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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

William Jeffrey Young, Circuit Court Judge

ALTONY BROOKS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001610

APPENDIX

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State of South Carolina) Court of General Sessions
County of Berkeley) Ninth Judicial Circuit
State of South Carolina)
vs.) Case No. 08-GS-08-1728
Altony Brooks,) 08-GS-08-1729
Defendant.)
_____)

TRANSCRIPT OF RECORD

January 12 and 13, 2009

Moncks Corner, South Carolina

B E F O R E:

The Hon. Kristi Lea Harrington, Judge, and a Jury

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

Allen Mastantuno, Esq.
Jim Courtney, Esq.
Attorneys for the State

J. Mitchell Lanier, Esq.
Attorney for the Defendant

Brenda Cooley
Circuit Court Reporter

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(Exhibits are retained by the Clerk of Court.)

BATSON LISTCOUNTY: Berkeley TRIAL DATE: January 12-13, 2009CASE NO.: 08-GS-08-1728
08-GS-08-1729 JUDGE:
The Hon. Kristi Lea HarringtonSTATE: State of South Carolina STATE'S ATTORNEYS:
Allen Mastantuno, Esq.
vs. Jim Courtney, Esq.DEFENDANT: Altony Brooks DEFENSE ATTORNEYS:
J. Mitchell Lanier, Esq.COURT REPORTER:
Brenda Cooley

<u>JUROR NO.</u>	<u>JUROR NAME</u>	<u>RACE</u>	<u>SEX</u>	<u>STRIKES</u>		<u>SEATED</u>
				<u>STATE</u>	<u>DEFENSE</u>	
70	Remus Harper, Jr.	B	M	X		
129	Paulette Rogers	B	F			X
12	Rosabell Beaufort	B	F			X
2	Donald T. Aiken	B	M			X
166	Robert D. White, Jr.	B	M	X		
7	Robert W. Ashby	W	M		X	
27	Todd N. Christensen	W	M	X		
50	Judy M. Ellington	B	F			X
90	Lenora Lambright	B	F			X
58	Elisa P. Furse	W	F			X
118	Michael J. Obremskey	W	M		X	
6	Christy C. Arnette	W	F		X	
173	Linda R. Wimmer	W	F			X
149	Toni M. Spurlock	W	F			X
52	Eva M. Erickson	W	F			X
144	Daniel J. Slotkin	W	M	X		
159	Carl A. Valdez	W	M			X
125	Crystal T. Potts	W	F		X	
132	Johnathan S. Ryan	W	M		X	
131	Audra M. Rourk	W	F			X
66	Joseph W. Guerry	W	M			X
<u>ALTERNATE:</u>						
112	James L. Moore	W	M		X	
142	Trent L. Singleton, Sr.	B	M	X		
53	Tina G. Fogle	W	F			X

1 (On Monday, January 12, 2009, the
2 defendant being present with counsel, the trial
3 convenes at approximately 3:30 p.m., and the
4 following proceedings were had:)

5 THE COURT: Ladies and gentlemen, thank
6 you very much. The jury panel is now qualified.

7 Mr. Mastantuno, is the state ready to
8 proceed?

9 MR. MASTANTUNO: Yes, Your Honor.

10 THE COURT: Mr. Lanier, is the state
11 (sic) ready to proceed?

12 MR. LANIER: Yes, ma'am.

13 THE COURT: Ladies and gentlemen of the
14 jury, now that the jury panel is qualified, we're
15 going to determine your eligibility to serve as
16 jurors in a particular case. The case that we
17 are about to begin the trial of is the case of
18 The State vs. Altony Brooks.

19 Mr. Lanier, if you will please stand,
20 introduce your client, as well as yourself, and
21 any persons that may be at your table during the
22 week.

23 MR. LANIER: This is Altony Brooks.
24 His first name is spelled A-L-T-O-N-Y.

25 And my name is Mitchell Lanier. I'm an

1 attorney here in Moncks Corner.

2 THE COURT: Is there any member of the
3 jury panel related by blood, marriage, close
4 personal friend of Mr. Brooks? If so, please
5 stand.

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel
9 related by blood, marriage, have any social,
10 business, or professional relationship, or ever
11 been represented by Mr. Lanier or anyone in his
12 firm? If so, please stand.

13 (There was no response.)

14 THE COURT: Thank you. There are none.

15 Mr. Mastantuno, if you will please
16 stand, introduce the persons that will be seated
17 at your table during the week and any key
18 personnel in the Solicitor's Office.

19 MR. MASTANTUNO: My name is Allen
20 Mastantuno. I'm an assistant solicitor here in
21 Berkeley County.

22 Helping me this week is Jim Courtney,
23 also an assistant solicitor with Berkeley County.

24 Charles Hart, an investigator for
25 Berkeley County.

1 Bryan Alfaro, deputy solicitor for
2 Berkeley County, as well.

3 THE COURT: Is there any member of the
4 jury panel related by blood, marriage, close
5 personal friend of either Mr. Mastantuno or
6 Mr. Courtney? If so, please stand.

7 (There was no response.)

8 THE COURT: Is there any member of the
9 jury panel who has ever had any business
10 dealings, ever been prosecuted by or been a
11 victim of a crime handled by the Ninth Circuit
12 Solicitor's Office? The elected solicitor is
13 Scarlett Wilson. If so, please stand.

14 (There was no response.)

15 THE COURT: Thank you. There are none.

16 The state alleges that Mr. Brooks did
17 on or about August 16th, 2007, willfully and
18 unlawfully commit an assault and battery upon one
19 Officer James Taylor of the St. Stephens police
20 department.

21 Is there any member of the jury panel
22 related by blood, marriage, close personal
23 friend, ever had any business or personal or
24 professional dealings with Officer James Taylor?
25 If so, please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Is there any member of the jury panel
4 that has any -- that you or any member of your
5 immediate family has ever been employed by the
6 St. Stephens police department? If so, please
7 stand.

8 (There was no response.)

9 THE COURT: Thank you. There are none.

10 Is there any member of the jury panel
11 that has had any prior knowledge, heard anything
12 on the radio, TV, read any news accounts of this
13 case prior to coming into court today? If so,
14 please stand.

15 (There was no response.)

16 THE COURT: Thank you. There are none.

17 I'm now going to call a list of
18 potential witnesses that may appear to testify in
19 this matter. If you are related by blood,
20 marriage, close personal friend, had any
21 business, professional, or social relationship
22 with any of these individuals, please stand:
23 Anderson Shannon, Richard Rothman, Jerry Gwin,
24 Lieutenant Robert Ollic, Jamie Taylor,
25 Dr. Timothy Osbon. If so, please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 THE BAILIFF: Your Honor, we do have
4 one.

5 THE COURT: Yes, sir. Your juror
6 number and name?

7 A POTENTIAL JUROR: It's 144, Daniel
8 Slotkin.

9 THE COURT: And, yes, sir. Who are you
10 related to or who do you know?

11 MR. SLOTKIN: I've known Jamie Taylor
12 for -- for a long time, actually. We grew up in
13 the same neighborhood.

14 THE COURT: Is there anything about
15 your relationship with Mr. Taylor that would
16 affect your ability to listen to the testimony as
17 presented and give both sides a fair and
18 impartial trial?

19 MR. SLOTKIN: Not really, no.

20 THE COURT: Okay. This is when I need
21 you to be very certain, sir. Is there anything
22 about your relationship with Mr. Taylor that
23 would cause you not to be able to listen to the
24 testimony as presented and give both sides a fair
25 and impartial trial?

1 MR. SLOTKIN: Probably not.

2 THE COURT: Okay. One more time. Will
3 you be able to, based upon your relationship or
4 your being in the same neighborhood with Jamie
5 Taylor, will you be able to listen to the facts
6 as presented by the witness stand and give both
7 the defendant and the state a fair and impartial
8 trial?

9 MR. SLOTKIN: Yes, ma'am.

10 THE COURT: All right. And your juror
11 number and name?

12 MR. SLOTKIN: 144, Daniel Slotkin.

13 THE COURT: All right. Thank you.

14 MR. SLOTKIN: Yes, ma'am.

15 THE COURT: Is there anyone else?

16 (There was no response.)

17 THE COURT: Is there any member of the
18 jury panel that was a member of the grand jury
19 that found the indictment in this case? If so,
20 please stand.

21 (There was no response.)

22 THE COURT: Thank you. There are none.

23 Is there any member of the jury panel
24 that has already formed an opinion about this
25 case or as to the guilt or innocence of

1 Mr. Brooks? If so, please stand.

2 (There was no response.)

3 THE COURT: Thank you. There are none.

4 Is there any reason while you were
5 sitting there listening to other members speak or
6 something just kind of dawned on you that this
7 week you have an important meeting and it's going
8 to be impossible for you to listen to the facts
9 as presented and give your attention to both the
10 state and the defendant, that there's just some
11 reason you cannot serve on this particular trial?
12 And, as well as any other catchall, I will meet
13 again with you in private. If there's just some
14 reason why you cannot sit in this particular case
15 and give both sides a fair and impartial trial,
16 please stand at this time.

17 (There was no response.)

18 THE COURT: Thank you. There are none.

19 Any there any additional questions from
20 the state?

21 MR. MASTANTUNO: No, Your Honor.

22 THE COURT: From the defense?

23 MR. LANIER: No, Your Honor.

24 THE COURT: Any objection to the clerk
25 drawing the jury?

1 MR. MASTANTUNO: No, Your Honor.

2 MR. LANIER: No, Your Honor.

3 THE COURT: All right. Madam Clerk,
4 please draw the jury.

5 THE CLERK: How many strikes?

6 THE COURT: Five and five.

7 Mr. Mastantuno, is the state ready?

8 MR. MASTANTUNO: Yes, Your Honor.

9 THE COURT: Mr. Lanier, are you ready?

10 MR. LANIER: No, Your Honor.

11 THE DEFENDANT: No, ma'am.

12 THE COURT: All right. Do we need a
13 few moments?

14 THE DEFENDANT: We need a little while,
15 yeah.

16 THE COURT: All right. Let's take a
17 ten-minute recess. Y'all may be excused, use the
18 restroom, cell phones, whatever. We're going to
19 take a ten-minute recess.

20 (A recess is taken at approximately
21 3:45 p.m.)

22 (The trial reconvenes at approximately
23 3:55 p.m., the defendant being present with
24 counsel, and the following proceedings were had:)

25 THE COURT: All right, Madam Clerk.

1 Ladies and gentlemen of the jury, the
2 clerk is going to call you by number. If you
3 will gather your belongings and come forward and
4 stand right by the podium and face out that way.

5 THE CLERK: If I say excuse the juror,
6 please return to your original seating. If I say
7 seat the juror, please have a seat in the
8 jury-box to my right.

9 Juror number 70, Remus Harper, Jr.

10 (Black male approaches.)

11 THE CLERK: What says the state?

12 MR. MASTANTUNO: Please excuse the
13 juror.

14 THE CLERK: Excuse the juror.

15 Juror 129, Paulette Rogers.

16 (Black female approaches.)

17 THE CLERK: What says the state?

18 MR. MASTANTUNO: Please seat

19 Ms. Rogers.

20 THE CLERK: What says the defense?

21 MR. LANIER: Please seat Ms. Rogers.

22 THE CLERK: Seat the juror.

23 Juror number 12, Rosabell Beaufort.

24 (Black female approaches.)

25 THE CLERK: What says the state?

1 MR. MASTANTUNO: Please seat

2 Ms. Beaufort.

3 THE CLERK: What says the defense?

4 MR. LANIER: Please swear Ms. Beaufort.

5 THE CLERK: Seat the juror.

6 Juror number 2, Donald T. Aiken.

7 (Black male approaches.)

8 THE CLERK: What says the state?

9 MR. MASTANTUNO: Please seat the juror.

10 THE CLERK: What says the defense?

11 MR. LANIER: Please swear Mr. Aiken.

12 THE CLERK: Seat the juror.

13 Juror 166, Robert D. White, Jr.

14 (Black male approaches.)

15 THE CLERK: What says the state?

16 MR. MASTANTUNO: Please excuse

17 Mr. White.

18 THE CLERK: Excuse the juror.

19 Juror number 7, Robert W. Ashby.

20 (White male approaches.)

21 THE CLERK: What says the state?

22 MR. MASTANTUNO: Please seat Mr. Ashby.

23 THE CLERK: What says the defense?

24 MR. LANIER: Please excuse Mr. Ashby.

25 THE CLERK: Excuse the juror.

1 Juror 27, Todd N. Christensen.

2 (White male approaches.)

3 THE CLERK: What says the state?

4 MR. MASTANTUNO: Please excuse the

5 juror.

6 THE CLERK: Excuse the juror.

7 Juror 50, Judy M. Ellington.

8 (Black female approaches.)

9 THE CLERK: What says the state?

10 MR. MASTANTUNO: Please seat

11 Ms. Ellington.

12 THE CLERK: What says the defense?

13 MR. LANIER: Please swear the juror.

14 THE CLERK: Seat the juror.

15 Juror 90, Lenora Lambright.

16 (Black female approaches.)

17 THE CLERK: What says the state?

18 MR. MASTANTUNO: Please seat

19 Ms. Lambright.

20 THE CLERK: What says the defense?

21 MR. LANIER: Please swear

22 Ms. Lambright.

23 THE CLERK: Seat the juror.

24 Juror 58, Elisa P. Furse.

25 (White female approaches.)

1 THE CLERK: What says the state?

2 MR. MASTANTUNO: Please seat Ms. Furse.

3 THE CLERK: What says the defense?

4 MR. LANIER: One moment, please.

5 Seat Ms. Furse.

6 THE CLERK: Seat the juror.

7 Juror 118, Michael J. Obrebskey.

8 (White male approaches.)

9 THE CLERK: What says the state?

10 MR. MASTANTUNO: Please seat

11 Mr. Obrebskey.

12 THE CLERK: What says the defense?

13 MR. LANIER: Please excuse

14 Mr. Obrebskey.

15 THE CLERK: Excuse the juror.

16 Juror number 6, Christy C. Arnette.

17 (White female approaches.)

18 THE CLERK: What says the state?

19 MR. MASTANTUNO: Please seat

20 Ms. Arnette.

21 THE CLERK: What says the defense?

22 MR. LANIER: Please excuse Ms. Arnette.

23 THE CLERK: Excuse the juror.

24 Juror 173, Linda R. Wimmer.

25 (White female approaches.)

1 THE CLERK: What says the state?

2 MR. MASTANTUNO: Please seat

3 Ms. Wimmer.

4 THE CLERK: What says the defense?

5 MR. LANIER: Please seat Ms. Wimmer.

6 THE CLERK: Seat the juror.

7 Juror 149, Toni M. Spurlock.

8 (White female approaches.)

9 THE CLERK: What says the state?

10 MR. MASTANTUNO: Please seat

11 Ms. Spurlock.

12 THE CLERK: What says the defense?

13 MR. LANIER: Please seat Ms. Spurlock.

14 THE CLERK: Seat the juror.

15 Juror 52, Eva M. Erickson.

16 (White female approaches.)

17 THE CLERK: What says the state?

18 MR. MASTANTUNO: Please seat

19 Ms. Erickson.

20 THE CLERK: What says the defense?

21 MR. LANIER: Swear Ms. Erickson.

22 THE CLERK: Seat the juror.

23 Juror 144, Daniel J. Slotkin.

24 (White male approaches.)

25 THE CLERK: What says the state?

1 MR. MASTANTUNO: Please excuse the
2 juror.

3 THE CLERK: Excuse the juror.

4 State has four strikes.

5 Juror 159, Carl A. Valdez.

6 (White male approaches.)

7 THE CLERK: What says the state?

8 MR. MASTANTUNO: Please seat
9 Mr. Valdez.

10 THE CLERK: What says the defense?

11 MR. LANIER: Swear Mr. Valdez.

12 THE CLERK: Seat the juror.

13 Juror 125, Crystal T. Potts.

14 (White female approaches.)

15 THE CLERK: What says the state?

16 MR. MASTANTUNO: Please seat Ms. Potts.

17 THE CLERK: What says the defense?

18 MR. LANIER: Please excuse Ms. Potts.

19 THE CLERK: Excuse the juror.

20 Defense has four strikes.

21 Juror 132, Johnathan S. Ryan.

22 (White male approaches.)

23 THE CLERK: What says the state?

24 MR. MASTANTUNO: Please seat Mr. Ryan.

25 THE CLERK: What says the defense?

1 MR. LANIER: Please excuse Mr. Ryan.

2 THE CLERK: Excuse the juror.

3 Juror 131, Audra M. Rourk.

4 (White female approaches.)

5 THE CLERK: What says the state?

6 MR. MASTANTUNO: Please seat Ms. Rourk.

7 THE CLERK: Any cause for challenge
8 from the defense?

9 MR. LANIER: Please swear Ms. Rourk.

10 THE CLERK: Seat the juror.

11 Juror 66, Joseph W. Guerry.

12 (White male approaches.)

13 THE CLERK: What says the state?

14 MR. MASTANTUNO: Please seat
15 Mr. Guerry.

16 THE CLERK: Any cause for challenge
17 from the defense?

18 MR. LANIER: Please swear Mr. Guerry.

19 THE CLERK: Seat the juror.

20 Juror 112, James L. Moore, alternate.

21 (White male approaches.)

22 THE CLERK: What says the state?

23 MR. MASTANTUNO: Please seat Mr. Moore.

24 THE CLERK: What says the defense?

25 MR. LANIER: Please excuse Mr. Moore.

1 THE CLERK: Excuse the juror.
2 Juror 142, Trent L. Singleton, Sr.
3 (Black male approaches.)

4 THE CLERK: What says the state?

5 MR. MASTANTUNO: Please excuse
6 Mr. Singleton.

7 THE CLERK: Excuse the juror.
8 Juror 53, Tina G. Fogle.
9 (White female approaches.)

10 MR. MASTANTUNO: Please seat Ms. Fogle.

11 THE CLERK: What says the defense?

12 MR. LANIER: Please swear Ms. Fogle.

13 THE CLERK: Seat the juror.

14 THE COURT: Any motion by the state as
15 to the selected jury?

16 MR. MASTANTUNO: No, Your Honor.

17 THE COURT: From the defense?

18 MR. LANIER: No, Your Honor.

19 THE COURT: Ladies and gentlemen, you
20 all have been selected as the jury.

21 And, Mr. Guerry, because you have taken
22 the seat of prominence, you have been selected by
23 virtue as the foreperson of the jury.

24 If you would, please, Madam Bailiff,
25 show them their jury room.

1 (Whereupon, the jury goes to the jury
2 room at approximately 4:10 p.m.)

3 THE COURT: Thank you. Be seated.

4 Are there any other motions or matters
5 pertaining to the jury selection process by the
6 state?

7 MR. MASTANTUNO: No, Your Honor.

8 MR. LANIER: Any motions what?

9 THE COURT: Any motions or matters
10 pertaining to the jury selection process now that
11 we're outside of the presence of the jury?

12 MR. LANIER: No, Your Honor.

13 THE COURT: All right. Ladies and
14 gentlemen of the jury pool, you were not selected
15 for this jury. I have been instructed that this
16 is perhaps the only case that will be called this
17 week, but do not start celebrating yet. You have
18 been given a telephone number with which to call
19 back. I am instructing you to call back after
20 6:00 p.m. tomorrow. So you are free for the
21 remainder of the afternoon as well as all day
22 tomorrow. So please remember to call back after
23 6:00 p.m. tomorrow.

24 Thank you. It's a pleasure having you
25 in my courtroom, and I appreciate your service to

1 Berkeley County. Good luck to you all. Thank
2 you.

3 (Whereupon, the jury panel is excused
4 at approximately 4:10 p.m.)

5 THE COURT: All right. I'm going to
6 bring back the jury. I will not swear the jury
7 until in the morning.

8 Anything before I bring in the jury,
9 Mr. Mastantuno?

10 MR. MASTANTUNO: Nothing, Your Honor.

11 MR. LANIER: Your Honor, I wanted to
12 make a motion. You're going to bring them back
13 in and then let them go?

14 THE COURT: Yes. Is the motion related
15 to the jury selection process? I'm going to go
16 ahead and let them go if it's not related.

17 MR. LANIER: Thank you, Your Honor.

18 THE COURT: All right. Please bring in
19 the jury.

20 Please rise for the jury.

21 (Whereupon, the jury enters the
22 courtroom at approximately 4:12 p.m.)

23 THE COURT: Y'all please have a seat as
24 you come in.

25 Thank you. Please be seated.

1 Ladies and gentlemen of the jury, as I
2 will give you further instructions in the
3 morning, we're going to recess for the evening,
4 but I will give you instructions but just so you
5 understand what is going on when you come in.

6 Y'all as the jury are considered the
7 judges of the facts. And as such, out of
8 respect, the members of the -- the attorneys and
9 members of the audience will stand. So as you
10 come in to your jury-box, please have a seat.

11 And, Ms. Fogle, you have the option of
12 the seat that you're in or the one behind you as
13 the alternate, and I need you to make sure that
14 you're always in one of those seats. All right?

15 And, Mr. Guerry, you must always
16 maintain -- as foreperson, you are spokesman for
17 the jury here in court. So I need to know that
18 you always are in that seat.

19 The rest of you, they're open seating.
20 So y'all can work that out amongst yourselves.
21 There are no assigned seating except for
22 Mr. Guerry and Ms. Fogle.

23 We will begin in the morning at 9:30.
24 And you have not heard any of the facts or the
25 evidence nor have I given you my instruction on

1 the law, so do not begin discussing this case, do
2 not begin deliberating, and I will see you back
3 here in the morning in your jury room at 9:30.
4 Thank you.

5 Please rise for the jury.

6 (Whereupon, the jury leaves the
7 courtroom at approximately 4:15 p.m.)

8 THE COURT: Thank you. Please be
9 seated.

10 Mr. Lanier you have a motion?

11 MR. LANIER: I do, Your Honor.

12 THE COURT: Mr. Brooks, you may be
13 seated.

14 (The defendant complies.)

15 MR. LANIER: Your Honor, my client has
16 asked that we move for a continuance in the case.

17 As I was telling Your Honor earlier,
18 Mr. Brooks was in jail on this charge for about
19 two months. At the end of that, towards the end
20 of that period when I began representing him, he
21 got out of jail on these charges, and within less
22 than 60 days he got arrested for charges in
23 Williamsburg County. Those charges are still
24 pending. And they have moved him from
25 Williamsburg County to Georgetown County, then to

1 Florence County, and now he's at Lee Correctional
2 Institute. I did go up there the Friday before
3 New Year's Eve, and that was the only time I was
4 able to go there and meet with him.

5 They didn't bring him here -- I asked
6 that he be brought about midweek last week. And
7 they said no, that they're not going to bring him
8 till the day of court or the day before. I think
9 he arrived some time last evening, Your Honor,
10 and I didn't get to meet with him. I did meet
11 with him this morning.

12 And, also, he is aware that you were in
13 the Solicitor's Office while this was -- in the
14 Ninth Circuit Solicitor's Office while this case
15 was pending, although I don't think -- this case
16 wasn't assigned to you. Ms. Porter was handling
17 it initially.

18 And on those grounds, I'd ask for a
19 continuance on behalf of my client.

20 THE COURT: Any response,
21 Mr. Mastantuno?

22 MR. MASTANTUNO: Yes, Your Honor.

23 The first argument, this case arises
24 out of an incident which occurred in August of
25 2007. The defendant has had ample time to

1 formulate a defense, consult with his attorney.

2 And, furthermore, on the second matter
3 of you being in the Solicitor's Office when this
4 case arose, I don't see any conflict there. I
5 don't know if you even know the facts of the
6 case. I believe Jennifer Porter handled the case
7 primarily and exclusively, and I don't believe
8 that you'd be conflicted out based on those
9 facts.

10 THE COURT: Mr. Lanier, do you have any
11 -- anything that you can point to that shows that
12 your client would suffer prejudice or that I have
13 actual prejudice or knowledge of this case?

14 MR. LANIER: No, Your Honor, other than
15 he doesn't feel he's prepared to go forward.

16 THE DEFENDANT: May I speak, please?

17 THE COURT: No, sir. That is why you
18 have an attorney.

19 THE DEFENDANT: Well, may I speak to
20 him?

21 THE COURT: You may.

22 (The defendant and Mr. Lanier confer.)

23 THE COURT: Mr. Lanier, your client
24 needs a moment.

25 (The defendant and Mr. Lanier confer

1 further.)

2 MR. LANIER: My client informs me that
3 earlier today and just now is the first time he's
4 been able to view the Rule Five material,
5 Your Honor.

6 THE COURT: Mr. Lanier, are you
7 prepared to go forward at this time?

8 MR. LANIER: I believe I am.

9 THE COURT: All right. I am declining
10 your request for a continuance. We met in
11 chambers prior to selecting the jury, and I
12 indicated to you that I typically start with
13 openings as well as the first witnesses on Monday
14 afternoon; but pursuant to our conversation in
15 chambers, I indicated to you that I would let you
16 have over the evening hour to meet with your
17 client to go over any last minute details which
18 you needed to do. So at this time I am denying
19 your motion for a continuance. This case has
20 been pending now well over 18 months.

21 With respect to the motion that I
22 recuse myself due to the fact that I was in the
23 Solicitor's Office while this case was pending,
24 the defendant has shown no actual bias that the
25 Court has towards Mr. Brooks, I did not handle

1 the case, I do not recall this incident, and as
2 such, I will deny your motion.

3 Anything further before we break for
4 the evening hour?

5 (The defendant and Mr. Lanier confer.)

6 MR. LANIER: You were finished?

7 THE COURT: I was asking you if you
8 were finished, Mr. Lanier.

9 MR. LANIER: Well, I am. I was going
10 to move to sequester the witnesses, but I suppose
11 we do that in the morning, or is now appropriate?

12 THE COURT: Any response to the rule
13 for sequestration?

14 (The defendant and Mr. Lanier confer.)

15 MR. MASTANTUNO: Yes, Your Honor.
16 We're not opposed to that motion. We just
17 request that the victim, Jamie Taylor, stay in
18 the courtroom during the presentation.

19 THE COURT: All right. Officer, you
20 will be allowed to stay in the courtroom.

21 OFFICER TAYLOR: Yes, ma'am.

22 THE COURT: Thank you.

23 (The defendant and Mr. Lanier confer.)

24 THE COURT: Mr. Brooks.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. I want to talk to
2 you just a moment, so I need you to pay attention
3 to me. All right? I am giving you extreme
4 latitude to talk to your attorney while we're
5 outside of the presence of the jury, but the loud
6 conversation will not be tolerated in front of
7 the jury. Do I make myself clear?

8 THE DEFENDANT: Yes.

9 THE COURT: If you need to have
10 additional time if something comes up, if you
11 will just ask your attorney to break, I will be
12 more than happy to do so, but the loud
13 conversation is disruptive to the Court and to
14 everyone involved. Do I make myself clear?

15 THE DEFENDANT: Yes.

16 THE COURT: Anything further,
17 Mr. Mastantuno?

18 MR. MASTANTUNO: One matter, Your
19 Honor, administratively. The indictment
20 2008-GS-08-1729 has a scrivener's error on the
21 back where the statute is off by one number, and
22 I believe Mr. Lanier here has consented to
23 modifying that indictment ---

24 THE COURT: All right.

25 MR. MASTANTUNO: --- to reflect the

1 appropriate number.

2 THE COURT: And what should the statute
3 reflect, Mr. Mastantuno?

4 MR. MASTANTUNO: 16-9-420 as opposed to
5 410(a)(2), the aiding escape.

6 THE COURT: Any objection to making the
7 correction on the indictment?

8 MR. LANIER: I don't object to that,
9 Your Honor.

10 THE COURT: All right. The Court will
11 change 410 to 420.

12 MR. MASTANTUNO: Thank you, Your Honor.

13 THE COURT: Anything further?

14 MR. MASTANTUNO: Nothing, Your Honor.

15 MR. LANIER: No, Your Honor.

16 THE COURT: All right. We'll be in
17 recess until 9:30.

18 (Whereupon, at approximately 4:25 p.m.,
19 the trial is recessed to the following day,
20 January 13, 2009, at 9:30 a.m.)

21

22

23

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25

1 (On Tuesday, January 13, 2009, the
2 defendant being present with counsel, the trial
3 reconvenes at approximately 9:30 a.m., and the
4 following proceedings were had:)

5 (Defendant's Exhibit No. 1, statement
6 of Richard Rothman, is marked for
7 identification.)

8 (Defendant's Exhibit No. 2, statement
9 of Officer Taylor, is marked for identification.)

10 (Defendant's Exhibit No. 3, report of
11 Officer Ollic, is marked for identification.)

12 (State's Exhibit No. 1, videotape of
13 incident, is marked for identification.)

14 (State's Exhibit No. 2, photo of
15 incident scene, is marked for identification.)

16 (State's Exhibit No. 3, photo of
17 incident scene, is marked for identification.)

18 (State's Exhibit No. 4, photo of
19 incident scene, is marked for identification.)

20 (State's Exhibit No. 5, photo of
21 victim, is marked for identification.)

