Postic, and maybe he just wasn't
23 aware, I believe we received, correct me if I'm wrong, for
24 the first time today a letter that Mr. Postic, my good
25 friend, represented Mr. Carter for the criminal defense,

1 which he may be a witness in this matter but that must
2 notwithstanding, it says, "my fee in this matter is
3 Seventeen Thousand, Five Hundred Dollars."

4 That's the first time we've heard about this. It's
5 not been disclosed in discovery, and I just don't really
6 know what to make of it. I object that this letter would
7 come in out of hearsay. The letter was from April 30,
8 2012. And for him to ask how much it would be, Seventeen
9 Thousand, Five Hundred, that he pay the individual that
10 examined him, just have a -- we'd ask for that to be
11 excluded.

12 MR. POSTIC: I was just -- and my plan, your Honor, is
13 just to ask him -- and I did not respond to the
14 interrogatories, Mr. Mills did. And it's -- what the
15 letter says is that I would accept the Five Thousand Dollar
16 retainer, as opposed to pulling in my whole fee right up
17 front. And that was because -- And again, I know my name's
18 not Defense -- and I'm just letting your Honor know. I
19 mean, that -- and all I'm going to ask him is what his
20 legal fee was, and that's all.

21 THE COURT: Well, I -- Are you going to object to
22 that?

23 MR. GARFIELD: I think we're -- I think we're taking
24 the position that he -- the criminal defense damages, the
25 invoice was Five Thousand Dollars ---

1 THE COURT: Well --

2 MR. GARFIELD: --- and he still owed him Twelve
3 Thousand, Five Hundred Dollars.

4 THE COURT: Well, I think he can ask him what he paid.
5 And if he only paid five, then he only paid five. If he
6 paid seventeen-five, he paid seventeen-five.

7 MR. GARFIELD: But do we know -- May I ask Mr. Carter
8 how much -- what he's going to testify to?

9 THE COURT: Well, I don't know. We've got to find --
10 I'll -- let's just see.

11 MR. GARFIELD: Okay.

12 THE COURT: But he's got to testify truthfully.

13 MR. GARFIELD: Yes, sir. Thank you.

14 THE COURT: So, I mean if he -- if he says he paid --
15 paid more or less than what he actually paid.

16 MR. POSTIC: That's fine, your Honor. I -- the --
17 it's a very simple history, your Honor. I represented him
18 -- he was one of my first clients when I left the
19 Solicitor's Office. On that trafficking charge that we
20 pled in front of you, Judge, he's somebody that I've stayed
21 in touch -- you know, when you're in private practice,
22 there are certain people you stay in touch with. He called
23 me a lot about different things. He sent me clients. And
24 my -- my fee in this case was seventeen-five. He paid Five
25 Thousand Dollars as a retainer. He never paid any more on

1 it. He still owes me Twelve Thousand, Five HundredD
2 Dollars, and --

3 THE COURT: Well, that does make it very awkward.

4 MR. POSTIC: And I agree. But --

5 MR. GARFIELD: And the issue that I have with that,
6 just to be clear, is that I can't call Mr. Postic to the
7 stand and ask him to clear that up. For him to say that he
8 is in arrears Twelve Thousand, Five Hundred Dollars with
9 the individual asking him, that's just been -- and I think
10 I voiced that to Alex at some point earlier on, I may be
11 mistaken about that, just as far as the criminal defense
12 aspect.

13 MR. POSTIC: All you said was that at -- initially,
14 Robbie did say that, yeah, this might be an issue with you
15 being on this case. Then, he later told me he wasn't going
16 to raise it. But I'm -- you know. He's got his case.

17 MR. GARFIELD: It was just the first time I heard
18 this.

19 MR. MILLS: Mr. Postic is not listed as a witness by
20 anybody in this case in the discovery.

21 THE COURT: I understand. I understand that, but I
22 mean, it's --

23 MR. MILLS: Is that not subject to cross-examination,
24 Judge? He only paid him five, and --

25 THE COURT: Well, I think I'm going to let him go and

1 testify to whatever he testifies to. And then, I think on
2 cross-examination, you can -- you could cover it. It is
3 very awkward, but I think we can work our way --

4 MR. POSTIC: Well, it makes me look like a really bad
5 lawyer.

6 THE COURT: Well,

7 MR. GARFIELD: I was trying to avoid this. I was
8 trying to avoid this.

9 MR. POSTIC: I appreciate that.

10 MR. MILLS: No good deed goes unpunished.

11 MR. POSTIC: That's a real good --

12 THE COURT: All right. Bring in the jury.

13 Ms. Miller, do you need to see me, or are you just
14 interested in this case?

15 SOLICITOR MILLER: Just interested.

16 THE COURT: Good.

17 MR. MILLS: Judge, we're trying to plan for the rest
18 of the day. How many people do you think --

19 THE COURT: Well, this witness is probably the
20 longest.

21 MR. MILLS: Yeah, he is. I don't like keeping --

22 THE COURT: I'd say five thirty or six.

23 MR. MILLS: Okay.

24 THE COURT: That's when I'll try to stop.

25 MR. MILLS: What we'd propose after this is play one

1 of the videos. But it's like, an hour and fifteen minutes
2 of just -- if you want.

3 THE COURT: We'll just have to see, but I -- I'm going
4 to try to stay with five thirty or six.

5 MR. MILLS: All right. That's fine. We're here for
6 whenever.

7 THE COURT: Good.

8 (JURY REENTERS COURTROOM AT 04:19 P.M.)

9 THE COURT: You may proceed.

10 MR. POSTIC: Thank you so much, your Honor.

11 DIRECT-EXAMINATION - CONTINUES

12 SHANE CARTER BY MR. POSTIC:

13 Q. Shane, tell us what was the -- what was your bond
14 amount in this case?

15 A. I believe -- I believe it was Two Thousand Dollars.

16 Q. Okay.

17 A. It was.

18 Q. And did you bond out immediately?

19 A. Yes, sir.

20 Q. Where did you go after you bonded out?

21 A. I went home.

22 Q. Okay.

23 A. Straight home.

24 Q. And what did you find at your house?

25 A. I found out that the night before, while I was in

1 jail, that somebody had left a roach-infested bag of trash
2 and a baby doll with the head ripped off laying in the
3 walkway. But I found my -- I found my family safe so.

4 Q. And as a result of these charges, what did you do?

5 A. Well, I called you.

6 Q. Thank you.

7 A. Thank God. Thank God I had a lawyer.

8 Q. And why did you call me?

9 A. Because I knew -- I knew -- I had dealt with you
10 before. I knew you was a honest man. I knew you'd work
11 with me while I got the money up, to be able to afford a
12 lawyer. I knew -- I knew you'd represent me in the best
13 way.

14 Q. And what would ---

15 A. I was innocent.

16 Q. --- what was your legal fee, Shane?

17 A. Okay. It was -- it's normally -- What I was told by
18 you, it's normally Twenty Thousand Dollars for such a big
19 case. The exact quote was, you know I'm a big-time lawyer
20 now, Shane. And -- and it was Five Thousand up front. He
21 worked with me, and he give me a discount that it's
22 Seventeen Thousand, Five Hundred Dollars. The Five
23 Thousand was -- I was struggling. I said it in the video.
24 I come from a hard winter of construction work. God
25 blessed me with a big family, and I was having a hard time

1 as it was. Thank God I had a family that I could lower
2 myself and beg them, or ask them, and they believed in me.
3 They -- I came up with the money.

4 Q. Thank you, Shane. Shane, what -- what did you -- what
5 happened to your neighbors?

6 MR. GARFIELD: Objection. I don't really --

7 THE COURT: I sustain the objection.

8 MR. POSTIC: I just wanted to ask where --

9 THE COURT: Well, I know. You did ask something.
10 He objected and I sustained it.

11 MR. POSTIC: Okay.

12 Q. Shane, were you still working at that time?

13 A. Yes, sir, I was.

14 Q. Did this arrest make any sort of press?

15 A. Yes, sir, it did.

16 Q. What sort of press was that? If you could just go on
17 ---

18 A. Well, --

19 Q. --- about that.

20 A. Here, in York County, they can -- whether you're
21 innocent or guilty or not, once you're arrested, for one,
22 it puts you online for being arrested. I'm still there
23 today. If you'll look me up, it's there. It's not -- I
24 don't believe it's fair. It's right I was innocent. Not
25 only that, I had my -- my favorite uncle bring me the

1 Slammer magazine over, showed me my picture. Me, in that
2 same picture, of slammer. No, that's a different picture,
3 I believe. But he brung me a picture of where I made the
4 Slammer magazine. I don't understand how they can put me
5 in there. And they also put it in the *Herald*, and the
6 story pretty much read that a man just went outside with a
7 ball bat, and beat up on a man that was needing water an
8 innocent guy.

9 Q. Were you named in that article?

10 A. I'm not sure. I -- it's been so long ago I've been
11 waiting to come here today. But I also met with my family.
12 You know I come from a pretty good -- I come from a really
13 good family. I've made mistakes, but several of them come
14 over. Most of them work for Comporium, and -- and they had
15 gotten hit up by their co-workers about it. It spread
16 pretty fast that it was me, that I'd been charged for
17 beating on the guy.

18 Q. And what -- when --

19 A. It's pretty shameful.

20 Q. What ultimately happened to your charge, your criminal
21 charge, Shane?

22 A. It was -- it was looked at, and it was found to be
23 totally justified, under South Carolina Persons And
24 Property -- Property Act, commonly known as the Common Law
25 Doctrine. They couldn't -- although they said it was

1 highly --

2 MR. GARFIELD: Objection.

3 THE COURT: Yeah, I sustain the objection.

4 MR. GARFIELD: Hearsay.

5 THE COURT: Even though it happened, what happened,
6 but why, your background and a rationale for it is for
7 somebody else --

8 MR. POSTIC: That's fine. That's fine, your Honor. I
9 just --

10 Q. Just a one-word answer. What happened to your charge?

11 A. It was nol prossed.

12 Q. And what do you think that means? What does that
13 mean?

14 A. It's totally unfounded, dropped.

15 Q. Okay. The word I was looking for was dismissed.

16 A. It was dismissed. That's the common term.

17 Q. Sorry. What is this, Shane?

18 THE COURT: That is called leading.

19 MR. POSTIC: Sorry, Judge.

20 Q. What is that, Shane?

21 A. Nol-prossed. Defendant's actions were within the law.

22 E.B. Springs.

23 Q. Do you recognize that piece of paper?

24 A. Yes, sir.

25 Q. What is it -- is that piece of paper?

1 A. It's a indictment with the warrant number, and it's a
2 dismissed, not prosecuted, process ended June 5th, 2012.

3 Q. Okay.

4 MR. POSTIC: And this has been pre-marked as
5 Plaintiff's Exhibit Number Three.

6 Any objection to that?

7 MR. GARFIELD: Well, this is certainly not laying a
8 foundation, your Honor. I would certainly like the jury to
9 see this. We'll go ahead and, without objection, put it
10 in.

11 THE COURT: In, without objection.

12 MR. POSTIC: Thank you.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
14 AND MARKED, RECEIVED INTO EVIDENCE.)

15 BY MR. POSTIC:

16 Q. That's the document I just showed you?

17 A. Yes.

18 Q. Okay. Back to the night of this incident.

19 A. Yes, sir.

20 Q. Was Mr. Faile actually fighting you?

21 A. Yes, sir. He was in the commission of a crime.

22 Q. Was he fighting you?

23 A. Yes, sir.

24 Q. Did you ever hit him when he was not actively fighting
25 you?

1 A. No, sir. Not once.

2 MR. POSTIC: Please answer any questions from Mr.
3 Garfield.

4 CROSS-EXAMINATION

5 RUSSELL SHANE CARTER BY MR. GARFIELD:

6 Q. Mr. Carter, I'm trying to understand, because you
7 talked about being booked into the York County Detention
8 Center.

9 A. Yes, sir.

10 Q. And what that felt like, and --

11 A. Yes, sir.

12 Q. You'd been booked into the York County Detention
13 Center, that wasn't your only time you've ever been booked
14 into the Detention Center.

15 A. When I was younger?

16 Q. Yes.

17 A. Without children. Yes, sir. I was -- I pled guilty
18 to trafficking cocaine. Bad mistake.

19 Q. I understand. You were booked in 1994?

20 MR. POSTIC: I'm objecting, your Honor. Those are not
21 ---

22 A. 1994.

23 MR. POSTIC: --- items that we raised in direct.

24 THE COURT: Well, he testified about --

25 MR. POSTIC: And they're not convictions.

1 THE COURT: Well, he -- his testimony was that he --
2 how he felt about being in that situation. That is,
3 arrested and processed, and so, I believe that opened the
4 door for this, so, I overrule your objection.

5 MR. POSTIC: Okay. Thank you, your Honor.

6 BY MR. GARFIELD:

7 Q. Just talking about arrests only. Have you -- you were
8 arrested in 1994 by the Rock Hill Police Department for
9 marijuana?

10 A. Yes, sir.

11 Q. Manufacturing marijuana?

12 A. I believe -- Yes, sir. I don't -- I'm not sure.
13 That's been twenty-two years ago.

14 Q. Okay.

15 A. That -- that charge -- that charge was unfounded.

16 Q. In 2000, you were booked into the Detention Center for
17 that; is that correct?

18 A. 2000?

19 Q. In 1994.

20 A. Yes. You said 2000.

21 Q. No, I said ---

22 A. It's 1994.

23 Q. --- something else. But I just want to be clear.

24 A. Okay. Yes, sir.

25 Q. You said it was unfounded?

1 A. Yes, sir.

2 Q. Okay. Now, I am bringing you to 2003. And you did
3 state that ---

4 A. Yes, sir.

5 Q. --- you were arrested for trafficking cocaine; ---

6 A. Yes, sir.

7 Q. --- is that correct?

8 A. Yes, sir.

9 Q. You were also charged with distribution or possession
10 of drugs or cocaine, possession with intent to distribute
11 near a school in that same charge; is that correct?

12 A. Yes, sir, that's correct.

13 Q. What -- looked like you were -- that wasn't -- that's
14 not funny, though, is it?

15 A. No. But that look from me is, they always give you
16 that charge, because you can't go near no park. Who knows
17 there's not an area that's not within a park?

18 Q. Okay.

19 A. School.

20 Q. And then, you were booked into for the trafficking in
21 cocaine. Then, you were booked in again before your actual
22 sentencing ---

23 A. Yes, sir.

24 Q. --- to go to the Department of Corrections.

25 A. Yes, sir.

1 Q. Okay. So, in all these other --

2 A. Years later.

3 Q. I understand they were years ago, but all these times
4 you were booked into the Detention Center; is that correct?

5 A. Yes, sir. Twice.

6 Q. Now, speaking of jails, --

7 MR. GARFIELD: I'm going to ask him this for
8 impeachment purposes.

9 Q. You said that you spent the night in jail as a result
10 of this particular arrest, and you didn't get out until the
11 following afternoon ---

12 A. Yes.

13 Q. --- about three o'clock?

14 MR. POSTIC: Judge, I object. I don't -- we haven't
15 seen this before. If I could have just a minute to review
16 it?

17 MR. GARFIELD: Absolutely. It's for impeachment
18 purposes, your Honor.

19 (PAUSE.)

20 MR. POSTIC: Go ahead.

21 MR. GARFIELD: Okay. Thank you. If I may approach,
22 your Honor?

23 THE COURT: Yes, sir.

24 BY MR. GARFIELD:

25 Q. This is what I'm going to represent to you, this is

1 just listed as booking card. It just -- I'm reading it.
2 It says "Russell Shane Carter. Print date April 27th,
3 2012." I'm going to let you look at that, and I'm going to
4 ask you a question about it.

5 You'd agree with me that your arrest warrant for
6 assault and battery of a high and aggravated nature was
7 served on you, and you were booked for this offense on
8 April 27th, 2012.

9 A. April 2 -- Yes, sir.

10 Q. Okay. And you would agree with me that you were
11 booked in, if I may, sir, it says military time, 23:53.
12 So, they actually booked you in roughly seven minutes
13 before midnight. Would you agree with that?

14 A. Yes, sir. I guess that's what they did. I don't --

15 Q. And you said the bond was set in the middle of the
16 night, like at four thirty in the afternoon. Four thirty
17 in the middle of the night, I'm sorry. Four thirty a.m.

18 A. Yes, sir.

19 Q. And you were --

20 A. It's not in the middle of the night.

21 Q. Yes, sir. And you were released on April 27th, 2012,
22 at ten twenty-five in the morning; is that correct?

23 A. I thought it was later in the afternoon.

24 Q. I'm sure it felt like later, but what is your
25 testimony? Was it in the morning, or was it in the

1 afternoon that you were released from the Detention Center?

2 A. I believe I said earlier in the afternoon. I believe
3 I said exactly like three or four o'clock in the afternoon.

4 Q. Do you have any reason to disagree that you were
5 released at ten twenty-five, thereabouts, in the morning?

6 A. Yes, sir. Yes, sir, I do.

7 Q. Okay.

8 A. If you -- would you like me to share?

9 Q. No, sir. But I appreciate it.

10 MR. MILLS: Your Honor, he has a right to explain his
11 answer after answering.

12 THE COURT: Go ahead. He can explain his answer. Go
13 ahead.

14 A. A lot of times, like the booking time, I'm sure that
15 night that, when I come in, it was hours I sat in a cell
16 before they got around to booking me. And then, there's
17 also, when they release you, just because you made bond, I
18 went back to the cell and sat there. So, I can't -- I
19 can't say for sure in a honest answer. But I'm pretty sure
20 it was during the afternoon, because I was in a hurry to
21 get home.

22 Q. And your bond, you've said, was Two thousand dollars?

23 A. I said that, but looking at your paper, I must have
24 been mistaken on the amount of money I had to come up with
25 because it says ten thousand on that piece of paper.

1 Q. Okay. Or you put One thousand dollars down, ten
2 percent, as a surety?

3 A. Yes, sir.

4 Q. Okay.

5 A. I was --

6 Q. So, let me bring you back to April 25th of 2012. So,
7 I think the lawyer said ten o'clock in the morning during
8 our opening statement, but you thought it was -- excuse me,
9 ten o'clock at night, but you thought it was more like
10 eleven o'clock at night that you heard banging on the door.

11 A. Yes, sir.

12 Q. All right. So, you hear a man banging on the door.
13 It was loud, correct?

14 A. Extremely.

15 Q. It was forceful?

16 A. Yes, sir.

17 Q. It was dark outside?

18 A. Yes, sir.

19 Q. And at that moment, did you call the police?

20 A. No, sir.

21 Q. And let's just make sure I understand correctly. At
22 this time, you had your family in the house.

23 A. Yes, sir.

24 Q. Okay. Your -- the -- your pregnant wife, three little
25 girls, and your grandmother, right?

- 1 A. Yes, sir.
- 2 Q. Okay. And you yelled out, who is it, right?
- 3 A. Yes, sir.
- 4 Q. And all you could hear are muffled voices; is that
- 5 correct?
- 6 A. Yes, sir.
- 7 Q. Okay. Voices. You didn't know who the person was at
- 8 your door, right?
- 9 A. No, sir.
- 10 Q. You had no idea what the person was up to, or whether
- 11 he or she was dangerous, right?
- 12 A. No, sir.
- 13 Q. You didn't know whether it was one person, and you
- 14 didn't know whether it was two people, did you?
- 15 A. Or more. No, sir.
- 16 Q. Or more. So, you've got a man or men on your porch,
- 17 on your property, right?
- 18 A. Yes, sir.
- 19 Q. The police had been out to your house, Mr. Carter,
- 20 previously, correct?
- 21 A. Yes, sir.
- 22 Q. For various things.
- 23 A. Yes, sir.
- 24 Q. Your -- your wife, in fact, had called the police out.
- 25 A. My wife called?

1 Q. Your wife had previously called the police out four or
2 five times beforehand?

3 A. I'm not sure about the four or five times.

4 Q. She had called the police out several times before,
5 correct?

6 A. I couldn't tell you the exact number, but I'm not --
7 we was not a weekly stop.

8 Q. I didn't say it was weekly, sir.

9 A. You said several, and I'm -- you mean like, three, or
10 do you mean two? I think we've called -- called them once.
11 To be honest with you I --

12 Q. Can you tell me about how many times did you or your
13 wife call 911 or the Sheriff's Office to come out to your
14 property, leading up to April 2012? And your best estimate
15 is fine.

16 A. In what time period, sir?

17 Q. Before April 2012, the time that you'd been on that
18 property.

19 A. I would say over a period of, I guess we had been
20 there and lived there maybe seven or eight years, I'd say
21 maybe twice that she called 911, maybe less than that.

22 Q. Okay.

23 A. Maybe once, at the most.

24 MR. GARFIELD: I'd like to approach, your Honor, and
25 see if I could refresh this gentleman's recollection.

1 Q. Do you remember giving your deposition --

2 MR. POSTIC: Judge, we'd object for a second, because
3 I'm worried that we're getting into some 403 territory. If
4 we can just -- if I could just approach.

5 THE COURT: Let me let -- Let me let you go to the
6 jury room for just a minute, while I take up a matter
7 outside your presence.

8 (JURY EXITS COURTROOM AT 04:37 P.M.)

9 THE COURT: All right.

10 MR. POSTIC: Your Honor, and I -- I'm sorry to send
11 that -- to send the jury out. I didn't want to disrupt the
12 flow of the trial; however, my concern is that there was a
13 -- one period when Shane did call the police about a
14 domestic issue. And I'm concerned that Rob -- that Mr.
15 Garfield is trying to paint a picture of a -- that has no
16 relevance in this matter.

17 THE COURT: All right. I'm going to let you make a
18 proffer. Go ahead.

19 MR. GARFIELD: Yes, sir.

20 MR. GARFIELD: I can shortcut it. I'll let you go
21 into the nature of the call that I was talking about. The
22 familiarity of calling 911, and he said that he was scared,
23 and his wife called 911 here. And the response time, I
24 wasn't going to go into any specific event, or the nature
25 of any call. Just the fact that he had called because in

1 his deposition, he does say something different, as far as
2 the number of times. I wasn't going to go into the nature
3 of any of the calls. So, because that would --

4 THE COURT: I think you've already asked him whether
5 there had been calls, and he's acknowledged that. So, what
6 else --

7 MR. GARFIELD: Yes, sir. I can -- then, I can go
8 ahead and make the question.

9 CROSS- EXAMINATION - PROFFERED TESTIMONY

10 RUSSELL SHANE CARTER, BY MR. GARFIELD:

11 Q. So, I understand that, Mr. Carter, you stated that
12 previously in the years that you have been at this house,
13 that you had -- your wife had called 911 or the Sheriff's
14 Office to the property for various reasons.

15 A. That's during my deposition I said that I had. My
16 wife -- you're asking me if my wife had, and I -- and I
17 answered, and I'll answer again. I really only think she's
18 called 911 once or twice at the most. Now, if you're
19 wanting to know if I have, I've called them six or seven
20 times.

21 Q. Then, I'll be very clear for the Court ---

22 A. Sure.

23 Q. --- because I understand the concern. But I read it
24 when the jury --

25 A. That was what was tripping me up.

1 Q. I understand. But I read it in front -- and I'm
2 reading it the same way. Can you tell me about how many
3 times did you, or your wife, call 911 or the Sheriff's
4 Office to come out to the property, leading up to April
5 2012? And your best estimate is fine. So, your answer is?

6 A. I would say -- I would guess six times.

7 MR. GARFIELD: That's just different, your Honor, and
8 I'd like to go ahead and ask him that.

9 MR. POSTIC: I --

10 MR. GARFIELD: Without going into the specifics of the
11 nature of the call.

12 MR. POSTIC: I apologize, your Honor. And your Honor,
13 I just wanted to just -- to -- I was afraid of innuendo.

14 THE COURT: Okay.

15 MR. POSTIC: And I -- I apologize for breaking up the
16 flow.

17 THE COURT: That's all right.

18 Okay. Bring the jury back in.

19 MR. POSTIC: I'm just making sure. He's not -- as
20 long as he doesn't go into the specifics we're cool.

21 THE COURT: Okay.

22 (JURY REENTERS COURTROOM AT 04:42 P.M.)

23 THE COURT: All right, Mr. Garfield.

24 MR. GARFIELD: Thank you, your Honor.

25 CROSS-EXAMINATION

1 RUSSELL SHANE CARTER BY MR. GARFIELD:

2 Q. Sir, I'll ask you, can you tell me about how many
3 times did you or your wife call 911 or the Sheriff's
4 Office, to come out to your property, leading up to April
5 2012, and your best estimate is fine?

6 A. My wife called once that night. And then, I called
7 them, I would guess, six times over the years that we've
8 stayed there.

9 Q. The truth is, Mr. Carter, you didn't have any
10 criticism about the way the police came and handled things,
11 did you?

12 A. No, sir. I -- but, well, it's complicated.

13 Q. Well, let's -- let me ask it this way. The Sheriff's
14 Office, in the past, before April 2012, responded
15 efficiently, correct?

16 A. Not always.

17 Q. They acted professionally, correct?

18 A. To my best -- yes.

19 Q. And there was no inordinate delay in getting there in
20 the past, was there?

21 A. No, sir. That night they was there very fast.

22 Q. And I'm talking about that night, sir. I'm talking
23 about the five or six times beforehand. You would agree
24 with me that you had no problems with the Sheriff's Office,
25 that there was no inordinate delay during those times.

1 A. No, sir. I -- I believe we've got a good sheriff's
2 department. All good.

3 Q. Okay. And so, you hear muffled voices and you didn't
4 know what was up, but you still didn't call the police, did
5 you?

6 A. Not at that point, I didn't, so.

7 Q. Okay. But you knew you had a baseball bat by the
8 door.

9 A. That was the last thing on my mind.

10 Q. You grabbed the -- after you heard the muffled voices
11 ---

12 A. No, sir, I didn't.

13 Q. --- and you -- I'd like to be through with my question
14 first, and I will give you a chance to respond, I promise.

15 A. Okay.

16 Q. After you heard the muffled voices, and you asked, who
17 is it, you hear voices. You, at that point, grab the
18 baseball bat at the front door; is that correct? You --
19 you deny that?

20 A. Yes, sir, I deny that. My wife placed it in my hand.

21 Q. Okay. Who -- whether it was you placed it in your
22 hand, but you had it in your hand at that point; is that
23 right?

24 A. No, sir. No, sir. You're -- if you want me to answer
25 this, you're preceding it by a few interactions with him

1 that I testified to earlier.

2 Q. Are you aware that a complaint was filed in this case?
3 In other words, a complaint was filed by your lawyers on
4 your behalf that started this lawsuit?

5 A. Yes, sir.

6 Q. Okay. And in this complaint, there are certain
7 allegations that are made?

8 A. Yes, sir.

9 Q. Okay. I'm going to ask you questions about your
10 complaint.

11 A. Okay.

12 Q. All right. Now, I'm reading, "Plaintiff yelled out,
13 who is it? He heard muffled voices on his porch.
14 Plaintiff had a bat near the front door, which he grabbed
15 for protection, and he opened the door."