22 (State's Exhibit No. 6, photo of
23 victim, is marked for identification.)

24 (State's Exhibit No. 7, photo of
25 victim, is marked for identification.)

1 THE COURT: Anything from the state
2 before we bring in the jury?

3 MR. MASTANTUNO: Mr. Lanier and I've
4 discussed this videotape. It's rather long, it's
5 about 30 minutes, and we wanted to discuss
6 whether it would be possible to fast forward
7 through portions of it that are not relevant.

8 MR. LANIER: Your Honor, I had told
9 Mr. Mastantuno earlier that I wasn't going to
10 fast forward it. I told him this morning I might
11 be in agreement with that, but my client
12 indicates no.

13 THE COURT: All right. We'll play the
14 whole tape.

15 MR. LANIER: Okay.

16 THE COURT: Anything further from the
17 state?

18 MR. MASTANTUNO: Nothing, Your Honor.

19 THE COURT: And are there any other
20 witnesses in the courtroom besides Mr. Taylor?
21 Officer Taylor?

22 MR. MASTANTUNO: Yes, Your Honor.
23 Right in this row we have three witnesses and ---

24 THE COURT: All right.

25 MR. MASTANTUNO: --- we have another

1 one to arrive.

2 THE COURT: I'm sorry?

3 MR. MASTANTUNO: We have another one
4 yet to arrive. It's going to be later on this
5 morning.

6 THE COURT: All right. The rule has
7 been invoked, so you need to go ahead and have
8 your witnesses remain outside.

9 (Said witnesses leave the courtroom.)

10 THE COURT: Lieutenant Ollic is on the
11 witness list. Are you planning on calling him,
12 Mr. Mastantuno?

13 MR. MASTANTUNO: No, Your Honor.

14 THE COURT: Anything from the defense
15 before we bring in the jury?

16 (The defendant and Mr. Lanier confer.)

17 THE COURT: Anything from the defense
18 before we bring in the jury?

19 MR. LANIER: No, Your Honor, not at
20 this time.

21 THE COURT: All right. Thank you.

22 MR. LANIER: I would like Detective
23 Ollic to be sequestered, Your Honor, because I
24 may call him, very well call him as a witness.

25 THE COURT: All right. Lieutenant

1 Ollic, you are on the witness list, and the rule
2 has been invoked, so I would ask that you remain
3 outside. And I'm sure you are very aware of what
4 the rule involves. You may not discuss your
5 testimony when anybody comes out, either.

6 LIEUTENANT OLLIC: Yes, ma'am.

7 THE COURT: All right. Thank you.

8 (Lieutenant Ollic leaves the
9 courtroom.)

10 THE COURT: Anything further?

11 (The defendant and Mr. Lanier confer.)

12 THE COURT: Mr. Lanier, anything
13 further?

14 MR. LANIER: No, Your Honor.

15 THE COURT: Please bring in the jury.
16 Please rise for the jury.

17 (Whereupon, the jury enters the
18 courtroom at approximately 9:35 a.m.)

19 THE COURT: Thank you. Please be
20 seated.

21 Madam Bailiff, if you could please
22 provide the notebooks for the jury.

23 THE BAILIFF: I'm sorry.

24 (The bailiff complies.)

25 THE COURT: And, Madam Clerk, if you'll

1 please swear the jury.

2 THE CLERK: Will you please stand and
3 raise your right hand.

4 (Whereupon, the jury is duly sworn by
5 the clerk.)

6 THE CLERK: Please be seated.

7 THE COURT: Ladies and gentlemen of the
8 jury, I will allow you to take notes during the
9 course of this trial.

10 My one caution, you may remember from
11 school some of us are better note takers than
12 others. The notes are not intended to be --
13 those are to be helpful to you. So one juror's
14 notes are not more correct or more right than
15 another juror's notes.

16 I also caution while you're writing
17 sometimes you miss what's going on in front of
18 you. So please be cognizant if you are taking
19 notes you may not be observing what is taking
20 place on the witness stand.

21 So those are my caveats to you for
22 taking notes, but most jurors have informed me
23 that having notes does help during the
24 deliberations.

25 Ladies and gentlemen of the jury,

1 before we begin this trial, I want to tell you
2 that this trial is probably going to be different
3 from what you might expect.

4 Most people don't have the opportunity
5 to attend court sessions on a regular basis, and
6 their frame of reference comes from watching
7 television, movies, reading books. Those trials
8 are always full of high drama and very riveting.
9 While all of these things may be true at times
10 during this trial, this trial is not for
11 entertainment. It is a fundamental part of our
12 democracy, a search for the truth in an effort to
13 make sure that justice is done between the
14 parties before the Court..

15 Searching for the truth and making sure
16 that justice is done is often slow, deliberate,
17 and repetitive, the opposite of what you may have
18 seen on television or in movies or in books.

19 This courtroom is a place of honor,
20 dedicated to the protection and preservation of
21 citizens' rights through what many have called
22 the greatest justice system ever created.

23 The attorneys appearing before you are
24 advocates for the parties they represent; but
25 first and foremost, they are officers of this

1 Court, sworn to uphold the integrity and fairness
2 of our judicial system and to help you in the
3 search for the truth. You should expect them to
4 be professional, competent, and ethical in the
5 representation of their clients.

6 Remember that you have just taken an
7 oath to try this case and reach a fair and just
8 verdict; and you are also expected to be
9 professional, reasonable, and ethical.

10 I just want to take this opportunity to
11 also thank you for being on time. All of you
12 were on time. We cannot begin this trial unless
13 all thirteen of you are in the box. So if one of
14 you is late, we cannot begin.

15 So, again, I want to thank you for
16 being prompt here this morning, and thank you for
17 accepting the most important responsibility of
18 jury service and for your contribution today to
19 our justice system.

20 What I will now say is intended to
21 serve as an introduction to the trial of this
22 case. These remarks are not a charge on the law.
23 I will instruct you on the law applicable to this
24 case at the end of the trial before you retire to
25 consider your verdict. This is merely an

1 explanation of the procedure that we will follow
2 in the trial of this case so that you may better
3 understand what is happening.

4 The defendant is charged by an
5 indictment filed in this court. Mr. Brooks is
6 charged with escape -- aiding escape from custody
7 of officers, and he is indicted for assault and
8 battery of a high and aggravated nature.
9 Mr. Brooks has pled not guilty to both of those
10 charges.

11 The indictment is simply the charge by
12 which the case is brought into court. It is not
13 in any sense evidence of the allegation it
14 contains.

15 The defendant has pled not guilty to
16 both of these indictments. That, therefore, puts
17 the burden on the state to prove each of the
18 elements of the indictment beyond a reasonable
19 doubt.

20 It will be your duty, ladies and
21 gentlemen, to decide whether the state has met
22 that burden. Your purpose as jurors is to find
23 and determine the facts.

24 You are the sole judge of the facts.
25 If at any time I make a comment regarding the

1 facts, you must disregard it.

2 You are to determine the facts from
3 the testimony you hear and any other evidence
4 introduced in court. It is up to you to
5 determine the inferences which you feel may
6 properly be drawn from the evidence.

7 It is especially important that you
8 perform your duty of determining the facts
9 diligently and conscientiously because ordinarily
10 there is no way to correct an erroneous
11 determination of the facts by a jury.

12 On the other hand and with equal
13 emphasis, the same law that makes you the judges
14 of the facts makes me the judge of the law. The
15 law as given by this Court is the only law that
16 you may consider. You must accept and follow it
17 even though you may disagree with it. I cannot
18 tell you what the facts are, and you cannot
19 disagree with me about what the law is or what
20 the law should be.

21 Your job is to take the law as I give
22 it to you and apply it to the facts as you find
23 them from the testimony of the witnesses and any
24 other evidence that is introduced. After doing
25 that, you will render your verdict, a true and

1 just verdict under the oath that you just took as
2 jurors.

3 Until I advise you to begin your
4 deliberations, you must not discuss this case
5 with anyone, including your fellow jurors,
6 friends, family members, and anyone involved in
7 this case. After the case is submitted to you,
8 you must discuss it only in the jury room and
9 only with your fellow jurors.

10 The attorneys and all the parties in
11 this case have been advised that they are not to
12 talk to you at all. So if you see them in the
13 hallway or during lunch and they don't even say
14 hello, they're not being unfriendly or rude.
15 They're merely following the Court's
16 instructions.

17 During this trial do not read, listen
18 to, or watch any news reports about this case.
19 This includes anything that may be in newspapers,
20 on the internet, radio, or television.

21 You must not consider anything that you
22 have read or heard about this case outside of the
23 courtroom whether before or during the trial.

24 It is important that you keep an open
25 mind and not decide any issue in the case until

1 all of the evidence has been presented, the
2 parties have made their closing arguments, and I
3 have instructed you on the law.

4 It is your solemn responsibility to
5 determine the guilt or innocence of the
6 defendant, and your verdict must be based solely
7 on the evidence as it is presented to you during
8 this trial and on the law as I instruct you
9 during and at the close of this trial.

10 In just a moment the solicitor will
11 make what is called an opening statement in which
12 the solicitor will explain to you the issues in
13 this case or at least what the solicitor thinks
14 the issues are. The attorney for the defendant
15 may also make an opening statement although he is
16 not required to do so.

17 What the attorneys will tell you during
18 their opening statement is not evidence in this
19 case. It is only their contention as to what the
20 issues are.

21 The evidence in this case will be
22 presented to you by the testimony of sworn
23 witnesses from the witness stand and by any
24 exhibits that may be introduced into evidence.

25 From time to time during the trial, you

1 may hear one of the lawyers say something like,
2 Your Honor, I believe we have a question of law
3 or a matter of law to discuss with you, or may we
4 approach the bench. Sometimes I might find it
5 necessary to excuse you from the courtroom for a
6 short while so the attorneys and I may discuss a
7 matter of law. The reason for this is because
8 you are the judges of the facts in this case; and
9 sometimes when I'm discussing matters of law, it
10 may be necessary for me to make a comment as to
11 the facts in connection with my ruling. I'm not
12 supposed to tell you what the facts are, so I
13 will excuse you from the courtroom while these
14 discussions take place so that in no way will you
15 be influenced by anything that I might say or do
16 in connection with the facts.

17 In determining what the true facts in
18 this case are, you must decide whether or not the
19 testimony of the witnesses are believable. It
20 will be my responsibility to rule as a matter of
21 law as to whether certain testimony is admissible
22 at all or not; but once the testimony is
23 admitted, whether or not you believe it is solely
24 for you to determine.

25 In deciding whether to believe a

1 witness, you have the right to consider the
2 interest of any witness, the bias of any witness,
3 the prejudice of any witness, the opportunity
4 for the witness to have seen the matters and
5 things about which the witness may testify, as
6 well as the way the witness acts on the witness
7 stand.

8 You have a right to consider anything
9 that is in the record that will help you evaluate
10 the testimony of the witness. That means it is
11 your duty to pay close attention to these
12 witnesses, to observe and to listen to the
13 witnesses and to pay close attention to the
14 attorneys and to the Court.

15 Don't let your thoughts wander, but
16 give strict attention to the testimony in this
17 case so that at the end of the testimony, after
18 the arguments of counsel, and the charge on the
19 law, you will then be in a position to determine
20 what the true facts are and apply the law to
21 those facts and render a true and just verdict.

22 It is your added duty, Mr. Foreperson,
23 to preside in the jury room and be the jury
24 spokesperson here in court. It will also be your
25 duty to write the verdict, but I will give you

1 further instructions on that when I give my
2 closing charge on the law.

3 Any objection to anything that I have
4 said? From the state?

5 MR. MASTANTUNO: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. LANIER: No, Your Honor.

8 THE COURT: Ladies and gentlemen,
9 please give close attention to the opening
10 statements.

11 Mr. Mastantuno. Mr. Courtney.

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

14 OPENING STATEMENT

15 BY MR. COURTNEY:

16 Good morning, ladies and gentlemen. I
17 appreciate y'all coming out here on a beautiful,
18 cold, rainy January morning to try this case.

19 The word "hero" I think is often
20 overused. As a matter of fact, if you have any
21 children, you might be familiar with this. My
22 children watch a show called "Higglytown Heroes,"
23 and in that show everyone's a hero. All the
24 adults are heroes.

25 So I do think it gets overused quite a

1 bit; but in this case, in the case of police
2 officers, I think it's appropriate that the term
3 "hero" be used. They're one of the few jobs
4 where they go out and they really honestly don't
5 know if they're coming home that night. Most of
6 them do every night, but they never really know.

7 Officer James Taylor is one such hero.
8 On August the 16th, 2007, he went to work at the
9 St. Stephens police department just like he
10 always did. It was a hot, humid night just like
11 it usually is here in Berkeley County. So it
12 seemed to be a normal night, but it didn't end up
13 being a normal night for him.

14 On that night he was working with
15 Officer Shannon. Officer Shannon shortly before
16 midnight of that night pulled over a vehicle for
17 a seatbelt violation. During that stop, Officer
18 Taylor arrived to back him up, pretty common
19 practice up there.

20 And everything seemed to be going well,
21 but pretty soon a group arrived to observe the
22 stop. They weren't in the car that was pulled
23 over. They just showed up.

24 The officers called for a tow truck to
25 come and pull the car away, and when the tow

1 truck driver arrived -- actually, as he was
2 arriving, Berkeley County dispatch informed him
3 that the group that was there was becoming a
4 little tense, so maybe he should stall before he
5 gets there for his own safety. Well, he was
6 already there, and he wanted to help, so he
7 decided to go ahead and try to pick up the car.

8 And while he's picking up the car,
9 Officer Shannon decides that one of the group
10 needs to be arrested for interfering. That's
11 what he was arrested for.

12 Now, Officer Taylor obviously is
13 helping him arrest this individual, and the
14 individual started to put up a little bit of a
15 fight, so Officer Taylor has to step in and help
16 out. At that point this is where our case really
17 comes in.

18 At this point the defendant, Altony
19 Brooks, who was in the group, draws back his fist
20 and runs all the way across the road and hits
21 Officer Taylor right in the left eye. He hit him
22 hard enough that both of them fell backwards into
23 the ditch, and then Altony Brooks then once again
24 hit, which allowed the person that was being
25 arrested by Officer Shannon and Officer Taylor to

1 escape, obviously.

2 The state will show and the state will
3 prove through eyewitness testimony, through
4 pictures and through videotape, that Altony
5 Brooks struck Officer Taylor in the left eye and
6 allowed the person in custody to escape.

7 And through the testimony of Dr. Osbon,
8 you will hear that Altony Brooks struck him with
9 such force that he broke Officer Taylor's orbital
10 bone and caused two lacerations that took 15
11 stitches to close.

12 The state will prove through that
13 testimony that Altony Brooks committed the crime
14 of assault and battery of a high and aggravated
15 nature and also the crime of aiding an escape of
16 a person in custody.

17 My name is Jim Courtney. This is my
18 partner, Al Mastantuno, and we represent the
19 state in this case, and we ask that you use your
20 common sense, weigh all the evidence, and then
21 find Altony Brooks guilty of assault and battery
22 of a high and aggravated nature and also aiding
23 an escape of a person in custody.

24 Thank you.

25 THE COURT: Mr. Lanier.

1 OPENING STATEMENT

2 BY MR. LANIER:

3 Ladies and gentlemen, I introduced
4 myself yesterday. I'm Mitchell Lanier, and I
5 practice law here in Moncks Corner, and today
6 I've been asked to represent Altony Brooks.

7 Now, Altony, everybody calls him Al, so
8 that's what I'm going to call him.

9 Al is 23 years of age. He does live up
10 in the St. Stephens area. When he's not living
11 with his mom, he lives up in Greenville.

12 And on this day, he's charged with
13 assault and battery of a high and aggravated
14 nature and aiding and abetting an escape from
15 officers.

16 Now, in South Carolina there are three
17 levels of assault and battery.

18 There's simple assault and battery,
19 people call it, and that's a violent injury to
20 another. Then, for example, if one person slaps
21 another and they're about the same size, same
22 age, then that's probably a simple assault.

23 An assault of a high and aggravated
24 nature is a violent injury to another with
25 circumstances of aggravation. And there are

1 several things, several different types of
2 aggravation, and the aggravation is what
3 distinguishes it from a simple assault and
4 battery. For example, a young person, a young
5 football player pushes around an old, infirm
6 person that's on crutches, 85 years old, that
7 could be a circumstance of aggravation.

8 In this case, the state alleges that
9 the only circumstance of aggravation that would
10 make this possibly an assault and battery of a
11 high and aggravated nature is serious bodily
12 injury to the person who was injured.

13 So that becomes one of the elements of
14 the crime, and you have to find a person suffered
15 serious bodily injury, and you have to find that
16 beyond a reasonable doubt as you have to find
17 each element of these crimes.

18 He's also charged aiding escape from
19 custody of officers, and the statute for that is
20 Section 16-9-420: Whoever aids or assists a
21 prisoner in escaping or attempting to escape from
22 an officer or a person who has the lawful custody
23 of such person -- such prisoner, excuse me, shall
24 be punished, and then it talks about what the
25 penalty is, and we'll talk about that later.

1 And, again, they have to prove each and
2 every element of both crimes beyond a reasonable
3 doubt. Right now Al Brooks sits there and he's
4 presumed innocent as much as you and I are
5 presumed innocent, and he retains that
6 presumption of innocence throughout this trial,
7 and that presumption of innocence is only removed
8 from him by evidence beyond a reasonable doubt
9 that convinces you of his guilt.

10 And I submit to you when the case is
11 submitted to you, you'll have several choices you
12 have to make, and I'll talk about those later on
13 in my closing argument.

14 But, you know, if I thought everything
15 Mr. Courtney said was going to be proven beyond a
16 reasonable doubt, we wouldn't be here trying this
17 case. I'd be talking to my client about pleading
18 guilty, but he's pled not guilty. And by
19 pleading not guilty, he says I did not commit the
20 offense of assault and battery of a high and
21 aggravated nature. I did not commit the offense
22 of aiding escape from officers.

23 And at the end of the case, that will
24 be your decision to make. And, again, I submit
25 to you you'll have several choices. I just ask

1 you to keep an open mind.

2 What the solicitor said to you, what I
3 say to you, is not evidence. As Her Honor told
4 you, the evidence comes from the witness stand,
5 the witnesses, and from any documents that are
6 introduced into evidence.

7 And I think that at the end of the case
8 you'll have some reasonable doubt whether
9 Mr. Brooks is guilty of assault and battery of a
10 high and aggravated nature and whether he's
11 guilty of aiding escape from custody of officers.

12 And, again, on behalf of Mr. Brooks, I
13 thank you for being here today and serving on
14 this jury.

15 Thank you.

16 THE COURT: Call your first witness.

17 MR. MASTANTUNO: The state would like
18 to call Anthony (sic) Shannon.

19 ANDERSON SHANNON,
20 being first duly sworn by the clerk, is examined
21 and testifies as follows:

22 THE CLERK: Please be seated. State
23 your full name and spell your last name for the
24 record.

25 THE WITNESS: Anderson Shannon,

1 S-H-A-N-N-O-N.

2 THE COURT: Mr. Shannon, if you'll pull
3 that microphone.

4 Mr. Mastantuno.

5 MR. MASTANTUNO: Thank you. May it
6 please the Court.

7 DIRECT EXAMINATION

8 BY MR. MASTANTUNO:

9 Q. Mr. Shannon, what's your occupation?

10 A. Right now I'm driving a tractor trailer.

11 Q. How long have you been driving trucks?

12 A. About six months.

13 Q. And before you drove trucks, what did you
14 do?

15 A. A police officer.

16 Q. For?

17 A. St. Stephens police department.

18 Q. How long did you -- how long were you
19 employed with St. Stephens police department?

20 A. Eleven, 11 months.

21 Q. Eleven months. On the evening of August
22 17th, 2007, were you employed with St. Stephens?

23 A. Yes, sir.

24 Q. Do you remember that evening?

25 A. Yes, sir.

1 Q. Could you start by describing what happened
2 that night with the initial traffic stop?

3 A. Roughly about 2020, 2030 hours, I was on
4 patrol, Highway 45, Fox Creek Apartments, and I
5 observed a silver in color Chrysler occupied
6 times two, and I noticed the driver was not
7 wearing a seatbelt. So I initiate a traffic stop
8 on the vehicle just outside of Fox Creek on
9 Highway 45.

10 Q. Let me ask you where is that located? Is
11 that ---

12 A. St. Stephens.

13 Q. St. Stephens, County of Berkeley?

14 A. Yes, sir.

15 Q. What duties do you normally perform? Is
16 this a normal duty for you?

17 A. Yes, sir.

18 Q. Typical traffic stops?

19 A. Yes, sir.

20 Q. Patrol?

21 A. Patrol.

22 MR. MASTANTUNO: May I approach,
23 Your Honor?

24 THE COURT: You may.

25 BY MR. MASTANTUNO:

1 Q. That's state's exhibit number one. Do you
2 recognize that?

3 A. Yes, sir. This is the car -- this is the
4 tape from my patrol car vehicle.

5 Q. Does that have any identifying markings
6 that allow you to recognize it?

7 A. Yes, sir. I wrote the date on there, and
8 then I put officer -- but it was -- it was a
9 blank, then I wrote that over there when that --
10 after the incident.

11 Q. When did it first come into your
12 possession?

13 A. The tape?

14 Q. Yes.

15 A. Oh, I had the tape in my vehicle for --
16 actually, when I got the vehicle it was already
17 in the vehicle.

18 Q. So was this not your vehicle that you're
19 driving that evening?

20 A. Yes, sir.

21 Q. It was your vehicle?

22 A. Yes, sir. It was assigned to me with the
23 tape and all that stuff.

24 Q. Okay. Who was it assigned to you from?

25 A. Sergeant Ollic.

1 Q. All right. After this evening, what did
2 you do with the tape next?

3 A. Okay. After the incident, I removed the
4 tape from my patrol car when I got to the
5 station, and I handed it over to Officer Ollic.
6 I said I had my tape on, my recorder was on at
7 the time of the incident. And we started looking
8 over the tape at that time.

9 Q. Is it in the same -- substantially same
10 condition today as it was when you initially
11 turned it in?

12 A. Yes, sir.

13 MR. MASTANTUNO: The state would move
14 to introduce this into evidence.

15 THE COURT: Any objection, Mr. Lanier?

16 MR. LANIER: Objection to it being
17 introduced into evidence?

18 THE COURT: Yes, sir.

19 MR. LANIER: Your Honor, I don't think
20 they've established the chain of custody of the
21 tape at this point.

22 MR. MASTANTUNO: Your Honor, if I may,
23 this ---

24 THE COURT: Counsel approach.

25 (There was an off-the-record bench

1 conference in the presence of the jury but out of
2 the hearing of the jury.)

3 (Said bench conference being concluded,
4 the following proceedings were had:)

5 THE COURT: State's one into evidence.

6 I note your objection, Mr. Lanier.

7 MR. LANIER: Thank you, Your Honor.

8 (State's Exhibit No. 1, previously
9 marked for identification, is received in
10 evidence.)

11 MR. MASTANTUNO: Your Honor, I'd like
12 to publish this to the jury. May I ask the
13 Court's indulgence to bring the television out
14 and...

15 THE COURT: Yes, sir.

16 MR. MASTANTUNO: Thank you, Your Honor.
17 Your Honor, would you prefer it right
18 here or up...

19 THE COURT: Since we're publishing it
20 to the jury, wherever the jury can best view it.

21 Mr. Hart, there's no way to put it up
22 on the big screen?

23 MR. HART: No, ma'am. It's VHS.

24 MR. MASTANTUNO: One other matter, Your
25 Honor. From this viewpoint, I don't believe

1 Mr. Shannon will be able to view the video.
2 Would he be able to step down and take his seat
3 back after this matter?

4 THE COURT: Are you wanting to publish
5 it, or do you want commentary during the video?

6 MR. MASTANTUNO: It's going to be both,
7 Your Honor. Well, I guess we can publish it
8 first, and then we go back and do commentary.

9 THE COURT: All right.

10 MR. MASTANTUNO: If you prefer.

11 MR. LANIER: As I understand it, we're
12 playing the tape in full?

13 THE COURT: Yes, sir.

14 MR. LANIER: Then go back?

15 THE COURT: Yes, sir.

16 MR. LANIER: I would like to observe
17 it, gentlemen.

18 THE COURT: Counsel and Mr. Hart,
19 please approach.

20 (There was an off-the-record bench
21 conference in the presence of the jury but out of
22 the hearing of the jury.)

23 (Said bench conference being concluded,
24 the following proceedings were had:)

25 THE COURT: Can you see the television?

1 THE WITNESS: Yes.

2 THE COURT: Can all the members of the
3 jury see the television screen?

4 MR. LANIER: Can you see?

5 A JUROR: Yes, I can.

6 (State's Exhibit No. 1, videotape of
7 incident scene, begins playback.)

8 THE COURT: Counsel, please approach.

9 (There was an off-the-record bench
10 conference in the presence of the jury but out of
11 the hearing of the jury.)

12 (Said bench conference being concluded,
13 the following proceedings were had:)

14 THE COURT: If you can pause it,
15 Mr. Hart.

16 (Mr. Hart complies.)

17 MR. MASTANTUNO: Mr. Shannon, are you
18 able to see the video well?

19 THE WITNESS: Yes, sir.

20 MR. MASTANTUNO: If you don't mind,
21 Your Honor, may I stand back here so I'm out of
22 the way of the jury?

23 THE COURT: Please do.

24 BY MR. MASTANTUNO:

25 Q. I've got one initial question for you.

1 Down at the bottom of the screen there, I don't
2 know if you can see that.

3 A. Yes, sir.

4 Q. I believe it says -- can you see what it
5 says?

6 A. It says "R. Ollic."

7 Q. Okay. And is that you?

8 A. No. R. Ollic is the sergeant. He had the
9 car before I did.

10 Q. Okay. And the dates and times, it's hard
11 to see on there, but I don't believe they
12 correspond?

13 A. No, the dates doesn't correspond
14 because ---

15 MR. LANIER: Objection, Your Honor. I
16 ask that he not lead the witness.

17 THE COURT: Sustained. Rephrase,
18 Mr. Mastantuno.

19 MR. MASTANTUNO: Yes, Your Honor.

20 BY MR. MASTANTUNO:

21 Q. Could you explain the dates and name on the
22 bottom of the screen there?

23 A. Yeah. The name is Robert Ollic. The date
24 and the time is unclear, because what happened at
25 that time the videotape was -- the vehicle was

1 Ollic's vehicle before my vehicle. And normally
2 when you get the vehicle, the tape is supposed to
3 be reset with your name and all that stuff, and I
4 had asked Robert to -- if he can reset the date
5 for me, but what happened he never got a chance
6 to. So that's why the name is still, you know,
7 with Robert Ollic. And the time, like I said,
8 the time is off, also. But the vehicle was my
9 vehicle, and it was Ollic's car before. (Video
10 continues playback.)

11 Q. Whose car is it that just drove by? Did
12 you have any action or anything going on with
13 this car, or is it just driving by slowly? Can
14 you explain that?

15 A. Well, at this point in time, we are
16 conducting an investigation with the two
17 individuals in the vehicle at this point, whereas
18 requesting the driver's license and insurance
19 card and all that kind of stuff.

20 At that -- right at this point we are
21 communicating with central dispatch with the
22 driver's license and the registration for the
23 vehicle.

24 Q. Why did you pull the vehicle over?

25 A. The driver wasn't wearing a seatbelt at the

1 time. (Video continues playback.)

2 Then at this point right here, we are
3 questioning him if he has somebody that can come
4 and, like, take the vehicle, because he didn't
5 have a driver's license at this point in time and
6 he couldn't drive the vehicle.

7 So that's when we are -- when Officer
8 Taylor is conducting the investigation, trying to
9 figure out, you know, if you can have somebody
10 drive the vehicle or we can have it towed at this
11 point. (Video continues playback.)

12 Q. Okay. Pause it for one second, please. On
13 the left side of the screen there, there's a
14 gentleman. Is he involved in the situation at
15 all?

16 A. When I first did a traffic stop, while I
17 was requesting the paperwork, I was -- at this
18 time, Officer Taylor didn't arrive at the scene
19 at this time. And I looked to my rear, and I saw
20 two guys walking up behind me.

21 And I was like, you know, you guys have got
22 to leave. You guys can't -- you guys can't stay
23 here. You guys have got to go. You know, I'm
24 conducting a traffic stop, and I don't feel safe
25 with you guys behind me.

1 So they say, "I ain't here to cause no
2 problem."

3 I says, "But I don't -- I don't know
4 what you're here to do, but right now you've just
5 got to keep going. You can't sit here."

6 So they walked across the street and
7 stand on the side of the street, watching what I
8 was doing at this time.

9 Well, I guess the car already pulled up
10 already, the patrol car already pulled up, which
11 is Officer Taylor's car pulled up, and he started
12 -- that's when he walked over to me.

13 Q. Where did his car pull up to?

14 A. On the other side. It's early in the tape.
15 I think it passed.

16 Q. Okay.

17 A. Passed earlier in the tape. And he pulled
18 up, and he came over to me, and he asked me what
19 I got. I told him, you know, unlicensed driver.

20 And at this time, those two guys across the
21 street there, you know, just keep an eye on them.

22 And he went over, and he spoke to them. He
23 came back and he said, "Okay. They say they're
24 not going to cause no problems. They're just
25 going to stay there. He said okay."

1 So at this time then, that's me walking
2 back and forth, you know, conducting the
3 investigation. (Video continues playback.)

4 Q. Okay.

5 A. Okay.

6 Q. Yeah, those two gentleman that's on the
7 left, that would be?

8 A. I don't -- I don't know their names. I
9 just see them.

10 Q. I mean, as to the officers right there?

11 A. Oh. I'm on the left side, and Officer
12 Taylor is on the right side.

13 Q. Okay.

14 A. Right now we're getting ready to order the
15 two suspects out of the vehicle. (Video
16 continues playback.)

17 Q. At this point you and Officer Taylor are
18 doing what?

19 A. Yeah. We ordered the suspects out of the
20 vehicle and for driving under -- well, driving
21 without a driver's license, and we are searching
22 -- pat them to make sure they don't have any
23 weapons, you know, for our safety and their
24 safety at this point in time.

25 Q. Did they cooperate with you?

1 A. Yes, sir. They cooperated.

2 Q. Did they put up any type of fight or
3 struggle? Were they restrained at all?

4 A. No. (Video continues playback.)

5 Q. You just grabbed that suspect. What were
6 you planning on doing with him there?

7 A. We at this point after -- Officer Taylor
8 was frisking the car to make sure there was no
9 weapons in the vehicle. Then I escorted
10 Mr. Darby into my vehicle, placed him in the --
11 you know, in the rear of my vehicle.

12 At this point in time, the guy you see
13 standing over here, he is just a passenger in the
14 car. He is not actually under arrest yet. He's
15 just being detained, you know, like set aside for
16 now because we don't have anything on him. But
17 further into the video there, he -- on his side
18 he has an open beer, beer -- open beer. (Video
19 continues playback.)

20 Q. It appears there's something on the hood
21 right there y'all just placed on the hood?

22 A. That's a baggy of -- it had like a -- crack
23 cocaine that was in between the driver and their
24 passenger. (Video continues playback.)

25 Q. The passenger in the black shirt is now out

1 of the video. Where is he?

2 A. He was placed in the -- in back into my
3 patrol car. Because on his side -- you know,
4 neither of them wanted to own up to the -- to the
5 crack residue. So we both put them in the -- in
6 the vehicle at this point.

7 Q. Are they both under arrest at this point?

8 A. Yeah. They were now being detained at this
9 point.

10 MR. LANIER: Your Honor, I'd ask if the
11 witness could speak a little more into the
12 microphone.

13 THE COURT: Thank you, Mr. Lanier.

14 BY MR. MASTANTUNO:

15 Q. What are your plans for the vehicle since
16 they're both detained?

17 A. The plan for the vehicle is to be -- right
18 now it's going to be -- to be towed from the
19 scene.

20 Q. Have you made that phone call or that call
21 in to the station?

22 A. Yeah. We already called central dispatch
23 and request for Carl's Towing at this time.

24 Q. And that's your regular towing company?

25 A. Yes, sir. (Video continues playback.)

1 Q. Again, right there on the left of the
2 screen there is a gentleman.

3 A. Those ---

4 Q. Just hanging out, observing?

5 A. Yeah. Those are the same two gentlemen
6 that walked up on me early in the scene.

7 Q. Are they causing any type of disruption or
8 commotion with you?

9 A. No. At this point in time, they were just
10 sitting on the side of the soft shoulder. (Video
11 continues playback.)

12 I think they were also on their -- their
13 cell phones. They were talking to each other on
14 some cell phones at this time over there. (Video
15 continues playback.)

16 Q. It appears that it takes a while for the
17 tow truck to arrive. Is that normal?

18 A. Sometimes it's -- you know, it takes a bit
19 longer than some. Sometimes probably on a
20 different call or stuff like that. (Video
21 continues playback.)

22 Q. Pause it for one second. A vehicle just
23 drove by, and y'all are conversing. Do you know
24 what's going on there?

25 A. No. Right now me and Officer Taylor is

1 conversing with the -- the charges for the guys
2 that -- the two individuals in the vehicle right
3 now.

4 Q. Okay. (Video continues playback.) At this
5 point would you classify this as a routine stop?
6 You feel safe, secure?

7 A. Yeah. Right now it's secure. We've got
8 the two individuals in the back of my patrol car
9 at this time. You know, they're in cuffs, so
10 it's no harm to us right there at that point.

11 See, right now we're just discussing the
12 charges because now we find the open beer and the
13 drug paraphernalia, and now we're conducting
14 the -- you know, the questioning about it.

15 (Video continues playback.)

16 Q. It appears the road slopes down on the
17 right. What's going on there? Would you
18 describe that area?

19 A. That's a little -- a little ditch, a water
20 drain. You know, I was just checking the ditch
21 to see if anyone walked over there and threw
22 anything into the -- into the ditch, when I
23 walked over that way just now. The guy -- the
24 other individual in the black shirt. (Video
25 continues playback.)

1 Q. What time is it right now?

2 A. At this point?

3 Q. Yeah.

4 A. It's like -- well, the tape in the car
5 doesn't have the correct time. I think it's like
6 2020, 2045, around that time.

7 Q. Is it military time?

8 A. Yes, sir.

9 Q. What is it in twelve o'clock hours?

10 A. That's like, like 20 to 9:00, something
11 like that. (Video continues playback.)

12 Q. All right. You can pause it for me. You
13 and Officer Taylor are staring at that other
14 vehicle. What was going on there?

15 A. At this point in time, while me and Officer
16 Taylor was conversating, this vehicle pulled --
17 drove by us and said "This is family" and obscene
18 language was passed, and they kept on driving.
19 So we just was looking at them to see what, you
20 know, where they were going. At this point ---

21 Q. Yeah. At that point did you know who was
22 in the vehicle?

23 A. Yeah. Officer Taylor notified to me this
24 is ---

25 Q. Did you know, yourself, though?

1 A. No. No. I have never had any contact with
2 the individual at this point in time.

3 Q. Were you informed of who was in the
4 vehicle?

5 A. Yes, sir.

6 Q. By who?

7 A. By Officer Taylor. (Video continues
8 playback.)

9 Q. Did you get an opportunity to see that
10 person again this same evening?

11 A. Within a few minutes later.

12 Q. Okay. When you see that person in the
13 vehicle, will you please let me know?

14 A. Sure. (Video continues playback.)

15 Q. Was anyone else there with you besides
16 Officer Taylor that evening?

17 A. Yeah. I had a ride-along with me this
18 time. He's also -- he's sitting in the passenger
19 side of my patrol car.

20 Q. Would that be right there?

21 A. Yeah. He's on the right side.

22 Q. Okay.

23 A. He's sitting there.

24 Q. You can't see him in the video, though?

25 A. No, no, not at this point in time. He's

1 sitting in the patrol car at this time, but he's
2 not allowed to actually -- you know, when we're
3 doing any traffic stops or anything, he's not
4 allowed to come exit the vehicle.

5 Q. So he's not an officer?

6 A. No, sir. He's just a ride-along. (Video
7 continues playback.)

8 Q. There's not much going on right now. What
9 are you doing at this point?

10 A. At this point me and the officer are
11 conversating with the two individuals in the
12 patrol car, telling them that they've been placed
13 under arrest for drug paraphernalia and the beer
14 that was found in the vehicle this point in time.
15 (Video continues playback.) Okay. While we ---

16 Q. Yeah. What's going on there?

17 A. While we were talking, a gentleman ---

18 Q. That gentleman right there?

19 A. A gentleman started walking up from the
20 apartment complex. So we ---

21 Q. Which apartment complex would that be?

22 A. Fox Creek Apartments.

23 Q. And how close to your vicinity ---

24 THE COURT REPORTER: Which apartments?

25 THE WITNESS: Pardon me?

1 THE COURT REPORTER: Which complex,
2 please?

3 THE WITNESS: Fox Creek.

4 THE COURT REPORTER: Thank you.

5 BY MR. MASTANTUNO:

6 Q. How close to your vicinity is Fox Creek?

7 A. Maybe like a hundred yards from where we
8 were.

9 Q. In relation to this video, is it in front
10 of you, behind you, to the left, to the right?

11 A. Oh, it's -- it's behind me at this point.
12 At that point it's behind me.

13 Q. About a hundred yards?

14 A. Yeah. So when we saw him walking, we
15 walked back towards the vehicle. That's why
16 we're headed back this way right now.

17 Q. Okay. (Video continues playback.)

18 Now, you've got another car driving real
19 slow right there. Just observing the scene or...

20 A. That's somebody just driving by. Just, you
21 know, looking to see what's going on. They
22 didn't -- they just kept on going. (Video
23 continues playback.)

24 At this point in time, we're just
25 awaiting the -- awaiting the tow truck at this

1 point because it still didn't show up, you know,
2 at this time. (Video continues playback.)

3 Q. How would you classify this road? Is it a
4 busy road? Desolate?

5 A. Yeah. After a certain time of night, you
6 know, it's -- it's not that busy at night, you
7 know, like -- like it would be during the
8 daytime.

9 Q. Any streetlights or...

10 A. Very, very -- very dull. There's a house,
11 a residence just on the right side, just on ---

12 Q. Pause it for me.

13 A. There's a residence on the right side with
14 a flood -- one of those flooded yard lights.
15 That's the only light we had from the -- plus my
16 patrol car lights and stuff like that, but there
17 weren't no streetlights and stuff like that out
18 there.

19 Q. What was your state of mind out there on
20 that type of road at that time of night with
21 people across the street from you?

22 A. Normally, you know, like in that -- in that
23 area, you know, there's a lot of people like
24 walking by. One or two, so, no, I wouldn't say a
25 lot of people. Like one or two people walking by

1 to the complex. You know, it's pretty much --
2 like I said, it's not that well litted out there.
3 You know, it's not that safe, basically, at
4 night.

5 Q. Okay. It's hard to see with it on pause,
6 but there's a gentleman who's black T-shirt --
7 you can play it a little bit so we see better.

8 A. That's one of the guys that walked up with
9 the -- with the group from the apartments.

10 Q. When you say group, can you please clarify?

11 A. It was a good 15 or more males and females
12 that walked up. You know, right now they're
13 probably not in the view of the camera. They're
14 on the side.

15 Q. But based on the camera angle, there are
16 additional people outside of the camera; is that
17 what you're saying?

18 A. No -- yeah, they're outside there, but
19 they're not in the view of the camera. They are,
20 you know, like, say, like almost across the
21 street, you know, but they are coming towards
22 this way. They're conversating. We are by the
23 vehicle right now. I'm just keeping an eye on
24 them at this point in time.

25 Q. And this gentleman that left the crowd,

1 what is he trying to do there?

2 A. Could you ---

3 Q. You can go up and play it so we see better.

4 A. He's attempting to get in the vehicle to
5 drive the vehicle away before it could get towed,
6 towed away.

7 Q. And you and Officer Taylor are stopping
8 him?

9 A. Yeah. Right now, you know, Officer Taylor
10 informed me and said he's about to arrest him for
11 obstructing justice at this point in time, trying
12 to place him into -- into restraints at this
13 time.

14 Q. You can pause it for me for one second.
15 You informed the suspect that he's being placed
16 under arrest?

17 A. Yes, sir. For obstructing justice. When
18 -- when I walked over there, did that.

19 Q. What steps did you take in pursuit of
20 placing him under arrest?

21 A. Obstructing justice.

22 Q. No. What steps did you -- to place him
23 under arrest, what steps were being taken at this
24 moment to place him under arrest?

25 A. Put him in the restraints.

1 Q. What type of restraints?

2 A. Handcuffs.

3 Q. Do you have any handcuffs on him at this
4 moment?

5 A. No. We are walking back to the vehicle
6 with him right now, trying to get him to the back
7 vehicle to place one cuff on him at this time.

8 Q. Okay.

9 A. I'll show you if you roll the tape a
10 little. Now we are getting the handcuffs to put
11 on him right now.

12 Q. Do you get both handcuffs on him?

13 A. No. No, sir. We only got one on him.
14 Actually, we are having a struggle trying to get
15 the next one on because he was actually fighting
16 us.

17 Q. And those flashing lights up there?

18 A. That's the tow -- the tow vehicle, the tow
19 truck.

20 Q. So the tow truck is now there?

21 A. Yeah. It's arrived.

22 Q. And now coming into the video, a couple of
23 people, is that part of the crowd?

24 A. Yes, sir. And he's fighting us. He's just
25 fighting us. He wouldn't give up. We're telling

1 him he's under arrest, and he just -- just
2 fighting us.

3 Q. What's your state of mind right now with
4 the number of people you see there as well as the
5 suspect who is struggling against your attempts?

6 A. At this point in time, you know, I'm trying
7 to get him in the cuffs. That's probably why we
8 couldn't get him in the cuffs. We were trying to
9 pay attention to the crowd coming towards us and
10 also trying to restrain this guy. And it was
11 like there's only two of us and there's like
12 maybe 15 to 20 of them over there. And they're
13 all shouting and carrying on, and we are calling
14 for the backup at this time. Trying to handcuff
15 him, fighting him, calling for backup, everything
16 at the same time.

17 Q. How close are they to y'all?

18 A. I would say about from here to...

19 Q. Can you pause it for me? Can you just tell
20 me where to stand, how far?

21 A. Come forward right now. Right here. Right
22 there.

23 Q. Okay. The closest person is here and then
24 you have...

25 A. Yeah. A whole bunch of them behind.

1 Q. Okay. And what was your state of mind as
2 far as the situation?

3 A. Well, at this point in time, you know, just
4 trying to get myself out of there, get him in
5 cuffs and get him out of there, because I know we
6 are pretty much outnumbered at this point. And
7 the best thing for us, you know, but we just
8 couldn't get it done, couldn't get him in the
9 handcuffs.

10 Q. In your 11 months of police experience,
11 have you had a similar situation or been in a...

12 A. No. No. No, I've never been in a
13 situation like this now in that department, no.
14 (Video continues playback.)

15 Now, this girl right here, she's just, you
16 know...

17 Q. Pause it for me one more time. Now she's
18 actually closer it appears. How close would you
19 say she is now?

20 A. She's like -- she's like right here up on
21 us, you know. And she's just using the language,
22 the...

23 Q. Okay.

24 A. --- you know, and just really carrying on,
25 obscene language.

1 Q. Okay.

2 A. You know, we're telling her to step back,
3 step back, step back, you know. You know, and
4 she won't step back. She just keep coming
5 forward.

6 And when she comes forward, when she get
7 boisterous with us, then the other crowd start
8 coming in. Like, okay, they're starting to come
9 in towards us now because -- you know, they're up
10 on us.

11 Q. Now you've got a whole crowd of people on
12 you; is that correct?

13 A. Yes, sir.

14 Q. Have you seen that gentleman in the vehicle
15 yet?

16 A. Yes, sir. The one -- if you just roll the
17 tape. (Video continues playback.)

18 Q. Do you see him?

19 A. Right now he's just not -- he's right
20 there, trying to advise some other people, trying
21 to ---

22 Q. Can you pause it? It's hard to see with
23 the pause, but do you recognize where he's at
24 right now?

25 A. Yes, sir. He's right ---

1 Q. Can you use this pointer to point him out
2 for me?

3 A. Right there.

4 Q. How close to you is he at that point?

5 A. Oh, he's right up on us, you know. You
6 know, he's actually on Officer Taylor at that
7 point in time.

8 Q. In a matter of feet or as a matter of
9 inches?

10 A. Inches, just right up and -- right up on
11 us. And, actually, the group was trying to get
12 him off of us, like, you know, come on, let him
13 -- you know, let him go, let him go, you know,
14 but he just keep coming after us, coming after
15 us.

16 Now we have two of them now trying to --
17 you know, we have him trying to get -- we're
18 there trying to get the other guy in cuffs, and
19 he's making it even harder for us to get him in
20 the cuffs. So now we are definitely -- you know,
21 it's definitely we couldn't get him into
22 restraints, the other restraint on him.

23 Q. You just previously stated that it's the
24 same gentleman that was in the car that drove by
25 screaming at y'all?

1 A. Yes, sir.

2 Q. Are you saying that this is the second time
3 you've seen him?

4 A. This is the second time, uh-huh.

5 Q. During this observation and your close
6 proximity, are you able to identify him, not
7 based on -- or recognize him, at least in his
8 face?

9 A. Oh, yeah. Oh, yeah.

10 Q. Do you see that gentleman today?

11 A. Yes, sir.

12 Q. Can you point him out to us?

13 A. Sitting right over there.

14 MR. MASTANTUNO: Can you please let the
15 record show that the witness pointed to the
16 defendant, Altony Brooks.

17 THE COURT: The record will reflect.

18 (Video continues playback.)

19 BY MR. MASTANTUNO:

20 Q. How positive are you of that
21 identification?

22 A. A hundred percent.

23 Q. A hundred percent?

24 A. Yes, sir. (Video continues playback.)

25 Q. And right now it looks like you're

1 struggling. Is that the same suspect?

2 A. Yeah. We are trying to get that -- that
3 right hand in that cuff, but that guy is awfully
4 strong.

5 Q. Okay. Right there. Can you describe what
6 happened with the suspect in the handcuffs?

7 A. At this point in time, he happened to make
8 a spin, like a 360, and toss me into the ditch.
9 Well, I mean, as you can -- and he made -- let's
10 keep it rolling a little bit. There you go. He
11 happened to back out and make a 360 around,
12 spinning me into the ditch, spinning Officer
13 Taylor to the floor and -- roll the tape. Okay.
14 And he's going towards Highway 52 on foot, and I
15 proceed to -- chased him on foot, foot pursuit.

16 Q. You say he flees in the direction -- which
17 direction, behind the camera or in front of the
18 camera?

19 A. In front of the camera. He's heading
20 towards the railroad tracks on Highway 52, going
21 that direction.

22 Q. And your next action was?

23 A. Chase him.

24 Q. Chase him?

25 A. Yeah.

1 Q. You mentioned that he had one handcuff on
2 him. Did he still have that same handcuff on
3 him?

4 A. Yes, sir.

5 Q. As he fled?

6 A. Yes, sir. He still had that handcuff on
7 him. (Video continues playback.)

8 Q. Is this your first observance of this
9 video?

10 A. No. I observed the video after, after we
11 got to the station when we reviewed the video.

12 Q. Because at this point you had run down the
13 road, chasing the suspect?

14 A. Yeah. Yes, sir. I chased him up until the
15 railroad tracks. And I chased him up until the
16 railroad tracks, and he went into a bushy area.
17 It was so dark in there, I said to myself, you
18 know, I'm not really going to, you know, proceed
19 to go in the bushes after this guy.

20 Q. Did you observe Officer Taylor get struck?

21 A. No. At this point in time I was -- I was
22 in foot pursuit. I wasn't -- I was already left
23 the scene here, and I was running towards the
24 railroad tracks behind that individual.

25 Q. And that evening -- or when did you observe

1 the video again? You said this is not the first
2 time you've seen it.

3 A. No. I saw it after we got to the station.
4 We reviewed the video and all that stuff. You
5 know, I said that my tape was running in the
6 vehicle in the -- throughout the whole traffic
7 stop.

8 Q. Based on your observation of the crowd that
9 night and who you observed, were you able to
10 identify who that person was who struck Officer
11 Taylor?

12 A. Yes, sir.

13 Q. Is it the same person you identified
14 previously?

15 A. Yes, sir. (Video continues playback.)

16 Q. What is that girl doing back there? It
17 looks like ---

18 A. She's actually ---

19 MR. LANIER: Your Honor, the tape
20 speaks for itself.

21 THE COURT: Sustained as to leading.
22 Rephrase.

23 MR. MASTANTUNO: The state will move
24 on.

25 BY MR. MASTANTUNO:

1 Q. (Video continues playback.)

2 A. Now, at this point in time I'm already --
3 I'm already up to the railroad tracks, and I
4 decide, you know, I wasn't going to go into the
5 -- into the wooded area. I turned around, and
6 after ---

7 Q. Did you observe anything when you turned
8 around?

9 A. No, I didn't really observe anything at
10 that point in time. But after reviewing the
11 video in the -- in my patrol car, at the station,
12 I realized that after the incident happened with
13 Officer Taylor getting -- being struck and I
14 chased after the other guy, after the individual
15 struck Officer Taylor he actually came after me,
16 you know.

17 But good thing, good thing I turned around
18 before going in the woods. If I had probably
19 went into the wooded area, he probably would have
20 followed me in there. I don't know what would
21 have happened after that.

22 But as soon as I turned around to come back
23 towards the scene, they turned around and walked
24 back towards the scene also. As you can see me
25 walking back towards the scene right there, if

1 you go back -- could you rewind it just a little
2 bit? Okay.

3 Q. There you go.

4 A. Hold it right -- hold it right there. Keep
5 -- keep it rolling, sir. (Video continues
6 playback.) Now.

7 Q. Who is that gentleman that's running down
8 the road there?

9 A. This was the other gentleman, and the other
10 gentleman that went behind him is the gentleman
11 sitting there (pointing.)

12 Q. And that's the same direction that you
13 went?

14 A. Yes, sir. I think you can see -- you can
15 see when the people -- see when they turn around
16 when I turned around, also, right there. Yeah.
17 I'm walking back this way now. They're walking
18 back this way.

19 Q. Do you know where they'd be headed, coming
20 this direction?

21 A. They're probably headed back to the
22 apartments.

23 Q. The Fox Creek Apartments?

24 A. Fox Creek Apartments, right. Now, at this
25 point in time I didn't know that, you know,

1 Officer Taylor had been struck at this time,
2 until I got back actually to the scene. (Video
3 continues playback.) And there I am walking back
4 towards the scene now.

5 Q. Were you able to locate the suspect who
6 fled?

7 A. No. No. At that time I request dispatch
8 to contact Berkeley County so they could have the
9 canine and so forth respond to the scene.

10 Now I'm -- okay, back to the scene here,
11 and I'm talking to the tow truck driver.

12 Q. Pause it for one second. The gentleman
13 right there who just walked out?

14 A. Oh.

15 Q. Can you tell me who he is? With the
16 short-sleeve shirt on?

17 A. Oh, that's the ride-along. He was riding
18 along with me in the vehicle at this time, at
19 that time.

20 Q. And what was he doing this whole incident?

21 A. He was sitting in the passenger seat in the
22 vehicle. (Video continues playback.)

23 Now he's informing me that -- about the hit
24 to Officer Taylor.

25 Now I'm going to Officer Taylor right here

1 and asking him what happened to you, man, you
2 know. He says Altony -- Altony hit me, punched
3 me in the eye, Altony.

4 Q. What's your observation of his appearance
5 and his mind, state of mind, at that point?

6 A. At this point in time, you know, it was
7 like -- it was really hot that night. It was
8 like maybe 90, 87 degrees. And he was talking to
9 me, and he was actually had his -- his ASP. This
10 is equipment that we carry. He was actually had
11 it out and holding himself up with the ASP
12 because he was about to pass out at this time.

13 And I'm like ---

14 Q. What equipment is that?

15 A. It's called a ASP.

16 Q. ASP?

17 A. ASP. It's a -- it's a baton, extended
18 baton that, you know, he was actually holding
19 himself up with that baton at this -- at that
20 time. Because it was so hot out there. And with
21 the struggle with the guy before and the heat, he
22 was really fatigued and everything else. So they
23 dispatch EMS to come to the scene. At this time,
24 you know, he's bleeding and...

25 Q. I'm sorry. You said he was bleeding?

1 A. Yeah, he's bleeding. I mean, he's bleeding
2 drastically because the blood just keep pouring
3 out and he wasn't like...

4 Q. Where was he bleeding from?

5 A. Oh. Over the right -- over the eye.

6 Q. Was it the right eye or left eye?

7 A. It's the -- the left eye. I think it was
8 the left eye.

9 So right now we are telling him, you know,
10 let's take him back to the station because, you
11 know, he's going to pass out at this point in
12 time, because the ambulance was taking kind of
13 long to get there.

14 Q. Were you concerned for his health and well
15 being?

16 A. Yes, sir. (Video continues playback.)

17 At this point in time, you know, I told the
18 ride-along, you know, could you please, you know,
19 drive his patrol car, take him in the car and
20 take him to the station, because if he pass out
21 over here then we're going to have a bit more
22 problems with the group.

23 So I help him to get him into his patrol
24 car, but the ride-along I had with me drove his
25 car to the station, and I proceed with the two

1 other guys, the two other suspects in my vehicle.
2 (Video continues playback.)

3 Q. You stated that the ride-along drove
4 Officer Taylor?

5 A. Yeah. Right now we are -- right now that
6 we are deciding, you know, all that stuff right
7 now.

8 Q. Were you under the impression he was unable
9 to drive himself?

10 A. Yeah, he was unable. He was unable, unable
11 to drive himself. He couldn't -- he couldn't
12 stand up at that point. (Video continues
13 playback.)

14 At this time actually we're telling the tow
15 truck driver to bring the vehicle to the station
16 and we all are going to, you know, get -- get
17 away from the area.

18 Q. Was the group still around?

19 A. Oh, yeah, they were around, but they were
20 more in the back of my patrol car.

21 Q. How far back behind your patrol car were
22 they?

23 A. Hm, I would say from here, this is -- right
24 about there. Right about there. (Video
25 continues playback.) That's where we then

1 proceed from the scene.

2 Q. And where are y'all headed at this point?

3 A. St. Stephens police department.

4 Q. Can you tell me why you're headed there?

5 Are you meeting anybody there?

6 A. You know, what happened, I had the two
7 individuals from the -- from the arrest to take
8 there to get them processed. So what I did, I
9 took them over there and left the tow truck
10 driver there, Officer Taylor, and the ride-along
11 that I had with me. So I had to respond back to
12 the scene to meet the deputies from Berkeley
13 County.

14 Q. What was your understanding of the plan
15 per se with Officer Taylor and his injuries?

16 A. Well, at this point in time I know that
17 Emergency Medical Services are in route to us.
18 So I, in turn, told them instead of coming to the
19 scene just come to the station because, you know,
20 we'll -- he'll be over there.

21 Q. Why did you leave the scene and go to the
22 station, or what was the purpose behind that?

23 A. Well, Officer Taylor, he was -- he actually
24 was about to pass out. He was -- he wasn't able
25 to stand on his legs, and we were still -- the

1 group was still there. So I think the safest
2 thing was to just get out of there, you know, at
3 that point.

4 MR. MASTANTUNO: No further questions.

5 THE COURT: Ladies and gentlemen of the
6 jury, I think this would be an appropriate time
7 for us to take our morning break. Please do not
8 discuss this case amongst yourselves. Please do
9 not begin deliberations.

10 Please rise for the jury.

11 Follow the bailiff. And you can leave
12 your note pads in your chair.

13 (Whereupon, the jury goes to the jury
14 room at approximately 11:05 a.m.)

15 THE COURT: Thank you. Please be
16 seated.

17 Mr. Shannon, the rule of sequestration
18 has been invoked. That means you may not discuss
19 your testimony with anyone. Do you understand
20 that, sir?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: We're going to take a
23 ten-minute break, and then we'll -- Mr. Lanier
24 will have cross-examination. All right?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: So you may step down.

2 THE WITNESS: Okay.

3 THE COURT: Officer Taylor, no gum
4 chewing in the room. Thank you.

5 Okay. We're in recess. Thank you.

6 (A recess is taken at approximately
7 11:10 a.m.)

8 (The trial reconvenes at approximately
9 11:20 a.m., the defendant being present with
10 counsel, and the following proceedings were had:)

11 (Whereupon, the jury enters the
12 courtroom at approximately 11:20 a.m.)

13 THE COURT: Thank you. Please be
14 seated.

15 Mr. Lanier, your witness.

16 MR. LANIER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. LANIER:

19 Q. Now, just briefly, you had been with the
20 St. Stephens police department about 11 months?

21 A. Yes, sir.

22 Q. And you're now driving a truck?

23 A. Yes, sir.

24 Q. And you did not know Altony or Al Brooks
25 prior to this incident. Correct?

1 A. No, sir.

2 Q. The way you knew his name was someone told
3 you his name after the incident or at the time of
4 the incident. Correct?

5 A. At the time, well, just before the incident
6 happened, I was informed by Officer Taylor when
7 he drove by.

8 Q. All right. Now, I believe you testified
9 that you recollect the time being 2030 hours?

10 A. I could be off a little bit. You know, it
11 was -- it was in the late evening.

12 Q. Well, you also testified later in your
13 testimony that it was 20 minutes to 9:00 ---

14 A. Well, it's the wrong ---

15 Q. --- when something was going on here?

16 A. Yeah. The original stop was around that
17 time, but it -- the duration of the time, you
18 know, it lasted for about an hour or more.

19 Q. And you remember writing a report about the
20 incident?

21 A. Yes, sir.

22 Q. Do you have a copy of that report?

23 A. No, not at this time, sir.

24 MR. LANIER: I didn't have this marked,
25 Your Honor. I don't intend to introduce it, but

1 I just want to refresh his memory with it.

2 (Defendant's Exhibit No. 4, report of
3 Officer Shannon, is marked for identification.)