16 Does that refresh your recollection?

17 A. Yeah. Well, my recollection is perfect. That's in
18 the complaint. I think you -- this question should be
19 asked of my attorneys. I didn't write that; they did. I
20 believe they got the order. You're talking about a matter
21 of a minute that was written down, maybe a little out of
22 order.

23 Q. So, you opened the door, and the man starts yelling at
24 you in an aggressive tone; is that right?

25 A. No, sir. That's not what I said earlier.

1 Q. What did you say earlier?

2 A. My exact words was first, I slid around; I asked him
3 to get off the porch. I told him to get away from my door.
4 I went back to the door. I could not hear him because of
5 my dog. And plus, I did not need to be yelling, with my
6 family asleep. I cracked the door open, once I seen that
7 he was off the porch. I started talking to him. His
8 response was incoherent, and he just kept talking about
9 wanting his water; I just want water. I asked him who he
10 was. He wouldn't -- he didn't respond. He was like,
11 what's wrong with the water? I asked him again, what's
12 your name? He did not, never once, tell me his name. I
13 asked him again, until -- in no yelling I didn't get
14 aggressive. There wasn't telling back and forth. In fact,
15 I'm not sure, he yelled at me not one time, I did not
16 testify. He just pretty much came up after --

17 Q. Well, sir, and I'm asking, so, you deny that he was
18 yelling at you in an aggressive tone at that point?

19 A. Yeah, I deny that.

20 Q. Okay. Do you recall giving your deposition in this
21 case?

22 A. Yes.

23 Q. Okay. Do you recall it being at your lawyer's office?

24 A. Yes, sir.

25 Q. And it was on November 20th of 2015?

1 A. Yes, sir.

2 MR. GARFIELD: If I may approach the bench, sir?

3 THE COURT: You can open it.

4 MR. GARFIELD: Okay. Thank you.

5 Q. And you were represented by Counsel at the time?

6 A. Yes, sir.

7 THE COURT: Members of the jury, a deposition is
8 testimony that is taken under oath before a trial. It's
9 typed up into a booklet, and under certain -- under our
10 rules under certain situations in which the deposition can
11 be used. Again, this would be under-oath testimony of this
12 particular witness at an earlier time.

13 Go ahead.

14 MR. GARFIELD: Yes, sir. Just provide this for the
15 Court, your Honor.

16 THE COURT: Well I don't need it.

17 MR. GARFIELD: Okay. I understand. I guess it's just
18 more practice on my part.

19 Page 68, Mr. Postic.

20 Q. And do you recall me asking you questions during the
21 deposition?

22 A. Yes, sir.

23 Q. And you recall a swearing under oath at your
24 deposition to tell the truth?

25 A. Yeah. I'm always honest.

1 Q. Well, sir, I'd just like you to answer my question.

2 A. Yes, sir.

3 Q. I understand. Okay. And the question was, Line 16,
4 this was the complaint that was filed on your behalf. It
5 says, "Faile started yelling at him in an aggressive tone,
6 asking, quote, what's wrong with the water?"

7 And you said "yes". And I asked, "Is that a true
8 statement?" And you said, "That's a true statement.

9 A. Okay. So --

10 Q. Okay. So, was he at -- was he talking to you in an
11 aggressive tone, or not?

12 A. Well, you're talking about an adjective. So, yes.
13 Yes and no. I don't know how --

14 Q. Well, I just want the truth, sir...

15 A. I don't know how to answer that honestly. He yelled -
16 - he didn't yell or scream, but he said in a loud manner,
17 I want my water, I want my water. What's wrong with the
18 water? But --

19 Q. And you asked the man who he was, right?

20 A. Several times.

21 Q. Okay. And the man did not answer.

22 A. True.

23 Q. The man didn't answer you, did he?

24 A. He -- His reply was he wanted his water.

25 Q. Okay. You didn't really know for sure who this man

1 was at this time; is that right?

2 A. No, sir.

3 Q. Okay.

4 A. I had never --

5 Q. Is that correct?

6 A. --- I had never met him before in my life.

7 Q. You suspected it could have been Mr. Blackwelder. It
8 sounded like Mr. Blackwelder.

9 A. I suspected that he could have been related to one
10 through -- once -- If you hear them talk, you might come to
11 the same conclusion. But that's what you was saying,
12 that's speculative, right? Speculation.

13 Q. No. I'm asking what you were thinking at the time a
14 man is banging on your door ---

15 A. Yes.

16 Q. --- and your house in an aggressive way, at night and
17 it's dark.

18 A. Yes.

19 Q. You would agree with me that this man could have been
20 connected in some way to Mr. Blackwelder, correct?

21 A. Yes, sir.

22 Q. You had a lock on that door; is that right?

23 A. Yes, sir. I ---

24 Q. Okay.

25 A. --- dead bolted it.

1 Q. And it had been previously locked; isn't that right?

2 A. Yes, sir, a dead bolt.

3 Q. All right. And at that moment, did you shut your
4 door, and did you lock it, and did you call the police?

5 A. No, sir.

6 Q. Okay. So, you didn't get an answer from the man, and
7 you tell the man that you're not the landlord, right?

8 A. Yes, sir.

9 Q. And you also told him that he was trespassing and he
10 needed to leave your property.

11 A. Yes, sir.

12 Q. And I think you testified that you were standing
13 about, maybe from -- maybe from here to where you are?

14 A. Exactly.

15 Q. Okay. Is this when you -- you smelled the alcohol on
16 him, or?

17 A. Yes, sir.

18 Q. From -- from --

19 A. From that distance.

20 Q. Twelve to fifteen or more feet away?

21 A. Yes, sir.

22 Q. Okay. So, and you had called the police previously
23 for Mr. Blackwelder for assault?

24 A. Yes, sir. Actually, he was charged for it.

25 Q. Sure. They came to your property, or came to the

1 property and picked him up, right?

2 A. Yes, sir.

3 Q. Arrested him?

4 A. Yes, sir.

5 Q. Convicted him?

6 A. Yes, sir.

7 Q. So, at that moment, you still didn't shut the door and
8 lock it, and call the police?

9 A. No, sir.

10 Q. And so, he's -- this man is becoming more aggressive,
11 he continues to ask you what's wrong with the water, and he
12 says he wants you to fix it right then; is that right?

13 A. I wouldn't say at that point that I was seeing him
14 become more aggressive. He just was not, at that point,
15 responding to any kind of reasoning from me.

16 Q. So, you were trying to reason with this aggressive
17 person ---

18 A. That --

19 Q. --- that's standing fifteen feet away, again, rather
20 than securing your door and phoning 911?

21 A. Well, that was when -- that was pretty much
22 simultaneous when after I figured that part out, that I
23 asked my wife to call 911 in front of him.

24 Q. Okay. So, at some point after -- when this whole
25 thing goes on between you and this man, at some point, you

1 do shout at your wife to call 911?

2 A. She was standing behind me.

3 Q. Okay. You yelled for your wife to call the police, I
4 believe. Its in your complaint so.

5 A. I raised my voice so he could hear it, to ---

6 Q. All right. So, --

7 A. --- know that I was calling them and they was on their
8 way.

9 Q. So, the man says, what do you have behind that door,
10 right?

11 A. No, that -- that ain't what he said. He said, -- he
12 said -- he had come up on the porch at that time, like I
13 said, so he's not standing there. He came up, he placed
14 his hand on the screen door. He said, he said, what you
15 got? This is, quote "what you got"? He said, "You got a
16 gun? You going to shoot me?"

17 Q. I want ---

18 A. "You gonna kill me?"

19 Q. --- to be clear. I want to be clear on this.

20 A. That was what he said. That's absolutely what --

21 Q. I'm talking when he's still in this distance from you,
22 sir.

23 A. Huh?

24 Q. You still about ten, twelve feet before he comes up --

25 A. Once I said, once I said, Dawn -- and I turned a

1 little bit, and I said, "Dawn, call 911, call York County
2 Sheriff's Department." That's when he closed that gap, and
3 he was no longer at that distance. And when I turned back
4 around, not completely turned around but y'all, I was just
5 slightly turned back, putting him in my full view and
6 standing peripheral, he had stepped closer, and he had
7 placed his hand on my door in that manner and that's when
8 he said, quote, What you got? He said, "What you got? You
9 got a gun? You gonna shoot me?"

10 Q. And you thought that he was -- you took that as him
11 coaxing you to come outside?

12 A. No. When he said those words right there, I went from
13 being passive, to trying to be talking to this drunk
14 stranger that I -- on my porch, that had no right. And I
15 done told him that he had no right, and he was criminal,
16 because he was breaking the law, to -- to becoming very
17 scared, very worried, and the time for talking was over.
18 He had to leave my property right that moment, because I'm
19 thinking that he's looking for an excuse, like I said
20 earlier, to shoot me or pull -- or kill me or hurt my
21 family.

22 Q. And you were angry. You were extremely angry --

23 A. At that point right there?

24 Q. Yes, sir.

25 A. Yes.

1 Q. And I'm not stating you shouldn't have been, but you
2 were angry.

3 A. Right.

4 Q. And you said, now you got to leave, didn't you?

5 A. No. I told him exactly, you have to get -- do you
6 want the exact words? I said them earlier. I don't want
7 to --

8 Q. You said --

9 A. I told him in a very aggressive, angry manner to -- to
10 leave. I can tell you quote what I said.

11 Q. All right. Well, that's what I'll ask you. You -- do
12 you agree with me that you said, now, you go to leave. Get
13 the F off my porch, get the G.D. hell out of here. You
14 said that to him.

15 A. Yes, sir.

16 Q. And you were angry.

17 A. Yes. If that's the way you said.

18 Q. No. I'm asking you, --

19 A. I was scared. I was scared. From that point on, I
20 was scared. I was scared even when the police department
21 got there because I don't think -- I didn't know if they
22 was -- I didn't know if this man had a weapon. And while
23 they're up there just looking at him, if he was going to
24 pull it out and kill one of us, until he was on that --
25 until he left my property. I'm still scared to this day of

1 this man and for good reason.

2 Q. So, he comes -- But you chose not to call the police
3 until after he had already gotten up to the threshold,
4 right?

5 A. No, sir.

6 Q. Okay. So, that --

7 A. No, sir. I -- She was on the phone with the police at
8 that point. I just said it, if you followed it. You are
9 following, right? I turned. I told her to call them. In
10 that call you can hear the voices all of the sudden raise
11 up. So, you see, 911 was in the process. That calls being
12 in the process. When I went from talking to him nicely to
13 aggressively and the elevation of the voices happened at
14 that point right there that she was already on the phone.
15 The evidence is there. The proof.

16 Q. It's the proof.

17 A. It's the proof.

18 Q. Okay. And we're going to talk about that.

19 A. Okay.

20 Q. So, he comes through your door. He takes one step
21 through your door?

22 A. No. I never said that.

23 Q. You took one step towards him?

24 A. I took a step so I could place my left hand on my
25 screen and close my door.

1 Q. And then, it was at that point that he punched you in
2 the face?

3 A. He punched me. And that's when -- the only part of
4 him that entered my house, that I've ever said, was his
5 right fist as he was striking me on -- on my ---

6 Q. And he --

7 A. --- on my temple. I didn't -- luckily, I didn't allow
8 any more to come in.

9 Q. Right. And then, when the two of you started engaging
10 back on the porch, you testified that he punched you two
11 more times.

12 A. To my best ---

13 Q. To your ---

14 A. --- recollection.

15 Q. --- to the other side of your temple?

16 A. To the best recollection in my right temple. So, that
17 would have been -- yeah. Or, that would be my left temple.
18 This side of --

19 Q. So, the first punch came to your right temple.

20 A. No. It was my left temple. I'm thinking right hand.
21 If I testified that, I'm just mistaken. He hit me right
22 here, where -- where the picture shows.

23 Q. So, he punched you a total of three times?

24 A. I --

25 Q. Roughly.

1 A. Huh?

2 Q. Approximately?

3 A. At least.

4 Q. Okay. And you told the police that this man didn't
5 just sucker punch you through your door the first time.
6 You told the police that he had hit you at least three
7 times. You told the police, which you've ---

8 A. Yes.

9 Q. --- you're telling us today.

10 A. Yes.

11 Q. You gave a written statement in this case. You
12 provided that information in a written statement; is that
13 correct?

14 A. Yes, sir. I told them many times, the same story,
15 every time. It's never varied.

16 Q. Can you show me -- can you identify what this is?
17 It's a two-page document.

18 A. This is my deposition.

19 Q. For economy, it's -- it's not a deposition. If you
20 could read what's on it.

21 A. Oh. This is where they interviewed me, and while they
22 was interviewing my wife simultaneously, with the voluntary
23 statement. That must have been --

24 Q. All right.

25 A. This is my statement. That's right.

1 Q. Whose handwriting is that on the statement?

2 A. That is mine.

3 Q. Can you have -- Take a moment and review it, and tell
4 me where, in the statement, that you inform the police that
5 this man punched you three times.

6 A. Okay.

7 Q. And you don't have to read it out loud, if you don't
8 want to.

9 A. I'm -- I'm not sure, but I'm pretty sure. I can read
10 it out loud.

11 Q. Certainly.

12 A. It's the same thing I told, so. Okay. "I was stirred
13 from my bed at 9:41" -- So apparently it was early --

14 "Wednesday night by loud banging and consistent knocking.

15 Upon reaching the door, I was met by a stranger, demanding
16 to know what was the problem with the water. I answered by

17 asking the gentleman who he was, to no reply in which I

18 told him to ask his landlord, and to leave the property.

19 He insisted to know what was wrong with the water. In

20 trying to get him off my porch, I told him I would look at

21 it, and to leave, and to stop harassing me at this time.

22 As for when I instructed my wife, Dawn, my wife, to call

23 the police, that's when he held my screen door open. I

24 took a step with my right foot" -- that was wrong -- "and

25 was blind-sided." I keep - I told 'em the right.

1 Q. I just wanted you to read it out in the record first,
2 sir, then you can explain.

3 A. "With a right hook to the brow area. Luckily, I had a
4 bat concealed behind the doorway with my right hand that I
5 was able to defend him off. I struck him in the back of
6 the head as we struggled across my porch. Finally, one
7 blow took effect, and he fell. As he hit the porch, he was
8 up, kicking. I continued to strike him in his legs until
9 he submitted. I instructed him to roll over on his
10 stomach, and I would no longer strike him. I held him at
11 bay until deputies arrived."

12 Q. Can you please tell me where, in that statement, that
13 you informed the police that this man struck you three or
14 more times?

15 A. Well, of course not in that statement. I answered
16 many questions for them that night. But I'm not going to
17 spend four and a half years -- I'm not going to sit here
18 and perjure myself to that -- to every aspect of that. It
19 -- I --

20 Q. And the reason why --

21 A. We can hear -- we can hear the tapes themselves ---

22 Q. Well, I understand. We can --

23 A. --- the questions they asked me.

24 Q. The tape will be played, sir.

25 A. Cool.

1 Q. This is my opportunity to ask you questions.

2 A. Yes, sir.

3 Q. Okay. Because you're under oath ---

4 A. Yes, sir.

5 Q. --- and I'm asking you questions about this. My
6 question is based on this. You've testified that the
7 officer, more or less, didn't really care about your side
8 of the story. So, my question is, did they ask you,
9 orally, how many times did this man hit you?

10 A. Did they ask me orally how many times did he hit me?

11 Q. Yeah. Did you tell them, this guy hit me three times
12 or more or four times?

13 A. They -- What I can remember, what I recall, is being
14 asked how many times did you hit him with the bat. And
15 I've been asked that a thousand times so ---

16 Q. Well, let --

17 A. --- the question you're asking, no, I can't recall at
18 the time --

19 Q. Well, this is my chance to ask you ---

20 A. Yes.

21 Q. --- and we're here for your day in court, sir.

22 A. I remember --

23 Q. Hold on. I'd like to get my question out first. This
24 is your day in court.

25 A. Yes.

1 Q. This is my chance to ask you questions.

2 A. Yes.

3 Q. So, now, I'm going to ask you, you said a thousand
4 times. How many times did you strike him with the bat?

5 A. Once again, I did not get a bat count. I was not
6 going for a bat count. I struck him with the bat until he
7 submitted.

8 Q. You would agree with me that you struck him with the
9 baseball bat six, seven, or more times?

10 A. In my deposition, that's what you asked, and that's
11 what I answered.

12 Q. Yes, sir. Because you told the truth in your
13 deposition, right?

14 A. Yes, sir. I always do.

15 Q. Okay. And you struck him with the baseball bat about
16 his -- all about his body, right?

17 A. Yes, sir. I was not going for any specific -- it was
18 hit and ask whatever I could hit.

19 Q. And you bashed him in the head multiple times, right?

20 A. Yes, sir. If that's where they landed. Yes, sir.

21 Q. That's where you hit him.

22 A. Okay.

23 Q. And at some point, the two of you were outside, his
24 knees buckle, and he's on the ground.

25 A. Yes, sir.

1 Q. And he's on -- he's on -- Bless you. He's on his
2 back, up-kicking you?

3 A. Yes, sir.

4 Q. Okay. And at that point, you're striking him in the
5 legs, right?

6 A. Yes, sir.

7 Q. And you testified, at that point, that Deputy Gwinn
8 comes up in a patrol car.

9 A. Not at that point. I testified that when he -- when
10 there was a little bit of something that went on in between
11 that point. If you want to know the exact instances and
12 the way it went, it's like I said earlier, after I hit him
13 in his legs, he told me -- I heard him say, please stop
14 hitting me, don't hit me again.

15 Q. When Officer Gwinn came up, you're standing over top
16 of him with the ball bat, correct?

17 A. Yes. With him on his stomach, with his hands flat on
18 the concrete. I'm not ---

19 Q. You were very --

20 A. --- over --

21 Q. --- emotional at the time, right?

22 A. Can I answer about over top?

23 Q. Well, I just want --

24 A. Because I'm not straddling him, if that's what you
25 think. I'm standing to the side of him, holding him at

1 bay. Yes, sir.

2 Q. Thank you for the clarification. And I appreciate
3 that, because I didn't want it to come out that you weren't
4 doing that. You're standing over him. You're emotional at
5 the time, right?

6 A. Highly. You'll hear that.

7 Q. So, at this point --

8 A. I'm scared.

9 Q. I got you. But at this point, you figured out -- by
10 this time, you figured out this wasn't Mr. Blackwelder,
11 right?

12 A. I had figured it out earlier than that.

13 Q. Okay. But before or at this time, you finally figured
14 out at some point --

15 A. He's a lot bigger than Mr. Blackwelder.

16 Q. This wasn't Mr. Blackwelder, was it?

17 A. I figured that out from the get-go.

18 Q. You figured that out at some point while you were
19 bashing him in the head with the baseball bat, right?

20 A. Way previous than that.

21 Q. You knew by his complaints and the way he was acting
22 that he was probably staying next door, right? You knew,
23 by this man's complaints and the way that he was acting,
24 that he probably had some connection with Mr. Blackwelder,
25 next door.

1 A. Yes. I told you -- Actually, he sounded identical in
2 their -- in their voice.

3 Q. I just wanted you to answer my question first, and
4 then you can explain.

5 A. Yes.

6 Q. And you had a rough and volatile history with Mr.
7 Blackwelder, right?

8 A. I didn't --

9 Q. You had -- you had a history with Mr. Blackwelder,
10 right?

11 A. Yes. I had a legal history with Mr. Blackwelder.

12 Q. You had enough of him didn't you?

13 A. You said it was rough and volatile.

14 Q. Sure. You had enough of Mr. Blackwelder, right?

15 A. I didn't want to deal with Mr. Blackwelder ever again
16 in my life, and I actually went to -- through the proper
17 channels to where I shouldn't have.

18 Q. And now, this man, somehow connected to Mr.
19 Blackwelder, is trespassing on your property, right?

20 A. Yes. This man came and assaulted me in my house.

21 Q. And you were going to send a message to Mr.
22 Blackwelder, once and for all.

23 A. That is a -- whoa. That's a leap. That's your own
24 speculation, if that's the way you see it.

25 Q. No, I'm asking you. Do you deny that?

1 A. In no way did I want to send that kind of message.

2 No, sir. I was protecting my house. I was protecting my
3 family, like I would do again. It didn't matter if it was
4 Mr. Blackwelder or anybody else, when I'm sitting in my
5 house. I hated it -- I hate that it happened. But --

6 Q. Your lawyer provided this picture for everyone.

7 A. Yes.

8 Q. EMS looked at you, right?

9 A. Yes.

10 Q. Okay. Can you point to where the first punch landed
11 you?

12 A. Yeah, it's pretty --

13 Q. Where you have a cut eyebrow?

14 A. Yes, sir.

15 Q. And where was the second and third and fourth punches?

16 A. Well, I didn't -- I don't know, but I know that there
17 was two more, at least, right there.

18 Q. And could you tell the -- show for your lawyers and
19 for the record, where you were pointing on that?

20 A. That would be my left temple.

21 Q. Okay. In your hairline somewhere?

22 A. In my temple area.

23 Q. Yeah.

24 A. If it's receded that far up ---

25 Q. Around where --

1 A. --- it was.

2 Q. I understand.

3 A. It's getting there.

4 Q. Some ---

5 A. Okay.

6 Q. --- some are different than others.

7 A. Yes, unfortunately.

8 Q. And EMS looked at you, right?

9 A. Yes, sir.

10 Q. They ran some tests on you, right?

11 A. Yes, sir.

12 Q. They said you were okay.

13 A. No. They asked if -- if I wanted to go in for further

14 -- If I wanted to seek further medical attention, if I

15 wanted to ride in with them. And I -- and I didn't, and

16 there was -- Can I share my reasoning for that? Because I

17 was scared to death ---

18 Q. They did.

19 A. --- for my family's sake.

20 Q. The EMS people --

21 A. --- just to be away from my family.

22 Q. Let me -- let me go one question at a time, sir.

23 MR. POSTIC: Your Honor, I'm sorry to interrupt. He's

24 interrupted my client's answers several times. I just want

25 to make sure my client --

1 THE COURT: You've got to keep the flow right with ---

2 MR. GARFIELD: Yes, sir .

3 THE COURT: --- the question and answer and question
4 and answer.

5 BY MR. GARFIELD:

6 Q. EMS folks looked at you, right?

7 A. Yes, sir.

8 Q. Okay. They said you were okay, right?

9 A. Yes, sir.

10 Q. Right. They did several field tests on you, correct?

11 A. Yes, sir.

12 Q. And when they said you were okay, you said, okay?

13 A. They said I had a possible concussion.

14 Q. Okay.

15 A. They said I was possibly concussed. The next day, I
16 pretty much believe it to be true also.

17 Q. The next day?

18 A. Yes, sir.

19 Q. You didn't tell the EMS folks that you had a possible
20 concussion.

21 A. Of course. They wasn't there. They told me that.
22 They told me that.

23 Q. Okay. So, I'm going to ask you again, for clarity's
24 sake, sir.

25 A. Yes.

1 Q. They said you were --

2 A. The only thing they -- the only thing they told me,
3 and I'll say it again, is, I could come -- do what they
4 asked me. Would I like to be coming in for further
5 testing; would I like to go in with them. That's what they
6 said.

7 Q. Sir, with all due respect, I'd like to know what the
8 truth is. Did they say you were okay, or did they say you
9 were not okay?

10 A. Sir, we've got it on video.

11 Q. I'm asking you, sir.

12 THE COURT: He's asking ---

13 A. No.

14 THE COURT: --- and you've got to answer. We'll be
15 here forever if you don't just answer the question.

16 A. Yes. I said, yes, yes. I'm okay, I'll live.

17 Q. Did they say you were okay, is the question.

18 A. I said yes.

19 Q. Okay. And you never saw a doctor after this, did you?

20 A. No, sir.

21 Q. Never went to the hospital or anything?

22 A. No, sir.

23 Q. All right. Based on all of this events -- Well, I do
24 have this question. You said that Mr. -- or Deputy Gwinn
25 put you in the back of his car.

1 A. Yes, sir.

2 Q. Okay. He told you at some point, right after he came
3 to the scene, he saw you outside. He took the bat from
4 you, right? Deputy Gwinn.

5 A. Yes, sir.

6 Q. All right. And he told you, gave you instruction to
7 go ahead and get back in the house, didn't he?

8 A. Yes, sir.

9 Q. You understood that instruction?

10 A. Yes, sir.

11 Q. You had no reason to not understand what he was
12 telling you?

13 A. I said I understood.

14 Q. Okay. And then, you still came outside with your
15 phone or your camera, and do whatever you were doing.

16 A. I took a picture from my doorway.

17 Q. I understand.

18 A. Yes, sir.

19 Q. And I understand wanting to take pictures. But he
20 told you to stay inside ---

21 A. Yes, sir.

22 Q. --- and you didn't follow directions?

23 A. No, sir. Apparently.

24 Q. And so, he placed you in the back of the car.

25 A. Yes, sir. He said he was detaining me.

1 Q. Just detained, not arrested you.

2 A. Detained me.

3 Q. Detained you. Okay. Mr. Blackwelder was also
4 detained, wasn't he?

5 A. Yes.

6 Q. He was in the back of another patrol car.

7 A. Yes, sir.

8 Q. Okay.

9 MR. GARFIELD: Beg the Court's indulgence.

10 Q. So, I'm just trying to understand, so we can have some
11 -- be all clear here. You paid your criminal defense
12 lawyer Five Thousand Dollars?

13 A. Yes, sir.

14 Q. That's how much that's come out-of-pocket so far?

15 A. Yes, sir.

16 Q. Okay. You've paid One Thousand Dollars, which was ten
17 percent of your bond. The Ten Thousand Dollar surety bond
18 that you paid One Thousand Dollars?

19 A. Yes, sir.

20 Q. You're out Six Thousand Dollars in this case. Is that
21 -- I'm trying to ---

22 A. No, sir.

23 Q. --- understand. No, no.

24 A. I'm out a lot more.

25 Q. I'm talking about those two issues.

1 A. Those two -- Yeah, those two amounts, six plus one
2 thousand is Seven Thousand Dollars. You're absolutely
3 correct. Okay.

4 Q. Five plus one.

5 A. Five plus --

6 Q. Five thousand, six thousand.

7 A. Okay. So, that's six thousand.

8 Q. That's what you paid, false arrest? Based on your
9 claim of false arrest, you paid Six Thousand Dollars?

10 A. I believe there's more expenses in there. Do you want
11 to know them? We can add them too.

12 Q. I'd like to know when those expenses were.

13 A. Huh?

14 Q. I'd like to know when those expenses were.

15 A. Okay. Well --

16 Q. I don't want to know what they were. When were they?

17 A. I believe you got that date for the thousand on that
18 bond there that you said, actual 10:30 in the morning,
19 right?

20 Q. No, I got it off your lawyer's discovery responses to
21 me.

22 A. Yeah.

23 Q. So, my question was --

24 A. Well that one, if -- if you'll share that piece of
25 evidence with me, I'll give you that one exact. And as for

1 -- as for meeting with Alex, giving him the Five Thousand
2 Dollars physically, I'd have to go to my cousin for his
3 bank draft, because that's who came up with that, along
4 with the cash I could come up with. I can't tell you an
5 exact date, but I've given it to them. I owe him more. I
6 believe, by law, sir --

7 THE COURT: Just wait. Just -- don't tell us what the
8 law is.

9 MR. GARFIELD: Thank you. Please answer any questions
10 your lawyer has.

11 THE COURT: Redirect?

12 MR. POSTIC: Thank you. Just briefly, your Honor.

13 REDIRECT EXAMINATION

14 RUSSELL SHANE CARTER, BY MR. POSTIC:

15 Q. Shane, you still owe me some money?

16 A. Yes, sir, I do.

17 Q. Okay. You're under oath. Do you plan on paying that
18 to me someday?

19 A. I hope to.

20 Q. Okay.

21 A. Alex, I really do.

22 Q. All right. How much is it?

23 A. I owe you -- I owe you Twelve Thousand, Five Hundred
24 Dollars, what's left. Five plus one, but one ain't you.
25 So, I give you five. You said originally, I owed you

1 Seventeen Thousand, Five Hundred Dollars ---

2 Q. Right.

3 A. --- and that you was cutting me a deal. So, I believe
4 I'd be square if I told you I still owe you Twelve
5 Thousand, Five Hundred Dollars.

6 Q. Thank you, Shane.

7 A. And that -- and it was worth every penny.

8 Q. Thank you. Thank you very much, Shane.

9 A. Twenty years would have been --

10 Q. Shane, Mr. Garfield, and I'm just trying to speed up,
11 because ---

12 A. Yes, sir.

13 Q. --- it's been a long day. Mr. Garfield asked you,
14 brought up the fact that you had been booked into the York
15 County Detention Center on previous occasions.

16 A. Yes, sir.

17 Q. Can you tell us how this time was different than those
18 times?

19 A. Yeah. Yes, sir. Back then, I was guilty, and I
20 deserved it. I hate to say that. This time right here,
21 this time I had a family. This time, I wasn't doing the
22 wrong thing. I did -- I did the only thing I had a chance
23 -- the only -- only choice I had. I didn't have a choice.
24 I'd go back again on this one. I'd do it the same way. I
25 had no choice. I was protecting my family. I was being --

1 I was being a good man this time. I'm not -- I'm not
2 ashamed of this. This time -- this time, I'm in a whole
3 different mind set. I'm a grown man. I'm not a child. I
4 got kids at my house that are being put in danger.

5 Q. Thank you.

6 A. I got a pretty good wife at the house.

7 Q. Thank you. Thank you, Shane. Shane, at one point,
8 Mr. Garfield asked you several -- about the police coming
9 to your house before and calling 911. You -- And then, he
10 asked you if they were courteous and did what you wanted,
11 and you said yes, on prior occasions. You hesitated when
12 he asked if they were efficient. Can you go -- What do you
13 mean by that? Did they always show up?

14 A. Well, I ain't always got justice by what I was hoping.
15 I guess I was wanting too much. And I ain't just talking
16 about this case.

17 Q. You're talking about -- okay.

18 A. I was talking about when the kids -- we call it the
19 kids down at the house one time, we had another house, and
20 they was --

21 Q. But specifically, Shane, about the response time.

22 A. Yeah. Yes, they was very efficient. They was there
23 this time.

24 Q. This time. But in prior times, were they always
25 efficient?

1 A. No, sir. But -- but I would say so. Yeah. I don't
2 know what --

3 Q. You can say yes or no.

4 A. Yes. I don't know what's efficient. What their
5 average respond -- response time.

6 Q. Now, going back to the -- what were you looking for on
7 the -- when you opened that door? What were you looking to
8 do? I feel like he was insinuating that you were looking
9 for a fight. Were you looking --

10 THE COURT: No. Don't -- Don't start a question by
11 saying, you feel like.

12 MR. POSTIC: Sorry.

13 THE COURT: That's just not a proper way to phrase a
14 question.

15 MR. POSTIC: I apologize, your Honor. Open-ended
16 question.

17 Q. What were you looking for when you opened up that
18 door?

19 A. I was looking to stop whoever -- I was looking to
20 answer. If it wasn't the police and it wasn't -- I was
21 wondering if it was some kind of emergency happening.
22 Somebody was wrecked or something, because like I said
23 before, it was pretty erratic beating on my door. I didn't
24 know. When they stepped off of my porch, I didn't know
25 what to expect. I know that it's not normal for somebody

1 to beat on your door at that time of night. I was looking
2 to -- I was looking to make sure my family wasn't awakened,
3 my dog stop barking, and I could get them off my yard, and
4 get them away from my house.

5 Q. Once you -- and I'm sorry to interrupt you, trying to
6 speed it up.

7 A. Okay.

8 Q. Once you knew that your wife had called the police,
9 why did you not close the door?

10 A. Well, I -- He didn't give me that opportunity. I
11 didn't have that opportunity, like I said earlier. Like
12 I've said many times to all of them. When -- if he would
13 have just went -- if he would have stayed where he was at,
14 I might had. I don't know. That's hindsight, but that
15 night, at that time, I was standing in my doorway. When I
16 looked around, he had a hold of my door. He had a -- once
17 he had a hold of my door, and once he asked me that
18 question, I wouldn't shut the door then, now, and I -- I
19 might have even went out and fought then, at that point;
20 because -- because I don't know if he's got a gun.

21 Q. Well, do you think you would have been safe if you had
22 closed that door?

23 A. I can't -- I can -- not what I was thinking.

24 Q. Why not?

25 A. Huh? Because he's fixin to shoot up in my house.

- 1 Q. Okay.
- 2 A. And my wife's behind me, pregnant.
- 3 Q. Okay. When you got -- when the police go to you ---
- 4 A. He was threatening my life.
- 5 Q. --- once -- When the police got to you, and they gave
- 6 you that statement, what did they ask you to write in that
- 7 piece of paper?
- 8 A. What did they ask me to write? How many times I --
- 9 I'm not sure.
- 10 Q. Did they ask you to write every single detail of what
- 11 happened that night?
- 12 A. No. They -- they asked me to give a brief
- 13 description. I could have give a lot less than what I
- 14 give.
- 15 Q. Thank you, Shane.
- 16 A. I tried to be as full, in-depth.
- 17 Q. Thank you, Shane.
- 18 A. But I was pretty --
- 19 Q. Shane, when you talked to -- and I'm sorry I keep --
- 20 A. No. No, no, no. Please do.
- 21 Q. -- I'm interrupting you, too. I'm sorry.
- 22 A. Please do.
- 23 Q. When you talked to EMS, why did you not go with EMS?
- 24 You were trying to answer that. Why didn't you try to go
- 25 to EMS?

1 A. Because I was still fearful for my family's life, and
2 this guy that they allowed onto come on my property, that
3 the -- that had done been arrested for threatening my
4 family's life, okay? Threatened my family's life, came
5 over during the middle of this investigation, out of
6 nowhere. He was right around the corner.

7 Q. You're talking about Mr. Blackwelder?

8 A. Yes. And I view him -- I view him as a danger and a
9 threat to my family. My -- And he came over into my yard.
10 He made several comments to where to I heard loud and
11 clear, and it's on the tapes. You all will hear it. Once,
12 again, he was making threats or innuendos, and I knew that
13 I was going to be leaving my house. They was taking me
14 away from my family, and those guys were going to be there
15 while I was in jail, not being able to protect my family.

16 MR. POETIC: Thank you, Shane, for your answers and
17 your testimony.

18 THE COURT: Re-cross?

19 MR. POSTIC: Your witness.

20 MR. MILLS: One moment, your Honor.

21 No questions, your Honor. Thank you.

22 THE COURT: You can step down and have a seat with
23 your attorney.

24 (WITNESS LEAVES WITNESS STAND.)

25 THE COURT: You want -- You have another witness?

1 MR. MILLS: Your Honor, at this time we would play one
2 of the expended tapes and it goes at a minimum of forty-
3 five which usually it's about an hour and a half.

4 THE COURT: Well, you confused me a little bit. You
5 said forty-five, and then you said an hour and a half.

6 MR. MILLS: Well --

7 THE COURT: It can't be both.

8 MR. MILLS: Well, well, because what they have is a
9 video that's forty-five minutes then it clicks over to
10 another one, which seems about a half hour. So, I think I
11 mis-spoke. It's an hour and fifteen minutes.

12 THE COURT: Well, can you show the forty-five minute
13 one, and then stop? Because I'd like to go to six, because
14 ---

15 MR. MILLS: Sure. No problem.

16 THE COURT: --- we're not starting 'til eleven in the
17 morning, and then ---

18 MR. POSTIC: Yes, your Honor.

19 THE COURT: --- you're not going to be here Thursday
20 and Friday, so.

21 MR. MILLS: All right.

22 THE COURT: This will take us a little past six but
23 we're going to do this one forty-five minute one.

24 You need a restroom --

25 MR. FOREMAN: Can we get a break?

1 THE COURT: Yeah. We'll take a break.

2 MR. MILLS: We'll do that, and we'll get it set up.

3 THE COURT: We'll take a real quick, just a refresher
4 break. If any of you need to call anybody because we're
5 running 'til six, the bailiff will make arrangements for
6 you to do that.

7 MR. POSTIC: Thank you, Judge.

8 (WHEREUPON, JURY EXITS COURTROOM AT 05:22 PM.)

9 (COURT IN RECESS AT 05:22 PM.)

10 (COURT BACK IN SESSION AT 05:34 PM.)

11 THE COURT: Thank you, you may take your seats.

12 You ready to go?

13 MR. POETIC: Yes, your Honor.

14 THE COURT: Bring in the jury.

15 MR. MILLS: Judge, can I just do a short introduction
16 on the one we're getting ready to see?

17 THE COURT: As long as you don't offend Mr. Garfield.

18 MR. GARFIELD: Sir? I missed it.

19 MR. MILLS: I was just gonna explain a little bit when
20 I cue it up Deputy Wright's in car video.

21 MR. GARFIELD: That's fine.

22 THE BAILIFF: Okay, Judge, you ready for the jury?

23 THE COURT: Yeah, come on in.

24 (JURY REENTERS COURTROOM AT 05:36 PM.)

25 THE COURT: Mr. Mills.

1 MR. MILLS: Your Honor, at this time pursuant to a
2 stipulation with the defense counsel about the
3 admissibility I believe this is Exhibit - -

4 Madam Court Reporter?

5 MR. MILLS: Exhibit Two which contains - it's a
6 copulation of all the in-car videos from the responding
7 deputies and at this time we're gonna play Deputy Wright's
8 video which is about - take us to the end of the day.

9 THE COURT: Thank you.

10 MR. MILLS: And if it's too loud y'all just give me
11 the sign.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER TWO, RECEIVED
13 INTO EVIDENCE/PUBLISHED TO THE JURY AT 05:36 PM.)

14 (PLAINTIFF'S EXHIBIT TWO, STOPS AT 06:31 PM.)

15 MR. MILLS: That's it, your Honor.

16 THE COURT: We will stop for the day then and we'll
17 see you at eleven am, eleven in the morning and we'll start
18 back up as promptly as we can. Have a pleasant evening.

19 Thank you. I appreciate your patience in bearing with
20 us.

21 (JURY EXITS COURTROOM ON EVENING RECESS AT 06:32 PM.)

22 THE COURT: I hope everyone has a pleasant evening and
23 we'll see you at eleven in the morning.

24 MR. POETIC: Thank you, Judge.

25 MR. GARFIELD: Thank you, Judge.

1 MR. MILLS: Thank you. Appreciate it, your Honor.

2 (COURT IN EVENING RECESS AT 06:33 PM.)

3 (COURT IN SESSION TUESDAY, NOVEMBER 8, 2016 AT 11:03
4 AM.)

5 THE COURT: Good morning. Thank you. Take your
6 seats.

7 MR. MILLS: Good morning, Judge Hayes.

8 THE COURT: Is the plaintiff ready? Is the plaintiff
9 ready?

10 MR. MILLS: We are and we were just discussing a
11 matter here which we thought we should bring to the Court's
12 attention.

13 THE COURT: All right. Defense ready?

14 MR. GARFIELD: Yes, sir. Thank you.

15 MR. MILLS: Judge, our plan is to call Dawn Carter as
16 our first witness. I forgot, we would read the deposition
17 of Deputy Reed. It's about thirty-five pages, and we think
18 will probably be about a half hour. I'm not going to do
19 another long video. I would do like a short portion of his
20 video that I think's relevant. It's all in evidence, but
21 if Mr. Garfield wants to go onto something else, he's
22 welcome to, but I did not want to go through -- for
23 economy's sake, I want to just cut to the spots that I
24 thought were relevant.

25 And then after that I thought we'd break. I have

1 our expert coming up at 12:30. I understand y'all got to
2 do a minor settlement.

3 THE COURT: Yeah. It'll take five minutes. And
4 they'll wait.

5 MR. MILLS: And -- so, anyway, but we'll have the
6 expert up here, ready to go, right after lunch, and --

7 THE COURT: All right. The Court will have to have a
8 proffer on that.

9 MR. MILLS: After -- Probably. I'd say you can make a
10 decision on that. And then, if you let it in, that's our
11 last witness. If you don't keep it out, we're closing.

12 THE COURT: Okay.

13 MR. MILLS: I -- I think.

14 THE COURT: Okay. All right.

15 MR. GARFIELD: Good morning again, Judge. On what Mr.
16 Mills was saying about the publishing the deposition of
17 Jonathon Reed, I presume he's taken the position that he's
18 a party, technically, because he is an employee for the
19 Sheriff, and the Sheriff is being sued in his official; to
20 sort of avoid the clunkyness of the publishing, there's --
21 I asserted several, many objections throughout the
22 deposition. Might I inquire what the Court's preference is
23 on that? Could we keep it where it's published without my
24 objections?

25 THE COURT: Yeah.

1 MR. GARFIELD: But it's -- to at least kind of keep it
2 as smooth, or as --

3 THE COURT: Just -

4 MR. MILLS: The few objections, I'll just go -- if we
5 have any discussion, I won't talk about that -

6 THE COURT: Go -

7 MR. MILLS: --- until we clear it up and I rephrase
8 the question.

9 THE COURT: Next -- yeah.

10 MR. MILLS: Then, I'll go -- skip to that. And if --
11 I'll have Mr. Postic instruct you to the line in the
12 deposition I'm going to.

13 THE COURT: Okay.

14 MR. GARFIELD: And as far as the expert's concerned, I
15 don't know your Honor's preference on this, but we would
16 like to -- your Honor suggested a proffer. I would
17 obviously like to be heard on why we would -- on the record
18 why so we preserve the record on that.

19 THE COURT: Oh, yeah. Well, we're definitely on the
20 issue take a look at that, because I'll have to hear what
21 he's an expert in, and decide whether or not that's
22 something that -- Probable cause is a definable concept in
23 law, as I understand it. So, I don't know that an expert
24 can testify -- I mean, he can testify to that. He can
25 testify if he -- if that's what he's going to testify to,

1 that might be all right. But I don't think he can give us
2 anything -- I don't think he can testify as to what his
3 idea or his opinion of probable cause is because the law
4 says what probable cause is.

5 MR. MILLS: Well, a couple things, if I might -

6 THE COURT: Yeah.

7 MR. MILLS: --- just respond to that while the Court's
8 -- One is, we've got a number of officers here talking
9 about probable cause, and why they thought they had
10 probable cause. So, the idea that no witnesses are talking
11 about probable cause to the jury is just wrong. They get
12 to say it, but I don't have anybody to say it. So, --

13 THE COURT: You lost me on that.

14 MR. MILLS: Well, I mean, they're coming in to say, we
15 had probable cause to arrest. I did this and this and
16 this, and we believe that was probable cause to arrest him.
17 That's what the defendant's gonna testify about.

18 THE COURT: Right.

19 MR. MILLS: Okay. So, they're going to be testifying
20 to probable cause. Okay? And now, you're saying that I
21 can't.

22 THE COURT: Well, no, but you put -- you can put --
23 you put that thing in, making -- you're stuck with what
24 they said.

25 MR. MILLS: Oh.

1 THE COURT: You -- you -- that's -- No. You can't
2 attack your own witness.

3 MR. MILLS: All right.

4 THE COURT: I mean, you can impeach your own witness.
5 You can set -- have different witnesses, but you can't,
6 now, have somebody come in and testify to their opinion of
7 what probable cause is, because again, it's a legal
8 standard. You can certainly, when we charge a jury, just
9 tell that these people were out in their field when they
10 were talking about probable cause. But I'll hear what he
11 has to testify to.

12 MR. MILLS: And also, your Honor, we're offering him
13 for investigation because it's their own policy, they say,
14 before you apply for an arrest warrant, you have to make
15 sure to weigh in all the other factors that are not, you
16 know, that don't go to probable cause, go against it. In
17 this case it would be all the considerations about the
18 *Defense of Homeowners Act*. So, he's going to be testifying
19 to the process of investigation, which they said they did,
20 which their own policies do, Judge. They've got two
21 different policies that say they should do these additional
22 investigative things in these situations, and they haven't
23 and he would testify that that's the proper investigation.

24 THE COURT: Like I say, we're gonna have a proffer on
25 it.

1 MR. MILLS: All right. Thank you, your Honor.

2 THE COURT: All right. Bring in the jury.

3 Was he ever indicted?

4 MR. MILLS: No, he was not. There was no criminal
5 hearing and there is no indictment.

6 (WHEREUPON, JURY RE-ENTERS COURTROOM AT 11:09 AM.)

7 THE COURT: Call your next witness.

8 MR. POSTIC: Thank you, your Honor. The next witness,
9 your Honor, is Dawn Oackasy Carter.

10 (WHEREUPON, DAWN CARTER,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 DAWN CARTER BY MR. POSTIC:

14 Q. Good morning, Dawn.

15 A. Good morning.

16 Q. Dawn, I am going to be asking you questions from back
17 here, so I just want to make sure that the jury can hear
18 you. All right?

19 A. Okay.

20 Q. So, just speak clearly, and you may have to lean
21 towards the microphone. It doesn't move, the chair doesn't
22 move. You have to move.

23 So, let's start. I mispronounced your last -- your
24 maiden name. What is that?

25 A. It's Ocskasy.

- 1 Q. Oackasy.
- 2 A. O-c-s-k-a-s-y.
- 3 Q. And what kind of name is that?
- 4 A. It's Hungarian.
- 5 Q. Hungarian. Okay.
- 6 A. The C is silent.
- 7 Q. The C is silent. Okay. I'm going to call you Dawn.
- 8 A. That's good.
- 9 Q. Dawn, tell us where you're from.
- 10 A. I was born in Yonkers, New York, and lived in
- 11 Charlotte and Fort Mill and Rock Hill. And I reside in
- 12 York County, Rock Hill.
- 13 Q. Okay. And where did you go to school? And speak up a
- 14 little bit, because I can't hear.
- 15 A. Okay. I went to Olympic High School. Elementary
- 16 school was in Charlotte, as well. Pinewood Elementary and
- 17 Smith Middle School.
- 18 Q. Okay. And did you graduate?
- 19 A. No.
- 20 Q. What year did you leave?
- 21 A. Tenth grade, and I started to work.
- 22 Q. You started to work.
- 23 A. Yeah.
- 24 Q. Where did you work?
- 25 A. I worked at a couple different restaurants.

1 Q. When did you meet -- I'm sorry, go ahead, ma'am. Were
2 you going to -- okay. When did you meet Shane?

3 A. When I was twenty-one.

4 Q. Okay. And did you guys start dating almost right
5 away, or?

6 A. Yes, sir.

7 Q. Okay. And he already testified, you guys have four
8 kids.

9 A. Yes, sir.

10 Q. Okay. And their ages again?

11 A. Twelve, nine, seven, and four. All girls.

12 Q. Yeah. And when did you -- Do you work at all?

13 A. No, sir.

14 Q. Just take care of kids?

15 A. Yes, sir.

16 Q. Okay.

17 A. It's a big responsibility.

18 Q. Yeah it is. Huge. And Shane does work?

19 A. Yes, sir.

20 Q. And tell -- Just give us a little bit about Shane,
21 just in your own words.

22 A. He's a hard-working, honest, fun father and good
23 provider, and an excellent husband.

24 Q. Okay. And where do you guys live?

25 A. 3001 Lesslie Highway.

1 Q. How long have you all lived there?

2 A. Probably like nine years.

3 Q. Okay. And tell us a little bit about that property.
4 Do you own it, or do you rent it?

5 A. Rent it.

6 Q. Tell us a little bit about that property, just
7 briefly.

8 A. It was a brick house with multiple trailers around it
9 for the majority of the time that we lived there, until
10 things changed.

11 Q. Okay.

12 A. And when they changed it was -- it was a very
13 complicated situation living there with -- with the
14 multiple families around us.

15 Q. Okay. And that situation has changed since this
16 event?

17 A. Yes. Yes.

18 Q. Okay. And now, how many families live on the
19 property?

20 A. None. Other than us.

21 Q. Just y'all?

22 A. Yeah.

23 Q. Okay. Do you live in that same brick house?

24 A. No. We live in the house behind it now.

25 Q. Okay. The brick house is still there?

1 A. Yes.

2 Q. So, let's go back to 2012. Do you remember this time?

3 A. I -- I'll never forget it.

4 Q. I imagine. At that point, were the trailers on the
5 property?

6 A. Three of them were.

7 Q. Okay. And how close would you say those trailers were
8 to your home?

9 A. They were close enough but far enough at the same
10 time. There was -- there was distance between them. I
11 don't know how -- how much yardage to say.

12 Q. And so, specifically, in April, how many families
13 lived there in those trailers?

14 A. At the time of the incident it was just Steve
15 Blackwelder and whoever was staying with him at the time.

16 Q. So, just one trailer was occupied?

17 A. Yes.

18 Q. And there's been some talk in the videos that we heard
19 last night about somebody being evicted. Can you of your
20 own memory, of your own knowledge, what do you know about
21 that?

22 A. Shane's responsibility with the agreement of the prior
23 owner of the land was that he would take care of the
24 grounds and the well, and to receive the rent from all of
25 the trailer -- trailer occupants.

1 Q. Okay. And so, so sort of a caretaker, would you say?

2 A. Yes. Yeah.

3 Q. And before we get to the well, what was the situation
4 with the neighbors?

5 A. They all were -- I don't want to judge anybody, but
6 they weren't class-act kind of people. They -- there was a
7 struggle, just a routine -- just to get the rent from them,
8 for them to keep up their trash, and everything else that
9 was going on.

10 Q. Okay. Was there an eviction process?

11 A. Yes. Shane tried on multiple times, because he had --
12 he had legal right from the owner of the land to be able to
13 obtain eviction notices, and have them -- have multiple
14 different trailers evicted, because they hadn't paid in
15 such extensive long amounts of time.

16 Q. Were there any other legal proceedings with those
17 folks before --

18 A. Yeah. Before the night of the incident?

19 Q. Yes.

20 A. Yes. Someone had taken over the land. When they took
21 over the land, they were trying to have the last remaining
22 occupant, which was Steve Blackwelder, removed. And he had
23 papers served on him that he was not even supposed to be on
24 the property at that time.

25 Q. Okay. And did he have any previous interaction with

1 you?

2 A. Yes. He was a very foul person. Not very nice. And
3 him and Shane had had conflict for the fact that he didn't
4 want to pay rent, and felt that he didn't have to give it
5 to Shane or anybody else. And so, they had an outcome that
6 wasn't so good, because all Shane was trying to do at one
7 time was collect the rent from him after extensive amounts
8 of attempts, and he posed a threat on our lives and Shane's
9 life, and Shane called the cops and had him arrested for
10 threatening our lives before.

11 Q. Okay. And that -- When would you say that happened?
12 Do you have any specific --

13 A. It wasn't long. It wasn't long before the incident
14 happened. I can't honestly say I remember. Because his
15 threat was always there, so, to remember which one to the
16 next was -- I don't know.

17 Q. Okay. So, -- And let me ask you about the water.
18 What was the deal with that?

19 A. It was an old well. It had galvanized piping.
20 Everything was really strained on the fact that the amount
21 of different households that it sourced water to.

22 Q. Okay.

23 A. And so, with it being on our property, and us paying
24 to get it we paid to get it fixed, which was part of the
25 agreement with the landlord, that we just kept the grounds

1 and everything together for him, so that he didn't have to
2 deal with, basically, the riff-raff that we dealt with for
3 him, just so that things would get maintained, and stay
4 maintained.

5 Q. How often would you have to fix that well?

6 A. Repeatedly. It was always one thing to the other,
7 from the points, to the pump, to the tank, to the
8 reservoir. All different things so it was a constant --

9 Q. Okay.

10 A. --- in the whole period of time that we lived there.

11 Q. Was it working on April 25th?

12 A. We were having problems with it. The points kept
13 burning out.

14 Q. What does that mean, the points?

15 A. Points are the -- the power that -- It's like the
16 switch that turns the pump on.

17 Q. Okay.

18 A. Between that, and there was a hole in -- in the next
19 tank and it was just constant things that were going wrong
20 with it and that day, we were having problems with it. The
21 water had been running low. The pressure was bad. Shane
22 came home from work, and he had checked it, thought
23 everything was okay and then, later on that evening, it
24 wasn't okay again.

25 Q. What time would Shane get back from work?

1 A. I guess about six o'clock that night.

2 Q. Do you remember where he was working then?

3 A. He was working for Boggs Construction.

4 Q. Okay. So, let's go to that night, April 25th, 2012,
5 over four years ago. Tell us, in your own words, what you
6 remember about that night.

7 A. Shane's grandmother was living with us. I was her
8 caretaker. I was eight months pregnant and me, Shane, and
9 our young -- our young -- one of our youngest daughters at
10 the time, were laying in bed watching TV about to go to
11 sleep and that's when the banging of the door came, and
12 just shook the house. And we had our twelve-year-old
13 boxer, which is our protector girl.

14 Q. That's a --

15 A. It stirred her up, too, to the point where she was,
16 you know -- she felt the threat, too, because she was
17 barking, which was waking the house up. So.

18 Q. And so, did you get out at that time, or just Shane?

19 A. Shane got out of the bed initially, and I followed
20 after him to the door.

21 Q. And what did you hear and observe?

22 A. We didn't know what to think at first. I mean, you
23 never know what somebody -- you don't know what somebody is
24 banging your door. It could be an emergency, it could be
25 anything. We've had a lot of things go on in our front

1 yard. We live on seven acres, and it's close to a busy
2 highway and we've had multiple odd scenarios happen in our
3 front yard, to where you never know what it is. And so,
4 Shane, you know, of course, standing, you know, was about
5 to go to sleep, standing in his boxers, asking what's going
6 on? Who are you? What do you need? What's going on?

7 Q. Could you -- And you were standing right next to
8 Shane?

9 A. Yes.

10 Q. Could you hear what was coming from the other side?

11 A. Not -- not really, other than shouting and mu -- you
12 know, just shouting.

13 Q. Okay.

14 A. Shane kept asking 'em, who are you, what do you want?
15 And then when we heard him screaming, something, something,
16 water, you know.