4 BY MR. LANIER:

5 Q. I'm going to show you what's been marked as
6 defendant's exhibit four and ask you if you can
7 recognize that.

8 MR. LANIER: If that's all right,
9 Your Honor?

10 THE COURT: Yes.

11 THE WITNESS: Yeah. This is the
12 report.

13 BY MR. LANIER:

14 Q. Okay. And read the first sentence of the
15 report, please.

16 A. On October -- sorry -- 8/16/2007 at 2350
17 hours ---

18 THE COURT: Mr. Shannon, you're going
19 to have to speak up.

20 THE WITNESS: Oh. Okay. On 8/16/200
21 -- 2-0-0-7 at 2350 hours, I, Private Shannon,
22 while patrolling the area of Fox Creek,
23 Highway 45, I observed a silver in color Chrysler
24 LaBaron, South Carolina tag 77...

25 Q. You can stop there.

1 A. All right.

2 Q. According to your report, you stopped the
3 vehicle for no seatbelt at 2350. What time is
4 that?

5 A. 2350 is actually ten minutes to 12:00.

6 Q. Correct, okay. Now, I notice on the
7 videotape... (video begins playback.)

8 Okay. Now, on the clock down here, and
9 it's kind of cut off, but I believe that says
10 1654, and it's counting the seconds. What time
11 is that, 1650, 1652?

12 A. 1652 is like minutes to 5:00, like say nine
13 minutes to 5:00, around that time.

14 Q. Okay. And in your report -- or on here you
15 have the date of the incident. It shows it's
16 August 24th, '06. Is that the correct date?

17 A. On that tape, no. The tape wasn't --
18 wasn't carrying a correct date or a correct time.

19 Q. And why is that?

20 A. Okay. It was off -- like I said, the
21 patrol car was Officer Ollic's vehicle before,
22 and I didn't know how to reset the -- my name and
23 the time in it. I had asked him to get to it,
24 but he never really get a chance to get to it.

25 Q. But yet y'all know that these tapes are

1 potentially going to be used as evidence in a
2 court of law. Correct?

3 A. Yes, sir.

4 Q. Now, if it was 2350 at night, how did you
5 see this guy with no seatbelt on?

6 A. It was ---

7 Q. How could you tell he didn't have a
8 seatbelt on?

9 A. Because the -- where I saw him, you know,
10 in the Fox Creek Apartments it's well litted.
11 The area is well litted over there.

12 Q. But you weren't in Fox Creek Apartments,
13 were you? You were down the street, weren't you?

14 A. No. When I -- when I initially saw the
15 vehicle, it was in the Fox Creek Apartments. We
16 were passing each other.

17 Q. And at some point you find out that this
18 gentleman only has a beginner's permit?

19 A. Yes, sir.

20 Q. He doesn't have a driver's license?

21 A. He didn't have a driver's license.

22 Q. And how old was the gentleman who was
23 driving?

24 MR. MASTANTUNO: Objection. Relevance,
25 Your Honor.

1 THE COURT: Sustained.

2 Mr. Shannon, I sustained his objection.
3 Please don't answer.

4 Mr. Lanier.

5 BY MR. LANIER:

6 Q. And you decided you were going to tow the
7 car prior to this open container being found and
8 the so-called crack pipes being found. Correct?

9 A. Actually, well, once you initiate a traffic
10 stop and the driver doesn't have a driver's
11 license, right there and then the vehicle has to
12 be towed because he's not allowed to drive a
13 vehicle, and he doesn't have a licensed driver
14 with him at the time.

15 Q. You had the registration; did you not?

16 A. Yes, I had the registration.

17 Q. Do you know who the car was registered to?

18 A. At this point in time it wasn't registered
19 to the individual that was driving the vehicle.
20 I can't remember the name on the registration at
21 this time.

22 Q. He didn't ask you to call his parents or
23 anything to come get the car?

24 A. No.

25 Q. Would you have done that?

1 A. If he had and if he had a licensed driver
2 come over to get the vehicle, sure, because the
3 registration or the insurance card was pretty
4 much good on the vehicle.

5 Q. And you had no idea that night who Altony
6 Brooks was, did you?

7 A. Well, before the incident I didn't know
8 until he drove by us and used the obscene
9 language and say "That's family" and Officer
10 Taylor indicated to me that that ---

11 Q. Officer Taylor did what?

12 A. Officer Taylor indicated to me that that's
13 Altony Brooks.

14 Q. Was Mr. Brooks driving that car?

15 A. He was.

16 Q. And was the window up or down?

17 A. Down.

18 Q. And what was he wearing?

19 A. He was wearing a white T-shirt. That's all
20 I could see, the top. I didn't see what kind of
21 pants he was wearing. (Video continues
22 playback.)

23 Q. Those first three individuals that walked
24 up, are you claiming that one of them is
25 Mr. Brooks?

1 A. No, sir. (Video continues playback.)
2 Q. At what time did you first see Mr. Brooks
3 on the scene?
4 A. When he drove by us and he -- if I'm
5 allowed to say the words he said, you know, he
6 said "This is family" and "M-F," you know, and
7 goes on.
8 Q. And he said, "This is my family"?
9 A. Yeah. He drove by and shout through the
10 window.
11 Q. Okay. But then he went on down somewhere,
12 didn't he?
13 A. Yeah. He went down to the apartment
14 complex.
15 Q. And disappeared?
16 A. Well, he turned in the driveway.
17 Q. I'm sorry?
18 A. He turned in the driveway to the Fox Creek
19 Apartments.
20 Q. Okay. And at what point did you see him
21 back up where you were?
22 A. Within a couple minutes he was back there
23 where we were with a group of others.
24 Q. I'm going to rewind the tape, so...
25 (Video begins playback.) The clock is

1 showing 1638, and I don't see Mr. Brooks
2 anywhere. Do you?

3 A. No. He's not there yet.

4 Q. Okay. He's not one of those individuals
5 across the street?

6 A. No, he's not. No, he's not one of them.

7 Q. Okay. And I'm going to speed it up a
8 little bit.

9 MR. LANIER: Am I blocking y'all?

10 (Jurors shake heads from side to side.)

11 (Video continues playback.)

12 BY MR. LANIER:

13 Q. Either one of those Mr. Brooks?

14 A. No, sir. (Video continues playback.)

15 Q. Was that Mr. Brooks?

16 A. No, sir. That was the guy that's coming
17 across the street. (Video continues playback.)

18 Q. It looks to me like that gentleman just
19 looked in the car and somebody told him to get
20 away from the car, either you or Officer Taylor,
21 and he backs away from the car and leaves the
22 car?

23 A. Actually, he went inside the car. He's --
24 you know, actually, in this stage it's like he
25 went inside, pushed the ---

1 Q. He opened the car. I saw that.

2 A. Yeah.

3 Q. All right.

4 A. You're right. He just pushes -- he meant
5 to check for the vehicle keys, pushed his hand
6 inside.

7 Q. But he doesn't get in the car?

8 A. No. He just push his hand inside to get
9 the ---

10 Q. Or attempt to drive the car?

11 A. No. He attempted to get the keys from the
12 ignition. (Video continues playback.)

13 Q. Who is the gentleman that you're trying to
14 put in cuffs?

15 A. It's Darby.

16 Q. I'm sorry?

17 A. Darby. Darby.

18 Q. Spell that for me?

19 A. D-A-R-B-Y. (Video continues playback.)

20 Q. Was that Mr. Brooks?

21 A. Say what?

22 Q. I'll withdraw that question. (Video
23 continues playback.)

24 Now, it appears to me that it's a good at
25 least 30 seconds or more from the time that

1 Caucasian female was more or less in y'all's face
2 and then that other gentleman comes up and gets
3 in your face and they back off. There's another
4 30 seconds before -- before Mr. Darby breaks away
5 and takes off. Did you see that?

6 A. Well, when the -- when the female was
7 there, they -- they were trying to actually get
8 him from the scene, trying to pull him away
9 because he was -- you know, he just was so upset,
10 I guess, and he was trying -- they were just
11 trying to calm him down, but I guess even his
12 friends couldn't get him calmed down.

13 Q. Couldn't get who calmed down?

14 A. Mr. Brooks.

15 Q. Okay. But even when Mr. Brooks is not in
16 the scene, not in the picture, it's a good 30
17 seconds or so before Mr. Darby breaks loose and
18 runs. There's that lapse of time. From the last
19 time you see who you call Mr. Brooks in this tape
20 until the time Dr. Darby breaks free and runs,
21 there is a lapse of time of -- I didn't mean to
22 do that, I'm sorry.

23 (Video continues playback.) All right.

24 Now, nobody is messing with y'all now, right?

25 A. No, sir, not at this point right here.

1 Q. So a period of time elapses between the
2 time the Caucasian female and who you claim is
3 Mr. Brooks backed away until Mr. Darby took off.
4 Correct?

5 A. They had actually -- they actually pulled
6 him back from the scene.

7 Q. Mr. Brooks and Ms. -- and the female
8 Caucasian, they weren't doing anything at the
9 time Mr. Darby broke free and ran?

10 A. They were -- yes, they were. They were
11 mouthing off. They were boisterous at that time
12 in the background.

13 Q. Okay. They were talking. But you agree
14 who you claim is Mr. Brooks wasn't even in this,
15 in the picture?

16 A. Oh. At that point in time he wasn't in the
17 picture, but he were -- he was out of the camera
18 view, like carrying on, like boisterous.

19 Q. Well, when I say in the picture, I'm
20 talking about that picture. Not in the camera,
21 not within the view of the camera, correct?

22 A. Are you talking about when we were trying
23 to restrain the individual?

24 Q. When Mr. Darby broke free.

25 A. Yeah.

1 Q. Who you claim is Mr. Brooks was not in this
2 video?

3 A. Well, he wasn't in the sight of the camera.

4 Q. Okay. That's my question.

5 A. But he was on the scene.

6 Q. That's my question.

7 Then Officer Taylor says that the vehicle
8 Mr. Brooks was supposedly driving went by at a
9 high rate of speed?

10 A. Well, when he came back, his shout -- his
11 head was -- maybe I can demonstrate it? Is it
12 okay if I just show you what, exactly what?

13 Q. That's fine.

14 A. Okay. We were -- okay. Let's say we are
15 heading towards Fox Creek, okay? This is towards
16 Pineville area, and this side is heading towards
17 St. Stephens, okay? Like my right -- my left
18 hand is towards St. Stephens. My -- so my left
19 hand is towards St. Stephens. My right hand is
20 towards Pineville. Okay?

21 He's heading towards Pineville into Fox
22 Creek Apartments, and he shouts through the
23 window. He put his head through the window,
24 "This is family, F police." Okay? That was the
25 exact as he drove down. All right. And at this

1 point in time ---

2 Q. "F the police," is that what you said he
3 said?

4 A. Well, I'm not really a curse word person.
5 I guess, you know, "F the police." "This is
6 family, F the police."

7 Q. Okay. That's fine.

8 A. Okay. All right. So he proceeded towards
9 Fox Creek Apartments.

10 And at this time, Officer Taylor, he came
11 to me. "You know who it is?"

12 I said, "I never really had no" -- you
13 know.

14 He said, "That's Altony Brooks."

15 I said okay, you know. I heard his name,
16 you know.

17 Okay. At this point in time, you know, we
18 just continued doing our job, went back, and it
19 seemed like just a few minutes later he came back
20 to the scene with ---

21 Q. Okay. That answered my question about the
22 car. And you didn't see Officer Taylor get
23 struck?

24 A. No. At that point in time I was in
25 pursuit.

1 Q. And he ran towards -- Mr. Darby, I believe,
2 he ran towards St. Stephens?

3 A. Yes, sir.

4 Q. And you went behind him?

5 A. Yes, sir.

6 Q. So, again, you didn't see him get --
7 anybody strike him?

8 A. No, sir.

9 (The defendant and Mr. Lanier confer.)

10 BY MR. LANIER:

11 Q. Now, in that videotape, I could only tell
12 that Officer Taylor was struck once. Do you
13 agree with that, looking at the video?

14 A. You know, like I say, I was -- I was in
15 pursuit. I didn't know how many times.

16 Q. Okay. So you don't know how many times he
17 was struck?

18 A. No. I was in pursuit.

19 Q. If you testified he was struck twice,
20 that's what somebody told you. Correct?

21 A. I testified he was struck twice?

22 Q. If you said that, then that's what someone
23 told you. You did not observe that. Correct?

24 A. No. I wasn't there. I was in pursuit.

25 MR. LANIER: Okay.

1 (The defendant and Mr. Lanier confer.)

2 BY MR. LANIER:

3 Q. Why isn't there any audio on this tape?

4 A. Like I said, the audio has had a default in
5 the tape. We know about it before. We were
6 supposed to take it down to get it -- you know,
7 get everything set up, but I would never get a
8 chance to get down there. But the audio wasn't
9 -- you know, it was in and out. Sometimes it
10 would work; sometimes it wouldn't work. At that
11 point in time that day it didn't work.

12 Q. Well, don't y'all repair these things if
13 they're not working?

14 A. Well, normally, we write up a report, a
15 repair slip, and we hand it to the sergeant and
16 that takes care of that.

17 Q. I'm going to go back to the tape one more
18 time.

19 (The defendant and Mr. Lanier confer.)

20 (Video continues playback.)

21 BY MR. LANIER:

22 Q. Now, what I'm trying to catch is the car
23 coming by that somebody yelled out the window.
24 Is that -- have you been looking?

25 A. When the car came by?

1 Q. Uh-huh.

2 A. Yeah. I looked right in the vehicle. I
3 looked right into ---

4 Q. No, no. Have you seen it on this tape
5 since I was rewinding it?

6 A. Oh. Yes, sir. I saw the car go by when
7 you -- well...

8 Q. Hold on. I'll speed it up here. That's
9 not the car.

10 A. Could you like take it back some more?
11 Could you take it back some more, please?

12 Q. Okay. (Video continues playback.) Was
13 that it?

14 A. No. No, sir.

15 Q. (Video continues playback.) How about that
16 one?

17 A. Yes, that was the vehicle that went by us.

18 Q. I'm sorry?

19 A. Yeah. That was the vehicle that went by
20 us, yes.

21 THE DEFENDANT: Mr. Lanier, can I see
22 you for a minute, please?

23 BY MR. LANIER:

24 Q. That's the vehicle there, correct?

25 A. Yes, sir. Yes, sir.

1 THE DEFENDANT: Can I see you a minute,
2 please? I have an objection over here.

3 BY MR. LANIER:

4 Q. All right. I don't see anybody leaning out
5 the window at that point, do you?

6 A. If you look -- if you'll look carefully...

7 (The defendant and Mr. Lanier confer.)

8 BY MR. LANIER:

9 Q. I mean, it can't go any slower than it's
10 going. I'm going to back it up one more time.

11 A. Right there is where he shouted out.
12 That's why we followed the car till it got out of
13 sight, till it get out of sight.

14 Q. I'm sorry?

15 A. Right there. Right there. That's when
16 they really shout out. That's what draws
17 attention and when Officer Taylor says if I know
18 that's actually -- that's Altony Brooks.

19 Q. There's no question that you didn't know
20 Altony Brooks prior to that night?

21 A. No.

22 Q. You'd never met him?

23 A. No, sir.

24 Q. You're relying on what somebody told you
25 the name of that person was. Correct?

1 A. Well, the fellow officer, my -- my fellow
2 officer indicated to me that that's who that was.

3 Q. Did you ever figure out where Mr. Brooks
4 lived?

5 A. No. I don't know where he lived.

6 Q. I'm sorry?

7 A. No, sir. I don't know where he lived at.

8 MR. LANIER: I don't have any further
9 questions, Your Honor.

10 THE COURT: Mr. Mastantuno.

11 MR. MASTANTUNO: May I redirect?

12 THE COURT: You may.

13 (Mr. Lanier and the defendant confer.)

14 REDIRECT EXAMINATION

15 BY MR. MASTANTUNO:

16 Q. Just a few questions for you, sir.

17 A. Yes, sir.

18 Q. In the video when you and Officer Taylor
19 are being surrounded and pushed even by the
20 female who was present and the gentleman which
21 you identified as the defendant, would you say
22 that hampered your ability to detain the suspect
23 which you were trying to arrest?

24 A. Yes, sir.

25 Q. Would you have had an easier time detaining

1 him if no one was around and you were not -- you
2 know, you were not being shoved or pushed?

3 A. Yes, sir. I feel if we didn't have the
4 extra commotion with everybody pushing on us, we
5 probably would have got him into handcuffs and he
6 couldn't -- he wouldn't have fled from us.

7 Q. And one further matter. You had not known
8 Altony Brooks before that evening. As Mr. Lanier
9 pointed out, Jamie Taylor identified who he was.
10 Ignoring his name and the identification Jamie
11 Taylor provided to you, based on your own
12 eyesight and your identification of seeing who
13 was in the crowd, who was pushing on you, are you
14 positive of your identification of the defendant?

15 A. Yes, sir.

16 Q. Is there any doubt in your mind?

17 A. No, sir.

18 MR. MASTANTUNO: No further questions.

19 THE COURT: Mr. Lanier.

20 MR. LANIER: No questions.

21 THE COURT: Mr. Mastantuno, may this
22 witness step down and be excused?

23 MR. MASTANTUNO: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. LANIER: None, Your Honor.

1 THE COURT: Mr. Shannon, you may step
2 down and be excused from the courthouse. You're
3 free to remain.

4 THE WITNESS: Okay.

5 (The witness is excused from the
6 witness stand.)

7 THE COURT: Counsel approach for
8 scheduling.

9 (There was an off-the-record bench
10 conference in the presence of the jury but out of
11 the hearing of the jury.)

12 (Said bench conference being concluded,
13 the following proceedings were had:)

14 THE COURT: Call your next witness.

15 MR. MASTANTUNO: The state calls
16 Robert (sic) Rothman.

17 (Mr. Rothman enters the courtroom.)

18 THE COURT: Mr. Rothman, right here to
19 this chair, please.

20 RICHARD ROTHMAN,
21 being first duly sworn by the clerk, is examined
22 and testifies as follows:

23 THE CLERK: Please be seated. State
24 your full name and spell your last name for the
25 record.

1 THE WITNESS: Richard Rothman,
2 R-O-T-H-M-A-N.

3 DIRECT EXAMINATION

4 BY MR. MASTANTUNO:

5 Q. Mr. Rothman, once again, can I get you to
6 state your name for me?

7 A. Richard Rothman.

8 Q. Mr. Rothman, what's your profession and
9 occupation?

10 A. I'm retired.

11 Q. Retired? How long have you lived in this
12 area?

13 A. In South Carolina or St. Stephen?

14 Q. South Carolina.

15 A. April of '06.

16 Q. April '06 in St. Stephens?

17 A. April of '07.

18 Q. April of '07. Do you remember the evening
19 of August 16th, 2007?

20 A. Yes, sir.

21 Q. Where were you that evening?

22 A. I was riding in Officer Shannon's police
23 car as a ride-along.

24 Q. When you say ride-along, typically can you
25 explain the duties or what you do?

1 A. Well, basically, I guess, an assistant or
2 an observer, if they need help, just to --
3 community service, I guess, be with them, an
4 extra hand, occupant.

5 Q. Do you carry a firearm?

6 A. Yes, I do.

7 Q. Do you have a licensed ---

8 A. Yes.

9 Q. --- concealed weapons permit?

10 A. Yes, I do.

11 Q. How many times have you been on a
12 ride-along?

13 A. I don't know times-wise, but I have almost
14 200 hours to date.

15 Q. Well, how many hours per ride-along
16 typically?

17 A. It'll vary. Some nights four hours. Some
18 -- some nights all night with them.

19 Q. So you've been on multiple, multiple
20 ride-alongs. Is that correct?

21 A. Yes.

22 Q. Was this night different than a typical
23 night?

24 A. Yes.

25 Q. How so?

1 A. The incident that had occurred, I never had
2 experienced that with these police officers
3 before.

4 Q. What was your state of mind?

5 A. Clear. Alert. Very attentive as to what
6 was happening and the situation that was arising.
7 Was I fearful? No. Just very attentive and
8 alert.

9 Q. When you say you weren't fearful, are you
10 referring to yourself or the officers that were
11 working that evening?

12 MR. LANIER: Your Honor, I object to
13 the relevance of that.

14 THE WITNESS: I was ---

15 THE COURT: Hold on one second,
16 Mr. Rothman.

17 THE WITNESS: Oh.

18 THE COURT: Counsel approach.

19 (There was an off-the-record bench
20 conference in the presence of the jury but out of
21 the hearing of the jury.)

22 (Said bench conference being concluded,
23 the following proceedings were had:)

24 THE COURT: Sustained.

25 MR. MASTANTUNO: I'll withdraw that

1 question and move on.

2 BY MR. MASTANTUNO:

3 Q. I'm not going to play the tape for you, but
4 can you -- based off your memory, can you tell me
5 the events of that evening, how it started?

6 A. Officer Shannon pulled a vehicle over for a
7 no seatbelt violation. Pulled the people over.
8 He approached the car. At that time I noticed
9 two people walking up alongside the vehicle. I
10 was about to notify him with the horn, but I
11 didn't. He had turned around and saw two people
12 behind him, two youths, one of them across the --
13 across the street.

14 Did his check with the men in the car,
15 handcuffed them, put them in the vehicle that I
16 was in, behind me, sitting behind me.

17 A crowd of people -- vehicles were coming
18 by. A crowd of people were starting to build up
19 there.

20 Q. How many people would you say arrived on
21 that scene that were not officers?

22 A. At least 20-ish.

23 Q. 20-ish?

24 A. Yeah, more or less.

25 Q. Can you give a range? What would the range

1 be?

2 A. Fifteen to 20, maybe.

3 Q. Okay. You can continue on, I believe.

4 A. At that time I observed the gentleman
5 trying to get into one of the vehicles as if to
6 take it away, you know. While the other
7 officers, Officer Taylor and Shannon, were trying
8 to subdue some gentleman, there was a ruckus
9 going on. I'm trying to keep an eye on the area
10 to see if any weapons are going to be drawn or
11 any other violence was going to escalate. I
12 don't remember at what point in time I called
13 central for a backup.

14 Q. Is that typical that you'd get on the
15 radio, yourself, and call for backup?

16 A. I was advised by my -- the chief of police
17 that if any of the officers were in trouble he
18 would expect me to step in and help. And since I
19 am not of any police authority, I called up and
20 said we needed some help here because there was a
21 -- they were outnumbered.

22 Q. So what you're referring to as "trouble"
23 was being outnumbered?

24 A. Yes.

25 Q. Anything else going on that gave you that

1 impression?

2 A. Well, they were moving closer to the
3 situation.

4 Q. How close were they? You can direct me.

5 A. Within -- within camera vision of the car,
6 and they were right next to the car. And before
7 the -- they tried to arrest one of the gentlemen
8 who was being in -- you know, obscuring the --
9 touching, you know, the vehicle.

10 Q. Right.

11 A. He broke free.

12 Q. Well, let me stop you there. You said the
13 crowd was gathering close. How close did you
14 observe them?

15 A. Well, when I saw a girl on two ---

16 Q. You can direct me to you, just so we can do
17 a distance here.

18 A. Three or four feet. Three feet, actually.

19 Q. About this close?

20 A. Closer. And when they were backing up ---

21 Q. This close?

22 A. Yeah.

23 Q. Okay.

24 A. And then there was a -- I saw a black
25 woman, I think. Yeah. She was trying to take

1 this white girl away who was touching Officer
2 Taylor, you know, pushing him.

3 I don't remember exactly what point in
4 time, but -- but the gentleman they put a
5 handcuff on, he broke free and ran away, and
6 Officer Shannon pursued him a bit. I imagine he
7 just turned around, thinking, you know, my
8 partner is back there. He turned around. At
9 that point in time Officer Taylor had turned his
10 head to look to see where ---

11 Q. I'm going to stop you there for one second.

12 MR. MASTANTUNO: May I approach,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. MASTANTUNO:

16 Q. I show you state's exhibit number two. Do
17 you recognize that scene?

18 A. Yes. I recognize those as one of the
19 scenes that evening.

20 Q. Is it a fair and accurate representation
21 of ---

22 A. What was happening?

23 Q. --- what was happening that evening?

24 A. Oh. This looks like the gentleman that ran
25 across the street here that hit the police

1 officer. This is the gentleman running across
2 the street here. Because it all happened so
3 fast. I was panning back and forth, looking for
4 -- I don't know exactly who he is.

5 Q. Right.

6 A. I just remember someone running across the
7 street. See, when Officer Taylor had looked down
8 past the side of this car, the car that we were
9 going to tow, he was looking for his partner as
10 to what had happened. This man over here come
11 running across the front of the car, this way,
12 but a running head start.

13 Q. So would you say this is a fair and
14 accurate representation of that evening then?

15 A. Oh, absolutely.

16 MR. MASTANTUNO: Your Honor, may I
17 publish this to the jury? Oh, I'm sorry. May I
18 introduce this into evidence?

19 THE COURT: And what number is that?

20 MR. MASTANTUNO: It's state's exhibit
21 number two.

22 THE COURT: Any objection?

23 MR. LANIER: I just need to look at it
24 one second, Your Honor.

25 (Mr. Lanier reviews exhibit.)

1 MR. LANIER: No objection, Your Honor.

2 THE COURT: State's two into evidence
3 without objection. You may publish to the jury.

4 (State's Exhibit No. 2, previously
5 marked for identification, is received in
6 evidence.)

7 (State's Exhibit No. 2 is published to
8 the jury.)

9 BY MR. MASTANTUNO:

10 Q. Based on your recollection, was Officer
11 Taylor observing the suspect running across the
12 street there with his hand cocked back or was
13 he ---

14 A. Not to my knowledge. It was -- the actual
15 contact, I didn't see the actual contact because
16 it was, well, for one, it's out of the range of
17 light, it was dark over here, and this all
18 happened in a split second.

19 And, you know, I'm looking at the people
20 over here, making sure nothing else was going to
21 happen, but I -- as soon as this gentleman run
22 across the street, go like this (indicating) and
23 not a couple of seconds later he come running
24 back and Officer Taylor was bleeding profusely
25 from his orbit, his eye socket, I assumed -- I,

1 well, noted that it was -- I realized he was hit
2 at that time.

3 MR. MASTANTUNO: May I approach, Your
4 Honor?

5 THE COURT: You may.

6 BY MR. MASTANTUNO:

7 Q. State's exhibit three and state's exhibit
8 four, do you recognize those photos? Are they a
9 fair and accurate representation of the events
10 that evening?

11 A. Yes. Well, it looks like it's a punching
12 shot (phonetic). Okay.

13 THE COURT REPORTER: Repeat that?

14 THE WITNESS: Oh. It looked a little
15 more -- I can see the officer here. That looks
16 pretty accurate to me, I would...

17 MR. MASTANTUNO: Let the state
18 introduce exhibits three and four into evidence.

19 THE COURT: Mr. Lanier.

20 MR. LANIER: If I can just look at
21 them, Your Honor.

22 (Mr. Lanier reviews exhibits.)

23 MR. LANIER: No objection..

24 THE COURT: State's three and four into
25 evidence without objection.

1 (State's Exhibits No. 3 and 4,
2 previously marked for identification, are
3 received in evidence.)

4 MR. MASTANTUNO: Your Honor, may I
5 publish those to the jury?

6 THE COURT: You may.

7 (Overhead projector does not function.)

8 MR. MASTANTUNO: Your Honor, it's not
9 -- it's not that urgent.

10 THE COURT: You can publish it the
11 old-fashioned way, Mr. Mastantuno.

12 MR. MASTANTUNO: That's all right.
13 I'll move on.

14 BY MR. MASTANTUNO:

15 Q. These photos that I showed you, are they
16 from your vantage point?

17 A. Yes.

18 Q. After this event occurred, what happened
19 next?

20 A. Immediately the crowd -- the crowd
21 dispersed. Those -- that gentleman there, the
22 person running across the street who assaulted
23 Officer Taylor, ran down the block.

24 I got out to assist. I called up central,
25 asked if I can get out to assist. They

1 authorized it. I got out and I assisted Officer
2 Taylor.

3 And those people who ran down the block,
4 obviously -- well, before I got out, they were
5 walking past us again with much caution and they
6 went back towards the Fox Creek area. The police
7 had arrived just shortly after that.

8 I drove Officer Taylor. He was unable to
9 operate the vehicle at that time. I took him
10 back to the station.

11 Q. Can you describe the injuries you observed?

12 A. Officer Taylor was in extreme pain,
13 couldn't see, exhausted.

14 Q. Speech?

15 A. Sweating. He could speak. He was -- he
16 was coherent, but he was -- he was hurting pretty
17 bad.

18 Q. Balance?

19 A. A little off. He was off a bit. Couldn't
20 drive, and I had to hold him. I helped him to
21 the car. He got into the -- the seat, and he
22 more or less collapsed, in relaxation, so to
23 speak.

24 Q. Who drove his car?

25 A. I'm sorry?

1 Q. Who drove his car to the station?

2 A. I did. I took him back, and I helped him
3 inside to the station, and that's when SLED and
4 the rest of the police got there and medics and
5 took care of him from that point forward.

6 MR. MASTANTUNO: Your Honor, I'll try
7 publishing these now.

8 THE COURT: All right.

9 (State's Exhibits No. 3 and 4 are
10 published to the jury.)

11 THE COURT: And for the record,
12 Mr. Mastantuno, that's state's three and four
13 that you just published?

14 MR. MASTANTUNO: Yes, Your Honor.

15 BY MR. MASTANTUNO:

16 Q. One further question. I know this is from
17 your vantage point, as you stated. Were you able
18 to identify the individual who struck Officer
19 Taylor?

20 A. No, I cannot.

21 Q. Do you have an explanation why you can't?

22 A. (A) it was dark; (b), it happened very
23 fast. I assume it was a black youth wearing the
24 white clothing, maybe five-six or six-ish, give
25 or take an inch. Maybe 125 pounds, I imagine.

1 130 pounds, if that.

2 Q. Are you sure about this identification, or
3 is this something...

4 A. That was the best description I can give
5 you.

6 Q. So you wouldn't -- you wouldn't bet on it?

7 A. If he was put in front of a lineup, I
8 couldn't pick him out.

9 Q. Did the crowd affect your observation that
10 evening?

11 A. Not at -- affect my vision?

12 Q. Not your vision but ---

13 A. Oh.

14 Q. --- your observation of details?

15 A. Um...

16 Q. Let me rephrase.

17 A. Yeah.

18 Q. Did you picture every face that was in the
19 crowd?

20 A. No, I didn't picture every face, but I
21 couldn't -- I couldn't -- I can't pick out faces
22 because of the lighting. The situation, it
23 happened very fast, but I do know that there were
24 numerous people there, like I had mentioned
25 earlier, and I do remember seeing two females

1 pushing Officer Taylor and one black youth, a
2 woman, pulling the other one away.

3 And the gentlemen in the backseat, the two
4 men in the backseat of the cruiser I was in, they
5 were hoping -- they were saying, "Guys, stop."

6 MR. LANIER: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. LANIER: Hearsay.

9 THE COURT: I'm sorry?

10 MR. LANIER: Hearsay.

11 THE COURT: Sustained.

12 MR. MASTANTUNO: Would you allow the
13 witness to continue as an excited utterance?

14 THE WITNESS: Well, they weren't ---

15 THE COURT: Sir.

16 THE WITNESS: Oh.

17 THE COURT: Mr. Mastantuno, you're
18 overruled. I sustained his objection.

19 MR. MASTANTUNO: Yes, Your Honor.

20 Question withdrawn. I have no further questions.

21 CROSS-EXAMINATION

22 BY MR. LANIER:

23 Q. Mr. Rothman, I didn't hear what you retired
24 from.

25 A. U.S. Postal Service.

1 Q. I'm sorry?

2 A. The U.S. Postal Service.

3 Q. And you did that in South Carolina, or you
4 did that in another state?

5 A. Another state.

6 Q. What state was that?

7 A. New York.

8 Q. New York?

9 A. Yes, sir.

10 Q. And you've lived in the St. Stephens area
11 how long?

12 A. Since April of '06 -- April of '07.

13 Q. April of '06?

14 A. Seven.

15 Q. April of '07, okay.

16 A. Yes.

17 Q. At the time of this incident, you said you
18 had been on a couple hundred?

19 A. As of today.

20 Q. As of today, okay. I just wanted to get
21 that clarified. And you wrote a statement about
22 the incident on August the 17th, 2007; do you
23 remember that?

24 A. I remember writing a statement.

25 Q. And in that statement you said: When

1 Officer Shannon returns, Police Officer Taylor
2 had been assaulted by a large black male. Do you
3 recollect saying that?

4 A. I remember something to the effect, yes.

5 Q. I'm sorry?

6 A. I remember something to the effect.

7 Q. Okay. And you didn't see the actual blow
8 being struck?

9 A. No, sir.

10 Q. Okay. So you don't know if he was struck
11 once? twice?

12 A. Well, considering the situation and the
13 position of this person running across the street
14 with his arm in the air in a fist and it
15 happening so fast, I imagined it was just one or
16 I assumed it was just one hit.

17 Q. Now, I'm looking at state's exhibit
18 three -- two, three, and four.

19 A. Yes.

20 Q. Now, on state's exhibit number three, it
21 appears to me that Officer Taylor is looking at
22 the person who's running across the road with
23 their fist raised. Do you agree with that?

24 A. You said it appears. Could it also be that
25 he just would be turning his head back at that

1 time? You know, he's looking for his partner,
2 and all of a sudden you turn back and, bang, it
3 happens?

4 Q. Mr. Rothman, I asked you a question.

5 A. It appears?

6 Q. It appears that he is looking at the person
7 who is approaching him, doesn't it?

8 A. Yes.

9 Q. Okay. And you cannot identify the person
10 who ran across the street? I understand a lot
11 was going on, and it was dark out there, correct?

12 A. Correct.

13 Q. And you cannot recognize the person?

14 A. No, sir.

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

17 THE COURT: Mr. Mastantuno.

18 MR. MASTANTUNO: Nothing, Your Honor.

19 THE COURT: May this witness step down
20 and be excused?

21 MR. MASTANTUNO: Yes, Your Honor.

22 THE COURT: Any objection, Mr. Lanier,
23 to this witness being excused?

24 MR. LANIER: Yes, he can, Your Honor.

25 THE COURT: All right. Mr. Rothman,

1 you may step down. You may be excused from the
2 courtroom, but you are free to remain.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you.

5 (The witness is excused from the
6 witness stand.)

7 THE COURT: Ladies and gentlemen of the
8 jury, we've reached an appropriate time to take
9 our lunch break.

10 I remind you that during this break you
11 are not to discuss this case with anyone. That
12 includes your fellow jurors, friends, family,
13 anyone involved in the trial. I also remind you
14 please do not read, watch, listen to any news
15 accounts of this trial should there be any.
16 Please be back in your jury room at 1:30. Thank
17 you.

18 Please rise for the jury.

19 (Whereupon, the jury leaves the
20 courtroom at approximately 12:15 p.m.)

21 THE COURT: Thank you. Please be
22 seated.

23 Anything from the state before we break
24 for lunch?

25 MR. MASTANTUNO: No, Your Honor.

1 THE COURT: Anything from the
2 defendant?

3 MR. LANIER: Yes, Your Honor. My
4 client is -- I just can't listen to what's going
5 on and listen to him constantly, and he's
6 constantly criticizing what I'm doing.

7 Now, I offered on three different
8 occasions this morning for him to take over this
9 case if he wants to. He has the absolute right
10 to do that, and I don't know what he wants to do.

11 THE COURT: All right. Mr. Lanier,
12 that was my -- that was what the Court was going
13 to address before we broke for lunch.

14 Mr. Brooks, you have been very
15 disruptive. I understand that this is important
16 to you, and you are entitled to be here, but it
17 does not give you the right to be disruptive. Do
18 you understand me?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Mr. Lanier has probably
21 more experience than any of the attorneys
22 combined in this courtroom. Do you understand,
23 sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: He cannot defend you and

1 present your defense while you are sitting there
2 interrupting him and making self-serving
3 statements in front of the jury. Do you
4 understand?

5 THE DEFENDANT: I understand, ma'am.

6 THE COURT: This is your warning,
7 Mr. Brooks. If I have to call you down again, I
8 will have the jury leave, and I will find you in
9 contempt which ---

10 THE DEFENDANT: Well ---

11 THE COURT: --- which is up to a
12 six-month term in the Department of Corrections.
13 Do you understand that penalty, sir?

14 THE DEFENDANT: Yes, ma'am, I totally
15 understand.

16 THE COURT: If I call you down again
17 after that, sir, I will remove you from the
18 courtroom and you will be unable to interrupt
19 anyone. Do you understand that, sir?

20 THE DEFENDANT: Yes, ma'am, I totally
21 understand, but I would like to say that ---

22 THE COURT REPORTER: He needs to speak
23 up. I can't hear him.

24 THE DEFENDANT: I would like to say
25 that I did not have ample enough time to go over

1 none of this information that ---

2 THE COURT: Mr. Brooks, this is not the
3 time. Your request for a continuance was denied.

4 THE DEFENDANT: All right. So,
5 therefore, I asked ---

6 THE COURT: You have counsel.

7 THE DEFENDANT: I asked my counsel to
8 address certain -- certain facts, and he has not
9 addressed certain facts. That's why I have been
10 -- I've been upset with him and continue. I've
11 been continuing sitting here without -- I have
12 not been sitting because I -- you've seen me
13 writing over here, and I show Mr. Lanier, and I
14 said, Mr. Lanier, I want you to argue these
15 facts.

16 THE COURT: Mr. Brooks, this is not
17 your opportunity to air any issues with
18 Mr. Lanier. Do you understand?

19 THE DEFENDANT: Yes, ma'am. You see,
20 my ---

21 THE COURT: As I indicated to you,
22 Mr. Brooks ---

23 THE DEFENDANT: My liberty's at stake,
24 ma'am.

25 THE COURT: I understand that,

1 Mr. Brooks. Mr. Lanier is a very experienced
2 criminal defense attorney.

3 THE DEFENDANT: I know.

4 THE COURT: I am not here to tell
5 Mr. Lanier how to try his case. What I am here
6 to do is preserve order and everyone's rights.

7 THE DEFENDANT: And I have a right to
8 tell Mr. Lanier what he needs to do.

9 THE COURT: I understand that,
10 Mr. Brooks, but I am telling you, and this is
11 your last warning, if I have to call you down
12 again, you will be held in contempt. If I have
13 to call you down after that, you will be removed
14 from this courtroom.

15 THE DEFENDANT: All right.

16 THE COURT: We are in recess until
17 1:30.

18 (Mr. Lanier and the defendant confer.)

19 (A lunch recess is taken at
20 approximately 12:20 p.m.)
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AFTERNOON SESSION

(The trial reconvenes at approximately 1:35 p.m., and the following proceedings were had:)

THE COURT: Anything before we bring in the defendant?

MR. MASTANTUNO: Nothing, Your Honor.

MR. LANIER: No, Your Honor.

(The defendant enters the courtroom at approximately 1:35 p.m.)

(The defendant being present with counsel, the following proceedings are had:)

(Mr. Lanier and the defendant confer.)

THE COURT: All right. Anything before we bring in the jury?

MR. MASTANTUNO: No, Your Honor.

THE COURT: Mr. Lanier?

MR. LANIER: I'd like to get one of my exhibits back, Your Honor, before we bring the jury.

(Exhibit is tendered to Mr. Lanier.)

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

(Whereupon, the jury enters the courtroom at approximately 1:40 p.m.)

1 THE COURT: Thank you. Please be
2 seated.

3 Mr. Mastantuno, call your next witness.

4 MR. COURTNEY: Your Honor, the state
5 calls Jerry Gwin.

6 (Mr. Gwin enters the courtroom.)

7 THE COURT: Sir, please come forward up
8 to this chair right here.

9 JERRY GWIN,
10 being first duly sworn by the clerk, is examined
11 and testifies as follows:

12 THE CLERK: Please be seated. State
13 your full name for the record and spell your last
14 name.

15 THE WITNESS: Jerry Gwin, G-W-I-N.

16 DIRECT EXAMINATION

17 BY MR. COURTNEY:

18 Q. Mr. Gwin, where do you work?

19 A. Carl's Automotive Towing Service.

20 Q. Okay. And did you work for them in August
21 of 2007?

22 A. Yes, sir.

23 Q. Were you working for them on August the
24 16th, 2007?

25 A. Yes, sir.

1 Q. Did you have an opportunity to respond to
2 pick up a car on Highway 45 in St. Stephens that
3 night?

4 A. Yes, sir.

5 Q. Tell us a little bit about what happened
6 when you responded to that call.

7 A. I was called to go to pick up a car, and on
8 the way, the dispatcher called me and told me to
9 1022, which is cancel, but I told them I was
10 already there, you know. They said, well, go --
11 go on ---

12 Q. I'm sorry to interrupt you. Did they say
13 why they cancelled the call?

14 A. No, sir. They just said to 1022. It might
15 be, you know...

16 Q. Okay.

17 A. So I got to the scene, and the officer said
18 to go ahead and hook up and leave as soon as --
19 we'll get away as soon as we could. So I did.
20 In the process, I was loading and hooking up the
21 chains up and stuff, and I looked back and ---

22 Q. Let's stop you right there. As you arrived
23 at the scene, what did you see?

24 A. All right. There was an officer there, and
25 they were behind the car, and I backed up to the

1 front of the car, and he said just to go ahead
2 and start loading it and to get out of there as
3 soon as we could.

4 Q. Were they the only people at the scene, or
5 were there ---

6 A. No. There were several people out in the
7 crowd, you might say ---

8 Q. Okay. Were they ---

9 A. --- or standing around. Yes, sir.

10 Q. They were close to the scene, as well?

11 A. Close to the scene?

12 Q. Close to the scene, close to the car?

13 A. Yes, sir, uh-huh.

14 Q. Okay. All right. Please continue.

15 A. Okay. I went ahead and started loading the
16 car, and I got down underneath, and when I got
17 down I heard some commotion going on. Then I
18 went around to the other side to load up that
19 side, and I could see the police officer behind
20 the vehicle. Kind of looked like he was
21 staggering or -- you know, not falling down, now,
22 don't get me wrong, but just staggering, holding
23 his face, and I could see blood running between
24 his fingers.

25 Q. Okay. So you didn't actually see what

1 happened to the officer?

2 A. No, sir. I was under the car at that time,
3 so -- so I couldn't see anything other than heard
4 the commotion underneath.

5 Q. Okay.

6 A. So I went back and asked the officer was he
7 okay. And he was trying to get to his radio, and
8 he couldn't get it to work or couldn't maneuver
9 it with one hand or whatever. So I took the
10 radio and called in, myself.

11 Q. Okay. When you say he couldn't get to his
12 radio, did he have a free hand to use for ---

13 A. He had a free hand, but he was kind of like
14 disoriented because he was holding his arm or
15 hand up here and trying to operate the thing,
16 too, with one hand.

17 Q. Okay. So he didn't seem to be very
18 coordinated? Would that be a fair ---

19 A. That would be a fair -- yes, sir.

20 MR. LANIER: Objection, Your Honor.
21 Leading.

22 THE COURT: Sustained.

23 MR. COURTNEY: I apologize.

24 BY MR. COURTNEY:

25 Q. Okay. Please continue.

1 A. Okay. I called in and told the dispatcher
2 who I was and asked them to send us some help,
3 that the officer was down, and they said okay.

4 Well, when I turned around, there was more
5 officers arriving on the scene, and they told
6 me -- advised me to go ahead and get it loaded
7 and get prepared to leave.

8 Q. Okay.

9 A. And I did so.

10 Q. When you say you radioed for help, did you
11 use your radio or his radio?

12 A. His radio, sir.

13 Q. The officer's radio?

14 A. Yes, sir.

15 Q. And just to reiterate, why did you do that?

16 A. Well, just that he was -- like he was
17 disoriented. He was confused. Not confused,
18 but, you know, disoriented, kind of stumbling
19 around a little bit, and the radio didn't want to
20 work or he couldn't get the right button to mash
21 or whatever.

22 Q. All right. Just go back for just one
23 minute. When you said that you arrived on the
24 scene and dispatch had told you to cancel.

25 A. Right, sir.

1 Q. What the 10 code meant is I think what you
2 explained. When you say dispatch, who are you
3 speaking of?

4 A. Berkeley County. Berkeley County sheriff's
5 department.

6 Q. Okay. So they radioed you and told you to
7 cancel. Have you ever had that happen before?

8 A. Yes, sir. Just on different occasions,
9 different things.

10 Q. Okay. Typically, what would be the reasons
11 for being cancelled at a call?

12 A. On a normal call, it would be they decided
13 not to tow the vehicle.

14 Q. Okay.

15 A. For whatever reason. You know, maybe let
16 someone else drive the vehicle home.

17 Q. Okay. All right. Did you render any
18 medical assistance to Officer Taylor at the time?

19 A. No, sir, I did not, other than to ask him
20 was he okay and took the radio and tried to call
21 in for him.

22 Q. Okay. And at that point I believe you said
23 the other officers started arriving?

24 A. Right, sir.

25 Q. Okay. So what did you do after that?

1 A. They advised me to go ahead and get hooked
2 up and ready to leave, and I did so, and then
3 they told me to follow the last car out.

4 Q. Okay. But just to make clear, you didn't
5 see the assault?

6 A. No, sir, I did not.

7 MR. COURTNEY: Okay. Beg the Court's
8 indulgence for just one moment.

9 THE COURT: Yes, sir.

10 (Mr. Courtney and Mr. Mastantuno
11 confer.)

12 BY MR. COURTNEY:

13 Q. Mr. Gwin, did you determine at a later date
14 why the call had been cancelled?

15 A. No. I believe ---

16 MR. LANIER: Objection, Your Honor. It
17 sounds like it calls for a hearsay answer, "did
18 you learn why."

19 THE COURT: Overruled.

20 BY MR. COURTNEY:

21 Q. You may answer the question.

22 A. Okay. That has happened. What I'm saying
23 that -- I'm going to think again here. Dispatch
24 calls it -- yes, "there was a possible situation
25 arising" is what they -- that I believe the words

1 they used.

2 Q. Okay.

3 A. But that didn't explain anything at all.
4 They just said to -- I told them I was already on
5 the scene, and they said leave as soon as
6 possible.

7 Q. Okay. What did you take "situation
8 arising" to mean?

9 A. I didn't know, sir. I'm not -- I didn't --
10 all I could see was a crowd gathering.

11 Q. Okay. Is it normal for you to have crowds
12 on the scene when you pick up a car?

13 MR. LANIER: Objection to that, Your
14 Honor, to relevance.

15 MR. COURTNEY: He's a tow truck driver.
16 I'm trying to determine if this was normal.

17 THE COURT: Overruled.

18 MR. COURTNEY: Thank you, Your Honor.

19 BY MR. COURTNEY:

20 Q. Is it normal?

21 A. Yeah, there's been crowds there before,
22 passerbys or other people in the vehicle or
23 something like that.

24 Q. Okay. Was there anything out of the normal
25 with this crowd that was different from other

1 crowds that you normally encounter?

2 A. Only thing I noticed when I arrived on the
3 scene it was a really large crowd. It was more
4 than just one or two people is what I'm saying.

5 Q. Okay. How did that make you feel?

6 A. A little leery, especially since the
7 dispatcher had just called me.

8 MR. COURTNEY: If you would please
9 answer any questions that Mr. Lanier has for you.

10 CROSS-EXAMINATION

11 BY MR. LANIER:

12 Q. Mr. Gwin, you said you got a call from
13 dispatch that the call was cancelled?

14 A. Yes, sir.

15 Q. Okay. They didn't give you a reason; they
16 just said it was cancelled?

17 A. As I said, that there was a possibility of
18 a situation.

19 Q. I thought you said you learned that later?

20 A. I didn't say I learned that later. I said
21 at that time, sir.

22 Q. Okay.

23 A. Yes, sir.

24 Q. And when you called and you said it was a
25 officer down, now, Officer Taylor, he was up and

1 walking around, right?

2 A. He was up, but he was not in full senses at
3 the time. He was staggering, and he was not real
4 coordinated, as I said.

5 Q. Okay. But he was not down on the ground?

6 A. Not on the ground, no, sir.

7 Q. At any time that you saw?

8 A. No, sir. Not to my knowledge.

9 MR. LANIER: I don't have any further
10 questions, Your Honor.

11 THE COURT: Mr. Courtney.

12 MR. COURTNEY: I just have a couple of
13 questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. COURTNEY:

16 Q. Mr. Gwin, when you say you don't know if
17 the officer was on the ground, not to your
18 knowledge, does that mean you had full sight of
19 him during the whole incident?

20 A. No, sir, it does not. As I stated, I was
21 under the vehicle, hooking up the vehicle. He
22 was out of my eyesight.

23 Q. Okay. So it would be possible that you
24 didn't see him on the ground?

25 A. He could have been on the ground and I

1 didn't see it, if that's what you're really
2 saying, yes, sir.

3 MR. COURTNEY: All right. Thank you.
4 Nothing further.

5 THE COURT: Mr. Lanier.

6 MR. LANIER: Nothing further.

7 THE COURT: Mr. Gwin, you may step
8 down. You may remain in the courtroom, but you
9 may be excused from the courthouse if you wish.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 (The witness is excused from the
13 witness stand.)

14 THE COURT: Call your next witness.

15 MR. COURTNEY: Your Honor, the state
16 would call Dr. Timothy Osbon.

17 (Dr. Osbon enters the courtroom.)

18 THE COURT: Right up here, sir.

19 TIMOTHY OSBON, M.D.,
20 being first duly sworn by the clerk, is examined
21 and testifies as follows:

22 THE CLERK: Please be seated. State
23 your full name and spell your last name for the
24 record.

25 THE WITNESS: My full name is Timothy

1 Barton Osbon, spelled O-S-B-O-N.

2 MR. COURTNEY: Thank you, Doctor.

3 Just one housekeeping matter,
4 Your Honor. Previously, before court started,
5 defense counsel has agreed to stipulate that
6 Dr. Osbon is qualified as a physician.

7 MR. LANIER: Well, I would like to hear
8 his educational background first, Your Honor.

9 THE COURT: All right.

10 MR. COURTNEY: I'll be happy to do
11 that, Your Honor.

12 THE COURT: You may proceed,
13 Mr. Courtney.

14 MR. COURTNEY: Thank you.

15 DIRECT EXAMINATION

16 BY MR. COURTNEY:

17 Q. Dr. Osbon, what is your occupation?

18 A. I am a physician at the emergency
19 department in Summerville and Moncks Corner.

20 Q. And where did you go to college?

21 A. I went to college at Wofford College at
22 Spartanburg, South Carolina.

23 Q. Okay. And medical school, where did you go
24 to?

25 A. The Medical University of South Carolina in

1 Charleston.

2 Q. And did you have to do any residency or
3 internship?

4 A. I did residency in emergency medicine in
5 Columbia for three years and then joined the
6 group down here.

7 Q. Thank you. All right. Now, if you could,
8 please reiterate where are you working.

9 A. I work in the Summerville emergency
10 department at Summerville Medical Center, as well
11 as Moncks Corner, the Trident Moncks Corner
12 emergency department.

13 Q. Okay. And were you working there in August
14 of 2007?

15 A. Yes, sir.

16 Q. Okay. Which place were you working that
17 night?

18 A. Moncks Corner.

19 Q. Okay. And we're speaking of August the
20 16th and the 17th, the early morning of the 17th?

21 A. Correct.

22 Q. 2007, correct?

23 A. (The witness nods head up and down.)

24 Q. Okay. Now, on that night, August the 16th,
25 the night of August the 16th, morning of August

1 the 17th, 2007, did you have an opportunity to
2 treat Officer James Taylor in your emergency
3 room?

4 A. We did.

5 Q. Okay. Can you tell us what were his
6 injuries?

7 A. He came in with having been apparently
8 assaulted, and he was struck in the left eye. He
9 had a couple of lacerations to the left eye, and
10 then on closer inspection, he had what we call
11 hyphema which is trauma to the eyeball itself,
12 resulting in a collection of blood in the
13 anterior aspect of his eye.

14 Q. When you say anterior aspect, where would
15 that be?

16 A. The front most portion of his eye had blood
17 in it.

18 MR. COURTNEY: Beg the Court's
19 indulgence for just one moment.

20 THE COURT: Yes, sir.

21 MR. COURTNEY: Your Honor, may I
22 approach the witness?

23 THE COURT: You may.

24 (Mr. Lanier reviews exhibits.)

25 BY MR. COURTNEY:

1 Q. Dr. Osbon, I've handed you three
2 photographs. They've been marked, premarked
3 state's exhibit five, six, and seven, I believe.

4 MR. COURTNEY: Yes, Your Honor, it's
5 five, six, and seven.

6 BY MR. COURTNEY:

7 Q. Do you recognize those photos, Dr. Osbon?

8 A. I do.

9 Q. Can you tell the Court what those are
10 photographs of?

11 A. Officer Taylor came in, and he's got a
12 rather severe laceration to the upper part of his
13 eyebrow on the left side, and then just
14 underneath the eye on the left he has another
15 laceration. And that's what you can tell from
16 that. A lot of swelling around the orbit itself,
17 the eye socket.

18 Q. Okay. All three of those photographs
19 depict the same thing?

20 A. Yes.

21 MR. COURTNEY: Your Honor, at this time
22 the state would move to introduce in evidence
23 what's been marked state's exhibit five, six, and
24 seven into evidence.

25 THE COURT: Mr. Lanier.

1 MR. LANIER: That's without objection,
2 Your Honor.

3 THE COURT: State's five, six, and
4 seven in evidence without objection.

5 (State's Exhibits No. 5, 6, and 7,
6 previously marked for identification, are
7 received in evidence.)

8 MR. COURTNEY: Thank you, Your Honor.
9 Your Honor, may I publish to the jury for the
10 next set of questions?

11 THE COURT: You may.

12 MR. COURTNEY: Thank you, Your Honor.

13 (State's Exhibits No. 5, 6, and 7 are
14 published to the jury.)

15 BY MR. COURTNEY:

16 Q. Dr. Osbon, I'm going to hand you a pointer
17 here. If you would, just for the jury, not that
18 they wouldn't be able to tell, if you would just
19 kind of point at the injuries and explain what
20 the injuries are there that the jury can see.

21 A. Okay. You see he's got two lacerations.
22 The bigger, the larger one is this one here,
23 close to three centimeters by my clinical note
24 that night. And he's got a smaller one right
25 here. The entire orbit itself is -- is swollen,

1 as you can see in the lower photograph.

2 At that point it looks like the bleeding
3 has stopped. Just before we cleaned it and then
4 reapproximated it by suturing, I think I removed
5 a little bit of foreign material from his eye, as
6 well. At least at that laceration, according to
7 my note, we had to debride back a little bit of
8 the wound itself to get it to close together
9 nicely.

10 You cannot see on this photograph his --
11 the eyeball itself. It really requires close
12 inspection to see the collection of blood in the
13 anterior or the front part of his eye itself.

14 Q. Doctor, I'm not a -- I'm not anything -- I
15 don't have any medical expertise. Does that mean
16 that the whites of his eye was turning red?

17 A. No. The sclera is the white of the eye.
18 This is actually in the cornea itself, on the
19 front part of the eye.

20 After direct trauma to the eyeball and the
21 eye socket, at times we do see blood as a result
22 of the trauma. It makes it a more significant
23 injury really than just the lacerations itself.

24 And as we subsequently found on CT, he had
25 an orbital fracture. So the bony part of the

1 skull that houses the eyeball was actually
2 fractured and displaced on the medial aspect. So
3 the side closest to his nose, the bone itself in
4 his skull was broken.

5 And then the eye itself had the blood in it
6 which prompted me to call the folks -- the
7 ophthalmology folks at MUSC to get him very close
8 follow up because it's a rather significant
9 injury in terms of long-term vision issues and
10 things like that.

11 Q. So then it would be your characterization
12 then that this is a serious injury?

13 A. Very serious.

14 Q. Typically, what would you see with an
15 injury like this? What kind of pain would the
16 victim be in in a case like this?

17 A. Well, there's a lot of pain, especially a
18 day or so afterward. I always tell folks they're
19 going to hurt more a day or two afterwards than
20 they do that day. Because of the extent of the
21 laceration, the soft tissue swelling and injury,
22 the bony injury to the skull and the orbit
23 itself, that's quite painful for an extended
24 period of time.

25 Q. Is there any kind of danger of long-term

1 effects from an injury like this?

2 A. There's a -- yeah. The vision can be
3 compromised because of the -- in fact, he had --
4 on exam, he had blurry vision that night, and I
5 think he tested -- it should have been 20/20 and
6 his left eye was about 20/50, mostly as a result
7 probably of the blood itself in the front of his
8 eye.

9 Because of the fact that he had this
10 hyphema, he's at risk for quite a period of time,
11 sometimes several years for re-bleeding. With
12 even the slightest trauma, that's an issue.

13 The vision issue is long term, tend to
14 clear when the blood itself clears, and then just
15 the pain itself from the healing wounds and the
16 fracture.

17 Q. And I want to reiterate, because I think
18 you've already said, but I want to reiterate.
19 Did you refer him to a specialist because of his
20 injury?

21 A. Yes. In fact, I got on the phone that
22 night and arranged for a follow up, I believe, at
23 about 5:45 that morning with the ophthalmologist
24 on call at MUSC because of the hyphema.

25 Typically, I would not have referred a

1 patient necessarily that day to be seen by an
2 ophthalmologist; but because he did have the
3 blood in his eye, that prompted me to call him
4 immediately, to patch his eye when we were done
5 with the repair itself and then get him down to
6 MUSC.