17 Q. And what did Shane ask him to do?

18 A. Shane tried to look out the window to see who it was,
19 because our porch light didn't work, and he couldn't. And
20 he told the man, back off the -- the porch to where I can
21 see you. He finally complied. Shane could see that there
22 -- out the window that there was a distance between him and
23 he cracked the door open to see what was going on, and to
24 talk to this person, and find out what their need was.

25 Q. Okay. And just go on and tell us, you know, what you

1 observed.

2 A. So --

3 Q. And what you didn't.

4 A. So, Shane was like, well, -- talking back and forth
5 with 'em asking 'em what he needed, why he was there, to --
6 the man said that he needed water. He was like, well, who
7 are you? He kept asking him who he was. He wouldn't re --
8 he wouldn't answer that. He just kept demanding that he
9 wanted water. And then, when I felt like things were --
10 this was a -- At this point it felt like -- Shane asked
11 this man to leave; things weren't going right. I grabbed
12 my phone. My phone was nearby, I grabbed my phone. And
13 Shane kept going back and forth with him to get off the
14 property, and that, you know, he'll look at it. You know,
15 if you -- if you feel that you deserve water then you call
16 your landlord. And I had walked behind Shane -- years ago
17 -- It was like three or four years before this incident, we
18 were in the front yard, playing with our girls, and there
19 was a Louisville Slugger aluminum bat in our front yard
20 that somebody apparently walked across our yard and left,
21 which was really weird. And I said, isn't that, you know,
22 kind of crazy? Shane was like, well, put it behind the
23 door. You never know, you know, when I'm not here, when
24 you might need it because you know, we had so many
25 incidents go on in our front yard before. And so, I -- and

1 it was behind the door. I went -- I was standing to the
2 corner of Shane while he was in between the door, I walked
3 behind him to behind the door. I grabbed the -- the bat,
4 and I leaned it up against the wall beside the door and us
5 and so that he knew that it was there. I just nudged him,
6 he knew that it was there. He turned to me as he's telling
7 the man to get off the porch that, you know, he can't do
8 nothing more for him.

9 Q. All right.

10 A And he said -- he turned to me and said, Dawn, call
11 the York Sheriff's Department. He grabbed up to the screen
12 door to try and pull it closed. Well, the man had come
13 onto the porch and grabbed the door. So, while he's trying
14 to pull the door, he can't now, because the man has got the
15 door. When he -- and -- so, when he --

16 Q. I'm sorry. I'm not --

17 A. All right.

18 Q. -- I didn't mean to -- I just want to slow you down
19 for one second. All right?

20 A. Okay.

21 Q. So, you -- What would you say the tone of the
22 conversation was at this point, between Shane and your --
23 and must have upset him?

24 A. It got intense, because now, you know, he's told this
25 man -- Shane knows it's time to close his door, and we got

1 to go, and that's what he was in the process of doing. And
2 -- and it escalated in -- in no time.

3 Q. Okay.

4 A. He had told me to call the cops. I called the cops.
5 He's telling this man to get off the porch.

6 Q. And you're watching it the entire time?

7 A. Yes. Well, I don't see the man, because I'm inside
8 the house, to the -- to the right of Shane but I'm hearing
9 it.

10 Q. And so, if you're -- Let's use these doors right here.

11 A. Okay.

12 Q. Which one would be the most like --

13 A. This is -- this is the front door.

14 Q. Okay.

15 A. Shane's standing here, cracked in the door, and I'm
16 right here to the right of him.

17 Q. How open would you say the door was?

18 A. He was just standing -- his body's-worth into the
19 door. So, the door's behind him.

20 Q. Okay. Just show ---

21 A. So -- so, --

22 Q. --- a body-worth.

23 A. A body-worth.

24 Q. Okay. All right. The bottom's bigger than your
25 attempt. Okay. And so, what do you observe at that point?

1 A. I'm on the phone with 911. I ask them to send
2 somebody that, you know, this is a domestic dispute,
3 because of the fact that he's asked this man, he's told
4 this man he would help the situation if he would just
5 leave. That -- that attention would come to it. He's now
6 told me to call the cops. The guy knows that the cops are
7 coming. So, I'm hoping that this would diffuse it, as well
8 as Shane is, too. And that's not what happened.

9 Right then, while I'm on the phone, asking for help
10 with the police, that's when he sees Shane with his hand
11 behind the door, where the bat is leaned up against the
12 wall. He's trying to pull it, and he won't let go of the
13 door. And then he ask Shane, well, what do you got, man?
14 What a you got in your hand? You got a gun? You going to
15 shoot me? And then, Shane was -- right when Shane tried to
16 pull one more time to the door to close, that's when the
17 guy punched Shane through the door, which, at that time, I
18 didn't know it was a punch because I'm just standing here,
19 and my husband's blazing past me and past the door, to
20 where, if this is the door, Shane's done come from being
21 just cracked in the door, through the door.

22 Q. Okay.

23 A. And so, that's when Shane pushed forward and went
24 through the door, grabbing the bat on the way out. The guy
25 bear-hugged Shane. They spun around. Shane was wedged up

1 against the banister.

2 Q. And you saw this?

3 A. I saw this. Because at that moment, I was stunned,
4 too, standing there with myself vulnerable at the door just
5 because -- but at the same time, I got my phone -- I'm
6 talking on the phone, and I'm witnessing my husband
7 fighting for our lives.

8 Q. And I think -- At some point what happened with your
9 dog?

10 A. The -- the dog was barking. She's trying to get out.
11 I got her, I wedged her to where she couldn't get out the
12 door, because she's a twelve-year-old boxer. I knew she
13 was trying to defend her father, and us, but I didn't want
14 her to get hurt. That's when I took her -- I got her
15 collar. I closed the door. I locked it. I went to the
16 back of the house, put her out here in our laundry room,
17 and then I came back to -- to the picture window, to see
18 what was going on with the whole situation.

19 Q. You locked your front door?

20 A. I think I did.

21 Q. Okay. All right. And then, what -- Were you able to
22 see the entire struggle?

23 A. Yes. Our picture window is two side windows, and then
24 a huge picture window.

25 Q. Right.

1 A. And so, I watched everything from that part, which was
2 --

3 Q. You were on the phone with --

4 A. While at the same time as our eighty-seven-year-old
5 grandmother, screaming at me, Dawn, what's going on? Dawn,
6 what's going on? And me telling her, grandma, go back to
7 sleep, everything's going to be fine. And then, being
8 questioned by the police what was going on, what this guy's
9 wearing, and --

10 Q. And about a what? There was something about a weapon
11 in there too.

12 A. Yeah.

13 Q. Can you -- Why didn't you mention the bat?

14 MR. GARFIELD: Objection. Leading.

15 MR. POETIC: That's --

16 THE COURT: Yeah. Rephrase your question.

17 BY MR. POSTIC:

18 Q. You did not mention a bat.

19 A. No.

20 Q. Oh, you didn't? I'm sorry. You did not mention a
21 weapon.

22 A. No, I didn't.

23 Q. Okay. Explain that to us.

24 A. I don't know. There was so many different things
25 going on at that moment to where -- I don't know why I

1 don't hear the part where I told Grandma and I think it's
2 because maybe I held the phone away, or I covered the phone
3 -- I don't know, but I had the dog barking. One of my
4 daughters was still awake, you know, and watching what I
5 was watching going on. It was enough for me to keep up.

6 Q. Okay.

7 A. Keep -- keep -- I don't know. My sanity at that
8 moment because what I was witnessing through a picture
9 window of -- could be the last time my husband, you know,
10 the threat was strong enough that it could have been the
11 last time my, you know, my husband was alive, and I
12 couldn't help him myself, other than to be on that phone
13 with 911.

14 Q. Did you -- did your husband -- Just tell me kind of
15 briefly about the fight as you saw it. And it's kind of an
16 obvious question, but what were your emotions at this time?

17 A. I was scared.

18 Q. And tell me about what you observed. And it's going
19 to be hard, but the fight that's -

20 A. He's -- he's as tall -- the -- the Michael Faile is a
21 taller man than my husband. And he has got shoes on, and
22 he's clothed. My husband is standing out there in his
23 boxers. And when they went out the door, he -- he bear-
24 hugged my husband and hit him in the head a couple times,
25 and my husband was trying to fend him off. That's when I

1 got the dog, and I went, so, they were scrapping along, and
2 then -- and then the fighting just kept on. He kept coming
3 towards Shane. Shane was blocked at the end of the -- the
4 porch where there's not an outlet. There's just the table
5 and the enclosure of the -- the fence, the porch fence.

6 And he -- I saw the man -- they were -- he was hitting
7 Shane, and Shane was hitting back to get him to stop, and
8 it finally took a toll on him, and he hit the ground. But
9 he hit the ground, but the man started immediately kicking
10 up at Shane, kicking Shane up in the chest to where he
11 couldn't get around him either way to get away from him.

12 And so, --

13 Q. Had you opened the door at this point at any time
14 during this?

15 A. That part I still -- I know that I did, but I still
16 don't -- I think it's when the -- the 911 is telling me
17 that the police are there. And then I opened the door. I
18 see them pass, and I said -- I said that on the thing, they
19 just passed my house. And then, that's when Shane is
20 telling -- telling, just stop. And the guy says, please,
21 just stop. So, they're -- they're both communicating that
22 this has been enough and Shane tells him roll over, put
23 your hands out, roll over and he did. He complied, and
24 Shane stood there until the cop parked his car and came
25 over to the house.

1 Q. Okay. And then the police arrive - arrived?

2 A. Yes.

3 Q. Okay. So, let's move on to that second part of the
4 night. How many police officers show up? And you can tell
5 --

6 A. The -- At first it was one. Officer Gwinn.

7 Q. Okay. And then, was he alone? Did somebody come up
8 after that?

9 A. Officer Gwinn was there for a brief minute and checked
10 out -- got Faile and then took the bat from Shane. And
11 then, --

12 Q. Take your time. Did you --

13 A I know that Bryan -- that Steven Blackwelder came up
14 into the scene after that too. You know, harassing Shane,
15 saying, you know, what did you do to him, Shane? What did
16 you do to him? Which I can't help but to think that he was
17 there the whole time and that if Shane didn't have a bat
18 and was defending himself they both would have jumped up on
19 him. But I don't -- I don't know that for fact.

20 Q. Sure.

21 A. But. So, you know, then ---

22 Q. Did the situation --

23 A. --- Gwinn's got, you know, us trying to explain to
24 him. The other officers are coming up at this time. Dog's
25 barking. I got my kid unattended in the house. And now I

1 have this person that's not even supposed to be on our
2 property's here, yelling at Shane, after Shane just had to
3 defend our lives. And we were asking the police to get him
4 off of our property, because he posed another huge threat,
5 because he's already threatened mine, my children, and
6 Shane's lives.

7 Q. Who is he?

8 A. Steven Blackwelder.

9 Q. Okay. So, did you end up talking to a police officer?

10 A. Yeah.

11 Q. Do you remember the name of that police officer?

12 A. Gwinn.

13 Q. Okay. And did you -- What did you tell that police
14 officer?

15 A. About the Faile, or about?

16 Q Just in general. I mean, what did -- what was the
17 conversation like?

18 A. At first, it was really just about -- The cops got --
19 the other cops got there and they were talking to Steven
20 Blackwelder and the -- when Gwinn first got there, it was
21 just about Gwinn, and how was he doing, and you know.
22 Pretty much just concerned about that and not about that
23 the threat was just there for our lives. It was about
24 taking care of this wounded person that hit my husband
25 first and started this whole thing.

1 Q. Okay. But you spoke to an officer?

2 A. Yes.

3 Q. What did you talk to that officer about?

4 A. I told him that this man has been beating on our door,
5 that we don't know him. Later, to my knowledge, I realized
6 this is the man that's been staying next door but I've
7 never physically seen his face before. I couldn't pick him
8 up out of a lineup or anything like that. I didn't know
9 his name.

10 Q. Did you tell the officers about the issues with the
11 neighbors?

12 A. Yeah. Because when Steve Blackwelder came up, you
13 know, they -- he could tell that there was a neighbor
14 dispute going on there and that this man was somehow tied
15 to this person too.

16 Q. Were you asked to do anything, like write a statement?

17 A. Yes, I was.

18 Q. And what were you told to put in that statement?

19 A. Just everything that I could recall of how this -- how
20 it started and ended.

21 Q. Okay. At that point, did they take your husband away
22 that night?

23 A. No. They told us to go -- go inside at one point. We
24 went inside and I tried to check Shane's eye out and
25 everything like that and he --

1 Q. What was his condition?

2 A. He was -- he was pretty rocked. And --

3 Q. Explain to me what that -- kind of like --

4 A. I know. He was just -- just -- just stressed and
5 scared and fretting of what had just went on and
6 transpired, you know, when we were trying to go to sleep.
7 And you know, he was like ---

8 Q. Is --

9 A. --- he just come to my house and just punched me and
10 all they care about is the care of this man and not about
11 how his eye's doing after he's got punched through the door
12 and kept getting punched.

13 Q. And I understand that. And EMS did look at Shane, to
14 be fair.

15 A. After he asked for -- to be looked at. After --

16 Q. And after everything's cooled down ---

17 A. Uh-huh.

18 Q. --- they've gone, what -- just tell us about the --
19 Well, this is before the arrest and everything like that.
20 Tell us about the rest of that evening.

21 A. Well, the rest of that evening, we have to fret that,
22 you know, for one, when they allowed the -- the Steven
23 Blackwelder in our yard, he's already a nosy neighbor.
24 We've already had conflict. We've already had him, you
25 know, stress and torment us. I had to worry about what he

1 was going to do in the middle of the night. I mean, he
2 could have caught our house on fire. He -- you know, we
3 still had to let the dog out, you know, to use the
4 bathroom. You know is he going to be in the yard? Is it
5 gonna, you know, be another scenario? It was just -- it
6 was stressful. It was stressful.

7 Q. Okay.

8 A. And the thought of, you know, they're talking about
9 they're going to come back and possibly, you know, arrest
10 Shane and what tomorrow holds. You know, he's thinking,
11 you know, only less than an hour before that he's going to
12 work in the morning.

13 Q. Did he go to work the next day?

14 A. Yes, he did.

15 Q. How was he -- explain psychologically how he was. How
16 was he physically?

17 A. I mean, it took a mental toll on him because he's got
18 the fret of I might be going to jail for this.

19 Q. I mean, physically, like, what's he -- was there any
20 physical ailments??

21 A. Yeah. He had just taken a beating to the head, yeah.
22 He was -- he wasn't -- he wasn't prepared for the day but
23 he had no choice to go to work.

24 Q. Okay. When did he find out that there was an arrest
25 warrant?

1 A. I don't know. It was like four or five o'clock that
2 day, or something. Some -- they called him.

3 Q. Okay. And so, what did he do about that?

4 A. He called me and let me know what was -- that he had
5 to go turn hisself in.

6 Q. And did you go with him?

7 A. No, I didn't. I had to stay with the kids.

8 Q. Okay. Tell us how that was for you.

9 A. Well, now I'm left with the kids; an eighty-seven-
10 year-old grandmother that can't really take care of
11 herself, and I'm responsible for keeping us safe now,
12 knowing that there's still a threat there. Because I don't
13 know if this man who just went to the -- you know, went to
14 the hospital. I'm hoping and thinking in my mind,
15 logically, that he got arrested, because he's the one that
16 came to our house and trespassed and caused all this. But
17 little did I know, and what I know now is that, it wasn't
18 only Steve Blackwelder that I had to worry about the night
19 that my husband is leaving to go to jail but I also could
20 be in trouble with him, too.

21 Q. Who is him? What do you mean?

22 A. Michael Faile. That he could come back and retaliate
23 in any way.

24 Q. And -

25 A. And I lived like that for a long time after.

1 Q. What was -- tell us what -- That night, did you end up
2 sleeping?

3 A. We had one of Shane's cousins came and stayed with me
4 as some protecting and comfort that somebody was there with
5 us.

6 Q. And what -- what was -- what did you find the next
7 morning?

8 A. Next morning there was two grocery bags on the front
9 porch with baby doll parts that were in -- they were baby
10 dolls that were in my husband's car, that were our
11 daughters', broken pieces, all stuffed and sticking out of
12 the bag along with cockroaches all over the front porch. I
13 mean like unreal, disgusting, nasty. So, that means that
14 somebody, which, in my mind, is pretty sure that it's Steve
15 Blackwelder, my neighbor, has went in our car, got our baby
16 dolls' babies, and broke them into pieces, and then shoved
17 them in two grocery bags full of roaches. And that's what
18 I wake up to, knowing that someone was there, and is trying
19 to terrorize us, knowing that Shane had gone to jail.

20 Q. What -- Do you remember when Shane came home?

21 A. It was like, three or -- like, three or four o'clock
22 the next day.

23 Q. When did -

24 MR. POSTIC: Beg the Court's indulgence.

25 Thank you so much. Please answer Mr. Garfield's

1 questions.

2 Your witness.

3 MR. GARFIELD: Thank you.

4 CROSS-EXAMINATION

5 DAWN CARTER BY MR. GARFIELD:

6 Q. Good morning, Ms. Carter.

7 A. Good morning.

8 Q. It was a scary time for you that night, and I think
9 we're all understanding. You had your hands full
10 reassuring your little ones and your husband's grandfather
11 while all this was going on.

12 A. Grandmother.

13 Q. Your -- I'm sorry, a grandmother, while all of this
14 was going on?

15 A. Yes.

16 Q. So, you were inside the house with your three
17 daughters and your husband's grandmother, and you were
18 eight -- seven, eight months pregnant?

19 A. Eight months pregnant.

20 Q. You called for the police to come, right?

21 A. Yes.

22 Q. Not just one deputy, but three deputies came.

23 A. Yes.

24 Q. And they conducted an investigation at that time;
25 isn't that right?

- 1 A. Yes.
- 2 Q. Okay. They asked for your side of the story.
- 3 A. Yes.
- 4 Q. And you told them.
- 5 A. Right.
- 6 Q. You were honest with them, right?
- 7 A. Yes.
- 8 Q. You didn't have any reason to be dishonest, or hold
- 9 anything back, did you?
- 10 A. No.
- 11 Q. In fact, they even took your statement, a written
- 12 statement, down?
- 13 A. Yes.
- 14 Q. As part of their investigation; is that right?
- 15 A. Yes.
- 16 Q. The individuals that was -- that were creating the
- 17 threat, one being Mr. Blackwelder, from what I understand;
- 18 is that correct?
- 19 A. Yes.
- 20 Q. He was being detained by one officer; is that right?
- 21 From -- as far as you know he was --
- 22 A. He finally got detained, yes.
- 23 Q. He was handcuffed and placed in a patrol car; is that
- 24 correct?
- 25 A. Yes.

1 Q. All right. And the other individual that created the
2 threat, Mr. Faile; is that right?

3 A. Yes.

4 Q. And he was trucked away by the EMS; taken to the
5 hospital?

6 A. Yes.

7 Q. Okay. You spoke with one of the deputies. We heard
8 on the video yesterday. Would that be your voice?

9 A. Yes.

10 Q. Okay. You spoke with him at length; is that right?

11 A. Yes.

12 Q. And you told him as best you could all the -- the bad
13 history between you and Mr. Blackwelder.

14 A. Yes.

15 Q. And all the problems with the water.

16 A. Yes.

17 Q. And he listened to you, didn't he?

18 A. Yes.

19 Q. And he tried to offer you suggestions and some advice.

20 A. Yes.

21 Q. In fact, one of the deputies told you, point blank,
22 that they didn't know if they were going to charge your
23 husband; isn't that right?

24 A. Yes.

25 Q. They said they were going to take the facts and take

1 what they had, and let the magistrate hear it; isn't that
2 correct?

3 A. Yes.

4 Q. And then the magistrate was going to decide whether or
5 not anyone was charged, including your husband, right?

6 A. Yes.

7 Q. And that they would call you, once they find that out.

8 A. Yes.

9 MR. GARFIELD: One moment, your Honor.

10 THE COURT: Okay.

11 MR. GARFIELD: Nothing further. Thank you, Ms.
12 Carter.

13 THE COURT: Any redirect?

14 MR. POSTIC: Just one thing.

15 REDIRECT EXAMINATION

16 DAWN CARTER BY MR. POSTIC:

17 Q. The officers also said that your husband could be
18 arrested.

19 A. Yes, they did. As you all saw yesterday on the tape,
20 that was a threat any moment that he could just close this
21 up and just take them to jail, too. So, that was pretty
22 stressful at the moment too.

23 Q. Thank you.

24 THE COURT: Re-cross?

25 MR. GARFIELD: No. No, your Honor.

1 THE COURT: You can step down and have a seat with
2 your counsel. Thank you.

3 (WITNESS LEAVES WITNESS STAND.)

4 THE COURT: Call your next witness.

5 MR. MILLS: At this time, we would publish the
6 deposition of Deputy Reed.

7 THE COURT: I told you yesterday what a deposition is,
8 and it can be used in several ways. The way that it is
9 being used now is the testimony is presented just as though
10 he was seated here and under oath. That is, even though
11 he's not here, the -- he -- the part of the officer will be
12 played by Mr. Postic, and I'm going to play -- he will read
13 the answers and Mr. Mills will read the questions. And
14 perhaps Mr. Grayson may too, but -- Garfield, I'm sorry.
15 But the answers of the witness are to be taken as if they
16 -- if he were actually sitting on the stand giving those
17 answers.

18 You can have a seat over here. You can open it.

19 MR. POSTIC: Thank you, your Honor.

20 MR. MILLS: If you would turn to page four, please,
21 Mr. Postic.

22 MR. POSTIC: Got it.

23 (WHEREUPON, JONATHON REED DEPOSITION READ INTO THE
24 RECORD:)

25 DIRECT EXAMINATION

1 JONATHON REED BY MR. MILLS:

2 Question: Deputy Reed, my name is Chris Mills. I
3 represent Shane Carter, who has brought an action
4 against the Sheriff's Department. I'm taking your
5 deposition today, because you were one of the
6 responding deputies out to the scene, which ultimately
7 led to his arrest. And I have been provided with a
8 video of your or at least what was recorded when you
9 were there.

10 My understanding, you've been on the force, at least
11 at this time, I guess this was back in '12, so how
12 long? Eight years now, or nine?

13 A. In 2012, at that time? You're asking 2012?

14 Q. 2012, yes. Six years at that time?

15 A. Yeah. Around six years.

16 Q. Okay. I don't want to know your whole
17 background, but where were you born and raised?

18 A. I was born in Joliet, Illinois primarily raised
19 in Richburg, South Carolina, since I was ten years
20 old.

21 Q. Richburg. Okay. Where did you graduate from
22 high school?

23 A. I graduated from -- I actually received a GED.

24 Q. Okay. All right. What did you do after
25 receiving your GED? Well, let me ask you this. Prior

1 to the Sheriff's Department -- How old are you now?

2 A. I'm thirty-one.

3 Q. Okay. Prior to your job at the Sheriff's
4 Department, did you have any other employment?

5 A. Okay. Prior? Yes. I worked at -- for
6 insurance, which was a contracting company at West
7 Marine.

8 Q. All right. Did you -- Did you do that after
9 getting out of high school?

10 A. No.

11 Q. Okay. I'm going about this in a very horrible
12 way. Let me -- tell me what you did after high
13 school.

14 MR. GARFIELD: I'm sorry, Chris, I just want to
15 interrupt.

16 MR. MILLS: I'm sorry.

17 MR. GARFIELD: I'm sorry there's no better way of
18 doing this, your Honor.

19 MR. MILLS: Oh. I'm sorry. Mr Garfield pointed out,
20 that didn't say *insurance*, it says *Insource* which is a -
21 Yes, *I worked at* -- you see that on line ten, Mr. Postic?

22 MR. POSTIC: Yes, I do.

23 MR. MILLS: Let's do that again so we get it accurate
24 for the jury.

25 Thank you, Mr. Garfield.

1 (DEPOSITION CONTINUES.)

2 A. Yes. I worked at Insource, which was a
3 contracting company at West Marine.

4 Q. All right. And did you do that after getting out
5 of high school?

6 A. No.

7 Q. Okay. I'm going about this in a very horrible
8 way. Tell me what you did after high school.

9 A. After high school, I went and worked a framing
10 job. And then, I went to college for a year and a
11 half at Bob Jones University.

12 Q. Okay.

13 A. And then, after that year and a half, I worked
14 for Insource for a short period before coming to the
15 Sheriff's Department.

16 Q. Okay. What sparked your interest in going into
17 law enforcement?

18 A. Seemed like a good career.

19 Q. Okay. Is this the only law enforcement agency
20 you applied for?

21 A. Yes.

22 Q. All right.

23 A. No, actually, that's incorrect. I applied foRock
24 Hill City Police Department, as well.

25 Q. Okay. I assume you went through the Criminal

1 Justice Academy?

2 A. I did.

3 Q. What year was that?

4 A. 2007.

5 Q. Now, as part of your employment with the
6 Sheriff's Department then you have an in-service
7 training; is that correct?

8 A. That's correct.

9 Q. And it's generally like forty hours a year. Is
10 that about right?

11 A. I don't know the exact number of hours.

12 Q. Okay. But one of the annual things that you get
13 is a legislative update for the new laws that have
14 passed and the new crimes and other things like that
15 that you are going to be enforcing, correct?

16 A. That's true.

17 Q. All right. And that's one of your jobs when you
18 take the oath as a deputy, actually, you take an oath
19 to uphold the laws, correct?

20 A. Yes, sir.

21 Q. All right. And one of your jobs as a law
22 enforcement officer is to be familiar with both the
23 criminal law and any elements of the criminal law. Is
24 that fair?

25 MR. MILLS: I direct -

1 MR. POETIC: Can you --

2 MR. MILLS: Let me rephrase that question.

3 Q. To charge anybody with a crime, if you're going
4 to charge somebody with a crime, you have to have a
5 general knowledge of what the elements of the crime
6 are to be determined if that person violated the law?

7 A. Yes, sir.

8 Q. And that's one of the things that's covered in
9 basic law enforcement, that they cover in criminal
10 statutes of South Carolina, that's in your lessons
11 plans, correct?

12 A. Could you rephrase that question?

13 Q. Do you recall the South Carolina Criminal Justice
14 Basic Law Enforcement? This is a twelve-week course
15 that you went through back in 2007.

16 A. No, sir, it's a nine-week course.

17 Q. It was only nine weeks back then?

18 A. Yes, sir.

19 Q. Okay. Did you have a block that included basic
20 criminal law and basic criminal statutes?

21 A. There were criminal statutes that were taught.

22 Q. Okay. And if there's any question you have about
23 whether somebody violated the law, what are your
24 options as law enforcement? Who can you go talk to,
25 to find out if there is -

1 A. I'd talk to a supervisor.

2 Q. Okay.

3 A. Legal counsel.

4 Q. Okay. Are you referring to Ms. Mouzon here?

5 A. Well, are you talking about at the time or are
6 you talking about right now?

7 Q. You're right, because back then, it was Christie
8 Jordan, right?

9 A. That's correct.

10 Q. Are you referring to in-house counsel or the
11 Solicitor's Office?

12 A. Both.

13 Q. So, if there's a question that you would have as
14 an officer out there on the street and you wanted to
15 make -- you had a legal question you'd call up the
16 Solicitor's Office and have somebody who would talk to
17 you?

18 A. That's one of the options. We also commonly
19 bounce ideas off each other as well. We have the law
20 books as well.

21 Q. Sure. Right. So, you've got several resources that
22 you can go to; is that right? Other experienced
23 officers, other officers' opinions, you have law books
24 that you can look at, correct?

25 A. That's correct.

1 Q. All right. Prior to this evening -- Let me ask
2 you a couple of questions, if I could. You've had
3 some training in the use of force as a law enforcement
4 officer, correct?

5 A. Yes, sir.

6 Q. All right. And you might use words like soft-
7 hand control or hard-hand control, or intermediate
8 force. Do you know what those -- do you know what
9 those mean?

10 A. Yes, sir.

11 Q. One is trying to get someone's compliance through
12 talking, and the other might be through making a
13 strong presence; is that correct?

14 A. That's correct.

15 Q. Through your voice inflection, correct?

16 A. Correct.

17 Q. And sometimes you actually have to go to weaponry
18 to get someone who is resisting or unwilling to
19 cooperate with an arrest, correct? I mean, you might
20 have to use a PR-24 or a taser.

21 A. We are trained how to use a PR-24 and
22 intermediate weapons.

23 Q. Have you ever heard of a forced continuum?

24 A. Yes.

25 Q. Okay. As a police officer, is it general -- is

1 the general understanding that you would meet -- any
2 force you would meet, you're trying to go one level
3 higher to control that person, correct?

4 A. We are authorized to go one level higher.

5 Q. Right. If officer safety is required, you would
6 go one level higher to protect yourself and to prevent
7 somebody from assaulting you or hurting you or getting
8 your gun; is that correct?

9 A. If necessary.

10 Q. Sure. I understand. I mean, I realize you
11 wouldn't just do it gratuitously; is that right?

12 A. Correct.

13 Q. Okay. Now, on this evening prior to responding
14 to Mr. Carter's house, have you ever had any contact
15 with him?

16 A. I don't recall.

17 Q. Prior to leaving -- arriving in your car, did you
18 receive any information about what you were going
19 into?

20 A. I don't recall.

21 Q. Okay. Is this something that you would pay
22 attention to prior to going? Would that be --

23 A. Generally, we would get some kind of dispatch or
24 you know, some kind of information. It may just be an
25 address. It may be a general idea of what's going on.

1 Q. Why don't you, in your own words kind of tell me
2 what you -- what happened when you got there and what
3 you did.

4 A. When I arrived, Deputy Gwinn, I believe, was just
5 prior to me. He went to -- to the house to speak with
6 whoever was on the porch and I believe, Mr. Carter.

7 Q. Yeah. His wife was named Dawn. I think her last
8 name was Oackasy but we can just call her Ms. Carter
9 for simplicity's sake, or Dawn and Shane.

10 A. Yeah. He was talking with that up at the house,
11 and there was another individual that was standing off
12 to the side.

13 MR. MILLS: Okay. And if you'd look at that again, I
14 think you mis-spoke there. "He was dealing with
15 that."

16 A. Yeah. He was dealing with that up at the house,
17 and there was another individual that was standing off
18 to the side.

19 Q. Okay.

20 A. Mr. Blackwelder. And I wound up dealing with him
21 primarily.

22 Q. Yeah. I saw that probably in the first twenty
23 minutes of your time was dealing with him and talking
24 with him and I think you ultimately handcuff him and
25 place him in your car; is that correct?

1 A. That's correct.

2 Q. Okay. During your conversation with Mr.
3 Blackwelder did he admit to you that he was -- that he
4 didn't see what actually happened?

5 A. I don't remember him saying, but if you have a
6 particular portion on video that you can play.

7 Q. Yeah, there's two points here I'll go to it.
8 There's one point where Blackwelder said it and then,
9 later on, we'll get to this where you're having a
10 conversation, you actually affirm -- affirmatively
11 represent to the other officers that Blackwelder
12 didn't see what had gone on based on your
13 conversation. So, I'll deal with it when we get to
14 that. But I'll take your answer as it is right now.
15 You listened to that tape. Did you listen to Mr.
16 Blackwelder kind of going off? Let me ask you this.
17 Explain to me about your mic system back then in '12
18 on your video car because I hear two different sources
19 of audio on your video.

20 A. Right. It records the in-audio -- in-car audio,
21 and we also wear a body mic that records audio as
22 well.

23 Q. So, they're simultaneously recording?

24 A. Yes.

25 Q. So, when -- so, when you listen, and I just want

1 to make sure I'm listening when I play it back, I want
2 to kind -- I can kind of hear both. Sometimes, you're
3 talking over each other; is that right?

4 A. That's correct.

5 Q. All right. I assume there's a camera option. Do
6 you have a camera option in -- placed in the camera
7 back on the person behind you in the car?

8 A. I would actually have to turn -- turn the camera
9 around.

10 Q. Okay. Not that it was critical in this case, I
11 was just curious. After you -- And my general
12 understanding is, you all were trying to investigate
13 the situation and find out what's going on -- whose
14 going on - Blackwelder and Shane, they were shouting
15 back and forth, so you decided to calm the situation,
16 put them each in detention, and separate them, and get
17 them out of the area. Is that fair?

18 A. My deci -

19 Q. I'm sorry.

20 A. I'm sorry.

21 Q. Is that fair?

22 A. My decision, sure, was to place Blackwelder in
23 the back of the patrol car because he kept -- not
24 because he was saying anything, but because he was
25 being generally disruptive. He kept walking towards

1 the porch when I instructed him to stay there with me,
2 in essence, obstructing the investigation.

3 Q. And the family had -- had been saying he didn't
4 live there, and he shouldn't -- he should get off
5 their property, correct? Do you recall that?

6 A. From listening to the video, I can recall Mr.
7 Carter saying that he needed to get off his property.

8 Q. Okay. And if somebody owns a piece of property,
9 and they ask somebody to get off it, they have the
10 right to do that, correct?

11 A. If you could maybe rephrase.

12 Q. If I own a piece of property, and Mr. Garfield
13 comes on there, and I tell him to leave -

14 A. If he is not a resident.

15 Q. --- if he is not a resident, doesn't he have to
16 leave?

17 A. You have a right to request a non-resident to
18 leave.

19 Q. Right. And if they don't leave, that would be
20 trespassing, correct? Could it be trespassing?

21 A. It could be trespassing.

22 Q. When would it not be trespassing? Well, let me
23 ask you this. Do you know the law of trespassing?

24 A. I have a general idea of it.

25 Q. Have you ever arrested people for trespassing

1 before?

2 A. Yes.

3 Q. Okay. So you know the elements of trespassing;
4 is that right?

5 A. Yes, sir.

6 Q. And if I own a piece of property, and someone who
7 is not a resident comes on there, and I tell them to
8 leave and they refuse, would that be considered
9 trespassing?

10 A. I would consider that trespassing.

11 Q. Okay. Thank you. After you secured Mr.
12 Blackwelder, what do you recall doing next?

13 A. I believe I went back up to the house, if I
14 recall correctly, to help Deputy Gwinn.

15 Q. Okay. Do you remember what time Deputy Gwinn -
16 do you remember what Deputy Gwinn was doing at the
17 time?

18 A. I think he was assisting paramedics at the time
19 when he had arrived, still investigating the incident.

20 Q. Okay. Do you recall listening to anything that
21 -- it's my understanding that the gentleman who got
22 hit with the bat who was hurt was named Michael Faile.
23 Does that sound familiar to you?

24 A. Yes, sir.

25 Q. All right. Did you hear anything Mr. Faile said

1 about his confrontation with Mr. Carter at the door?

2 A. I --

3 Q. I'm sorry. Let me rephrase it. Could you tell
4 me --

5 A. Could you repeat the question?

6 Q. Did you hear anything Mr. Faile said about his
7 confrontation with Mr. Carter at the door? Is it your
8 understanding that Mr. Carter and Mr. Faile had a
9 confrontation at his door? Is that an unfair
10 characterization of what happened at the door, to your
11 understanding?

12 A. What do you mean by confrontation?

13 Q. I don't know. What do you mean by confrontation?
14 What does that word mean to you?

15 A. It is my understanding, they had -- at his door,
16 they had a discussion about the water.

17 Q. Okay. Did you hear Mr. Faile say that he was
18 fighting with Mr. Carter?

19 A. If I recall correctly, he said Mr. Carter
20 attacked him in the back.

21 Q. Okay. And that's all you heard him say?

22 A. That's all I can recall. Maybe if you have a
23 particular portion of the video to play.

24 Q. No. You remember that from listening to the
25 video, correct? As we sit here today, you looked at

1 the video, and you remembered that part of the video;
2 is that right?

3 A. I recall that from the video.

4 Q. And you -- you don't recall Mr. Faile saying,
5 yeah, I was fighting him?

6 A. Are you quoting him?

7 Q. I'm asking, do you recall Mr. Faile telling you
8 all, yeah, I was fighting Mr. Carter.

9 A. If I recall correctly, he said that he hit him
10 because he -- he had a bat, or came at him with a bat,
11 attacked him with a bat, something to that effect.

12 Q. And who did you understand threw the first lick?

13 A. It is my understanding -- it's my understanding
14 that Mr. Carter threw the first, that he hit him first
15 with the bat.

16 Q. So, they took a bat to this guy's head first?

17 A. I don't know where it hit him first.

18 Q. Okay. Did you take the story -- did you take any
19 statements from anybody?

20 A. I believe I got a written statement from the
21 wife, Dawn. If that's her name.

22 Q. Is it her position that her husband hit Mr. Faile
23 with a bat first?

24 A. She didn't see. All she said was she saw them
25 fighting out in the yard.

1 Q. Okay.

2 A. She went to call 911 and didn't see what happened
3 out on the porch.

4 Q. Okay. All right. So, what do you think Mr.
5 Carter and Mrs. Oackasy's story was? Do you know what
6 their story was? Do you recall what they said
7 happened?

8 A. Are you talking about Dawn? Is that her last
9 name?

10 Q. Uh-huh. Yes, I'm sorry.

11 A. I believe he said that -- Well, he had two
12 different versions. At one, he said he took a step;
13 he was arguing with him at the door, and that he took
14 a step back, and he had the -- he had to actually take
15 a step -- taken a step back, and then Mr. Faile
16 punched him, and that's when he grabbed the bat and
17 started hitting him, hitting him. He later stated he
18 stepped out of the house.

19 Q. Let me -- On the first statement that you just
20 repeated, did you hear that on the video that you just
21 listened to today?

22 A. I don't recall hearing that.

23 Q. Okay. Where did you get that information that he
24 had given a different story for the first time?

25 A. It's my understanding, I believe that's in a

1 written statement.

2 Q. Okay.

3 A. If I recall correctly.

4 Q. So, what you just said is what he put in his
5 written statement. All right. What is the other
6 story he gave?

7 A. He stated that he -- he was trying to get him to
8 leave from the property, that he stepped outside, and
9 then Mr. Faile punched him and that's when he started
10 hitting him.

11 Q. Okay. Now, if that was the case, all right,
12 would you agree with me that, we knew that where Mr.
13 Carter lived was considered a home and a dwelling
14 under South Carolina law?

15 A. Yes.

16 Q. Okay. And that would include his front porch,
17 his covered front porch, would it not?

18 A. Yes.

19 Q. And this occurred at nighttime, didn't it?

20 A. Yes, sir.

21 Q. And Mr. Faile did not have -- You were looking at
22 Mr. Garfield. You're looking at Mr. Garfield. Do you
23 need to -- is there something you need from him?

24 A. No.

25 Q. Okay. Now would you agree that if Mr. Faile came

1 onto the house and was pounding on the door, someone
2 told him to leave, and he didn't leave, that would be
3 trespassing?

4 A. When you say someone, who are you referring to?

5 Q. If Mr. Faile, who does not, would you agree with
6 me that Mr. Faile did not even live next door,
7 correct?

8 A. To my knowledge, that is correct.

9 Q. So, he doesn't have any connection with that
10 property other than his daughter having stayed
11 apparently, in the trailer next door, correct?

12 A. That's my understanding.

13 Q. So it's not his water that he's complaining
14 about, is it?

15 A. That's my understanding.

16 Q. Okay. And he's at Mr. Carter's house at
17 nighttime banging on the door. Is that what you
18 understand?

19 A. I believe he knocked on the door. I don't know
20 whether he was banging on it or not. I wasn't there.

21 Q. If Mr. Carter asked him to leave, and he didn't
22 leave, under those circumstances would you consider
23 that trespassing?

24 A. Yes.

25 Q. And if Mr. Carter opened his door, and somebody

1 assaulted him and threw a punch, knocking him back
2 into his house, would that be considered an assault?

3 A. Yes.

4 Q. Okay. What is your understanding of the law when
5 somebody is in their home, and somebody is illegally
6 entering their home and committing a crime, do they
7 have to retreat and shut the door?

8 A. It is my understanding of the law, with the
9 *Castle Doctrine*, that you have no duty to retreat.

10 Q. Okay. And if you have a right to defend your home
11 and your family -- and you have a right to defend your
12 home and your family with deadly force?

13 MR. GARFIELD: Your Honor, I'm sorry. Just for a
14 moment could I ask not to leave all the intimations out.
15 They're just supposed to be reading and publishing the
16 deposition.

17 THE COURT: Okay.

18 MR. MILLS: I think I can ask my questions however I
19 like, Mr. Garfield.

20 THE COURT: Well, I wasn't there, and the page says
21 what it says, so, just read it as it is.

22 MR. GARFIELD: Thank you, your Honor.

23 MR. POSTIC: Yes, your Honor.

24 MR. MILLS: I think we're on line fourteen.

25 (DEPOSITION CONTINUES.)

1 Q. And is it your understanding that Mr. Faile hit
2 Mr. Carter in the head?

3 A. What I can say is that he has -- Mr. Carter had
4 an injury to his head that looked consistent with
5 being struck in the head.

6 Q. Okay. Now, you are familiar with the crime of
7 burglary first degree.

8 A. Yes, sir.

9 Q. That's one of the elements. Excuse me. And the
10 elements of that offense is at nighttime, correct?

11 A. That's one of the elements.

12 Q. And it's got to be an invasion of a dwelling.

13 A. That's correct.

14 Q. Is there any other elements that you're aware of
15 for burglary first?

16 MR. MILLS: Oh, excuse me, I apologize.

17 Q. All right. There's got to be an intent to commit
18 a crime therein; is that right?

19 A. That's true.

20 Q. And is there any other elements that you're aware
21 of for burglary first degree?

22 A. If you're armed with a weapon and someone present
23 in the home, that's all I can remember offhand.

24 Q. Okay. If Mr. Faile came onto the property at
25 nighttime, refused to leave the porch, and when the

1 door was opened assaulted Mr. Carter knocking him back
2 into his house, would he not have a right to defend
3 himself at his home with up to deadly force from
4 somebody who is committing burglary first degree?

5 A. If he's trying to forcibly enter the home, then,
6 under the *Castle Doctrine*, he does have a right to
7 defend himself and someone in his home.

8 Q. And so, even if -- so, if he's not trying to
9 enter the home and if he's just assaulting him in his
10 doorway, and he throwing a punch and coming after him,
11 that would not be considered -- he wouldn't have the
12 right to defend himself in that instance?

13 A. Well, coming after him that would indicate that
14 he's trying to -- that at that point he's knocked him
15 back and he's trying to come into the home. So, at
16 that point then, yes, it would.

17 Q. So, I'm going to -- I'm going to go to a certain
18 section. I just want to make sure. I think it's
19 Sergeant Wright who's talking here. I just want to
20 see if you can confirm that for me.

21 Mr. Mills plays the video portion

22 Q. Did you hear a little thing that he -- did you
23 hear that little thing that quote, he already told me
24 he didn't see what happened?

25 A. Yes, sir.

1 Q. Is that your voice?

2 A. Yes, sir.

3 Q. This. We are currently -- I'm trying to get the
4 spot -- hour twenty, minute thirty, sixteen seconds.
5 And it is a conversation -- hold on. It's a
6 conversation that I think -- that I think the deputies
7 were getting ready to have about what to do, and
8 Shane's kind of in the background talking. And I hear
9 who I assume to be Deputy Reed.

10 Mr. Mills plays the video portion.

11 Q. All right. Now, is that you?

12 A. Yes, sir.

13 Q. And are you referring to Blackwelder?

14 A. I believe so.

15 Q. And he's told you he didn't see what happened?

16 A. I believe so.

17 Q. All right. But you were there listening to this
18 conversation, were you not?

19 I'm sorry. Mr. Mills plays another portion of video
20 But you were listening to this conversation, were you
21 not? Or were you?

22 Mr. Mills plays video portion.

23 Q. Have you ever listened to the 911 tape?

24 A. I don't remember.

25 Q. Okay. Is that something that you all can access

1 if you want to? Let me be more specific. I'm sorry.
2 Do you remember if I asked you earlier if you have a
3 right to consult with the Solicitor's Office or your
4 counsel if you had a question? Would you also have
5 the opportunity to go back and look at your own video
6 if you needed to consult about what happened before or
7 go listen to the 911 call if you had any question
8 about the sequence of events?

9 A. Yes, sir.

10 Q. Okay. Have you ever received any directive or
11 any memo from the York County Sheriff's Department
12 about swearing out warrants before magistrates?

13 A. I don't remember any specific one.

14 Q. Let me tell you what's prompting my question. In
15 this video, at one point, I hear somebody say, well,
16 let's just take it to the magistrate. Let's go call
17 -- let's go call the magistrate and see what he says.
18 And I believe it's either you or Sergeant Wright says,
19 quote, *No, we can't do that any more. We're not*
20 *supposed to do that any more.* End quote. Do you know
21 what that was in reference to?

22 A. I do. That was in reference to what we -- in
23 reference to we did receive direct -- we were not
24 supposed to be calling to get -- to get an opinion, or
25 a side-opinion, without presenting -- having all the

1 facts and presenting probable cause to the magistrate
2 without going through the formal steps of obtaining a
3 warrant.

4 Q. Okay. And was that directive that came out of in
5 the form of a memo and a briefing that you recall?

6 A. I don't remember how it came out. I just
7 remember that being a general instruction.

8 Q. Okay. And what -- was there a practice -- what
9 was that in response -- was there a practice of people
10 calling up and talking to the magistrate
11 independently?

12 A. I can't -- I can say that I have done that. I
13 have called before. I don't know what everybody else
14 has done. I can just answer as to what I've done. I
15 know prior to that it was not uncommon for me to call
16 a magistrate and present the facts as I knew them.

17 Q. Right. And I understand that, and I've practiced
18 for thirty years, and things are changing throughout
19 the state on a regular basis. So, that's why I was
20 just asking here. There was a suggestion that the
21 magistrate is somebody separate -- there was a
22 suggestion that the magistrate is somebody separate
23 and apart from law enforcement, correct?

24 A. That's correct.

25 Q. And he's not supposed to be for or against law

1 enforcement, correct?

2 A. That's correct.

3 Q. All right. And your job as law enforcement is to
4 present him with the facts and the charge that you
5 want and then you make that decision and you present
6 it to him, correct?

7 A. We present the factors of the case as we know
8 them, and he decides whether there is probable cause
9 to issue a warrant at that point.

10 Q. Does he have to pick whatever charge -- whatever
11 the charge is, or do you all actually submit what you
12 want? Do you request what you want?

13 A. We have a warrant request form that we use or we
14 may just tell him what the charges that we're looking
15 at, what we consider the offense to be, and present
16 the factors as we know them and see if it meets
17 probable cause for that charge.

18 Q. Okay. And if you don't ask for a warrant against
19 somebody, I mean, you're the one who's at issue,
20 correct?

21 A. What do you mean?

22 Q. I mean, if you don't supply like a warrant
23 against -- like -- Well, let me be specific. In this
24 instance Mr. Faile wasn't charged with anything.

25 Okay? That would have been certainly the prerogative

1 of Deputy Gwinn as the original responding officer,
2 correct?

3 A. That's correct.

4 Q. And it's up to him to make a request for a
5 warrant, correct? I mean the judge just doesn't
6 decide to issue warrants, does he?

7 A. No, sir.

8 Q. And my point is that its law enforcement that
9 makes the charge against the individual. It's law
10 enforcement that prosecutes the charge against the
11 individual, correct?

12 A. Could you maybe rephrase?

13 Q. Well, I'm saying -- I'm sorry. I'm not trying to
14 be confusing. If you write a ticket, it's you who are
15 making the charge against the individual, correct, as
16 a law enforcement officer?

17 A. Well, it's the State, and I'm representing the
18 State.

19 Q. Right. That's what I meant. I mean, it's not --
20 if you swear out a warrant that you as a
21 representative of the State are alleging somebody else
22 has committed a crime?

23 A. That's correct.

24 Q. And the judge either approves or disapproves your
25 decision to charge that individual?

1 A. That's correct.

2 Q. Okay. We briefly talked about the *Castle*
3 *Doctrine*. Were you aware of that doctrine when this
4 occurred, when this event occurred?

5 A. Yes, sir.

6 Q. Okay. Had you received any training on that in
7 the Sheriff's Department regarding the *Castle*
8 *Doctrine*?

9 Well, let me ask you this. Did you understand it was
10 a doctrine that was actually existed, a common law in
11 South Carolina?

12 A. I wasn't aware that it was a common law.

13 Q. Okay. But you realize they made a specific
14 statute for a specific purpose, with a specific
15 purpose?

16 A. At that time, I did not know that it was a
17 specific statute. I had been reading on my own where
18 I gained understanding of the *Castle Doctrine*.

19 Q. Okay. I got you.

20 MR. MILLS: Those are the only questions I
21 have. Thank you very much. I appreciate your time.

22 THE COURT: Is that it? All right. You can step
23 down.

24 MR. POSTIC: Thank you.

25 (MR. POSTIC LEAVES WITNESS STAND.)

1 MR. MILLS: That's it, your Honor.

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

3 MR. MILLS: Your Honor, at this time, we'd like to
4 play a part of Deputy Reed's video. I've tried as opposed
5 -- tried to cut out those parts that are non-repetitive to
6 what we heard yesterday.

7 THE COURT: All right.

8 MR. MILLS: And so, I believe -- if I -- and if I may,
9 your Honor, if it's permissible, I'd just like to orient
10 the jury about where we are --

11 THE COURT: You may.

12 MR. MILLS: --- so it's jut not dropping out of the
13 sky.

14 MR. GARFIELD: May we approach just very briefly, your
15 Honor?

16 THE COURT: Yes.

17 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
18 THE JURY AT 12:13 PM.)

19 THE COURT: All right. Let's take a short five-minute
20 refresher break before we do this.

21 (JURY EXITS COURTROOM AT 12:14 PM.)

22 (COURT IN RECESS AT 12:14 PM.)

23 (COURT BACK IN SESSION AT 12:30 PM.)

24 THE COURT: Thank you. You may take your seats.

25 MR. GARFIELD: Thank you, your Honor, appreciate it.

1 MR. MILLS: Judge?

2 THE COURT: Yes, sir.

3 MR. MILLS: Just, with your permission, I just -- I
4 think I already cleared this up. Just -- I don't want to
5 interrupt his testimony this being the setting. This is
6 Deputy Reed coming to the scene. And then when I skip a
7 spot I'm just going to tell them where we are next, if
8 that's all right.

9 THE COURT: Unless somebody objects.

10 All right. We'll do it that way.

11 MR. MILLS: I expect this will be about thirty to
12 thirty-five minutes.

13 THE COURT: That'll be fine, because then it'll be
14 time to break for lunch since we started at eleven.

15 MR. MILLS: All right.

16 MR. POSTIC: Thank you, your Honor.

17 THE COURT: Bring 'em in.

18 (JURY REENTERS COURTROOM AT 12:31 PM.)

19 THE COURT: You may proceed.

20 MR. MILLS: Yes, your Honor. At this time we would
21 play portions of Deputy Reed's video. I'm going to try and
22 just do portions of it so not to duplicate what we heard
23 yesterday.

24 THE COURT: All right.

25 MR. MILLS: We expect this to be about thirty-five

1 minutes. Ms. Straight, thank you.

2 I'm sorry, your Honor. Your Honor, I apologize but
3 the sound is not -- Your Honor, if you'll give me a moment
4 please, I apologize to both the jury and the Court.

5 THE COURT: All right. Let's turn the lights back on
6 until we see what we're doing. This is the kind of thing
7 that if I were home I'd let my four-year-old granddaughter
8 figure it out. I couldn't.

9 MR. POETIC: Let me check with IT real quickly, your
10 Honor.

11 MR. MILLS: This is Deputy Reed.

12 (OFFICER DEPUTY REED IN-CAR VIDEO PUBLISHED AT 12:32
13 PM.)

14 MR. MILLS: Your Honor, I'm going to stop the video at
15 this point because Officer Reed goes and talks to Officer
16 Wright, which we have -- which we listened to yesterday.
17 I'm gonna move it, I'm stopping it at 22:45, I believe.
18 And I am just going to start it back up at 22:53.

19 (DEPUTY REED'S IN-CAR VIDEO CONTINUES TO BE PUBLISHED
20 TO THE JURY.)

21 MR. MILLS: Your Honor, and just as a caution, tell
22 the jury there's going to be some really strong language
23 being used in here. Just preparing you, your Honor.

24 THE COURT: All right.

25 (DEPUTY REED'S IN-CAR VIDEO CONTINUES TO BE PUBLISHED

1 TO THE JURY.)

2 MR. MILLS: Your Honor, Mr. Garfield has asked me to
3 set it for the jury. This is an in-car video. If you
4 remember the deposition said there's two microphones going
5 on. This is being said while he's in the car.

6 MR. POSTIC: Not to the officer?

7 MR. MILLS: Not to the officer directly.

8 MR. POSTIC: Blackwelder.

9 MR. MILLS: Your Honor, I'll skip ahead three minutes.
10 It's just silence here.

11 THE COURT: All right.

12 MR. MILLS: So we won't have to sit through it.

13 (OFFICER REED'S IN-CAR VIDEO CONTINUES TO BE PUBLISHED
14 TO THE JURY.)

15 (OFFICER REED'S IN-CAR VIDEO ENDS AT 01:05 PM.)

16 MR. MILLS: Your Honor, we'll stop at this point. At
17 this point, it's just overhearing conversation we heard
18 last evening.

19 THE COURT: That's fine. Okay.

20 MR. MILLS: And if that's enough for -- that's all we
21 have until after break.

22 THE COURT: All right. Members of the jury panel,
23 we'll break for lunch. It's a few minutes after one; we'll
24 break 'till two thirty. Have a pleasant lunch, and we'll
25 see you back at two thirty.

1 MR. MILLS: We call Jay Phillips to the stand.

2 THE COURT: Okay. Please come up and be sworn.

3 (WHEREUPON, JAY PHILLIPS,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MADAM COURT REPORTER: Mr. Phillips, the mic doesn't
6 move and the chair doesn't move. Sorry.