7 MR. COURTNEY: Thank you. If you would
8 answer any questions Mr. Lanier might ask you.

9 THE COURT: Mr. Courtney, just so the
10 record is clear...

11 MR. COURTNEY: Yes, ma'am.

12 THE COURT: --- could you place the
13 stipulation on the record?

14 MR. COURTNEY: I'm sorry?

15 THE COURT: As to the doctor's
16 qualifications.

17 MR. COURTNEY: I'm sorry, Your Honor.

18 Your Honor, can we stipulate to the
19 doctor's qualifications as to his qualifications
20 as a doctor after having been through his
21 educational background.

22 THE COURT: Mr. Lanier.

23 MR. LANIER: Your Honor, we'll
24 stipulate that he is an expert in the area of
25 emergency medicine.

1 MR. COURTNEY: Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen,
3 Dr. Osbon will be qualified as an expert in the
4 area of emergency medicine.

5 Normally, a person cannot give opinion
6 testimony. When a person typically testifies,
7 they must testify as to what they either saw,
8 heard, or sensed by smell or something of that
9 nature.

10 However, there is an exception. When
11 someone is qualified because of education or
12 experience, they are permitted to give their
13 opinion in certain areas if the Court qualifies
14 them in that way.

15 This witness will be qualified in the
16 area of emergency medicine to give opinion
17 testimony in that area. That does not mean that
18 you must accept the opinion. It is evidence for
19 you, the jury, to use in any way you see fit.

20 Mr. Courtney.

21 MR. COURTNEY: Thank you, Your Honor.
22 If the witness would, we are ready for Mr. Lanier
23 to question the witness.

24 THE COURT: Thank you, Mr. Courtney.

25 Mr. Lanier.

1 MR. LANIER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LANIER:

4 Q. Doctor, how long have you been working at
5 -- is it Trident?

6 A. Yes, sir.

7 Q. How long have you been doing that?

8 A. I've been doing it for four and a half
9 years now.

10 Q. Okay. And then you also work over at the
11 Summerville...

12 A. Correct.

13 Q. --- Medical Center in their emergency room?

14 A. Correct.

15 Q. Now, I am looking at your notes. I see
16 that the lower laceration took three stitches,
17 three sutures, and the upper one took seven
18 sutures?

19 A. I believe so.

20 Q. Okay. And he was at the emergency room
21 0039. That's 12:39 in the morning?

22 A. Yes, sir, if that's what the note says.
23 They typically do it in real time. If they log a
24 patient in, it logs the time that they do it.

25 Q. And at 0255 -- excuse me -- then he was

1 discharged at 3:11?

2 A. If that's what the note says.

3 Q. You have no reason to dispute that?

4 A. No.

5 Q. And there's nothing, no treatment you can
6 give someone for an orbital fracture, is there?

7 You can't put a cast on it.

8 A. No, you can't put a cast on it. Depending
9 on the extent to which the fracture is displaced,
10 there are times when they could -- they can get
11 follow up in the immediate future, not
12 necessarily that day but get very close follow up
13 with a facial surgeon or sometimes a plastic
14 surgeon.

15 What the danger there is, is that when you
16 have a displaced fracture some of the musculature
17 of the eyeball that actually controls the way the
18 eyeball moves can become trapped underneath bony
19 parts of the skull which would result in a much
20 longer problem and then would have to be
21 surgically decompressed.

22 Q. But you didn't see that in this case?

23 A. Did not.

24 Q. Okay. And there was no treatment you gave
25 him about the orbital fracture other than refer

1 him to the Medical University?

2 A. I don't believe I wrote him for any --
3 sometimes we write for antibiotics if it's an
4 open fracture.

5 Q. Okay.

6 A. If there's evidence. But I don't believe
7 that I -- that we saw that on a CT scan.

8 Q. Would you have given him antibiotics for
9 the lacerations?

10 A. Not typically. By virtue of the fact that
11 we anesthetize the area, numb it up, and really
12 clean it out, which I did manually with irrigated
13 -- with irrigation, and then reapproximate,
14 that's typically all you have to do. You don't
15 typically give antibiotics for lacerations. You
16 may give a tetanus shot if he was not up to date,
17 but...

18 Q. And, again, it was three stitches on the
19 lower, below the eye, and seven above the eye?

20 A. I believe so, yes.

21 MR. LANIER: I don't have any further
22 questions, Your Honor.

23 THE COURT: Mr. Courtney.

24 MR. COURTNEY: No further questions for
25 this witness, Your Honor.

1 THE COURT: Dr. Osbon, you may step
2 down. You may be excused from the courthouse,
3 but you are free to remain.

4 THE WITNESS: Thank you.

5 (The witness is excused from the
6 witness stand.)

7 THE COURT: Call your next witness.

8 MR. MASTANTUNO: The state calls
9 Jamie Taylor.

10 OFFICER JAMES WARD TAYLOR,
11 being first duly sworn by the clerk, is examined
12 and testifies as follows:

13 THE CLERK: Please be seated. State
14 your full name and spell your last name for the
15 record.

16 THE WITNESS: James Ward Taylor,
17 T-A-Y-L-O-R.

18 DIRECT EXAMINATION

19 BY MR. MASTANTUNO:

20 Q. Mr. Taylor, please tell me what your
21 occupation is.

22 A. Police officer with the City of Moncks
23 Corner.

24 Q. How long have you been a police officer in
25 Moncks Corner?

1 A. A year and a half.

2 Q. Before that, what did you do?

3 A. I was a police officer with the Town of
4 St. Stephen.

5 Q. And how long were you with them?

6 A. A year and a half.

7 Q. So during August of 2007 you were employed
8 by?

9 A. The St. Stephen police department.

10 Q. St. Stephen police department. What were
11 your typical duties in that role?

12 A. Normal patrol, the assigned areas.

13 Q. Did you regularly take people into custody?

14 A. When the law ---

15 Q. Detain people for...

16 A. When the law allowed it.

17 Q. When that happened, the incident on August
18 16th was not the first time you detained
19 somebody?

20 A. No, it was not.

21 Q. Have you seen the video from Officer
22 Shannon's car that evening?

23 A. I have.

24 MR. MASTANTUNO: Your Honor, may I turn
25 this back on?

1 THE COURT: Yes.

2 (Video begins playback.)

3 BY MR. MASTANTUNO:

4 Q. Are you able to see it?

5 A. Yes, I am.

6 Q. Where we were -- let me pause it, actually.
7 We kind of jumped in the middle of this tape. Do
8 you recognize the point in time that we are at
9 right now?

10 A. Yes, I do. (Video continues playback.)

11 Q. Right there you're staring at a vehicle.
12 What just happened right there?

13 A. An individual drove by, shouted something
14 out the window of the vehicle.

15 Q. What did they say?

16 A. I can't recall at this time.

17 Q. Do you know who the individual was?

18 A. I do.

19 Q. Who was that person?

20 A. A gentleman by the name of Altony Brooks.

21 Q. Do you see him in the courtroom today?

22 A. I do.

23 Q. And are you familiar with him from previous
24 experience?

25 A. I am.

1 Q. If you had to put a percentage of certainty
2 on that identification of the gentleman in the
3 car, what percentage would you say?

4 A. One hundred percent.

5 Q. I'm going to fast forward here a little
6 bit. (Video continues playback.) Where is your
7 car in relation to the view on this video?

8 A. Officer Shannon's vehicle is parked on
9 Highway 45, the front of the vehicle facing
10 towards Highway 52. In reference to my vehicle,
11 it would be directly to the left. (Video
12 continues playback.)

13 Q. And at that point are y'all waiting on
14 anything in particular?

15 A. We're waiting on a tow, a tow truck.
16 (Video continues playback.)

17 Q. You can't be seen in the video. Where are
18 you at this point right here?

19 A. At this time, I believe we're at the rear
20 quarter panel of his vehicle.

21 Q. And that gentleman who just walked into the
22 screen, can you tell me who he is?

23 A. I can. That is Altony Brooks.

24 Q. And what are you saying to him then?

25 A. At that time I'm telling Mr. Brooks -- he's

1 wondering what's going on with his family. He's
2 stating to me that the driver of the vehicle was
3 indeed his cousin. He was demanding to know what
4 was going on with it. I told Mr. Brooks at a
5 later time he could speak with his cousin, that
6 in fact his cousin was okay at this time.

7 Q. Did you maintain your posture and tone of
8 voice with him, or did you get irate with him?

9 A. No. I did not become irate at that time.
10 (Video continues playback.)

11 Q. At this point where did he -- I can't see
12 him on the video. Do you know where he went?

13 A. I do. Mr. Brooks then turned around and
14 went back to Fox Creek Apartments. (Video
15 continues playback.)

16 Q. Is there anybody out on the street right
17 there besides you and Officer Shannon at this
18 moment?

19 A. Out on the roadway?

20 Q. Yeah, but out of the view of the camera.

21 A. No. It's just Officer Shannon and I in the
22 roadway. (Video continues playback.)

23 Q. At this point I think we have another
24 gentleman who arrives on the video. That
25 gentleman right there, do you know him?

1 A. I do.

2 Q. Who is that?

3 A. I know him by Archie Darby.

4 Q. Was he by himself, or did he come with
5 anybody else when he walked up to the vehicle
6 right there?

7 A. Initially, he came up by himself, but then
8 there was a crowd following behind him.

9 Q. And what's going on at this moment?

10 A. If we can rewind the tape just a little
11 bit, I'll be more than happy to explain it.

12 Q. Tell me when to stop.

13 A. You can go ahead and stop now.

14 Mr. Darby then walks to the driver's side
15 of the vehicle, opens the door, and attempts to
16 locate the keys in the ignition at which time he
17 could not find them, and Officer Shannon advised
18 him that he will be placed under arrest for
19 obstructing justice.

20 Q. Is he resisting out there?

21 A. He is.

22 Q. Do you try to place any restraints upon
23 him?

24 A. I did. Tried to place the subject in
25 handcuffs.

1 Q. Were you successful with that?

2 A. No, I was not.

3 Q. With either wrist?

4 A. With one wrist. I was able to place one --
5 one restraint on the right hand. (Video
6 continues playback.)

7 Q. Now, it looks like a couple of people are
8 on the scene in the video, which I see -- tell me
9 how many people you see there.

10 A. At this time I see -- I believe it's going
11 to be four or five.

12 Q. Is that everyone that's on scene?

13 A. No, it is not.

14 Q. How many other people would you say are off
15 the camera?

16 A. I would say anywhere from the range of 18
17 to 25 people.

18 Q. And what's your mental state at this time?

19 A. Leery, trying to see everything that's
20 going around me and fear that potentially it
21 could turn bad.

22 Q. Have you been in a situation like this
23 before?

24 A. No, I have not. (Video continues
25 playback.)

1 Q. Do you notice that girl while you are
2 trying to detain the suspect? It's hard to see
3 with it on pause.

4 A. Are you asking if I notice her now or if I
5 noticed her at the time?

6 Q. At the time of the incident.

7 A. I did. (Video continues playback.)

8 Q. Does she lay any hands upon you?

9 A. She does.

10 Q. What does she do?

11 A. She's pushing and grabbing, I believe in an
12 attempt to free the subject we were trying to
13 place under arrest at that time.

14 Q. And, again, your mental state, are you
15 growing more -- more or less scared?

16 A. More and more fearful. (Video continues
17 playback.)

18 Q. At this point another gentleman right here
19 is pushing on you. Again, it's paused, it's hard
20 to see, but the gentleman right there is pushing
21 on you. Were you able to take a look at him?

22 A. I was.

23 Q. And who was that gentleman?

24 A. Mr. Altony Brooks.

25 Q. Is he in the courtroom today?

1 A. He is.

2 Q. Can you point him out for us?

3 A. He's right there in the white shirt.

4 MR. MASTANTUNO: May the record reflect
5 that the witness pointed to the defendant.

6 THE COURT: The record will reflect.

7 BY MR. MASTANTUNO:

8 Q. Again, can you describe what's going on
9 there? Let me rewind that for you just a little
10 bit.

11 A. From the outside looking in, there's a lot
12 of things going on at that time. We're trying to
13 arrest a subject, trying to keep the other two
14 subjects off of me, and trying to maintain the
15 equipment on my belt from being taken.

16 Q. Did you exchange words with that gentleman
17 who's pushing on you?

18 A. The only words I exchanged with him was
19 "please step back."

20 Q. So you had direct communication with him?

21 A. I did. I said, "I'm not going to ask you
22 again. Please step back."

23 Q. Is that the same gentleman that drove by
24 earlier?

25 A. It is.

1 Q. And, again, I'm going to ask you, what
2 would your percentage identification be?

3 A. One hundred percent.

4 Q. At this point that the suspect breaks loose
5 and runs up the road, what is your initial
6 thought?

7 A. To take a second and see where the subject
8 runs. He possibly could have ran into the woods
9 or ran on the railroad tracks and attempt to flee
10 the scene. I was just trying to gather a point
11 of reference where I can maybe go cut him off and
12 apprehend the suspect.

13 Q. With the crowd being there, what was your
14 plan, or how did you plan to detain the suspect
15 that fled if Shannon was unable to detain him
16 himself?

17 A. I believe at that time we would probably go
18 ahead and pull out, I guess you would say, the
19 tow truck driver, as well as Shannon and the
20 ride-along and his two subjects he already had
21 under arrest.

22 Q. So you would actively pursue him if
23 possible?

24 A. Of course.

25 Q. Were you able to?

1 A. No, I was not.

2 Q. Can you tell me why?

3 A. I can. As I was watching the subject run
4 down the ditch line, I was ultimately struck in
5 the face.

6 Q. Did you get a chance to see the assailant?

7 A. Briefly out of the corner of my eye.

8 Q. I'm going to show you what's marked as
9 state's exhibit two, three, and four. These
10 aren't in chronological order based on the
11 numbers here.

12 A. Do you mind if I switch them?

13 Q. Please. Have you had a chance to take a
14 good look at them?

15 A. Yes, I have.

16 Q. All right. It appears that you're looking
17 at him right there. Is that correct?

18 A. It would appear so.

19 Q. So you're looking down the road?

20 A. Correct.

21 Q. And at what point do you turn around and
22 see?

23 A. At the last moment.

24 Q. And what do you remember next?

25 A. I remember an excruciating pain, falling

1 backwards into a ditch.

2 Q. Were you by yourself at that point?

3 A. No, I was not.

4 Q. Who was with you?

5 A. Mr. Altony Brooks.

6 Q. And when you say he was with you, where was
7 he?

8 A. If you come a little closer. Probably
9 about this far apart.

10 Q. Did he proceed to flee at that point?

11 A. No, he did not.

12 Q. What happened next?

13 A. Mr. Brooks then drew back again with his
14 right hand and struck me on the top of the head.

15 Q. Are you positive about that?

16 A. Absolutely.

17 Q. At that point -- if you continue on the
18 narrative here, I will start the tape again.
19 Tell me what happens next.

20 A. Okay. At this time Mr. Brooks then gets up
21 out of the ditch and, well, goes back across in
22 front of Officer Shannon's car and then back down
23 Highway 45 towards 52.

24 Q. What direction is that? Is that towards
25 Officer Shannon and the fleeing suspect?

1 A. That is. (Video continues playback.)

2 Q. Why are you leaning on the car there?

3 A. Disoriented, dizzy, fatigued from the
4 fight. And I also had blood in my left eye.

5 Q. Do you remember that gentleman coming to
6 your aid there?

7 A. Vaguely.

8 Q. Do you know what he did for you, or did he
9 do anything for you?

10 A. I believe he took the radio off my duty
11 belt at that time and called central dispatch.

12 Q. Why didn't you call central dispatch
13 yourself?

14 A. There was a thousand things going on in my
15 mind at that time. (Video continues playback.)

16 Q. Are you steadying yourself there, or what's
17 going on in that scene?

18 A. I'm leaning against the vehicle that
19 Officer Shannon initially stopped, trying to
20 steady myself, finding it difficult to do so on
21 the incline of the ditch. (Video continues
22 playback.)

23 Q. At this point do you know where the crowd
24 is? Are they off camera, or have they started
25 to...

1 A. I believe at that time, after the incident
2 had taken place, the crowd dispersed back towards
3 Fox Creek Apartments.

4 Q. How is your memory of this incident?

5 A. I remember a good portion of it. (Video
6 continues playback.)

7 Q. What's that in your right hand there?

8 A. That would be a collapsible ASP baton.

9 Q. And why do you have that out?

10 A. I believe it was the only weapon I could
11 get my hand on at that time. (Video playback
12 concludes.)

13 Q. After we leave the video, what happens
14 next?

15 A. Richard Rothman places me in my patrol
16 vehicle.

17 Q. Who is Richard Rothman?

18 A. He was the ride-along with Officer Shannon
19 that evening.

20 Q. Was that the first time you met him?

21 A. No, it was not.

22 Q. Is it typical that he would drive your
23 vehicle for you?

24 A. No, it is not.

25 Q. Has that happened before?

1 A. No, it has not.

2 Q. And where did he take you?

3 A. He took me back to the police department.

4 Q. Once you arrived at the police department,
5 what happened next?

6 A. I was then met by Sergeant Ollic and
7 Officer Shannon and -- excuse me -- Mr. Rothman
8 then pulled me out of the patrol vehicle and took
9 me inside.

10 Q. When you say pulled you out, were you
11 having difficulty getting out on your own?

12 A. I was.

13 Q. Why is that?

14 A. Again, from being fatigued and just shocked
15 and unable to steady myself on my feet.

16 Q. What happened after you met Lieutenant
17 Ollic?

18 A. They took me inside and placed me on a
19 couch.

20 Q. Did you lay down?

21 A. No. I was sitting up.

22 Q. Sitting up? Were you in a recline position
23 or...

24 A. Yes.

25 Q. When did you receive medical treatment?

1 A. EMS came a short time afterwards. They
2 then loaded me up in the back of the ambulance
3 and transported me to Trident Moncks Corner.

4 Q. When you say they loaded you up in the
5 ambulance, how did they do that?

6 A. They strapped me down on the stretcher.

7 Q. So you didn't sit in the vehicle?

8 A. No. I was actually -- they put me on the
9 stretcher and buckled me in.

10 Q. Where did they take you?

11 A. They took me to Trident Moncks Corner.

12 Q. And when you arrived at Trident, how long
13 before you received treatment?

14 A. I don't know an exact time, but as soon as
15 I came through the door they started on my
16 paperwork.

17 Q. Can you describe any sensations you were
18 having about your injury?

19 A. Pain.

20 Q. How severe?

21 A. From one to ten, I would say a ten.

22 Q. Was this the first time you've been injured
23 in the line of duty?

24 A. No, it was not.

25 Q. How did it compare to the previous

1 incidents?

2 A. I don't believe there was a comparison.

3 Q. As in which one was greater?

4 A. The incident that had taken place at this
5 time.

6 Q. How long would you say you were at the
7 hospital?

8 A. If I had to guess, it'd probably be about
9 four or five hours.

10 Q. And once you were treated, where did you go
11 next?

12 A. I was then taken home by Chief Waters of
13 the St. Stephen police department.

14 Q. Were you still unable to drive your
15 vehicle?

16 A. I was. And then I was able to rest for
17 about two hours before the chief carried me
18 downtown to MUSC Storm Eye Institute.

19 Q. So to get a time frame right here, what
20 time do you think you got to the hospital,
21 roughly?

22 A. I can't recall. If I had to say, it would
23 probably be maybe 30, 40 minutes after midnight.

24 Q. And you were there for approximately four
25 hours; is that correct?

1 A. Yes.

2 Q. So that puts us at 4:30. You went home for
3 a period of time?

4 A. I did.

5 Q. A couple of hours you said?

6 A. Correct.

7 Q. Until about 6:30?

8 A. I wouldn't say 6:30. I had a -- the
9 appointment was about 5:30, 5:45 at the Storm Eye
10 Institute.

11 Q. Okay. What I'm trying to figure out is,
12 after you got struck, what, five to six hours
13 later you're still unable to drive? You still
14 weren't completely there?

15 A. Correct.

16 Q. How long did it take you to regain your
17 complete senses and feel comfortable on a
18 day-to-day basis and not be in pain and not have
19 to suffer through treatment and...

20 A. I would say a week.

21 Q. A week?

22 A. Yes.

23 Q. Has this affected your life today?

24 A. It has.

25 Q. And how so?

1 A. I am a law enforcement officer in
2 South Carolina. I carry my duty weapon wherever
3 I go. I keep it in my vehicle or on my person.

4 Q. Is this different than before?

5 A. It is.

6 Q. How so?

7 A. Prior to this incident, I really didn't
8 feel a need to carry a weapon all the time.

9 Q. So are you saying that you're in fear of
10 your life, or do you have some fear?

11 A. Potential. Potential fear.

12 Q. Shortly thereafter, you said you moved over
13 to the Moncks Corner police department?

14 A. I did.

15 Q. Have you had any similar incidents or --
16 since then?

17 A. We all have our scuffles in this line of
18 work, but nothing -- nothing to this magnitude,
19 no.

20 MR. MASTANTUNO: No further questions.

21 THE COURT: Mr. Lanier.

22 MR. LANIER: Let me start by going back
23 on the tape.

24 THE COURT: All right, Mr. Lanier.

25 MR. LANIER: Thank you.

1 (Video begins playback.)

2 CROSS-EXAMINATION

3 BY MR. LANIER:

4 Q. Now, you say that was Mr. Brooks pushing on
5 you there?

6 A. That is correct.

7 Q. It looks to me like you had your back to
8 him when he was doing that. Do you want to go
9 back and look again?

10 A. Absolutely.

11 Q. Let me figure it out. (Video is rewound.)

12 A. You could pause it right there.

13 Q. I'm trying.

14 A. That's fine. At the point where I told you
15 to pause it, I was able to look at Mr. Brooks in
16 the face and establish who he was.

17 Q. How about the female? Who is she?

18 A. I believe her name is Jennifer Miles.

19 Q. Did you know her?

20 A. No, I did not.

21 Q. Now, you said you had met Mr. Brooks
22 previously?

23 A. I'm sorry, can you say it again?

24 Q. You had encountered Mr. Brooks previously,
25 had met him previously?

1 A. I have.

2 Q. He's not one of your favorite people?

3 A. I wouldn't say that.

4 Q. He is one of your favorite people?

5 A. I wouldn't say that, either.

6 Q. Okay. And he had already made one comment
7 to y'all that night, you say, when he drove by,
8 correct?

9 A. He said something. I can't recall what he
10 said at this time.

11 Q. And when Mr. Darby ran, were you going to
12 chase after him?

13 A. Are you talking about on foot or...

14 Q. Yeah, on foot.

15 A. No, not on foot, I was not.

16 Q. Okay. Is there a reason for that or...

17 A. I don't understand what you're trying to
18 get at.

19 Q. Well, I mean, why wouldn't you chase him?

20 A. Well, maybe -- he had a 45-second head
21 start.

22 Q. Okay. No. I'm talking about before you
23 were struck, now.

24 A. Okay. He had a -- he had a head start when
25 he left out of there.

1 Q. And you say there were as many as 25 people
2 out there?

3 A. Eighteen to 25.

4 Q. Okay. But yet you're positive you can pick
5 out Mr. Brooks?

6 A. One hundred percent.

7 Q. As the person who assaulted you, correct?

8 A. Yes, I can.

9 Q. And by the way, you did a report on August
10 23rd, '07, about this incident. Do you recollect
11 that?

12 A. Well, I would have to take a look at it.

13 Q. I show you what's been marked as
14 defendant's exhibit number two for identification
15 purposes.

16 MR. LANIER: All right, Your Honor?

17 THE COURT: Yes. Yes, Mr. Lanier.

18 (The witness reviews exhibit.)

19 THE WITNESS: Okay. I was unsure of
20 the date when I submitted this, but, yes, I do
21 remember this.

22 BY MR. LANIER:

23 Q. That is your report?

24 A. That it is.

25 Q. Done in your own words?

1 A. Yes, it is.

2 Q. Okay.

3 A. Do you mind if I look along with you?

4 Q. I'll hand it back to you.

5 A. Okay.

6 Q. All right. Now, here, where I'm pointing,
7 read that, please.

8 A. It states: "An unknown white female at
9 that time" - quotation marks -- "Ann Woods
10 and Altony Brooks began pushing and hitting on
11 me". ---

12 Q. That's good. Now, that's not the name you
13 called the female on your direct testimony, was
14 it?

15 A. No, it was not.

16 Q. Do you know now who it was?

17 A. Yes, I do.

18 Q. Who was it?

19 A. It was Jennifer Miles.

20 Q. Okay. Do you know why they would have --
21 why you put Ann Woods in there?

22 A. Through further investigation into this
23 incident, it was later determined that it was
24 Jennifer Miles instead of Ann Woods.

25 Q. Okay. And you say that you ran down -- it

1 looked like you went down in the ditch area and
2 looking to see where Mr. Darby ran?

3 A. That is correct. I went to the ditch line.

4 Q. And then you say Mr. Brooks came over and
5 struck you?

6 A. Yes, with a -- with a running start.

7 Q. Okay. And were you looking at him when he
8 did that?

9 A. As he was running up? No, I was not.

10 Q. Did you see him before he struck you?

11 A. I did.

12 Q. And you say that "he hit you in the face,
13 causing major laceration to my upper eye and
14 lower eye, fracturing my orbital socket, and at
15 this moment I cannot remember anything after this
16 moment." Do you remember saying that?

17 A. I remember putting that in the report, yes.

18 Q. Okay. And is that true, you cannot
19 remember anything after he struck you?

20 A. Are you talking as far as the incident
21 or...

22 Q. Yeah, as far as the incident goes.

23 A. --- or for anything from the incident up
24 until this point? I'm trying to figure -- I
25 don't understand. I don't understand what you're

1 saying.

2 Q. I'm asking you, you said at the time after
3 he struck you in the eye you could not remember
4 anything after that moment. That's what you say
5 in your report, correct?

6 A. Correct.

7 Q. Okay. Now, according to the medical
8 records, you went to -- oh, and by the way, they
9 had to talk you into going to the hospital,
10 didn't they?

11 A. No, they did not.

12 Q. They didn't? The EMS report states
13 "convince patient to allow EMS to take him to the
14 E.R.," but you're saying you didn't put up an
15 argument with them?

16 A. That is not true.

17 Q. Okay. I don't think you understood my
18 question. It says they convinced you to go, but
19 you're saying you didn't put up an argument about
20 going?

21 A. No, I did not.

22 Q. Okay. And you ambulated to the ambulance?
23 You walked to the ambulance?

24 A. With help.

25 Q. Okay. And then they strapped you on the

1 stretcher?

2 A. Correct.

3 Q. And according to the E.R. report, you
4 arrived at 0039 which I believe would be 12:39 in
5 the a.m?

6 A. That's what I would assume.

7 Q. And then you were discharged at 0311 which
8 I believe means at 11 minutes after 3:00 that
9 same morning?

10 A. Correct.

11 Q. Okay. Then you went to MUSC the next day?

12 A. Yes. And being a couple hours later on.

13 Q. Well, actually, it was the same day.

14 A. Correct.

15 Q. Just a few hours after you left there.
16 Have you had any medical attention since that
17 time?

18 A. I have had numerous follow ups days after
19 the incident, and now I'm going through yearly
20 checkups.

21 Q. Is your vision okay now?

22 A. I would say so.

23 Q. Okay. And you're not in pain anymore?

24 A. Physical pain, no.

25 Q. Now, I understand it was upsetting.

1 A. Yes, sir.

2 Q. But you're not in any type of physical
3 pain?

4 A. No, sir.

5 Q. How long were you out of work?

6 A. I would say close to a month.

7 Q. And but you admit it was dark out there and
8 there was a lot going on at the scene?

9 A. Yes.

10 Q. And things happen fast?

11 A. They do.

12 MR. LANIER: I don't have any further
13 questions, Your Honor.

14 MR. MASTANTUNO: Just a few more
15 questions, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MASTANTUNO:

18 Q. Will you read that underlined part one more
19 time?

20 A. Which underlined part? There's two of
21 them.

22 Q. I apologize. This top one right here.

23 A. This one right here?

24 Q. No. I'm sorry. Right here.

25 A. Okay. "An unknown white female at the

1 time" -- quote/unquote -- "Ann Woods and Altony
2 Brooks began pushing and hitting me while I was
3 trying to take Arch Darby into custody."

4 Q. Why did you put "an unknown female at the
5 time," yet with Altony Brooks' name you didn't
6 put that in?

7 A. Because I was not a hundred percent sure at
8 the time who the white female was.

9 Q. But you're a hundred percent sure who the
10 other gentleman was?

11 A. I am.

12 Q. And were you then?

13 A. I am.

14 Q. At the bottom, can you repeat that last
15 line there?

16 A. "I cannot remember anything after this
17 moment."

18 Q. Have you seen the video since the incident?

19 A. Yes, I have.

20 Q. Did that help refresh your memory?

21 A. It did.

22 Q. And when you refer to after "this moment,"
23 you're referring to what? What moment is "this
24 moment"? I'll let you look over this and see if
25 it helps you.

1 A. Okay. (The witness reviews exhibit.) I
2 guess maybe the reason I put "I cannot remember
3 anything after this moment" is I was more worried
4 about my health and well being than anything else
5 at that time.