7 JAY PHILLIPS: That is okay.

8 DIRECT EXAMINATION - PROFFERED TESTIMONY

9 JAY PHILLIPS BY MR. MILLS:

10 Q. Mr. Phillips, where are you currently employed?

11 A. I'm employed by myself as a private investigator.

12 Q. Okay. What is your history in law enforcement?

13 A. I started as a dispatcher with the Lexington County
14 Sheriff's Department in 1985. I was promoted to patrol
15 deputy, then to investigator. Promoted to sergeant in
16 investigations. Lieutenant, which I served as the deputy
17 commander over headquarters region, and oversaw all of the
18 major crimes, narcotics and crime scene investigations for
19 Lexington County.

20 Q. All right. And when did you retire from that
21 position?

22 A. In 2005.

23 Q. Okay. The last state -- how long had you been in
24 investigations before 2005?

25 A. Since 1991.

1 Q. Okay. So, some fifteen years?

2 A. Yes.

3 Q. Including the head of investigations for Lexington
4 County?

5 A. Deputy II.

6 Q. Deputy II, excuse me.

7 A. I was number two, not number one.

8 Q. All right. In that capacity, have you -- Well, do you
9 have -- taken any education or training in investigations?

10 A. Yes.

11 Q. Please tell the Court that -

12 A. Of course I was certified by the Criminal Justice
13 Academy in South Carolina. I have been to the academies,
14 criminal investigation school, narcotics school,
15 fingerprint classification school, photography school, and
16 crime scene. I've also had training outside of the
17 department and the academy in homicide investigations,
18 kinesic interviews, child abuse, child pornography, and
19 various other interview schools.

20 Q. Do you have any idea about how many investigations
21 you've conducted?

22 A. I actually asked Steve Mason to look it up for me and
23 I was personally assigned over four thousand during my
24 time. And then that doesn't include once I became a
25 supervisor and had investigators under me in a number of

1 cases I was involved in.

2 Q. All right. Did those investigations include being a
3 first responder to the scene?

4 A. Yes.

5 Q. Did they include followup investigations?

6 A. Yes.

7 Q. In your experience and in your time as a investigator,
8 did you investigate home invasions?

9 A. Yes.

10 Q. All right. Did you investigate assault and battery of
11 a high and aggravated nature?

12 A. Yes.

13 Q. Did you investigate burglaries?

14 A. Yes, sir.

15 Q. Did you investigate cases where someone was claiming
16 self-defense?

17 A. Yes, sir.

18 Q. Okay. And in those cases that investigated that
19 involved self-defense, did all those cases, did they all
20 lead to an arrest?

21 A. No.

22 Q. All right. Did you make some decisions at your -- at
23 the investigating level about whether there's probable
24 cause to go forward with an investigation or not?

25 A. Yes.

1 Q. All right. Is that something that is normally done by
2 an investigator and a detective in that position?

3 A. Yes, sir.

4 Q. All right.

5 MR. MILLS: Your Honor, we would offer Mr. Phillips as
6 an expert in investigations.

7 MR. GARFIELD: This is a -- this is a proffer, your
8 Honor.

9 THE COURT: Yeah, I know.

10 MR. MILLS: I'm sorry. It's for purposes of -

11 THE COURT: Okay.

12 MR. GARFIELD: Mr. Garfield, feel free.

13 THE COURT: You want to ask him any voir dire?

14 MR. GARFIELD: Well, I'd like for him to -- as far as
15 his qualifications as an expert, no, your Honor. But as
16 far as his ultimate opinions and --

17 THE COURT: Okay. I knew that, yeah.

18 MR. GARFIELD: Yes, sir. Thank you.

19 THE COURT: All right. You may proceed.

20 MR. MILLS: So, so, we're good on that.

21 Q. Now, Mr. Phillips, did I hire you in this case?

22 A. Yes, sir.

23 Q. And have I paid you money to serve as an expert in
24 this case?

25 A. Yes, sir.

1 Q. All right. When I hired you what did I ask you to do?

2 A. You asked me if I would review the file and give you
3 my opinion on the investigation and the probable cause in
4 this incident.

5 Q. Did I suggest to you what I wanted your outcome to be
6 or what I wanted you to find?

7 A. No, sir.

8 Q. All right. What did you actually look at when you
9 looked at this file?

10 A. I was provided the incident report, copies of the
11 audio from the police officers at the scene, statements
12 that was taken at the scene, as well as depositions that
13 were taken later.

14 Q. Okay. Were you shown photographs?

15 A. Yes. I have also had access to photographs.

16 Q. And the Solicitor's file, including a warrant?

17 A. Yes.

18 Q. Incident report?

19 A. That's correct.

20 Q. Have you also had an opportunity to review some
21 policies of the York County Sheriff's Department?

22 A. Yes.

23 Q. All right. Have you reviewed the criminal records of
24 both Mr. Faile and Mr. Carter?

25 A. Yes.

1 Q. Okay. Now, in this instance, I'd first like to draw
2 your attention to what happened out at the scene there.
3 You reviewed the officers' prelim -- response to the scene.
4 How would you describe their response or characterize their
5 response to the scene?

6 A. The initial response, their first priority was to get
7 medical assistance for someone on the scene that was
8 injured.

9 Q. Okay.

10 A. Which is appropriate and exactly what we are trained
11 to do.

12 Q. All right.

13 A. Then they separated the witnesses, interviewed the
14 witnesses which is, again, appropriate, and what you're
15 trained to do in a initial investigation.

16 Q. Okay. Was there anything you saw in reviewing the
17 tapes that the police did wrong or say anything that was
18 improper?

19 A. One officer kept telling Mr. Carter that he had a duty
20 to retreat from his home and that he couldn't defend his
21 home or himself, or his family, and that's not correct.

22 Q. Okay. What -- why is it not correct?

23 A. *Castle Doctrine* and the statute. South Carolina gives
24 us that stuff already. That right to be secure. The
25 *Constitution of the United States* allows -- it guarantees

1 our security in our own home from the government. You know
2 it's going to be -- you got to be secured from your next-
3 door neighbor.

4 Q. All right. Now, I'm going to hand you what's been
5 marked as -- well, this one hasn't been marked.

6 MR. MILLS: Excuse me, your Honor.

7 Just --- It's been marked as Plaintiff's Exhibit Ten.

8 Q. And I ask you if you recognize that, sir.

9 A. Yes, sir.

10 Q. What is that?

11 A. It's a copy of the policy for the York County
12 Sheriff's Department involving criminal investigations.

13 Q. All right. Have you had a chance to review that
14 policy?

15 A. I did.

16 Q. Does that look similar to other policies you've seen?

17 A. Yes.

18 Q. And does it conform with your general understanding of
19 proper investigative procedures?

20 A. Yes.

21 Q. All right. There's a little thing, C-a-l-e-a. Do you
22 know what that is?

23 A. CALEA. That's the accreditation agency that provides
24 accreditation for law enforcement agencies.

25 Q. So, they have to have these policies and these

1 procedures to ensure they're working properly to get
2 accredited by this organization?

3 A. That's correct.

4 Q. All right. Now, does it give any direction on
5 preliminary investigations?

6 A. Yes, it does.

7 Q. All right. And I think you just testified, from your
8 perspective, the officers did an adequate preliminary
9 investigation?

10 A. Yes.

11 Q. All right. The next section, what does it say?

12 A. The section following that would be *Followup*
13 *Investigations*.

14 Q. Well, let me ask you this. If after the result -- if
15 after the officers have said in this case, on tape, that
16 they're not sure really what happened. They were just
17 going to take the evidence and give it to the judge. Is
18 that appropriate?

19 A. No.

20 Q. Why not?

21 A. In a case like this you have serious crimes that are
22 being alleged. There's -- there's evidence in the
23 preliminary investigation of potentially numerous, very
24 serious crimes. My experience, that's the type situation
25 that would warrant a followup investigation, and a better-

1 trained investigator, someone with more training and
2 experience, to come in and -- and complete the
3 investigation.

4 Q. Okay. And does the policy that York County have
5 follow that same type of suggestion?

6 A. Yes.

7 Q. Now, what would you do to follow up to try and resolve
8 this undecided, or plausit, so to speak?

9 A. Well, you've got statements from two of the witnesses.

10 Q. Okay.

11 A. You would need a statement from the third witness, Mr.
12 Faile. There was no statement in the pack from him. He
13 would need to be interviewed and get a statement from him.

14 Q. All right. Well, let --

15 A. You needed to get background.

16 Q. Let me stop you there for a moment there if I may. In
17 this case the deputies testified that they went and they
18 did talk to Mr. Faile.

19 A. Yes.

20 Q. Should they have done something more?

21 A. You always want to get a written statement. That
22 documents what they were told and locks an individual in to
23 that information. When it's fresh in your mind you're
24 going to have the best memory of it. There are certain
25 things that you may think about later, but your best memory

1 of the incident is going to be when it's fresh in your
2 mind. You don't have time -- for other people -- it's the
3 reason we separate witnesses. We don't want 'em comparing
4 notes because everybody sees something different.

5 Q. Okay. On page two that we're on, right -- Number
6 3(d), what is that? What does their policy direct the
7 officers to do in those situation?

8 A. Plan, organize, conduct searches --

9 Q. Excuse me. I'm sorry, Number (d). 3(d).

10 A. 3(d). Okay. You're above -- Okay. You hadn't got to
11 followup investigation, yeah.

12 Q. Right.

13 A. "Interview the complainant, victims, witnesses, and/or
14 suspects to determine what information is known and obtain
15 written statements from each for later review."

16 Q. So, they did it properly by getting the written
17 statements from the Carters.

18 A. Correct.

19 Q. But they did not get a statement --

20 A. If -- if they did --

21 Q. Why is it important --

22 A. --- it was not provided.

23 Q. Why is it important to get a written statement?

24 A. Again, it locks them into what they're saying. It
25 documents what you were told. It gets you out of the --

1 well, this is what I remember he said. It's not a matter
2 of what I remembered he said; here it is in writing. I've
3 got it on paper what he said happened.

4 Q. Okay. Is there anything else useful when they put
5 something on paper that could be used later on in your
6 investigation?

7 A. You would use it if you got to the point that you'd
8 present to a magistrate for an affidavit for a warrant.

9 Q. All right. And would you use -- Do you compare them
10 with anything later on in the investigation?

11 A. Well, that's compared to the statements of the other
12 witnesses and the physical evidence and any other
13 supportive statements that you can find.

14 Q. All right. Sometimes you need to do followup
15 interviews.

16 A. Yes.

17 Q. And why would you do those?

18 A. As you investigate a case, you look at the physical
19 evidence, and it tells you one thing when the statement
20 says something else. So, you would need to go back to that
21 individual and re-interview them to try and find out where
22 the difference in the two comes from.

23 Q. Now, how about looking into the people involved
24 because here you're trying to determine the credibility of
25 the individuals and which story to believe; is that

1 correct?

2 A. Correct.

3 Q. All right. In your experience as a law enforcement
4 officer, do you look into the backgrounds of these
5 individuals?

6 A. Yes. You would pull criminal histories. Usually do a
7 in-house computer search to see what type of calls to
8 service and what type of incident reports were filed under
9 this person's name to get an idea what their background is,
10 and what -- what type person that they are.

11 Q. All right. Now, did you look at Mr. Carter's criminal
12 record?

13 A. Yes.

14 Q. What kind of criminal record did he have?

15 A. Nothing in the last ten years. He had a marijuana
16 charge in -- I think it was a manufacturing marijuana
17 charge and a trafficking cocaine charge, both over ten
18 years old.

19 Q. All right. Does that tell you anything as an
20 investigator?

21 A. In an incident like this there were no assault charges
22 there, so, there's nothing to show that he's an aggressive
23 -- has a history of being aggressive. And the other is if
24 he hadn't had any criminal charges in ten years maybe our
25 rehabilitation does work sometimes. I never really thought

1 it did but it might.

2 Q. All right. Let me hand you this, which is -- Do you
3 recognize what that is?

4 A. Yes. That's a criminal history that the State Law
5 Enforcement Division provides.

6 Q. And who is that of?

7 A. This is on Michael Faile.

8 Q. And that was the individual who was involved with the
9 altercation with Mr. Carter?

10 A. Yes, sir.

11 Q. And what do you see in his criminal history?

12 A. A consistent history of violent behavior and assaults.

13 Q. All right. Tell me what you see.

14 A. Started back in 1991 charged for strong-armed robbery,
15 burglary. '92, assault and battery.

16 Q. Let me stop you right there. There's no conviction
17 for that charge. Is that relevant to you at all?

18 A. No, sir.

19 Q. Why?

20 A. Just because there wasn't a conviction doesn't mean
21 something didn't happen. A lot of things can happen.
22 People can decide they don't want to prosecute, they don't
23 want to press charges. A lot of these happen in the
24 criminal world -- in the criminal procedure that if he had
25 evidence or if he had witness to a crime that was more

1 serious than his. It is not uncommon for deals to be made
2 to not process certain charges if he would be willing to
3 testify against somebody else. Let's say -- you don't --
4 just because he wasn't convicted you can't hold it against
5 him, but it still tells you when it's consistent with the
6 convictions that he's got a long history of violent
7 behavior.

8 Q. All right. What else do you see?

9 A. '93, got unlawful weapons charge. '94, parole. 2000,
10 disorderly conduct. 2000, damaging/tampering with a
11 vehicle. 2002, breach of trust. 2002, another unlawful
12 carry of a weapon charge. Criminal domestic violence in
13 2004. 2006, another criminal domestic violence. 2007,
14 assaulting a police officer while resisting arrest. That's
15 always a big red flag to someone's aggressive behavior.

16 Q. Okay.

17 A. 2007, simple assault. 2008, a second assaulting a
18 police officer resisting arrest, assault and battery second
19 degree. 2013, DUI and shoplifting.

20 Q. All right. Comparing those -- what do those two --
21 Comparing those two criminal records, what does that tell
22 you as to the relationship with this case in a followup
23 investigation?

24 A. Mr. Failes is an individual that has constantly been
25 in trouble with the law. He has a problem with authority

1 and he's very aggressive. The appearance for Mr. Carter is
2 that he got -- he learned his lesson and he had been trying
3 to do better for the last -- for over the last -- for over
4 ten years.

5 Q. Or else he hadn't just got caught.

6 A. Or he didn't get caught.

7 Q. All right.

8 A. Which is unlikely.

9 Q. All right. Now, you talked about comparing the
10 various witnesses' statements and getting written and
11 looking into the backgrounds of those individuals. Is
12 there anything else you use to judge -- try to figure out
13 what happened?

14 A. Well, you compare the physical evidence to the
15 statements of the account of the -- of what happened.

16 Q. Okay. Well, in this case, let's -- the 911 tape, did
17 that have any relevance?

18 A. Yes. The 911 tape has significant relevance because
19 it contains what's considered an excited utterance. It's a
20 conversation between Mrs. Carter and the dispatcher. She's
21 telling them that they need to get somebody out there, that
22 this man's in the yard and he won't leave and he's refusing
23 to leave which corroborates Mr. Carter's statement. But
24 then she just blurts out, he just hit my man. He just
25 shoved him. Now, they're fighting in the yard. That also

1 corroborates Mr. Carter's statement, and it is inconsistent
2 with Mr. Failes sequence of events.

3 Q. Would it make any difference if Mrs. Carter said, he
4 just got physical with my man instead of, he just hit my
5 man.

6 A. Same thing.

7 Q. All right.

8 A. It -- it indicates that Mr. Failes initiated the
9 physical aggressive behavior.

10 Q. All right.

11 A. And it -- and that corroborates what Mr. Carter said
12 happened.

13 Q. All right. Do you have an understanding of how Mr.
14 Carter described the physical fight he had with Mr. Faile?

15 A. Yes.

16 Q. All right. What's your understanding of that
17 confrontation?

18 A. That Mr. Carter opened the door; asked Mr. Faile to
19 leave the property. As he reached out to pull the screen
20 door closed that Mr. Faile was holding open, Mr. Faile
21 struck him upside the head. At that time the two started
22 tussling. Mr. Carter did have a baseball bat for
23 protection in his home and he used that to fend off Mr.
24 Faile and continued striking Mr. Faile until Mr. Faile
25 said, okay, I'm done, I quit, and he just -- Now once the

1 aggression stopped from Mr. Faile, Mr. Carter stopped
2 defending himself.

3 Q. All right.

4 A. According to the statement of Mr. Carter.

5 Q. All right. Now, in your experience in law
6 enforcement, you've had to use force as a police officer in
7 the past, haven't you?

8 A. Yes.

9 Q. And have you dealt -- Do you know if I say the word
10 use of force continuum, do you know what that means?

11 A. Yes. That's something that we're taught at Criminal
12 Justice Academy. It's a triangle, a pyramid, and teaches
13 you that you increase your level of force directly
14 proportionate to how much the resisting person escalates
15 their force.

16 Q. So, you might first start with, let's say, soft voice
17 control, correct?

18 A. Correct. Then heavy voice control. Then, soft hand
19 tactics. Then, intermediate weapons.

20 Q. But it could escalate -

21 A. It could escalate all the way up to and including the
22 use of deadly force.

23 Q. And it can go from soft to deadly force in an instance
24 sometimes.

25 A. Correct. You don't have to -- you don't have to hit

1 all of them. Depending on their level of aggression as to
2 where, you know, we're trained, your level should be one
3 above theirs.

4 Q. And how long can you keep applying force?

5 A. Until they stop fighting.

6 Q. You don't have to say, okay, I think I've done enough,
7 maybe if they're just -- they're just kind of fighting now.
8 They're just kicking me, instead.

9 A. No. Once they stop, then you stop.

10 Q. All right. Now --

11 A. If you stop before then, you probably get hurt.

12 Q. Okay. And if you -- Let's say you're an officer and
13 you're in a hand-to-hand struggle and they have a weapon,
14 is there any danger to you?

15 A. Yes. They could get your weapon.

16 Q. So, if you -- Even if one person has a weapon doesn't
17 automatically mean they've got an automatic advantage if
18 you're in a fist -- hand fight, is it?

19 A. No.

20 Q. All right.

21 MR. MILLS: Sorry for the leading question, your
22 Honor.

23 Q. Did you had an opportunity to look at the physical
24 evidence in this case? And I'm specifically referring to
25 the pictures of Mr. Faile and his injuries.

1 A. Yes.

2 Q. All right. I asked you if you knew the Carters' story
3 of what happened. Do you know what Mr. Faile's story is of
4 what happened?

5 A. My understanding Mr. Faile said that he was walking
6 away from Mr. Carter and Mr. Carter struck him from behind
7 with the bat and continued to hit him.

8 Q. Okay. And did he admit -- did he admit that he did
9 anything to provoke it?

10 A. No. He denied anything to provoke the whole
11 altercation at all.

12 Q. All right. Was there any evidence that he hit Mr.
13 Carter first?

14 A. Physical evidence was there was an injury documented
15 to Mr. Carter's head that would be consistent with being
16 punched. And you also have the 911 tape of Mrs. Carter
17 making the excited utterance that her man had just been
18 assaulted.

19 Q. Okay. Now, looking at those injuries of Mr. Faile,
20 are they cons -- are they more consistent? Whose story is
21 more consistent?

22 A. Mr. Carter's.

23 Q. Why do you say that?

24 A. Well, Mr. Carter does not deny he hit him with the
25 bat. He says he hit him in the legs, that Mr. Faile was

1 kicking at him trying to, you know, continue fighting with
2 him once he -- they were on the ground. But that once Mr.
3 Faile quit fighting he stopped hitting him. Even though
4 Mr. Faile had a lot of injuries, the one to the head was
5 somewhat serious, but the rest of them were just minor
6 bruises and scrapes. There were no serious injuries. It
7 did not appear that he was being struck with a full swing
8 like you were trying to, you know, knock a home run.

9 Q. All right. Did they appear consistent with Mr.
10 Faile's story?

11 A. No.

12 Q. Why not?

13 A. Mr. Faile says he was walking away and struck in the
14 back of the head and hit the ground and would continue --
15 there were no other injuries to his back. I mean, if he's
16 going away from him he's going to have more injuries to his
17 back. How does he get all the injuries on his hands and
18 his feet and his torso if he's not engaged in an
19 altercation?

20 Q. Now, are you familiar with the process of applying for
21 warrants -

22 A. Yes.

23 Q. --- in South Carolina? What -- When you've got an
24 investigation like this, and you make a decision to get a
25 warrant, how does one go about it?

1 A. Contact the magistrate to make an appointment to go
2 see him. You take your warrant application.

3 Q. All right. I'm going to hand you this. Have you ever
4 seen anything like that, sir?

5 A. Yes.

6 Q. What is it.

7 A. It's very similar to the ones we -- we use in
8 Lexington County.

9 Q. And what is it?

10 A. It's a warrant request that has all the basic
11 information for the defendant.

12 Q. Okay.

13 A. What crime you're alleging he committed, and the
14 affidavit.

15 Q. Okay.

16 A. These are commonly filled out and sent to the
17 magistrate prior to the meeting -

18 Q. Okay.

19 A. --- so that he can review it. But then the officer
20 goes to the magistrate and presents all the evidence under
21 oath and swears to the warrant to obtain it.

22 Q. Well, is the oath just like a technicality?

23 A. No. That's -- that's not a technicality. That's
24 something that has to be done.

25 Q. Is it required by law?

1 A. Yes.

2 Q. All right. Can you base a warrant off non-sworn
3 testimony?

4 A. No.

5 Q. Okay. If there is no unsworn testimony, what
6 determines what's in the probable cause for the warrant?

7 A. What's on the face of the warrant. A warrant that
8 does not have probable cause on its face is not -- is not
9 good and cannot be served.

10 Q. That is not a facially valid warrant?

11 A. That's correct.

12 Q. All right. Have you looked at the warrant in this
13 case?

14 A. I did.

15 Q. All right. Do you believe that is a facially valid
16 warrant? Well, let me get it for you.

17 A. Yeah.

18 MR. MILLS: I apologize. Oh, yeah. We've got a piece
19 of evidence don't we?

20 Here we go.

21 Q. Now, what is the warrant supposed to have as far as
22 probable cause goes?

23 A. It needs to state certain facts that lead to the
24 probable cause for the crime.

25 Q. All right. Are you supposed to just make a

1 conclusion?

2 A. No.

3 Q. Would you read that warrant, please?

4 A. Yes, I've read it. There's -- It states that the
5 probable cause is based on the investigation but does not
6 state any probable cause on the face of the warrant.

7 Q. All right. So, if that information had been given
8 under oath that would be okay.

9 THE COURT: You know, I hate to interject myself but
10 you need to be a little more clear why that warrant doesn't
11 -- I mean, -- Maybe I'm going where I shouldn't, but just
12 I'm looking at the warrant, and it mirrors Section 16-03-
13 600(b) that he's charged with. So, I ---

14 MR. MILLS: It just said --

15 THE COURT: --- I'm having a little trouble
16 understanding why that's conclusory. It says --

17 MR. MILLS: Because it just says it happened, it
18 doesn't say what happened and what facts support it, your
19 Honor.

20 THE COURT: Okay. Go ahead.

21 BY MR. MILLS:

22 Q. Is there any facts on there that says who told him
23 what, and why they believe it?

24 A. No, sir. There's nothing that relates to physical
25 evidence or witness statements or anything of that nature.

1 Q. Well, let me ask you this question. If somebody's
2 shot, is it automatically murder?

3 A. No.

4 Q. If somebody's beaten up with a bat is it automatically
5 assault and battery of a high and aggravated nature?

6 A. No.

7 Q. What's the key factor?

8 A. Intent. You have to -- you know the person has to
9 intend to inflict bodily harm or kill someone.

10 Q. And is legal justification an issue? From let's say
11 if I shoot you. If you came into my house and attacked me
12 in my living room and I shot you, okay?

13 A. Okay.

14 Q. The mere fact that I shot you have I committed murder?

15 A. No.

16 Q. Okay. But if I pen a warrant that said on such-and-
17 such a date with malice aforethought Chris Mills shot Jay
18 Phillips that would be all the elements of murder with
19 malice aforethought.

20 A. Correct. That's all the elements, but there's no
21 probable cause there.

22 Q. Why not?

23 A. Because you didn't give -- you didn't put any down.
24 All you did was state the elements.

25 Q. And you -

1 A. And you didn't state anything to support probable
2 cause.

3 Q. In this case, -- Have you also had an opportunity to
4 look at the Lexington County -- excuse me, the York County
5 policy on obtaining warrants?

6 A. Yes.

7 Q. And I'm going to hand this to you. And I draw your
8 attention to the bottom of that thing which, Number 8,
9 Arrest With Or Without Warrants. Do you see that?

10 A. Yes, sir.

11 Q. All right. And I'd ask you to turn the page. Now,
12 let me just ask you this. Could you just read that first
13 section, there on the first page at the bottom?

14 A. "The constitutional validity of every arrest whether
15 it is made with or without a warrant depends on the
16 existence of probable cause at the moment the arrest is
17 made. Probable cause must exist at the time the deputy
18 makes the arrest. It is not constitutionally permitted for
19 the deputy to make an arrest and then investigate further
20 hoping to establish probable cause."

21 Q. And read on, please.

22 A. "The inclusion of other evidence favorable to the
23 accused must be considered before the arrest is made. If
24 the inclusion of this additional evidence reduces the level
25 to below probable cause no arrest will be made. This also

1 applies if after an arrest warrant is issued additional
2 information develops to reduce the level below probable
3 cause."

4 Q. Is that what we're talking about in this case?

5 A. Yes, sir.

6 Q. All right. So they should factor in those things that
7 are favorable to Mr. Carter, correct?

8 A. Right.

9 Q. And having done a review of the forensic evidence,
10 listen -- watching the tapes, listening to the 911, where
11 does the forensic evidence point?

12 A. It all supports Mr. Carter's statement about what
13 happened that night.

14 Q. All right. Well, but Mr. -- what about Mr. -- You
15 just disregard Mr. Faile?

16 A. You don't disregard him but unfortunately the evidence
17 does not support his recollection of the events.

18 Q. All right. What do -- does anything -- We had this
19 event and when you apply for a warrant does the judge
20 decide what to charge somebody?

21 A. No, sir. You -- That's on the warrant application.
22 You put the charges you're asking for when you go in there.

23 Q. Does the -

24 A. The officer decides what the charges should be and
25 makes a determination of probable cause. The judge just

1 confirms it, or denies it.

2 Q. All right. Well, if -- let's say -

3 THE COURT: Is he saying the judge doesn't make a
4 finding of probable cause?

5 MR. MILLS: No. I'm saying the judge decides what
6 charge you're going to be charging the person.

7 THE COURT: Well, I know. But the warrant's got to
8 be based on probable cause. Is he telling me that --
9 testifying that the judge doesn't determine probable
10 cause? I'm lost.

11 MR. MILLS: No. He just said the judge doesn't
12 determine what you charge. You bring it to the judge, he
13 determines if there's probable cause or not to issue the
14 warrant.