6 Q. But "this moment," what are you referring
7 to "this moment"? What moment is "this moment"?
8 When you say "this moment," what moment are you
9 talking about?

10 A. Let's see.

11 Q. Why don't you go ahead and read after that,
12 that line, all the way through the bottom.

13 A. Just read it?

14 Q. Yeah, go ahead and read the rest of it.

15 A. "After fighting with the subject for
16 approximately two minutes, I lost grip on the
17 subject and he was able to run down the ditch
18 line. As I'm watching for the subject to see
19 where he entered the woods, Altony Brooks hit me
20 in the face, causing a major laceration to my
21 upper and lower eye, fracturing my orbital
22 socket. At this time I cannot remember anything
23 after this moment."

24 Q. So when you say "this moment," are you
25 referring to the previous sentence?

1 MR. LANIER: Your Honor, it says what
2 it says. Now, he can try to stretch it.

3 THE COURT: Mr. Lanier.

4 MR. LANIER: Objection.

5 THE COURT: Speaking objection. The
6 basis, what's the basis?

7 MR. LANIER: That the document speaks
8 for itself.

9 THE COURT: Sustained.

10 BY MR. MASTANTUNO:

11 Q. Before being struck, you had no problems
12 with your memory; is that correct?

13 A. None.

14 Q. And the first identification of Mr. Brooks
15 driving the vehicle, no problem with that memory?

16 A. None.

17 Q. Any problem with the memory of who was
18 pushing on you?

19 A. None.

20 Q. Any problem with the memory of who struck
21 you?

22 A. No.

23 MR. MASTANTUNO: No further questions.

24 THE COURT: Mr. Lanier.

25 MR. LANIER: No questions, Your Honor.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 (The witness is excused from the
4 witness stand.)

5 THE COURT: Ladies and gentlemen of the
6 jury, this is an appropriate time for us to take
7 our afternoon break. Please do not discuss this
8 case amongst yourselves. Please do not begin
9 your deliberations. We'll be in recess for about
10 ten minutes.

11 Please rise for the jury.

12 (Whereupon, the jury goes to the jury
13 room at approximately 2:40 p.m.)

14 THE COURT: Thank you. Be seated.

15 Anything before we break for the
16 afternoon break?

17 MR. MASTANTUNO: One matter, Your
18 Honor. Me and Mr. Lanier were discussing jury
19 charges, and I obtained one from the office to
20 present to you to see if it's appropriate to look
21 over.

22 THE COURT: Is there one in particular
23 or...

24 MR. MASTANTUNO: Yes, Your Honor.

25 THE COURT: --- the entire charge,

1 Mr. Mastantuno?

2 MR. MASTANTUNO: The aiding and
3 escaping custody. We were unsure about what ---

4 THE COURT: All right. You may
5 approach.

6 (Mr. Mastantuno and Mr. Lanier approach
7 the bench.)

8 (Document tendered to the Court.)

9 THE COURT: All right. Is there any
10 particular reason why we're all right here?

11 MR. LANIER: You would -- I thought --
12 no.

13 THE COURT: I had asked Mr. Mastantuno
14 to approach so that he could hand me the
15 document.

16 All right. Mr. Lanier.

17 MR. LANIER: Your Honor, I had asked
18 your clerk after lunch if I could see what you
19 charged about serious bodily injury or if you
20 charge anything.

21 THE COURT: We will have the charge --
22 the charge should almost be done. I'll have it
23 printed out momentarily.

24 MR. LANIER: Thank you.

25 THE COURT: All right. And we can

1 review it at that time. Anything before we take
2 our afternoon break?

3 MR. LANIER: No, Your Honor.

4 THE COURT: Mr. Mastantuno, for
5 scheduling, how many more witnesses do you have?

6 MR. MASTANTUNO: The state's case in
7 chief is finished. It's completed.

8 THE COURT: All right.

9 MR. MASTANTUNO: We have no further
10 witnesses.

11 THE COURT: All right. I'm going to
12 allow you to rest on the record, but since we --
13 since we have rested, the state has rested, do
14 you have any motions?

15 MR. LANIER: I would move for a
16 directed verdict on the charge of aiding and
17 abetting an escape, Your Honor.

18 It's obvious on the tape that there was
19 a good deal of time that elapsed from the time
20 Mr. Brooks allegedly had any physical contact
21 with Officer Taylor or the Caucasian female when
22 she had any contact with Officer Taylor. A
23 substantial period of time elapsed before
24 Mr. Darby escaped. In fact, I mean, at no time
25 did he have more than one cuff on him, so I don't

1 think anything they did aided or abetted his
2 escape.

3 THE COURT: Mr. Mastantuno, if you
4 would please articulate for the record the
5 elements that the state has proven on both
6 charges.

7 MR. MASTANTUNO: Yes, Your Honor.

8 On the first charge of ABHAN, the state
9 has proven that an unlawful act occurred which
10 would be the striking which, as well, meets the
11 second element of violent physical injury,
12 fractured orbital bone, lacerations which
13 required stitches, EMS care. It was to another
14 person, the victim Jamie Taylor, and it was
15 accompanied by aggravation -- I'm sorry --
16 accompanied by circumstances of aggravation,
17 being severe bodily injury; and, again, the
18 broken orbital socket, the bleeding in the eye
19 itself, the doctor was concerned about long-term
20 vision problems, and I believe anytime a bone is
21 broken that meets the term of serious bodily
22 injury.

23 Secondly, on the aiding the escape, we
24 have -- the state has proven that the defendants
25 provided assistance to the subject by pushing and

1 interfering with officers who had the legal right
2 to detain the subject and had him in their
3 custody. While he was not fully detained, they
4 did have a handcuff on him, and they were in the
5 middle of placing the other handcuff on him.

6 And Mr. Brooks had a -- facilitated
7 that escape by shoving officers, as on the
8 record, with Jamie Taylor stating that if he was
9 not shoved and pushed by both the female and the
10 defendant, he would have a better opportunity to
11 place the second handcuff on the subject and
12 detain him.

13 THE COURT: Mr. Lanier, your response.

14 MR. LANIER: Well, Your Honor, the only
15 thing I can say is that the tape indicates a
16 lapse of -- I'm not going to say a minute, but I
17 believe at least 30 seconds from the time whoever
18 assaulted -- was putting their hands on Officer
19 Taylor withdrew from that activity, both the male
20 and the female, and they still couldn't get the
21 other cuff on him. So I don't see how that, what
22 they did, facilitated his escape.

23 If that were the case, then why in that
24 lapse of time between when whoever the male and
25 the female who were putting their hands on

1 Officer Taylor withdrew from that activity that
2 it was still 30 seconds or so before Mr. Darby
3 was able to escape. So I don't see how what they
4 did, what the people did, facilitated or aided or
5 abetted his escape.

6 THE COURT: Based upon the testimony as
7 presented and viewing it in the light most
8 favorable to the nonmoving party, which in this
9 case is the state, my ruling depends upon the
10 existence or nonexistence of the evidence, not
11 the weight of the evidence.

12 Based upon the testimony as presented
13 by Officer Shannon as well as Officer Taylor, I
14 am denying your motion for a directed verdict as
15 to the assault and battery of a high and
16 aggravated nature and to escape -- aiding escape
17 from custody of officers. I'll note your
18 exception.

19 Mr. Brooks, we've reached the part of
20 the trial now where you may present your defense.
21 Please stand.

22 (The defendant complies.)

23 MR. LANIER: Your Honor, I may need to
24 confer with him for just a couple of minutes.

25 THE COURT: Well, let me -- why don't

1 we do this, Mr. Lanier. I'm going to read him
2 the rights that he has, then we'll take our
3 break, and before I bring in the jury I'll give
4 -- this will give you some time to meet with your
5 client, but I just want to advise him on the
6 record of his rights to testify or not to
7 testify.

8 Mr. Brooks, please stand.

9 (The defendant complies.)

10 THE COURT: Please place the defendant
11 under oath.

12 WHEREUPON,

13 ALTONY BROOKS,
14 is duly sworn by the clerk.

15 THE CLERK: Thank you.

16 THE COURT: Mr. Brooks, at this time
17 I'm going to explain to you certain of your
18 rights. If you do not understand anything that I
19 say, please let me know. If you need me to
20 explain anything further, please let me know. Do
21 you understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: We've reached the stage of
24 the trial where you may present your defense.
25 The state has rested.

1 You have the right to claim the
2 protections given to you by the Fifth Amendment
3 of the Constitution of the United States. This
4 amendment states in part: No person shall be
5 compelled in any criminal case to be a witness
6 against himself.

7 This means that you cannot be required
8 to testify in this case. You do have the right
9 to testify on your own behalf; however, no one
10 can make you testify. This is a personal right,
11 and no one can waive this right except for you.

12 If you decide to testify, sir, you will
13 be subject to the same rules that govern other
14 witnesses, and you may be examined and
15 cross-examined on any relevant issue in this
16 case.

17 In addition, if you have any
18 convictions involving dishonesty, false
19 statements, or for a crime punishable by
20 imprisonment for more than one year and I
21 determine that the probative value of admitting
22 this evidence outweighs its prejudicial effect,
23 the solicitor will be able to introduce your
24 record to attack your credibility.

25 If you decide to testify, this decision

1 on your part must be freely, voluntarily,
2 knowingly, and intelligently made with the
3 knowledge of the protections given to you by the
4 Fifth Amendment as well as the consequences of
5 your decision to testify.

6 If you decide not to testify,
7 Mr. Brooks, I will instruct the jurors that they
8 cannot give the fact that you did not testify any
9 consideration whatsoever and that there is to be
10 absolutely no prejudice to you because you did
11 not testify.

12 It is left entirely up to you whether
13 or not you testify. You may talk with your
14 attorney, your family, and friends, or anyone
15 else, but the final decision will be left
16 entirely up to you.

17 Do you understand what I have explained
18 to you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you have any questions
21 about what I've explained to you?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You do have questions?

24 THE DEFENDANT: Well, my question is
25 about the -- I wanted to talk about the evidence

1 of assault and battery of a high and aggravated
2 nature.

3 THE COURT: All right. Sir, we are --
4 the purpose of this dialogue between the Court
5 and you is to determine whether or not you
6 understand the consequences and your
7 constitutional rights that you have regarding
8 your decision to testify. That is all ---

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: --- I am inquiring of now.

11 THE DEFENDANT: All right. I
12 understand. Thank you.

13 THE COURT: All right. Mr. Mastantuno,
14 does Mr. Brooks have any convictions that you
15 plan to introduce?

16 MR. MASTANTUNO: Yes, Your Honor.

17 THE COURT: And for the record, what
18 would those be?

19 MR. MASTANTUNO: Strong arm robbery,
20 resisting arrest, an assaulting a police officer
21 while resisting arrest, and another strong arm
22 robbery.

23 (The defendant raises hand.)

24 THE COURT: All right. Mr. Brooks, you
25 understand that that is -- that the state intends

1 to introduce those crimes to impeach you; you
2 understand that?

3 (Mr. Lanier and the defendant confer.)

4 MR. LANIER: I think that what -- I
5 think that he believes Mr. Mastantuno is
6 incorrect about having two strong arm robberies.
7 He admits he had one, but I think the other one
8 is a -- shows that he violated his probation on
9 that sentence and sentenced to some active time
10 on violating his probation.

11 THE COURT: All right.

12 Mr. Brooks, before we take our
13 afternoon break, I will allow you time to meet
14 with your attorney to discuss whether or not you
15 wish to testify. Do you have any questions for
16 the Court regarding your decision to testify? I
17 have not made any determination regarding your
18 prior convictions at this time. Do you have any
19 questions concerning your right to testify?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. We will be at
22 ease. Mr. Lanier, will ten minutes be
23 sufficient?

24 MR. LANIER: It should be sufficient,
25 Your Honor.

1 THE COURT: All right. We'll be at
2 ease until 3:05.

3 MR. LANIER: Thank you.

4 THE COURT: Thank you.

5 (A recess is taken at approximately
6 2:50 p.m.)

7 (The trial reconvenes at approximately
8 3:15 p.m., the defendant being present with
9 counsel, and the following proceedings were had:)

10 THE COURT: Thank you.

11 Mr. Brooks, please rise.

12 (The defendant complies.)

13 THE COURT: Have you had sufficient
14 time to meet with your attorney?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Did you discuss with your
17 attorney whether you should or should not
18 testify?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you need any more time
21 to meet with your lawyer to discuss this matter?

22 THE DEFENDANT: No further.

23 THE COURT: Do you wish to testify?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Thank you.

1 Mr. Lanier, do you have any additional
2 witnesses?

3 You may be seated.

4 (The defendant complies.)

5 MR. LANIER: I do not, Your Honor. The
6 defense would rest at this time.

7 THE COURT: All right. Are you
8 prepared -- do you have any further motions?

9 MR. LANIER: I have a request to
10 charge.

11 THE COURT: Okay. I'll be happy to
12 hear regarding that.

13 MR. LANIER: Your Honor, I'm going to
14 request that the -- a simple assault and battery
15 charge. I think whether serious bodily injury
16 occurred is a question for the jury to answer and
17 that they could find the defendant just guilty of
18 simple assault and battery.

19 As I said, I think that whether it was
20 serious bodily injury or not -- and I can't find
21 the definition of what serious bodily injury is.
22 The closest I can find is the felony DUI statute
23 where it talks about great bodily injury being
24 bodily injury which creates a substantial risk of
25 death or which causes serious permanent

1 disfigurement, a protracted loss or impairment of
2 the function of any bodily member or organ.

3 And like I said, I think in this case
4 it's a question whether serious bodily injury
5 occurred or not; therefore, I think the defendant
6 is entitled to a charge on simple assault and
7 battery, also.

8 THE COURT: Does the state have any
9 position as to the lesser included?

10 MR. MASTANTUNO: The state objects to
11 the charge of simple assault and battery. We
12 believe the charge for assault and battery of a
13 high and aggravated nature is sufficient; and if
14 the jury is unwilling to convict on that, we're
15 not interested in seeking a simple assault and
16 battery.

17 THE COURT: All right. Mr. Lanier, I
18 will include the lesser included simple assault
19 and battery pursuant to your request.

20 MR. LANIER: Thank you, Your Honor.

21 THE COURT: Anything further regarding
22 the jury charges?

23 MR. MASTANTUNO: Nothing, Your Honor.

24 MR. LANIER: Do you have a charge on
25 serious bodily injury? I would like this

1 opportunity to look at it.

2 THE COURT: Mr. Lanier, the Court did
3 not define serious bodily injury. The state's --
4 and its -- and the Court's charge is:

5 The state must prove a circumstance of
6 aggravation. Circumstances of aggravation
7 include the use of a deadly weapon, the intent to
8 commit a felony, the infliction of serious bodily
9 injury, a great disparity between the ages or
10 physical conditions of the parties, difference in
11 genders, taking of indecent liberties. These are
12 only examples of circumstances of aggravation.

13 Pursuant to the Court's review, the
14 definition of serious bodily injury would be a
15 question of fact for the jury to determine.

16 MR. LANIER: Thank you, Your Honor.

17 MR. MASTANTUNO: Thank you, Your Honor.
18 Nothing further.

19 THE COURT: And the Court will be
20 charging aiding escape from custody, pursuant --
21 consistent with the language that the state
22 presented:

23 The defendant is charged with aiding an
24 escape from the custody of an officer. The state
25 must prove beyond a reasonable doubt that the

1 defendant aided or assisted a prisoner in
2 escaping or attempting to escape from an officer
3 or other person who had lawful custody of the
4 officer (sic).

5 Anything further?

6 MR. MASTANTUNO: No, Your Honor.

7 THE COURT: Who will be closing?

8 MR. MASTANTUNO: I'll be closing,
9 Your Honor.

10 THE COURT: All right. Do I need to
11 limit you, Mr. Mastantuno?

12 MR. MASTANTUNO: In time, Your Honor?

13 THE COURT: Yes.

14 MR. MASTANTUNO: No.

15 MR. LANIER: Nor me, Your Honor.

16 THE COURT: All right. Are you
17 prepared to go bring in the jury and both of you
18 will rest on the record? Do you need any
19 additional time?

20 MR. LANIER: I do not, Your Honor. Of
21 course, I get the closing argument, correct?

22 THE COURT: Yes. Do you need any
23 additional time?

24 MR. LANIER: No, Your Honor.

25 THE COURT: You're ready to go,

1 Mr. Mastantuno?

2 MR. MASTANTUNO: Yes, Your Honor.

3 THE COURT: All right. Let's bring in
4 the jury. Please rise for the jury.

5 (Whereupon, the jury enters the
6 courtroom at approximately 3:20 p.m.)

7 THE COURT: Thank you. Please be
8 seated.

9 Mr. Mastantuno.

10 MR. MASTANTUNO: Thank you. May it
11 please the Court.

12 THE COURT: Mr. Mastantuno, does the
13 state have any further evidence?

14 MR. MASTANTUNO: Oh, I'm sorry. No,
15 Your Honor. The state rests.

16 (The state rests.)

17 THE COURT: All right.

18 MR. LANIER: The defense rests,
19 Your Honor.

20 (The defense rests.)

21 THE COURT: All right. Ladies and
22 gentlemen of the jury, that concludes the
23 evidence that has been -- will be presented in
24 this trial. As I indicated to you in my opening,
25 we've now reached the stage of the trial in which

1 the attorneys will present their closing
2 arguments. As I indicated to you during my
3 opening, just as their opening statements are not
4 evidence, the closing arguments are not evidence
5 in this case. After both sides have given you
6 their closing arguments, I will then instruct you
7 on the law in this case.

8 Mr. Mastantuno.

9 MR. MASTANTUNO: Thank you, Your Honor.
10 May it please the Court.

11 CLOSING ARGUMENT

12 BY MR. MASTANTUNO:

13 Ladies and gentlemen of the jury, thank
14 you for serving with us today. Now it's my time
15 to give a closing argument and present to you the
16 state's case in a final synopsis.

17 A picture paints a thousand words. I
18 believe all of y'all have heard that, a pretty
19 common expression. We have picture after picture
20 after picture of the scene that night and the
21 injuries that Jamie Taylor suffered.

22 We also have a lengthy video. I'm sure
23 you realize -- hopefully, y'all didn't fall
24 asleep during it. It's rather long. So if a
25 picture paints a thousand words, I'd say that a

1 video paints a million words.

2 Basically, we have a novel forming
3 here. What I'm asking you to do is write a final
4 chapter. The novel goes something like this:

5 You have two -- two officers, seasoned
6 officers even. They're not, you know, a week,
7 two weeks, a month in to their job. They've been
8 working for a while. They go out every day, risk
9 their lives, hope to come home. As my co-counsel
10 articulated, typically they're classified as
11 heroes. You hear on a regular basis where people
12 don't come home from the job, and it's a sad
13 state of society that that's the case. So when
14 you have such clear, convincing evidence and
15 injuries to an officer that are not only
16 witnessed by themselves but it's also on video,
17 action needs to be taken.

18 We have Jamie Taylor who says multiple
19 times, 100 percent positive, he knows who struck
20 him. Not only did he see him strike him, he saw
21 him moments before pushing him. They had a
22 verbal altercation face to face. They were
23 probably as close as me and you are, if not
24 closer. They were touching. He was able to look
25 in his eyes and see exactly who he was, and he

1 recognized him from previous history in
2 St. Stephens.

3 He was a St. Stephens cop for quite a
4 while, and he knew the citizens of St. Stephens,
5 who lived there. It's a small town. And this
6 individual he definitely knew without a doubt,
7 100 percent. He said it over and over and over,
8 100 percent.

9 Officer Shannon, back there observing,
10 hoping that justice is served today for a fellow
11 officer, he stated without a doubt, 100 percent,
12 he knows who it is, 100 percent.

13 Then you saw the video and the severity
14 of injuries. You saw Officer Taylor stagger
15 around, blood flowing down his face. He had a
16 broken skull is what the doctor testified to.
17 His skull was broken. I don't know about you,
18 but a broken bone is a serious injury. It's a
19 very serious injury.

20 I had a broken bone when I was a kid.
21 I broke my arm, and it required a hospital visit.
22 I actually had to stay in there for hours,
23 repairing it. It took months to heal. This is
24 no different.

25 He was transported, EMS. They didn't

1 even allow him to sit in the vehicle. He had to
2 be placed on the stretcher.

3 He had ten stitches; seven above his
4 eye, three below his eye.

5 He was transported within hours to the
6 specialist downtown to determine whether his
7 vision was going to be permanently impaired. He
8 had blood inside of his eye.

9 Luckily, Mr. Taylor can see well out of
10 his left eye today, but there's a good chance
11 that he was not going to be able to regain full
12 vision. As the doctor testified, he only had
13 20/50 vision that evening, and he was seeing
14 20/20 out of the other eye.

15 The still images of the video, you can
16 actually see this gentleman who's been identified
17 by two officers, 100 percent, winding back with
18 all his force, getting ready to strike the
19 officer and finally striking him, taking both of
20 them down to the ground in a ditch where he
21 testifies -- Jamie Taylor testifies that he was
22 struck again by the defendant.

23 And the defendant didn't quit there.
24 He got up and proceeded to run down the road
25 after the other officer. Officer Shannon

1 testified that he was thankful he turned around
2 in time. Who knows if he'd be here today if he
3 hadn't turned around in time. He'd be alone in
4 the woods with two individuals who are obviously,
5 obviously very dangerous.

6 So once Officer Shannon turns around,
7 the defendant sees him and he turns around. And
8 you see him in the video. He's not running.
9 He's strolling down the street, headed back to
10 the apartments. He's not concerned about
11 Mr. Taylor. He doesn't go over to him to see if
12 he's all right. He doesn't show any compassion.
13 He just goes home and celebrates with his friends
14 is more than likely what happened.

15 So the state has proven beyond a
16 reasonable doubt that the defendant, Altony
17 Brooks, aided the subject that night in escaping.
18 He not only pushed the officer while he was
19 trying to place handcuffs on him and shoved the
20 officer, he got in a verbal altercation with an
21 officer all while he's trying to place handcuffs
22 on him. He punched him and broke his skull,
23 broke his skull, and the gentleman ended up
24 escaping. Luckily, he was apprehended at a later
25 date.

1 You're going to get these videos --
2 these pictures. You'll get the video. You're
3 going to get the officers' statements, and you'll
4 be able to take that back into the deliberation
5 room with you and analyze it.

6 And I feel confident that you will
7 write the final chapter in the novel and find the
8 defendant, Altony Brooks, guilty on both the
9 aiding escape from custody of an officer and of
10 assault and battery of a high and aggravated
11 nature.

12 Thank you.

13 THE COURT: Mr. Lanier.

14 MR. LANIER: Thank you, Your Honor.

15 CLOSING ARGUMENT

16 BY MR. LANIER:

17 You know, there was a lot that went on
18 that night, and it went on rather rapidly once it
19 started; and but, you know, the only person that
20 identifies the person who struck or apparently
21 struck Officer Taylor was Officer Taylor.

22 Officer Shannon didn't know who it was.
23 He learned his name. Now, he testified that the
24 person he saw that night was the person sitting
25 over there, but, I mean, how many people were

1 sitting over there. Me and Mr. Brooks, that's
2 it. He was going to pick me, pick me out?

3 The tow truck driver couldn't tell who
4 it was, didn't even know that Officer Taylor had
5 been struck.

6 Mr. Rothman, the ride-along, he didn't
7 see that Officer Taylor was struck.

8 And I'm not saying Officer Taylor
9 wasn't struck, because it's obvious that he was;
10 and but Officer Taylor who had known Altony
11 Brooks in the past, he's the only one that
12 identified the person as Altony Brooks. It was
13 dark out there, there was a lot going on, and it
14 happened real quick.

15 You know, as far as the aiding and
16 abetting charge, now, there's no question that a
17 white Caucasian and a black male got up in these
18 officers' face when they were trying to arrest --
19 I believe the gentleman's name was Darby.

20 I don't know why they arrested him. He
21 stuck his head in the car. It looked to me like
22 they told him to get away from there, and he
23 backed away from there.

24 But nevertheless, you know, even after
25 those people backed out of the picture, the black

1 male and the white Caucasian that were arguing
2 with Officer Taylor and Officer Shannon, even
3 after they backed out of the scene, it looks
4 there's a substantial period of time before
5 Mr. Darby broke loose and ran.

6 So I fail to see how either one of
7 those people aided and abetted his escape. You
8 know, he was going to escape anyway.

9 And, again, I'd say when I looked at
10 the tape, it was at least 30 seconds from the
11 time the Caucasian female and the black male
12 backed away from the scene that Mr. Darby breaks
13 free and takes off.

14 Now, and Mr. Mastantuno, he wants to
15 imply that the person who struck Officer Taylor
16 was running down the road after Officer Shannon.
17 But, I mean, what evidence is there of that?
18 He's running down the road on the other side of
19 the street, and we don't even see Officer
20 Shannon. But he says he took off down along the
21 ditch line. So that's just mere speculation on
22 the solicitor's part, and I'd ask you to ignore
23 that.

24 Now, when the judge charges you about
25 assault and battery of a high and aggravated

1 nature -- and I'll read you the definition of it:

2 "Assault and battery of a high and
3 aggravated nature is an unlawful act of violent
4 injury to the person of another accompanied by
5 circumstances of aggravation, such as the use of
6 a deadly weapon" -- we don't have that here --
7 "the infliction of serious bodily injury" -- I'll
8 address that in a few minutes -- "the intent to
9 commit a felony, great disparity between the ages
10 and physical conditions of the parties, a
11 difference in sexes, indecent liberties with a
12 female or familiarities with a female, or a
13 purposeful infliction of shame and disgrace."

14 "Assault and battery of a high and
15 aggravated nature is an unlawful act of violence
16 to the person of another accompanied by
17 circumstances of aggravation."

18 You're going to have a choice back
19 there, and the judge is going to tell you that
20 you can also find Mr. Brooks guilty of assault
21 and battery, called a lesser included offense of
22 assault and battery of a high and aggravated
23 nature.

24 An assault and battery is defined as:
25 "An unlawful act of violent injury to the person

1 of another without accompanying aggravating
2 circumstances."

3 So you're going to have some choices
4 back there. And if you have some doubt in your
5 mind, if you think Mr. Brooks committed an
6 assault upon Officer Taylor but there's some
7 doubt in your mind whether it was an assault and
8 battery of a high and aggravated nature as
9 opposed to an assault and battery, then you must
10 resolve that doubt in Mr. Brooks' favor and
11 return a verdict of assault and battery, not
12 assault and battery of a high and aggravated
13 nature.

14 And, again, they of course have the
15 burden of proving every element of all these
16 crimes, including who committed the crime, beyond
17 a reasonable doubt.

18 Now, what is a reasonable doubt? A
19 reasonable doubt is a doubt which would cause a
20 reasonable person to hesitate to act. All right.
21 That's basically what Her Honor is going to
22 instruct you about reasonable doubt.

23 I always -- sometimes I compare it to
24 like it's a big rock; a reasonable doubt as a big
25 rock. And the prosecutor, they chip away at that

1 rock and chip away at that rock through their
2 case, and they chip away at the rock, chip away
3 at that rock. And if there's just a minute piece
4 of that rock left once they've presented all
5 their evidence, that is reasonable doubt, and
6 that would require you to return a verdict of not
7 guilty.

8 Okay. Broken orbital socket. No
9 treatment for it. You might have to do surgery
10 sometimes, but there was no evidence -- you know,
11 nobody testified about him having surgery done.
12 And seven stitches and three stitches. You'll
13 have to decide whether that's a serious --
14 serious bodily injury or not.

15 And the state's got to prove it was a
16 serious bodily injury beyond a reasonable doubt
17 or you're not justified in finding Mr. Brooks
18 guilty of assault and battery of a high and
19 aggravated nature.

20 And as far as what occurred that night,
21 Mr. Brooks has said all he needs to say to y'all.
22 When he pled not guilty, he said I am not guilty
23 of assault and battery of a high and aggravated
24 nature. That's all he needed to tell y'all.

25 And the fact that he did not testify,

1 Her Honor is going to instruct you that you
2 cannot even discuss that when you're back in
3 chambers. That cannot enter into your mind. You
4 cannot hold it against Mr. Brooks that he did not
5 testify, because that is every U.S. citizen's
6 right guaranteed to them by the Fifth Amendment
7 to the U.S. Constitution and a comparable
8 amendment to the South Carolina Constitution. No
9 person can be compelled to be a witness against
10 themselves. You cannot even discuss that. You
11 just have to put it out of your mind.

12 And, you know, Officer Taylor, he was
13 at the hospital for, I don't know, calculated at
14 three, three and a half hours. Then he goes to
15 MUSC and gets checked out, and he said he had
16 some follows up down there, but he sees fine now.
17 He sees fine now. He's not in any pain now. So
18 it caused no permanent bodily injury to him.

19 And I submit to you it's not a serious
20 bodily injury, either, and it's not the same --
21 breaking to an orbital socket is not the same as
22 breaking your arm. They can do something if you
23 break your arm. They can put pins in it. They
24 can put a cast on it. They can immobilize it.
25 They can't do anything for an orbital break.