15 THE COURT: Well, okay. Then, we are saying the same
16 thing. The judge decides probable cause.

17 MR. MILLS: Yes.

18 THE COURT: Okay.

19 MR. MILLS: Well, I was asking --

20 THE COURT: That's what I thought.

21 MR. MILLS: No. I was asking who decides what to
22 charge. The judge doesn't decide that.

23 THE COURT: The judge decides whether there's probable
24 cause to issue a warrant.

25 MR. MILLS: Yes, sir. I agree. No, Judge, no question

1 about that.

2 Q. Looking at this policy to the next level it talks
3 about magistrates. See where it says, Magistrate Shall
4 Issue Warrants?

5 A. Yes.

6 Q. And what does it say there in the first paragraph?

7 A. "This may occur as a result of sworn testimony" --

8 Q. I'm sorry. Under Arrest Warrants, Section B.

9 A. Okay. Where it says "magistrate generally ---

10 Q. Yes, sir.

11 A. -- issue criminal warrants"?

12 Q. Yes, sir.

13 A. "This may occur as a result of sworn testimony given
14 to them by affidavit of a law enforcement officer or
15 citizen who states that a violation of South Carolina law
16 had been committed."

17 Q. So, York County deputies would advise that they have
18 to give sworn testimony to the magistrate, and they should
19 include in that sworn testimony all things that are
20 favorable to the accused in determining it, correct?

21 A. Correct. They should include all information from the
22 investigation.

23 Q. All right. Do you see any of the information about
24 Mr. Carter being in his home, about being hit first, in the
25 face of that warrant?

1 A. No, sir.

2 Q. All right. Does it only give one side of the story?

3 A. Yes, sir.

4 Q. Okay. I'd like now to address the issue of probable
5 cause to arrest. You said earlier that there were several
6 major crimes committed. There could be potentially several
7 crimes committed?

8 A. Yes.

9 Q. All right. What other crimes in that assault and
10 battery of a high and aggravated nature did you see?

11 A. Burglary, trespassing and assault and battery.

12 Q. By Mr. Carter?

13 A. No. By Mr. Failes.

14 Q. All right. Well, what kind of evidence would support
15 those charges?

16 A. Mr. Failes was under the -- inside the curtilage of
17 home. He was on the front porch. He was holding the front
18 door open.

19 Q. Let me -- let me stop you there for a moment. The
20 front porch. Is that part of somebody's house?

21 A. Yes.

22 Q. Under the burglary statute?

23 A. Correct.

24 Q. Under the defense of habitat, defense of your home and
25 family?

1 A. Yes.

2 Q. All right. So, if somebody's on your porch, they're
3 in your house?

4 A. Correct.

5 Q. Right? And you don't have to go through the door,
6 right?

7 A. No.

8 Q. All right. Go ahead.

9 A. Mr. Carter was assaulted. Burglary statutes says that
10 if you enter someone's home with the intent to commit a
11 crime, or that a crime is committed, you have violated the
12 crime of burglary.

13 Q. And by -

14 A. Mr. Failes was also in violation of trespassing after
15 notice. Mr. Carter, several times, told him to leave. He
16 refused to leave, so, that would be trespassing. So,
17 you've got two crimes being committed while the man is
18 uninvited, unwanted, came to his home, acting as an agent
19 for someone that was already on trespass notice to not be
20 there.

21 Q. All right. How about Mr. Carter? Do you think there
22 was probable cause to charge him with the crime of assault
23 and battery of a high and aggravated nature?

24 A. No, I do not.

25 Q. Why not?

1 A. Because his statement was corroborated by the physical
2 evidence, and he has every right to defend himself and his
3 home if someone comes in and does not -- will not leave.
4 He doesn't have to leave his home. He has every right to
5 defend himself. He says he was assaulted. The physical
6 evidence supported that he was assaulted. His wife was on
7 the phone with the dispatcher when it happened. She had an
8 excited utterance. All of this supports Mr. Carter's
9 statement.

10 MR. MILLS: Thank you. Please answer any questions
11 Mr. Garfield has.

12 CROSS-EXAMINATION - PROFFERED TESTIMONY

13 JAY PHILLIPS BY MR. GARFIELD:

14 Q. Good afternoon, Mr. Phillips.

15 A. Good afternoon.

16 Q. You were retained by Mr. Mills approximately when?

17 A. Probably four or five weeks ago. I don't remember the
18 exact date.

19 Q. And --

20 A. I can get it if you needed it, but.

21 Q. Yes, sir. I understand. And what was your retainer?

22 A. Fifteen hundred dollars.

23 Q. And what was your agreement as far you being paid
24 anything over and above the Fifteen hundred dollars?

25 A. The only thing over and above that fee was if I was

1 brought in for a deposition.

2 Q. Which you were not?

3 A. Which I was not.

4 Q. Okay. Did you -- did you charge by the hour for, for
5 instance, travel up here today and review of documents?

6 A. No, sir.

7 Q. You stated that you have reviewed some items before
8 providing your testimony today?

9 A. Yes.

10 Q. Okay. Let's go over those. What exactly have you
11 reviewed to form a basis of your opinions here today?

12 A. The incident report written at the -- written by the
13 officers; the statements taken by the -

14 Q. The officers? How many officers wrote incident
15 reports?

16 A. One officer wrote the incident report. More than one
17 was referenced in the report.

18 Q. Yes, sir. So, one incident report, more than one
19 officer.

20 A. One incident report. Statement of Mr. Carter.

21 Written statement of Ms. Carter. The pictures of the
22 injuries. The audio from the lapel mics of the officers on
23 the scene.

24 Q. Yes, sir.

25 A. The depositions of the officers and the magistrate.

1 The warrants that were written in the case.

2 Q. Warrant, or warrants?

3 A. Warrant. The case file summary which was pretty much
4 the same as the investigative report. Top of my head,
5 that's everything I can recall from the top of my head.

6 Q. Thank you. I'd like to go over some of the
7 criticisms, or some of the opinions, that you formulated in
8 this case. One opinion you have that I understand is that
9 the officer, one of the officers, you could hear on the
10 video was characterizing the law in a certain way. Such
11 as, for instance, that someone would not have a duty -- or
12 have a duty, rather, to retreat from their house and you
13 said that was incorrect.

14 A. You're saying that the officer --

15 Q. That he didn't -- that was a bad question. Did he
16 mis-characterize the *Castle Doctrine* on the scene?

17 A. Yes, that would be my opinion.

18 Q. And so he in mis-quoting statutory law. Is that your
19 opinion that the officer mis-quoted what the statute was?

20 A. Mis-quoted what the *Castle Doctrine* is.

21 Q. And the *Castle Doctrine* is formed on statutory law in
22 South Carolina. Are you familiar with the -- the
23 *Protection of Persons Act*?

24 A. I have never -

25 Q. Have you --

1 A. -- I have -- I have -- I am familiar with what it
2 stands for but I have never read the act, no.

3 Q. You've never read the statute yourself?

4 A. No.

5 Q. Have you ever appeared in General Sessions Court to
6 testify in a *Castle Doctrine* case, or where the person
7 testifies that they used some degree of force to protect
8 their family or their home?

9 A. No.

10 Q. Have you ever been a part of an evidentiary hearing
11 where there's testimony provided to the Court so the Court
12 can make a determination whether an immunity is
13 appropriate?

14 A. No.

15 Q. But your criticism is that the officer, in attempting
16 to describe this statute that you, yourself, have not read,
17 that you criticize him that he did what? That he mis-
18 characterized, mis-quoted it or he shouldn't have said it,
19 or?

20 A. He gave the -- Mr. Carter improper information. Mr.
21 Carter does not have a duty to leave his home. He doesn't
22 have a duty to retreat.

23 Q. Now, Mr. Mills asked you about a policy and procedure,
24 a guideline. I believe you have it in front of you.
25 That's a policy and procedure -- Those are guidelines

1 issued by a law enforcement agency, correct?

2 A. Correct.

3 Q. In this case it would be the York County Sheriff's
4 Office, right?

5 A. Correct.

6 Q. That's not the law. Those are police guidelines for
7 that particular agency, right?

8 A. Yes, sir.

9 Q. Okay. That differs from the law, correct? It may
10 differ from the law. Or does it just quote the law
11 verbatim?

12 A. I'm confused. I'm not sure what you're asking.

13 Q. Sure. The -- the law itself is the law. Policy and
14 procedures that are promulgated or formulated by a
15 particular law enforcement agency that is to guide what the
16 officers should and should not do within that agency,
17 correct?

18 A. The policies apply to the actions of the officers and
19 how they should conduct themselves.

20 Q. Okay. The --

21 A. I'm not sure where that has any direct effect on the
22 elements of the statute. The policies can't instruct an
23 officer to violate the law. It can only instruct them to
24 main -- to conduct themselves within the law.

25 Q. Okay. Very good. So a policy and procedure

1 guidelines are different than the law? It's a different

2 ---

3 A. Set of --

4 Q. --- it's a different set of rules, correct?

5 A. Yes.

6 Q. Okay. So, an officer could actually do a lawful act
7 but violate one of his internal policy and procedure
8 guidelines; is that correct?

9 A. Without knowing specifics --

10 Q. Uh-huh.

11 A. --- I would hate to give an opinion. I would -- Yeah,
12 anything's possible.

13 Q. Okay. When you were at Lexington County did you have
14 a hand, directly or indirectly, in drafting or reviewing
15 policy and procedure guidelines before they were put in
16 effect?

17 A. Yes.

18 Q. Okay. And you would agree with me the policies and
19 procedures tend to be very strict in order to develop
20 police officers to -- to do their job competently. It's a
21 strict standard, generally.

22 A. I don't know that I would agree with strict.

23 Q. Okay.

24 A. It's the standard that the department requires of its
25 officers.

1 Q. And when an officer violates certain policies and
2 procedures that -- and there's a performance review, or a
3 supervisor's -- supervisory review, they use the policy and
4 procedures, oftentimes --

5 A. Correct.

6 Q. --- to determine as to whether, for instance,
7 discipline is appropriate in --

8 A. That is correct.

9 Q. So, oftentimes it's stricter or stricter standard than
10 the law. Wouldn't you agree with that?

11 A. I don't -- Again, I don't know about stricter. It's
12 -- it guidelines your behavior and in my mind those are two
13 separate things. The policy manual and the statutes are
14 two separate entities. I -- I don't see them as -- as
15 being the same thing.

16 Q. Do you have any criticism as an expert witness as to
17 the policy and procedure guidelines that was drafted and
18 put in effect in this particular case?

19 A. No, sir.

20 Q. Okay. Your criticism only stems to where the actions
21 or inactions of the police officers as to whether they
22 conformed to the guidelines; is that correct?

23 A. That's correct.

24 Q. And that's what I'd like to ask you about. Your first
25 criticism is that 911 tape that they did not listen to the

1 911 call so that they can ascertain the excited utterance
2 and place some sort of value on that?

3 A. I didn't say that they didn't listen to it. I don't
4 know whether they did or not. I stated that the 911 call
5 with the excited utterance was in support of Mr. Carter's
6 statement.

7 Q. So, what criticism, if any, do you have of the police
8 officers in this case with respect to the 911 call?

9 A. With respect to the 911 call?

10 Q. Yes, sir.

11 A. I don't have any.

12 Q. Okay. Okay. What other opinions do you have in this
13 case with respect to the officers during the course of
14 their investigation? And I'll start you off. As far as
15 approaching the magistrate and the time that they
16 approached him.

17 A. Based on the information that they provided there was
18 no followup investigation, there was no documentation that
19 they listened to the 911 tape. There was no written
20 statement of Mr. Failes. There was no comparison of the
21 physical injuries to the statements. According to the
22 investigative report he stopped at the narrative from the
23 crime scene. Once they got it secured the next thing he
24 documented was -- and it says further investigation needed
25 but then the next thing documented was they went to the

1 magistrate. If there was any further investigation needed
2 it wasn't documented. So I can't say whether they listened
3 into the 911 tape or whether they didn't.

4 Q. Okay.

5 A. There's no documentation to say that.

6 Q. So, failure to document -

7 A. If they -

8 Q. --- would be one --

9 A. -- if they did -- if they did anything else they
10 didn't document it.

11 Q. Okay.

12 A. I'm not saying they didn't document it. I don't know.

13 Q. All right. So, let's take one at a time. No followup
14 investigation. Whether an officer follows up with a
15 subsequent fact-finding investigation, or not, that's in
16 the discretion of that officer. Would you agree with that?
17 I'm not saying he used good judgment, but it's -

18 A. It's his --

19 Q. --- it's the officer's prerogative which was -

20 A. It's his decision what he does.

21 Q. It's in his judgment or her judgment, correct?

22 A. Yes.

23 Q. Okay. Whether that officer listened to the 911 tape
24 or considered the contents of the 911 tape, whether it was
25 a good decision or a bad decision, it certainly was within

1 their discretion or judgment to do that, correct?

2 A. Correct.

3 Q. Whether or not they pursued additional statements,
4 such as the one here with Mr. Faile, and whether it was
5 procured, either written or oral, whether or not that's
6 good police work is one thing but the bottom line is it's
7 still within their discretion or exercise of judgment; is
8 that correct?

9 A. Yes.

10 Q. How about taking physical injuries and comparing that
11 to the actual reports? Croff it -- comp -- excuse me,
12 cross-referencing what they had before them. Whether they
13 do or don't do that that's also within their own exercising
14 their own judgment and their discretion, correct?

15 A. Yes but it is in violation or could be a violation of
16 their policy.

17 Q. Sure. And frankly any of these things I'm asking you
18 that you find respectful criticism with, that could be a
19 violation of their internal policies and procedures.

20 A. Yes.

21 Q. And in many cases in this case you're prepared to
22 testify in this trial that their actions and inactions
23 violated their own policies and procedures. Is that your
24 testimony?

25 A. My testimony would be that they could be a violation

1 of their policies and procedures.

2 Q. Okay.

3 A. I'm not in the chain of custody. I mean I'm not in
4 the chain of command. Those are decisions made by their
5 chain of command.

6 Q. Okay.

7 A. My opinion would be that this case warranted a
8 followup investigation and there's no documentation of any
9 followup investigation that was done.

10 Q. Well, let's talk about the documentation. The fact
11 that the officers, the quantity or the quality of the
12 documentation involved, whether they write a little bit or
13 a lot, or the scope of their documentation as far as
14 content, that would also be within their discretion and
15 their judgment; is that correct?

16 A. Correct.

17 Q. Now one of your criticisms -- go ahead and scratch
18 that. In the four thousand or so investigations that
19 you've either directly or indirectly had a hand in, whether
20 that's -- it was your investigation, or whether you were a
21 supervisor, were there ever times where a witness or a
22 subject was unavailable to get a statement? Or in every
23 one of those you were able to take statements of everybody
24 that you thought was involved or observed certain events?

25 A. I'm sure there were some that were unavailable that

1 you couldn't contact or get in touch with.

2 Q. For instance, some are -- some are dead?

3 A. Could be.

4 Q. Could be in the hospital?

5 A. Well, in a hospital you can usually go talk to them.

6 Q. Usually. Sure.

7 A. But it depends ---

8 Q. You can --

9 A --- it depends on the situation and the injuries.

10 Q. Four thousand or so cases you didn't run into anyone
11 that's physically incapacitated or comatose?

12 A. Oh, yes.

13 Q. How about injuries to their hands so they wouldn't be
14 able to, you know, to write ---

15 A. I've -

16 Q. --- like in this -- in this case?

17 A. I've written -

18 Q. You've reviewed the pictures, right?

19 A. --- or I -- I have written and I had other people
20 write ---

21 MR. MILLS: Your Honor, I ask that he allow the
22 witness to answer the question before he interrupts him.

23 A. --- many statements. And then, when you have
24 situations like that, where they can't write, or they just
25 too excited, you do the best you can to write it in their

1 words what they say. You give them the piece of paper.
2 They read the paper. They -- we always have them initial
3 at the beginning and at the end, and sign it, if it was
4 accurate. But just because they were injured if at all
5 possible we try to get a written statement. And I know you
6 can't do it every situation but if it was possible we
7 always try.

8 Q. When possible. So, the fact that one was not done
9 here you criticize the officer in what, paraphrasing, or
10 trying to put down in his report what he said orally?
11 What's your criticism of the officer?

12 A. That he didn't obtain a written statement. I don't
13 know if he paraphrased it correctly.

14 Q. And you take into account -- What value do you place
15 in the fact that he was in an emergency room and he had a
16 neck brace on and he had severe injuries when you evaluate
17 the officer's appropriateness here?

18 A. You can always go back the next day and get a written
19 statement.

20 Q. As far as the investigation, what other criticisms and
21 what other opinions have you formulated with respect to
22 either Deputy Gwinn, Deputy -- Sergeant Reed -- excuse me,
23 Sergeant Wright, or Deputy Reed? Any other opinions?

24 A. I've never met any of those men. I don't have an
25 opinion about them individually. My opinion was about the

1 incident and what was documented that was done, what may
2 have -- or what should have been done; that there's no
3 documentation that it was done.

4 Q. Okay. Do you know if the bat -- It was a baseball bat
5 used in this case, correct?

6 A. Correct.

7 Q. Do you know if it was a wooden or aluminum bat?

8 A. It was aluminum.

9 Q. Do you know --

10 A. To the best of my memory.

11 Q. Do you know if it was a children's bat or was it a big
12 bat?

13 A. I didn't see it. I saw no photograph of it. I was
14 just going by what was documented in the report.

15 Q. Could it have been a Louisville Slugger?

16 A. Could have been.

17 Q. Do you know -- Let's talk about the warrant stage. Do
18 you know what Judge Yard considered before issuing his
19 arrest warrant?

20 A. No, I do not. I was not there.

21 Q. Okay. So you formed an opinion as far as the
22 appropriateness of Deputy Gwinn and what he represented to
23 the judge and you don't know the sum and substance of what
24 he reported to the judge?

25 A. The only thing I know is what was on the face of the

1 warrant.

2 Q. I thought you --

3 A. I have no way of knowing what Mr. Gwinn told the
4 judge.

5 Q. All right. Do you know whether or not Deputy Gwinn
6 advised the judge before being sworn or during the time of
7 meeting with the judge? As his previous days observations
8 about being dispatched to the residence, do you know if he
9 reported those things to the judge?

10 A. I was not at that meeting.

11 Q. Do you know if the judge considered the full narrative
12 within Deputy Gwinn's police report?

13 A. I don't know what the judge considered.

14 Q. Okay. Do you know if the judge was furnished with
15 written statements of both Mr. Carter and his wife?

16 A. Again, I was not there.

17 Q. Do you know whether the judge in formulating his
18 decision, formulating probable cause, whether he considered
19 any of Mr. Carter's version of events?

20 A. I do not know.

21 Q. Do you know in formulating probable cause Judge Yard
22 whether he considered Mrs. Carter's version of events?

23 A. No, sir.

24 Q. Or how about Mr. Faile's version of events?

25 A. I was not there.

1 Q. Okay. Do you know how many times Mr. Carter struck
2 Mr. Faile with the bat in this instance?

3 A. No.

4 Q. Do you know if it was -- Well let's go three strikes
5 you're out. Do you know if it's more than three?

6 A. I don't know if it was more than three. My opinion
7 based on the photographs ---

8 Q. Uh-huh.

9 A. --- and the injuries I saw that it would be more than
10 three.

11 Q. Okay. Would your opinion based on the evidence that
12 you've reviewed and the photographs be -- that it would be
13 more than -- more than six?

14 A. Possibly.

15 Q. Okay. Do you know if the judge considered the
16 multiple times that Mr. Faile was struck with the bat in
17 establishing and determining probable cause in this case?

18 A. I was not there. I don't know what the judge decided
19 or didn't decide. I don't know what he used in forming his
20 opinion.

21 Q. So you don't know whether he considered and took into
22 account Mr. Carter and his wife's claim that Mr. Carter's
23 actions were taken in defense of himself, his family, and
24 his residence?

25 A. I don't know. I wasn't there.

1 Q. With all due respect, Mr. Phillips, I thought you
2 reviewed Judge Yard's deposition.

3 A. I said I had it. I did not read his deposition. I
4 said I had it. I reviewed the officers' depositions, but
5 my opinion, he asked for an opinion on what happened at the
6 incident and the probable cause. And then in the
7 investigation. That's, you know, ---

8 Q. I know.

9 A. --- that's not my purview.

10 Q. So, let's go over this again. You reviewed Deputy
11 Gwinn's deposition. You read it?

12 A. No, I said I had it.

13 Q. You had it. Okay.

14 A. I did not read it verbatim.

15 Q. All right.

16 MR. GARFIELD: Your Honor --

17 A. I said I read the incident reports.

18 Q. I understand.

19 A. And the statements.

20 Q. I understand.

21 A. And reviewed the physical evidence.

22 Q. Did you review -- When I say review, did you sit down
23 and read any of the depositions in this case?

24 A. No, I did not.

25 Q. Did you sit down and read any of the affidavits that

1 were filed in support of summary judgement in this case?

2 A. The only statements I read were those of the witnesses
3 at the incident that night.

4 Q. You have not. So to be clear, so the record could be
5 clear, you have in formulating your opinions you have not
6 read the affidavit of Leon Yard or the deposition
7 transcript of Leon Yard, correct?

8 A. Correct.

9 Q. You have not read the affidavit of EB Springs, the
10 prosecutor in this case, correct?

11 A. Correct.

12 Q. Okay. That you are prepared to have an opinion as far
13 as the judge and what he considered for probable cause; is
14 that correct?

15 A. No, that's not what my opinion was.

16 Q. I'd like you to go ahead and take that arrest warrant.
17 Do you know Judge Yard?

18 A. No.

19 Q. Okay. Do you know whether he is a duly authorized
20 magistrate in York County?

21 A. No, sir, I do not.

22 Q. Okay. Let's assume he is a magistrate in York County
23 and authorized to issue search warrant and arrest warrants.

24 Do you have any reason to disagree with that?

25 A. No, sir, I don't.

1 Q. Okay. So on the face of the warrant you could see
2 that Judge Yard signed that arrest warrant, correct?

3 A. I'll -- I'll take your word that that's his signature.
4 I don't know his signature.

5 Q. Fair enough. You also see that the crime, the
6 criminal offense classification. And I'll let you get
7 situated with your --

8 A. Yes.

9 Q. --- glasses first. It says assault and battery of a
10 high and aggravated nature; is that correct?

11 A. Correct.

12 Q. Okay. That is a criminal charge in South Carolina,
13 correct?

14 A. Yes.

15 Q. Okay. An arrest warrant for assault and battery of a
16 high and aggravated nature that is a valid charge in which
17 someone can be arrested in this state, correct?

18 A. That's correct.

19 Q. So on its face that charge is a legitimate charge,
20 correct?

21 A. Yes.

22 Q. You're taking my word for it that the magistrate
23 itself has the power and authority to issue arrest warrants
24 in South Carolina, correct?

25 A. I'm taking your word that he is a magistrate?

1 Q. Uh-huh.

2 A. State law says a magistrate, a duly sworn certified
3 magistrate has that authority. And I don't -- I don't
4 question that he's a magistrate with the authority to issue
5 a warrant, no.

6 Q. Okay. Mr. Phillips, you were a sworn class one
7 officers for many -- or have been for many years, correct?

8 A. Correct.

9 Q. All right. You started Lexington County in 1991,
10 correct?

11 A. 1985.

12 Q. Or 1985, I'm sorry. You began investigations in the
13 early '90's; ---

14 A. Yes.

15 Q. --- is that correct?

16 A. That's correct.

17 Q. Sorry I misstated you. Did you ever roll up on the
18 scene in certain locations in Lexington County to observe a
19 crime being committed?

20 A. Yes.

21 Q. Okay. And in those instances, when you believe that
22 -- you reasonably concluded that a crime was comm -- had
23 been committed, or freshly committed in your presence,
24 there would be times when you would make an arrest,
25 correct?

1 A. Correct.

2 Q. And you wouldn't need a warrant, would you?

3 A. Correct.

4 Q. Those would be called warrant-less arrests, correct?

5 A. Correct.

6 Q. Okay. Well, let me ask you this scenario as an expert
7 witness, Mr. Phillips. If you rolled up to or arrived at
8 the scene, when you were working Lexington County, and I've
9 prosecuted in Lexington County during the time you were an
10 investigator I believe. I remember some instances but I'll
11 ask you two or three. If you rolled up and came up on a
12 scene and an adult male had an aluminum baseball bat in his
13 hand, okay? Just stay with me on the scenario. And you
14 had another subject on the ground, curled up, and he was
15 bleeding and needing medical attention, if you as an
16 officer would make a warrant-less arrest for some type of
17 an assault, would that be unlawful?

18 A. There is a lot of situ -- there's a lot of
19 circumstances there that you're not giving me enough
20 information to make that decision.

21 Q. Huh? Okay. Man with a bat, aluminum bat in his hand,
22 and the person crawled up under him bleeding needing EMS.
23 Now, first thing --

24 A. And that's all the information I have?

25 Q. Yes, sir. Now, the first thing you --

1 A. That's not enough information to make an arrest.

2 Q. Hum? Okay. Number one, because your criticism or
3 your information you would need is to find out as to
4 whether that guy was acting, for instance, in self-defense,
5 right?

6 A. Whether he was acting in self-defense. Whether he was
7 even the person that had done the assault. How do I know
8 that he didn't walk up and pick the bat up right as I was
9 driving up?

10 Q. Uh-huh. Self-defense would be one though?

11 A. Self-defense would be one.

12 Q. But you assert the right of self-defense as an
13 affirmative defense in the trial of the case whether in
14 Magistrate's court or General Sessions court. You've been
15 a part of those, correct?

16 A. Correct.

17 Q. Okay. You don't assert self-defense from a legal
18 defense or an affirmative defense at the time of the
19 arrest, do you?

20 A. At the time of arrest?

21 Q. Yeah. Yeah. And how about any kind -- well, we said
22 you did not review the statute for immunities. But you
23 would not believe that an officer would have probable cause
24 to make an arrest in that circumstance for -- for
25 something?

1 A. That somebody was just standing there holding the bat
2 with somebody underneath him bleeding?

3 Q. And needing medical attention.

4 A. That would not be enough information for me to make an
5 arrest.

6 Q. Okay.

7 A. It would warrant an investigation but just based on
8 those limited facts I would not make an arrest.

9 Q. Well, let me ask you this. If an officer made an
10 arrest based on those facts, would it be an unlawful
11 arrest? Would the arrest lack probable cause that the
12 person committed some type of assault?

13 A. I don't even know if there's enough evidence there to
14 assert probable cause in that either. I couldn't agree
15 with that.

16 MR. GARFIELD: I don't want to painfully go into this,
17 but Court's indulgence.

18 Q. What if he had a gun standing over somebody and the
19 person was bleeding under him, and needing -

20 A. The -- the same argument. I don't -- Without further
21 investigation I have no information that he is the person
22 that assaulted or injured him.

23 Q. Okay. Another --

24 A. Based on your strict set of facts,---

25 Q. Yes, sir.

1 A. --- no. I couldn't agree with that.

2 Q. Okay. And another criticism you had was that the
3 officers did not intentionally adequately investigate and
4 potentially charge Mr. Faile with trespassing?

5 A. Correct.

6 Q. Potentially charge him with some type of burglary such
7 as burglary in the first degree?

8 A. Could have been.

9 Q. Okay. They failed to comply and enforce valid laws in
10 South Carolina? The officers.

11 A. My opinion was that the evidence supported charges
12 against Mr. Failes, not Mr. Carter.

13 Q. Okay.

14 A. The totality -- the totality of the circumstances and
15 the totality of the evidence in the situation supported the
16 charges against Mr. Failes, not Mr. Carter.

17 Q. And another opinion is that you believe the
18 investigation and the way it was conducted was careless.

19 A. I can't say it was careless, because it was lack of
20 docu -- they may have done a lot of things that they didn't
21 document. So I can't say what they did or did not do. I
22 can base my opinion on the documentation that I have and
23 the information that was provided to me in that
24 documentation.

25 Q. So, you --

1 A. They -- they made their -- and you referenced that
2 they made their decision on whether or not to make an
3 arrest based on the same information that I was provided in
4 making my opinion. Now, if they didn't have -- if they did
5 not look at -- if they didn't listen to the 911 tape, I
6 don't know. If they did, I don't know. They may have done
7 all these things and come to a different conclusion than I
8 did. You're asking me my opinion. That's my opinion based
9 on my experience and training.

10 Q. That they could have done a better job?

11 A. That there's a lot of information that does not appear
12 to have been provided.

13 Q. Based on the information you were provided, you have
14 formulated the opinion --

15 A. Based on that.

16 Q. --- that the officers could have done a better job?

17 A. Yes.

18 Q. That they could have been more careful?

19 A. Correct.

20 Q. Could have been more methodical?

21 A. Correct.

22 Q. Okay. Could have done better as far as adhering to
23 the standard of care of law enforcement officers?

24 A. And their -- and their policy.

25 Q. And their policy. And you do not know what Judge Yard

1 in fact considered before --

2 A. No, I do not.

3 Q. And you don't know whether this report, could you see
4 where he's referencing a report and a number?

5 A. Uh-huh.

6 Q. You don't know whether he considered the full contents
7 of that report.

8 A. I do not know if he read it or not. I was not there.

9 Q. But you still have the opinion that the warrant itself
10 was not facially valid?

11 A. There's no statement of probable cause beyond as
12 contained in this evidence.

13 Q. So you're saying the warrant was issued without
14 probable cause?

15 A. No. I said on its face I do not see where it
16 describes any probable cause. It states this happened.

17 Q. I understand.

18 A. But it does not -- it does not say as witnessed by any
19 of those other things that you would normally see in a
20 warrant. I don't see it there. So on its face I do not
21 see probable cause that I accept.

22 MR. GARFIELD: Beg the Court's indulgence.

23 THE COURT: Probable cause that you accept. What does
24 that mean?

25 MR. PHILLIPS: Pardon?

1 THE COURT: You said you don't see probable cause that
2 you would accept. What does that mean?

3 MR. PHILLIPS: Documented on the face of the warrant.

4 THE COURT: No, I mean that you accept. What -- what
5 -- what has that got to do with -

6 MR. PHILLIPS: I would have had my investigators write
7 the warrant differently -

8 THE COURT: So, you --

9 MR PHILLIPS: --- To say more about the investigation
10 or more about the evidence involved -

11 THE COURT: All right.

12 MR. PHILLIPS: --- in the assault.

13 THE COURT: I got you.

14 MR. PHILLIPS: I would inquire more than the probable
15 cause that's just contained within -

16 THE COURT: Okay. I got you. I just didn't
17 understand.

18 JAY PHILLIPS: --- the incident report.

19 THE COURT: I didn't understand that answer.

20 MR. GARFIELD: Thank you. Nothing further, your
21 Honor.

22 THE COURT: All right. Brief.

23 MR. MILLS: It will be very brief.

24 REDIRECT EXAMINATION

25 JAY PHILLIPS, BY MR. MILLS:

1 Q. You and I have met a couple times, correct?

2 A. Yes.

3 Q. And we discussed the Protection of Person and
4 Properties Act did we not?

5 A. Correct.

6 Q. And I hear you testify that you haven't sat down and
7 read the whole act?

8 A. Correct.

9 Q. Have you sat down and reviewed portions of the act
10 relevant to this case?

11 A. Yes.

12 Q. All right. And did you base your opinion on
13 specifically on the act or also on the common law *Castle*
14 *Doctrine*?

15 A. My opinion is based on the common law *Castle Doctrine*
16 which is what I was trained under at the Criminal Justice
17 Academy.

18 Q. All right.

19 A. What you explained to me of the act is supportive of
20 what I had been trained.

21 Q. Con -

22 A. But I was trained on the *Castle Doctrine*.

23 Q. Consistent with -- The Act is consistent with the
24 *Castle Doctrine* and the long-standing law of South Carolina
25 for two hundred years?

1 A. Correct.

2 Q. All right. Now, as far as Judge Yard goes, if Judge
3 Yard has testified that Officer Gwinn called him on the
4 phone and talked to him about the case and came into his
5 office and sat down and talked to him for a good long time,
6 completely, but was never under oath, and then only swore
7 to those documents in there, does that establish probable
8 cause?

9 A. Based on the law if he only swore to what's on this
10 piece of paper, then, in my opinion, there's not enough
11 there to say there's probable cause.

12 Q. Okay.

13 A. Now, if he swore to the entire testimony or to the
14 entire conversation he had with the judge, I don't know. I
15 wasn't there.

16 Q. All right. Now, Mr. Garfield was asking you about
17 being involved in trials where they assert self-defense.
18 Is self-defense something you only analyze at trial?

19 A. No. It's part of the elements of any investigation or
20 an investigation that that arises in.

21 Q. And if your investigation determines the acts were
22 done in self-defense, would you charge somebody anyway?

23 A. No?

24 Q. Okay.

25 MR. MILLS: That's all, your Honor.

1 THE COURT: All right. Any -

2 MR. GARFIELD: No, your Honor.

3 THE COURT: You can step down. Thank you. We
4 appreciate your time.

5 (WITNESS LEAVES WITNESS STAND.)

6 THE COURT: Are you qualifying him or do you -

7 MR. MILLS: Your Honor, I'm offering him. I guess
8 it's up to him if he's going to object.

9 MR. GARFIELD: I am going to object, your Honor.
10 Go ahead.

11 THE COURT: Well, I don't need to go -- I've been
12 taking some notes and listening very carefully and I'm not
13 going to allow this witness to testify. I find that his
14 testimony lacks foundation. I don't find that he's not
15 credible. I find he's an honest man. But I find that his
16 testimony lacks credibility. It's ironic that he is
17 criticizing the officers who made the arrest for not doing
18 a thorough investigation, and then hadn't even done a
19 complete investigation of what he bases his opinion on.
20 Didn't read all the material. Didn't -- just came to these
21 conclusions without full investigation. Just what he says
22 the other officers did not do.

23 The scope of the investigation really is not an issue
24 in this case. The issue is whether or not probable cause
25 existed at the issuance of the warrant. As a matter of law

1 I find the arrest warrant is facially valid. A probable
2 cause issue is one of fact for the jury. As to the Castle
3 Doctrine I find that the code section codifies the Castle
4 Doctrine and that the Castle Doctrine is an affirmative
5 defense. It is not a bar to an arrest, it is a bar to
6 prosecution. And the burden of proving the Castle Doctrine
7 is on the defendant, so, I'm not going to allow him to
8 testify. Thank you.

9 MR. MILLS: May I put my objection on the record?

10 THE COURT: Yes. Go ahead.

11 MR. MILLS: Your Honor, I think everything you say
12 goes to the weight of his testimony, not its admissibility.
13 I will say that he came here, he is experienced in law
14 enforcement. When the Court says it can only be asserted
15 as a defense, I believe the Court is inaccurate. There are
16 many times that individuals get shot and the police don't
17 arrest that person and make them suffer through a criminal
18 prosecution to prove their innocence.

19 THE COURT: Well what -

20 MR. MILLS: If the facts -- I'm sorry.

21 THE COURT: Well, I don't want to debate and argue
22 with you but the fact that they don't do it in one doesn't
23 mean it's wrong to do it in another.

24 MR. MILLS: I fully appreciate that but you're saying
25 it has nothing to do with it. In one case they do an

1 investigation and they don't make a charge to determine --
2 their own policy says, look at this stuff and don't make --
3 and do it before you make an arrest. Don't start doing it
4 after you make an arrest. In this instance it was done
5 after the arrest. And then it was dismissed because they
6 didn't do it. And any legitimate law enforcement officer
7 looks at both sides of the stories, okay, and makes a
8 determination. And so, your Honor, I disagree obviously.
9 I think -- Let me make sure I'm just protecting my record.

10 THE COURT: Okay.

11 MR. MILLS: I'm not -- not going to argue with you.

12 THE COURT: No, I understand, I understand. You need
13 to have a record. This may go up, and it's --

14 MR. MILLS: Of course I disagree. I passed up to the
15 Court a case, *State versus Bacchus*, earlier on. It dealt
16 specifically with conclusory warrants. It is exactly on
17 point with this case. It says exactly that -- it just
18 states that there's a crime that was committed and a person
19 committed it and that is inconclusive as a matter of law.
20 And so I think I'm on the record to say I disagree with the
21 Court on your assessment of that warrant.

22 THE COURT: All right. Thank you. All right. Let's
23 take a break before we do our next witness.

24 MR. MILLS: It'll be the Defense, so I think we'll go
25 into motions now, I guess.

1 THE COURT: All right. So, Defense is going to rest?

2 MR. MILLS: Well, let me just --

3 THE COURT: I mean the plaintiff's going to rest.

4 MR. MILLS: The State.

5 THE COURT: The State.

6 MR. MILLS: Let me talk to my client and I'll get back
7 with you.

8 THE COURT: All right. We'll take a short break,
9 then.

10 MR. GARFIELD: Thank you, your Honor.

11 (COURT IN RECESS AT 03:18 PM.)

12 (COURT BACK IN SESSION AT 03:22 PM.)

13 THE COURT: Thank you. You may take your seats.

14 All right. Defense has rested. I mean, Plaintiff,
15 I'm sorry. Plaintiff's resting, it's my understanding.

16 I'll let you rest on the record before the jury.

17 Defense motions?

18 MR. GARFIELD: Yes, sir. Thank you, your Honor. May
19 it please the Court?

20 Your Honor, at this time, the Defense -- the Defendant
21 Sheriff will make a motion for a directed verdict based on
22 the evidence. Considering all the evidence in the
23 plaintiff's case-in-chief and all the inferences drawn
24 therefrom taking the facts in the light most favorable to
25 them we do move for a directed verdict and believe that the

1 -- there's only one reasonable inference that a jury could
2 draw from the facts.

3 The plaintiff's theories in this case, for instance,
4 is that -- there's several, but it really is based on a
5 failure to comply and adhere to certain statutory law.
6 Failure to comply with, for instance, this *Castle Doctrine*,
7 statutory law, failure to enforce certain laws such as
8 burglary and trespassing. When the *Protection of Persons*
9 *and Property Act* was adopted in 2006 it was obviously
10 adopted by our legislature. And I believe I can make this
11 claim without stepping on the toes of any of the appellate
12 courts --

13 THE COURT: They're not here. They're not here

14 MR. GARFIELD: Well they're not here today. My words
15 are obviously could be in the transcript. The legislature
16 passed the law with some obvious defects. The General
17 Assembly in 1996, or excuse me, in 2006 they adopted
18 immunity for which a homeowner could raise, at the
19 appropriate time frame, an immunity from criminal
20 prosecution in a civil action. But at the time what was
21 not done was the General Assembly did not provide a remedy
22 procedure for determinist to whether the defendant, or the
23 subject, would be entitled to an immunity.

24 The Supreme Court subsequent to that they had efforts
25 to address their defects but since that time that's been

1 muddled. The first case came out in 2011, *State versus*
2 *Duncan*. It's 392 S.C. 404, Supreme Court. This is the
3 decision or re-hearing in 2011, *State v Duncan*, in which
4 the Supreme Court determined -- tried to cure the defect in
5 the statute by saying that a subject would be entitled to
6 the actual -- a hearing, a evidentiary hearing, and then
7 set forth the standard for the pretrial hearing.

8 THE COURT: Well, isn't that sort of what I said a
9 little bit ago is my understanding that this is
10 procedurally a prosecutorial immunity and not an arrest
11 immunity?

12 MR. GARFIELD: Exactly, your Honor. And I believe at
13 some point you provided Counsel, for us just to look at,
14 this *State versus Curry*, 406 S.C. 364. That case and
15 subsequent cases, even to this year, 2016, *State versus*
16 *Jones*, the Supreme Court of South Carolina, 416 S.C. 283
17 and also, one from last month, Supreme Court of South
18 Carolina *State versus Manning*.

19 In all of these cases, and exactly which your Honor is
20 making reference to, all of these cases provide an immunity
21 for which the defendant could avail himself. What the
22 plaintiff is trying to do in this case he's trying to
23 place, with all due respect, a legal burden on law
24 enforcement officers who are much less sophisticated in
25 these particular areas than even our jurors.

1 For instance the one this year there was a respectful
2 disagreement between Chief Justice Toal and a dissent with
3 now-Chief Justice Pleicones. So the members of the General
4 Assembly in 2006 in all of these cases that have really
5 been an evolving form of the law have been wrestling with
6 this doctrine. And I do not believe that the law requires
7 a law enforcement officer, in tense, rapidly evolving,
8 volatile circumstances in the midst of an investigation to
9 correctly interpret and correctly implement the terms of
10 this statute without having the benefit of the statute in
11 front of them. And the truth is that the law does not
12 require the police to use perfect judgment in these
13 circumstances.

14 I'd go one step further, your Honor. The same
15 statutory immunity that's carved out by the General
16 Assembly that for instance in this occasion affords
17 homeowners protection from criminal prosecution and
18 protects them from even civil liability based on this one
19 statute. And even though in these facts taking it in the
20 light most favorable to the plaintiff, your Honor, that an
21 individual takes an aluminum bat and severely beats another
22 man sending him to the hospital, that same General Assembly
23 also adopted, in an immunity structure, by way of the *Tort*
24 *Claims Act* in which governmental entities -- or excuse me,
25 governmental entities based on the actions and inactions of

1 their employees that they would be immune for civil actions
2 for money damages; even though based on the plaintiff's
3 theory in this case that the police used unsound judgment.
4 That the police used things -- exercised certain things in
5 their discretion that they were finding fault with.

6 And -- and here's why. Because in 2006 when the
7 *Castle Doctrine* so to speak was passed that was twenty
8 years after the *Tort Claims Act*. The absolute sovereign
9 immunity function protects the entity from reasonable
10 mistakes of the officers. You know the plaintiff argues
11 that it's a would'a-could'a-should'a; that the officers,
12 you know, that they used poor judgment, that the officers
13 exercised poor discretion. They published Deputy Reed's
14 deposition and the question and answer that was published
15 to the jury said, Question: So, that's why I was just
16 asking here was there was suggestion that the magistrate is
17 somebody separate and apart from law enforcement, correct?

18 Answer: That's correct.

19 And he's not supposed to be for or against law
20 enforcement, correct?

21 That's correct.

22 And your job as law enforcement is to present him with
23 the facts and the charge that you want and then you make
24 that decision and you present it to him, correct?

25 His answer: We present the factors of the case as we

1 know them and he decides whether there's probable cause to
2 issue an arrest warrant at that point.

3 And then, he states at another time, on page thirty-
4 one: In this instance, Mr. Faile wasn't charged with
5 anything.

6 That would have been certainly the prerogative of
7 Deputy Gwinn as the original responding officer, correct?

8 Answer: That's correct.

9 Under the Tort Claims Act, 15-78-60, and this is
10 Subsection 5, says that the entity is not liable for a loss
11 resulting from the exercise of discretion or judgment by
12 the governmental employee, or their performance or failure
13 to perform any act or service which is in the discretion.

14 THE COURT: Well, I'm looking at that right now, but
15 you've lost me. You're talking about Mr. Faile and the
16 fact that they didn't arrest him?

17 MR. GARFIELD: Yes, sir.

18 THE COURT: That's got nothing to do -- I don't think
19 that has anything to do with -- I've listened when all this
20 was gone through with Mr. Phillips. I don't think the fact
21 that they didn't charge somebody else has nothing to do
22 with this.

23 MR. GARFIELD: Exactly. And that's part of the point
24 that I was just going to get to. But the criticism or the
25 thrust of their case is that the officers did not comply

1 with the *Castle Doctrine* or they did not do that. This is
2 a probable cause standard.

3 But in order to determine probable cause, as your
4 Honor has already pointed out, there are two issues as to
5 whether the arrest warrant was a facially valid arrest
6 warrant. And number two, is to what -- what the judge did
7 as the gatekeeper here. And based on Subsection 5 and
8 Subsection 4 of 15-78-60 in this particular case the
9 governmental entity is not liable for a loss resulting from
10 the adoption, enforcement, or compliance with any law, or
11 failure to adopt or enforce any law or written policies.

12 So, just making a record for this point your Honor is
13 correct. Whether the -- whether the policies and
14 procedures or complied or adhered to in this particular
15 case is absolutely not at issue here. In fact, even their
16 own would-be expert stated that the policies are different
17 than the law. And what happened here was Judge Yard had
18 made the determination that there was probable cause based
19 on Subsection 1 of 15-78-60 and Subsection 3.

20 Their entire case is because the governmental entity,
21 or excuse me, the employee went to the magistrate in which
22 the magistrate made the determination, as the gatekeeper in
23 his gatekeeper's function, to issue an arrest warrant in
24 this particular case. It -- Carelessness is not the
25 standard. Negligence is not the standard. It is probable

1 cause.

2 There is also one other *Tort Claims Act* immunity I
3 wanted to show your Honor is 15-78-60, Subsection 23, in
4 which the entity is not liable when the facts are that
5 there's an institution or prosecution of any judicial or
6 administrative proceeding. There is in this particular
7 case when they are alleging malicious prosecution, one, by
8 definition, they would need to prove by the same wording
9 that there was an institution or prosecution of any
10 judicial or administrative proceeding.

11 Black-letter law, reading this on its face, the *Tort*
12 *Claims Act* has carved out an absolute sovereign immunity
13 from the entity when the facts of the case, taken in the
14 light most favorably to the plaintiff, is that this
15 individual was prosecuted and it was pursuant to a judicial
16 or administrative proceeding. And that wording that the
17 General Assembly used is exactly -- almost exactly the
18 wording in which they would have to prove to show a
19 malicious prosecution.

20 In this particular instance there was a facially valid
21 warrant. We have provided case law and we can provide it
22 again. Based on the *Bouchard* case, *Bouchard versus the*
23 *United Investigatory Company* and *Porterfield versus Lott*
24 there is no dispute that Judge Yard was neutral and
25 detached from the underlying criminal investigation. He's

1 not alleged nor has he presented any evidence that the
2 arrest warrant that was issued by Judge Yard was void or
3 facially deficient or in some way not facially valid. We
4 would show that this determination by the York County
5 Magistrate clearly demonstrates the existence of probable
6 cause.

7 They would need to prove the lack of probable cause in
8 this case. They are unable to show that probable cause is
9 lacking. The information is that there was a man with an
10 aluminum bat in his hand, and he had struck the individual
11 somewhere north of six or seven times, in which the
12 individual needed and required medical attention. That
13 fact has been over and over.

14 I would submit that not only that the warrant is valid
15 on its face but it was issued pursuant to probable cause.
16 And if the officer made a warrant-less arrest, coming up
17 the scene seeing that, that similarly he would have
18 probable cause to decide as to whether it was an assault
19 and battery of a high and aggravated nature, an unlawful
20 act, coupled with a serious injury.

21 We believe as a matter of law that the officers would
22 be entitled to the absolute -- excuse me, the entity would
23 be entitled to absolute sovereign immunity. And we also
24 believe that as a matter of law they failed to prove the
25 lack of probable cause by a preponderance of the evidence

1 and the jury could only reach one reasonable inference, is
2 that there was probable cause in this case. Thank you.

3 THE COURT: Mr. Mills.

4 MR. MILLS: Yes, your Honor. I think Mr. Garfield --
5 I guess he's addressing both causes of action now arguing?

6 THE COURT: I think so.

7 MR. MILLS: Okay. To apply his argument that you
8 cannot sue for malicious prosecution because they're an
9 exception, and you can't sue because of a warrant means you
10 can't sue for false arrest in South Carolina ever since
11 Tort claims. If you're arrested due to warrant you've got
12 no remedy according to - Well, that flies in the face of
13 just a law.

14 THE COURT: I've got it.

15 MR. MILLS: I'm sorry, just for -

16 THE COURT: I've got it right here.

17 MR. MILLS: Just versus Berkeley County and Law versus
18 South Carolina Department of Corrections. .

19 THE COURT: I had it here.

20 MR. MILLS: I'm sorry.

21 THE COURT: No, I've got it. I've got it. I just was
22 looking at it.

23 MR. MILLS: And so, those are directly on point. They
24 say probable cause is a question of fact for the jury.
25 They say the liability attaches from the application of the

1 warrant to applying for the warrant not in the execution of
2 the warrant. And that in that case they specifically dealt
3 with the very issue we're dealing here. That was a remand,
4 of course, because there wasn't -- they conceded it was
5 conclusory on its face, and I'm suggesting its similar to
6 this -- this warrant. Same as in law, conclusory on its
7 face, and it was much more extensive in the body but the
8 Court again concluded. But they also found it was
9 supplemented by sworn oral testimony. Okay? And so in
10 this case, your Honor, there's no evidence that was
11 supplemented by sworn oral testimony.

12 And your Honor, I know you and I may -- are going to
13 disagree about this, because you've already kind of
14 indicated your opinion, but I've just got to say it that's
15 a conclusory paragraph. If you read *State versus Bacchus*
16 *they explained* what that means be it conclusive --
17 conclusory after and this fits that deposition. But
18 regardless as the -- as Gest says, as Wartmon says, as all
19 the South Carolina law says, probable cause is a question
20 of fact for the jury.

21 Mr. Garfield is trying to impose that it can only be
22 considered as a defense at trial and Court passed us that
23 case where it was certainly considered *Protection of*
24 *Property Act*. But I would also suggest the *Castle*
25 *Doctrine*, on which we're relying, has been enforced since

1 this state came into being. We got it from the English
2 common law and it's still with us.

3 THE COURT: But its always been an affirmative
4 defense.

5 MR. MILLS: Well, yes. But, your Honor, if I could
6 just take a little time, I don't think I'm being articulate
7 like in my argument so the Court can understand and so I'm
8 going to try and do it by some examples and I apologize.

9 If I shot somebody -- and I think I was using this
10 with Mr. Phillips. Just because somebody's been beaten
11 with a bat doesn't mean a crime has been committed. Just
12 because somebody's shot does not mean a crime has been
13 committed. We all remember from basic -- Bill Macanish
14 taught me you've got to have an evil mind and a doing hand.
15 So if I shoot your clerk with malice aforethought I've
16 committed murder. If he really ticks me off because he's
17 the one who gave you the energy for that ruling then it's
18 maybe manslaughter. But if he has attacked me and shot me
19 and there is a bullet hole behind me and I shoot him back,
20 that's self-defense.

21 Now if the police come and investigate it, and they
22 see those seven holes behind me and see it, they're not
23 obligated to arrest me. That's not probable cause to
24 arrest me for murder. They can investigate -- That's
25 actually what he did was completely justified and within

1 the law. He was in his house. Somebody attacked him.

2 THE COURT: The question would not be whether they're
3 obligated to arrest you, but if they did arrest you, that
4 would be an unlawful arrest.

5 MR. MILLS: If the -- exactly. If there are facts
6 available to them at the time that they could have found
7 that would have negated any probable cause they have duty
8 to to look at. That is what investigation is. That's why
9 probable cause is a question of fact. They ignored some.
10 They picked some -- they can't just pick and choose. And
11 so, what they're gonna say is, listen, we are entitled to
12 believe Mr. Faile. All right? They are entitled to
13 believe him. The question is, does Mr. Faile's story
14 establish probable cause?

15 THE COURT: We don't have Mr. Faile's story.

16 MR. MILLS: Well --

17 THE COURT: Much of it. We've got some of it, but he
18 hasn't testified.

19 MR. MILLS: Well -- And I understand. The testimony
20 we had from Mr. Reed was that, you know, our guy came out
21 and hit him first, you know, so we do have that testimony
22 in the record. All right. So, you know, to me it's a
23 question of fact for the jury to make a determination
24 whether probable cause exists. It's not -- I think the
25 only way the Court can give a directed verdict is this led

1 to absolute one conclusion. The only way they could do
2 this was arrest him. There's no other way to do it. The
3 Court makes that determination then I guess I'm packing my
4 bags. But I don't think that's the case. I think it is
5 clearly, he is entitled -- the officers -- let me see how I
6 can compose myself.

7 THE COURT: Well, here's what I --

8 MR. MILLS: Okay.

9 THE COURT: --- I think I -- I'm not gonna say I heard
10 enough and I didn't mean to cut you off.

11 MR. MILLS: That's fine.

12 THE COURT: But I'm not gonna direct a verdict on
13 malicious prosecution. I think that is a -- malice can be
14 -- it's got to be proven, but it can be proven by a lack of
15 probable cause. I'm not going to direct a verdict as to
16 the cause of action of malicious prosecution.

17 I am going to direct a verdict in the favor of the
18 defendant on the false arrest because as I've found it is
19 not that the arrest was based on a facially -- that the
20 arrest was not based on a facially invalid warrant. So,
21 I'm -- And based on that, I grant a directed verdict on the
22 false arrest but I'm going to let you go forward on the
23 malicious prosecution.

24 MR. MILLS: All right, your Honor. And I think my
25 record's clear that obviously I disagree.

1 THE COURT: Yeah. I understand.

2 MR. MILLS: Okay. Just disagree and not -

3 THE COURT: All right.

4 MR. MILLS: Thank you.

5 THE COURT: You ready for the jury?

6 MR. GARFIELD: Yes, sir.

7 THE COURT: All right. Bring in the jury.

8 (JURY REENTERS COURTROOM AT 03:44 PM.)

9 THE COURT: Members of the jury panel, I assure you we
10 didn't take an extra-long lunch. We've been back working
11 since two o'clock to deal with some issues, or take care of
12 some issues that we had to take care of outside of your
13 presence which we have done. I have made some rulings and
14 where that puts us now is that I understand the plaintiff
15 is resting.

16 MR. MILLS: Yes, your Honor. Thank you.

17 THE COURT: The plaintiff has presented their case,
18 and now the Defense can call witnesses if it wishes.

19 MR. GARFIELD: Thank you, your Honor. Defendant
20 Sheriff calls Kevin Gwinn to the stand.

21 (WHEREUPON, KEVIN GWINN,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION

24 OFFICER KEVIN GWINN BY MR. GARFIELD:

25 Q. Please introduce yourself to the jury.