1 unless they have to do that surgery the doctor
2 was talking about, which they didn't have to do
3 in this case.

4 Probably if you've ever been to the
5 doctor's for a broken toe, they said, well, it'll
6 get better in a little bit. And that's all they
7 can do.

8 They couldn't do anything for a broken
9 toe, and they can't do anything for an injury
10 like this. It just resolves itself, causing no
11 permanent injury.

12 And it hurt, sure, and probably --
13 sure, it hurt. I've been hit in the eye before.
14 It hurts. But that's not the test of whether
15 it's a serious bodily injury or not.

16 And all of this stuff about, well, I
17 carry my gun now everywhere I go, that doesn't
18 have a thing to do with whether Altony Brooks is
19 guilty of assault and battery of a high and
20 aggravated nature or not. It doesn't have a
21 thing to do with anything he's charged with
22 doing. So put all of that out of your mind.

23 And, again, any doubt you have in your
24 mind, you have to resolve in Mr. Brooks' favor.
25 And I think, considering the elements of assault

1 and battery of a high and aggravated nature and a
2 simple assault and battery, then there is some
3 doubt whether he's guilty of the greater offense
4 of assault and battery of a high and aggravated
5 nature; and if that's the case, then you are
6 bound by your oath to find him guilty only of
7 simple assault and battery.

8 Now, I know Mr. Brooks was over there
9 and he was trying to get my attention a lot, and
10 I know y'all probably heard him, but you saw him,
11 it was pretty obvious, but Mr. Brooks and I have
12 not been able to confer about this case for a
13 long time. This happened going on two years ago,
14 and but those -- the fact we could not confer was
15 beyond his control and it was beyond my control.

16 So when I met with him yesterday
17 morning, it was the first time I had talked with
18 him in a long time. And he had a lot of
19 questions about what was going on, what was going
20 on. And I don't blame him for that. You know,
21 he stands to lose his freedom today.

22 MR. MASTANTUNO: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. LANIER: And, you know, that's just
25 a fact of life. Y'all know that. So it's a very

1 serious matter to him, and I hope you think -- I
2 hope you take it as a very serious matter.

3 It's tough to sit in judgment of your
4 fellow man. It's not an easy task to judge
5 someone else, and that's what you're asked to do
6 today. And you all look like you've taken it all
7 seriously. I've seen a lot of you taking a lot
8 of notes. You've all paid attention to the
9 testimony and what the judge has had to say and
10 what the lawyers have had to say.

11 And, you know, I have faith in you, and
12 I think Mr. Brooks has faith in you, and on his
13 behalf, I want to thank y'all for serving.

14 Thank you very much.

15 JURY CHARGE

16 THE COURT: Ladies and gentlemen of the
17 jury, we've now reached the stage of the trial
18 where I will instruct you on the law. Do you all
19 want to stand and have a stretch break for just a
20 moment before I instruct you? I know it's
21 getting late in the afternoon, and I also tend to
22 drift off, so if y'all want to take a moment to
23 break.

24 Ladies and gentlemen, I remind you that
25 during this trial you and I have had certain

1 duties to perform. As the trial judge, it is my
2 responsibility to preside over the trial of this
3 case, and I also have the duty to rule on the
4 admissibility of the evidence offered during this
5 trial.

6 You are to consider only the competent
7 evidence before you. If there was any testimony
8 ordered stricken from the record in this case,
9 you must disregard it. You are to consider only
10 the testimony which has been presented from the
11 witness stand, any exhibits which have been made
12 part of the record in this case, as well as the
13 stipulations of counsel.

14 I have the additional duty to charge
15 you the law applicable to this case. As the
16 presiding judge, I am the sole judge of the law.
17 It is your duty as jurors to apply and accept the
18 law as I state it to you now.

19 As I indicated previously, if you
20 already have an idea as to what the law is or
21 what the law ought to be and it does not agree
22 with what I'm about to tell you, you must abandon
23 your own idea because you are sworn to accept the
24 law and apply the law exactly as I state it to
25 you now.

1 In every case tried in this court
2 before a jury, the jury becomes the sole and
3 exclusive judge of the facts in this case. The
4 trial judge cannot state, comment on, or make any
5 statement to a trial jury about the facts in a
6 case.

7 Since you, the jury, are the sole judge
8 of the facts in this case, you are not to infer
9 from anything that I have said during the
10 progress of this trial in ruling upon the
11 admissibility of the evidence or otherwise or
12 anything that I say now during the course of my
13 instruction that I have any opinion at all about
14 the facts in this case. The law does not allow
15 me to have an opinion about the facts. This is a
16 matter solely for you, the jury, to determine.

17 As jurors it is your duty to determine
18 the effect, value, weight, and truth of the
19 evidence presented during this trial.

20 The indictments charge the defendant
21 with assault and battery of a high and aggravated
22 nature and aiding escape from the custody of
23 officers. I remind you the fact that the
24 defendant was arrested, charged, and indicted in
25 this case is not evidence in this case and cannot

1 be considered by you as evidence of guilt in this
2 case nor does it create any presumption or
3 inference of guilt. This document is simply the
4 formal written instrument which contains the
5 charges made against the defendant. It is the
6 formal document by which this case is brought
7 into this court.

8 The indictments in this case allege
9 several different offenses against the defendant.
10 The charges are, indictment one, assault and
11 battery of a high and aggravated nature;
12 indictment number two, aiding escape from the
13 custody of officers.

14 Each indictment contains a separate and
15 distinct offense. You must decide each
16 indictment separately on the evidence and the law
17 applicable to it, uninfluenced by your decision
18 as to any other indictment.

19 The defendant may be convicted or
20 acquitted on any or all of the offenses charged.
21 You will be asked to write a separate verdict of
22 guilty or not guilty for each indictment.

23 The defendant has pled not guilty to
24 these indictments, and that plea puts the burden
25 on the state to prove the defendant guilty. A

1 person charged with committing a criminal offense
2 in South Carolina is never required to prove
3 himself innocent.

4 I charge you that it is an important
5 rule of law that the defendant in a criminal
6 trial, no matter what the seriousness of the
7 charge may be, will always be presumed to be
8 innocent of the crime for which the indictment
9 was issued unless guilt has been proven by
10 evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 This presumption of innocence does not
13 end when you begin your deliberation. It
14 accompanies the defendant throughout the trial
15 until you reach a verdict of guilt based upon
16 evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is like a
19 robe of righteousness placed about the shoulders
20 of the defendant which remains with the defendant
21 until it has been stripped from the defendant by
22 evidence satisfying you of his guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is not
25 mere legal theory. It is not just a legal

1 phrase. It is a substantial right to which every
2 defendant is entitled unless you the jury are
3 satisfied from the evidence of the defendant's
4 guilt beyond a reasonable doubt.

5 The state has the burden of proving the
6 defendant guilty beyond a reasonable doubt. Some
7 of you may have served as jurors in civil cases
8 where you were told that it is only necessary to
9 prove that a fact is more likely true than not
10 true, such as by the greater weight or
11 preponderance of the evidence. In criminal
12 cases, the state's proof must be more powerful
13 than that. It must be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is
15 proof that leaves you firmly convinced of the
16 defendant's guilt. There are very few things in
17 this world that we know with absolute certainty,
18 and in criminal cases the law does not require
19 proof that overcomes every possible doubt.

20 If based upon your consideration of the
21 evidence you are firmly convinced that the
22 defendant is guilty of the crime charged, you
23 must find the defendant guilty.

24 If, on the other hand, you think there
25 is a real possibility that the defendant is not

1 guilty, you must give the defendant the benefit
2 of the doubt and find him not guilty.

3 There are two types of evidence which
4 are generally presented during a trial, direct
5 evidence and circumstantial evidence.

6 Direct evidence is the testimony of a
7 person who claims to have actual knowledge of a
8 fact, such as an eyewitness. It is evidence
9 which immediately establishes the main fact to be
10 proved.

11 Circumstantial evidence is proof of a
12 chain of facts and circumstances indicating the
13 existence of a fact. It is evidence which
14 immediately establishes collateral fact from
15 which the main fact may be inferred.

16 Circumstantial evidence is based on inference and
17 not on personal knowledge or observation.

18 The law makes absolutely no distinction
19 between the weight or value to be given to either
20 direct or circumstantial evidence nor is a
21 greater degree of certainty required of
22 circumstantial evidence than of direct evidence.

23 You should weigh all of the evidence in
24 this case. After weighing all the evidence, if
25 you are not convinced of the guilt of the

1 defendant beyond a reasonable doubt, you must
2 find the defendant not guilty.

3 Necessarily, you must determine the
4 credibility of the witnesses who have testified
5 in this case. Credibility simply means
6 believability. It becomes your duty as jurors to
7 analyze and evaluate the evidence and determine
8 which evidence convinces you of its truth.

9 In determining the believability of
10 witnesses who have testified in this case, you
11 may believe one witness over several witnesses or
12 several witnesses over one witness. You may
13 believe a part of the testimony of a witness and
14 reject the remaining part of the testimony of
15 that same witness. You may believe the testimony
16 of a witness in its entirety or reject the
17 testimony of a witness in its entirety.

18 You may consider whether any witness
19 has exhibited to you any interest, bias,
20 prejudice, or other motive in this case. You may
21 also consider the appearance and manner of the
22 witness while on the witness stand.

23 The rules of evidence ordinarily do not
24 permit witnesses to testify to opinions or to
25 conclusions. An exception to this rule exists

1 for witnesses we call expert witnesses.

2 A witness who by education and
3 experience has become expert in some art,
4 science, profession, or calling may state an
5 opinion as to a relevant and material matter in
6 which the witness claims to be an expert and may
7 also state the reasons for that opinion.

8 You should consider any expert opinion
9 received in evidence in this case and like any
10 other evidence give it the weight you think it
11 deserves.

12 If you decide that the opinion of an
13 expert witness is not based on sufficient
14 education and experience or if you conclude that
15 the reasons given in support of the opinion are
16 not sound or that the opinion is outweighed by
17 other evidence, you may disregard the opinion
18 entirely.

19 An expert witness's testimony is to be
20 given no greater weight than that of any other
21 witness simply because the witness is an expert.
22 Further, you are not required to accept an
23 expert's opinion even though it is not
24 contradicted.

25 I instruct you and emphasize the fact

1 that the defendant did not testify is not a
2 factor to be considered by you in any way in your
3 deliberation and in your consideration on the
4 question of the guilt or the innocence of the
5 defendant. It must not be considered by you in
6 any manner whatsoever.

7 A defendant has a constitutional right
8 to remain silent, and the assertion of this right
9 must not be considered by you in your
10 deliberations.

11 I repeat: Under your oath, you are to
12 draw no conclusion whatsoever from the fact that
13 the defendant in this case did not testify. The
14 fact that this defendant did not testify should
15 not even be discussed in the jury room. The
16 burden of proof, as I have stated to you, is on
17 the state. The defendant is not required to
18 prove his innocence. The burden of proof remains
19 on the state to prove guilt beyond a reasonable
20 doubt.

21 At issue in this case is the
22 identification of the defendant as the person who
23 committed the crime charged.

24 The state has the burden of proving
25 identity beyond a reasonable doubt. You must be

1 satisfied beyond a reasonable doubt of the
2 accuracy of the defendant -- of the
3 identification of the defendant before you may
4 convict the defendant.

5 Identification testimony is an
6 expression of belief or impression by a witness.
7 You must determine the accuracy of
8 identification. You must consider the
9 believability of each identification witness in
10 the same way as any other witness.

11 You may consider whether the witness
12 had an adequate opportunity to observe the
13 offender at the time of the offense. This will
14 be affected by things like how long or short a
15 time was available, how far or close the witness
16 was, the lighting conditions, and whether the
17 witness had a chance to see or know the person in
18 the past.

19 Once again, I instruct you the burden
20 of proof on the state extends to every element of
21 the crime charged, and this specifically includes
22 the burden of proving beyond a reasonable doubt
23 the identity of the defendant as the person who
24 committed the crime.

25 If after examining the testimony you

1 have a reasonable doubt as to the accuracy of the
2 identification, you must find the defendant not
3 guilty.

4 In order to establish criminal
5 liability, criminal intent is required. For
6 example, the mental state required to be proven
7 by the state for a particular crime might be
8 purpose, intent, knowledge, recklessness, or
9 criminal negligence. Criminal intent must be
10 proven by the state beyond a reasonable doubt.

11 Criminal intent is always a matter that
12 must be determined by the jury from the
13 circumstances surrounding the situation. There
14 is no way to prove intent to a mathematical
15 certainty. There is no way medical science can
16 dissect a person's brain and determine what the
17 person had in mind. So the law says criminal
18 intent may be inferred from circumstances shown
19 to have existed. This is how you make a
20 determination of whether or not the element
21 requiring intent is present.

22 It is not necessary to establish intent
23 by direct and positive evidence, but intent may
24 be established by inference in the same way as
25 any other fact by taking into consideration the

1 acts of the parties and all the facts and
2 circumstances of the case.

3 Criminal intent is a mental state, a
4 conscious wrongdoing. It is up to you to
5 determine what the defendant intended to do based
6 upon the circumstances shown to have existed.

7 Criminal intent can arise from action
8 or a failure to act. It may arise from
9 negligence, recklessness, or an indifference to
10 duty or to consequences that is considered by the
11 law to be the equivalent of criminal intent.

12 Assault and battery of a high and
13 aggravated nature is an unlawful act of violent
14 injury to the person of another accompanied by
15 circumstances of aggravation.

16 An assault occurs when a person
17 unlawfully attempts or offers to commit a violent
18 injury upon another person and had the present
19 ability to complete the attempted injury. An
20 assault is the intentional creation of a
21 reasonable fear of immediate bodily harm.

22 It is not necessary that the attempted
23 injury or harm actually take place. For example,
24 if I walk up to you and when we are within arm's
25 reach I draw back to hit you, that is an assault.

1 A battery is the unlawful touching of
2 another person by a person who has committed the
3 assault. An unlawful touching can be caused by a
4 part of the accused's body or by any object the
5 accused puts in motion.

6 A battery is a completion of the
7 assault by using or applying force to another
8 person, however slight, in a rude, angry, or
9 resentful manner without legal justification for
10 doing so. Using my earlier example, if I carry
11 through the assault by hitting you, then that is
12 a battery.

13 The state must also prove a
14 circumstance of aggravation. Circumstances of
15 aggravation include the use of a deadly weapon,
16 the intent to commit a felony, the infliction of
17 serious bodily injury, a great disparity between
18 the ages or physical conditions of the parties, a
19 difference in the genders of the parties, the
20 taking of indecent liberties or familiarities
21 with a female through the use of force, the
22 purposeful infliction of shame and disgrace, and
23 the resistance of lawful authorities. These are
24 only examples of circumstances of aggravation.

25 If you find that the state has failed

1 to prove that the defendant is guilty of assault
2 and battery of a high and aggravated nature, you
3 must then decide whether the state has proved
4 that the defendant is guilty of simple assault
5 and battery.

6 Simple assault and battery contains all
7 of the elements of assault and battery of a high
8 and aggravated nature except a circumstance of
9 aggravation.

10 If you find that the state has failed
11 to prove beyond a reasonable doubt that the
12 defendant is guilty of simple assault and
13 battery, you must return a verdict of not guilty.

14 The defendant is charged with aiding an
15 escape from the custody of an officer. The state
16 must prove beyond a reasonable doubt the
17 defendant aided or assisted a prisoner in
18 escaping from an officer or other person who had
19 the lawful custody of the prisoner.

20 Mr. Foreman, ladies and gentlemen of
21 the jury, the indictments will go back into the
22 jury room with you. There are two verdict forms,
23 and they correspond to the indictments. There is
24 no particular significance -- there is absolutely
25 no significance in how I state the possible

1 verdicts. It's simply one has to go first on the
2 form.

3 Indictment 2008-GS-08-1728 which
4 corresponds to the indictment for assault and
5 battery of a high and aggravated nature, the
6 verdict form states: We the jury find the
7 defendant not guilty, or we the jury find the
8 defendant guilty of assault and battery of a high
9 and aggravated nature, or simple assault and
10 battery.

11 Mr. Foreman, you will certify that the
12 decision is the unanimous decision of the jury,
13 sign and date that verdict form.

14 Indictment 2008-GS-08-1729 which
15 corresponds to the indictment for escape --
16 aiding escape from custody of officers: We the
17 jury find the defendant not guilty, or we the
18 jury find the defendant guilty of aiding escape
19 from custody of officers.

20 Again, Mr. Foreman, you will sign and
21 date the verdict form, certifying that the
22 decision is the unanimous decision of the jury.

23 Ladies and gentlemen, as I stated, your
24 verdict must be a unanimous one.

25 When the jury agrees on the verdict,

1 you will sign the verdict form, Mr. Guerry, and
2 then you will knock on the jury room door. At
3 that time you will inform the bailiff that you
4 have reached a verdict. I will then receive you
5 back into the courtroom, and we will announce
6 your verdict at that time.

7 I ask that you now -- you can return
8 back to your jury room, but do not begin your
9 deliberation. We must gather the verdict forms
10 and the indictments and all the exhibits that
11 have been admitted into evidence that will go
12 back into the jury room with you. Please do not
13 begin your deliberations until you have been told
14 to do so by the bailiff.

15 Ms. Fogle, as the alternate, you do not
16 get to deliberate with the jury. So you have
17 completed your service for this trial. I ask
18 that you remain with us just until the
19 housekeeping matters are taken care of.

20 All right. Please stand for the jury.

21 (Whereupon, the jury goes to the jury
22 room at approximately 4:00 p.m.)

23 THE COURT: Thank you. Be seated.

24 Any objections to the charge as read?
25 From the state?

1 MR. MASTANTUNO: No, Your Honor.

2 THE COURT: From the defense?

3 MR. LANIER: None, Your Honor.

4 THE COURT: And, please, counsel, we
5 will review the verdict form to make sure that
6 they are in order before they go back.

7 (Mr. Mastantuno and Mr. Lanier comply.)

8 THE COURT: One second, Mr. Brooks.

9 THE DEFENDANT: All right.

10 THE COURT: And so the verdict forms
11 are in order, Mr. Lanier?

12 MR. LANIER: They are, Your Honor.

13 THE COURT: Mr. Mastantuno?

14 MR. MASTANTUNO: Yes, Your Honor.

15 THE COURT: And we are in agreement as
16 to the exhibits that are to go back to the jury?

17 MR. MASTANTUNO: Yes, Your Honor.

18 THE COURT: And for the record, those
19 are?

20 MR. MASTANTUNO: State's exhibit one
21 through seven and the defense exhibit one ---

22 MR. LANIER: I didn't put anything into
23 evidence, Your Honor. I had them marked for
24 identification.

25 THE COURT: My records do not show --

1 is that correct? One through seven, the state's,
2 is the only thing in evidence. Is that correct?

3 MR. MASTANTUNO: Yes, Your Honor.

4 THE COURT: Madam Court Reporter.

5 THE COURT REPORTER: Yes, Your Honor.

6 THE COURT: Thank you.

7 And we should address it now,
8 Mr. Mastantuno. State's exhibit number one is
9 the video.

10 MR. MASTANTUNO: Yes, Your Honor.

11 THE COURT: Are we sending a television
12 back?

13 MR. MASTANTUNO: May we?

14 THE COURT: Any objection, Mr. Lanier?

15 MR. LANIER: No, I have no objection.

16 THE COURT: All right. I have the
17 verdict forms and the indictments.

18 Madam Bailiff, and if we could make
19 arrangements to have the television.

20 (Mr. Mastantuno and Mr. Lanier review
21 exhibits.)

22 MR. LANIER: Your Honor, could I just
23 show my client the verdict forms if that's all
24 right?

25 THE COURT: Yes. Madam Bailiff has

1 them.

2 (Mr. Lanier and the defendant review
3 verdict forms.)

4 THE COURT: All right. Is there
5 anything additional from the state?

6 MR. MASTANTUNO: No, Your Honor.

7 THE COURT: From the defense?

8 MR. LANIER: No, Your Honor.

9 THE COURT: All right. We'll be at
10 ease until we have a verdict.

11 MR. LANIER: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (The trial is in recess at
14 approximately 4:05 p.m.)

15 (The trial reconvenes at approximately
16 5:25 p.m., the defendant being present with
17 counsel, and the following proceedings were had:)

18 (Court's Exhibit No. 1, note from the
19 jury, is marked for identification.)

20 THE COURT: Thank you. Be seated.

21 We have received a note from the jury
22 which has been marked as Court's exhibit number
23 one.

24 Question number one: Does it matter
25 whether the defendant intended to aid or assist

1 the escape; i.e., does intent matter?

2 Number two: Does it matter if aiding
3 or assisting the escape was premeditated?

4 Number three: Could a serious injury
5 without a weapon be assault and battery of a high
6 and aggravated nature? Clearer definition.

7 Four: Is there a definition of a
8 serious injury?

9 Five: Is interference considered
10 aiding or assisting an escape?

11 MR. LANIER: I didn't understand number
12 five, Your Honor.

13 THE COURT: "Is interference considered
14 aiding or assisting an escape?"

15 The Court has prepared a copy of its
16 charge and will mark that as Court's two, and it
17 will go back to the jury.

18 Mr. Mastantuno.

19 MR. MASTANTUNO: Yes, Your Honor.

20 THE COURT: Anything additional from
21 the state?

22 MR. MASTANTUNO: No, Your Honor.

23 THE COURT: From the defendant?

24 MR. LANIER: No, Your Honor. Just --
25 okay. You're not going to bring the jury back

1 in?

2 THE COURT: No, sir. There is -- based
3 upon the question as -- the questions as written,
4 those are all factual bases, questions of fact
5 for the jury. The definitions that they have
6 requested are contained in some form or fashion
7 in the charge, and I believe that giving them a
8 written copy of the charge will answer all of
9 their questions.

10 MR. LANIER: Thank you, Your Honor.

11 MR. MASTANTUNO: Your Honor.

12 THE COURT: Yes.

13 MR. MASTANTUNO: May I briefly look
14 over that charge real quick if that's
15 appropriate?

16 THE COURT: Yes, you may.

17 Mark it Court's two.

18 MR. MASTANTUNO: May I approach?

19 (Court's Exhibit No. 2, printout of
20 Court's jury charge instructions, is marked for
21 identification.)

22 MR. MASTANTUNO: The only request that
23 the state would make is, I don't know if it's
24 possible to modify the charge, but instead of
25 "and", "or"? Can it be replaced with "or" so

1 they realize that all the aggravating
2 circumstances can be independent as opposed to...

3 THE COURT: Did you not number the...

4 THE LAW CLERK: I can number them now.

5 THE COURT: If you'll number those so I
6 can...

7 Here is a copy of the note, just for
8 your review, Mr. Lanier. And a copy of the
9 charge, also.

10 With reference to Mr. Mastantuno's
11 request to change the Court's instruction, that
12 was page 23 of the charge: The state must also
13 prove a circumstances -- a circumstance of
14 aggravation. Circumstances of aggravation
15 include -- and it has a list.

16 Mr. Mastantuno is requesting that the
17 "and" be changed to "and/or." Is that correct,
18 sir?

19 MR. MASTANTUNO: Yes, Your Honor, or
20 just "or."

21 THE COURT: The next sentence states:
22 These are only examples of circumstances of
23 aggravation.

24 Because I am giving a copy of the
25 charge that I read, I decline to grant your

1 request. I feel that taken in its entirety it is
2 clear that -- that you only have to prove, as the
3 state, a circumstance of aggravation.

4 MR. MASTANTUNO: Yes, Your Honor.

5 (Mr. Lanier and the defendant review
6 documents.)

7 THE COURT: All right. Mr. Lanier, has
8 your client had sufficient time to review the
9 Court's charge?

10 MR. LANIER: He has, Your Honor.

11 THE COURT: All right. Any objection?

12 MR. LANIER: No.

13 THE COURT: Thank you. We will send
14 Court's two back to the jury. We'll be at ease.

15 (The trial is in recess at
16 approximately 5:30 p.m.)

17 (The trial reconvenes at approximately
18 6:25 p.m., the defendant being present with
19 counsel, and the following proceedings were had:)

20 THE COURT: Thank you. Be seated.

21 I understand we have a verdict. Please
22 bring in the jury. Please rise for the jury.

23 (Whereupon, the jury enters the
24 courtroom at approximately 6:25 p.m.)

25 THE COURT: Thank you. Please be

1 seated.

2 Mr. Foreman, I understand we have a
3 verdict.

4 THE FOREMAN: Yes, ma'am.

5 THE COURT: If you'll please hand the
6 verdict forms to the bailiff.

7 (The foreman complies.)

8 (The bailiff tenders verdict forms to
9 the Court.)

10 THE COURT: Madam Clerk, if you'll
11 please publish the verdict.

12 Mr. Brooks, please rise.

13 (The defendant and Mr. Lanier stand.)

14 THE CLERK: State of South Carolina vs.
15 Altony Brooks, indictment number 2008-GS-08-1728,
16 we the jury find the defendant guilty of assault
17 and battery of a high and aggravated nature.
18 Signed by the foreperson.

19 State of South Carolina vs. Altony
20 Brooks, indictment number 2008-GS-08-1729, we the
21 jury find the defendant guilty of aiding escape
22 from custody of officer. Signed by the
23 foreperson.

24 If this is your verdict, please signify
25 it by saying "I do" at this time.

1 (Whereupon, each member of the jury
2 replies "I do.")

3 THE COURT: Are there any matters
4 before the jury is excused?

5 MR. LANIER: No, Your Honor.

6 THE COURT: From the state?

7 MR. MASTANTUNO: No, Your Honor.

8 THE COURT: Ladies and gentlemen of the
9 jury, this concludes your service in this matter
10 as well as your jury service for the week. You
11 have earned your exemption for the next three
12 years. On behalf of Berkeley County, I wish to
13 thank you for your important service to Berkeley
14 County as well as to our justice system.

15 You may now discuss this case amongst
16 yourselves, with friends, family members, but you
17 also have the right not to discuss this case. If
18 anyone continues to try to contact you to discuss
19 your decision making or question you about your
20 verdict, if you will please contact the Clerk of
21 Court, they will contact me, and I will handle
22 the matter immediately.

23 You are excused from service. You may
24 remain in the courtroom if you wish. We will be
25 proceeding with sentencing, but at this time you

1 are excused. Thank you.

2 Please rise for the jury.

3 (Whereupon, the jury is excused at
4 approximately 6:30 p.m.)

5 THE COURT: Thank you. Be seated.

6 Mr. Mastantuno, do you have the
7 sentencing sheets prepared?

8 MR. MASTANTUNO: Your Honor, I
9 apologize. If you'll give me a brief moment, I
10 beg the Court's indulgence, to get those
11 prepared. I'm not sure why I don't have those,
12 but I do not have them at this moment.

13 THE COURT: All right. We'll be at
14 ease. If you'll let the Court know when you have
15 the sentencing sheets ---

16 MR. MASTANTUNO: Yes, Your Honor.

17 THE COURT: --- we'll proceed with
18 sentencing at that time.

19 (A recess is taken at approximately
20 6:35 p.m.)

21 (The trial reconvenes at approximately
22 6:40 p.m., the defendant being present with
23 counsel, and the following proceedings were had:)

24 THE COURT: Thank you. Be seated.

25 Mr. Mastantuno, anything further from

1 the state?

2 MR. MASTANTUNO: Nothing, Your Honor.

3 THE COURT: Mr. Mastantuno, how about
4 the defendant's prior convictions?

5 MR. LANIER: Your Honor, I didn't know
6 when you were going to ask. I do have a motion
7 for a new trial before the sentencing.

8 THE COURT: All right. I'll be happy
9 to hear from you.

10 MR. LANIER: Your Honor, I do make a
11 motion for a new trial on the aiding and abetting
12 escape from officers on the grounds -- basically
13 the same grounds I moved for a directed verdict.

14 In view of the evidence in the light
15 most favorable to the state, it's insufficient to
16 find beyond a reasonable doubt that his
17 activities, my client's activities, resulted in
18 the defendant being able to escape. I mean, he
19 escaped anyway, even after my client withdrew
20 from whatever shown on the tape, and that's the
21 basis of my motion.

22 THE COURT: Mr. Mastantuno, do you have
23 any response?

24 MR. MASTANTUNO: Yes, Your Honor. I
25 believe that the charge was proper, and the

1 jury's verdict was -- in the light most favorable
2 to the state, properly in evidence and met all
3 the elements of aiding escape; that is, the
4 gentleman who was in custody escaped based on the
5 actions of the defendant.

6 THE COURT: Mr. Lanier, based upon the
7 testimony as presented, the jury deliberated --
8 was very attentive, deliberated for approximately
9 three hours, sent a note to the Court with five
10 well written questions that appeared to the Court
11 that they had considered all of the evidence..

12 Based upon the testimony as presented
13 by -- from the witness stand from the officers,
14 both the victim as well as Officer Shannon
15 testified that Mr. Brooks drove by, made
16 derogatory statements to the officers, following
17 that there was a crowd of individuals that
18 approached, there was an altercation which
19 prevented Officer Taylor from placing handcuffs
20 on the -- I believe he had had a handcuff on the
21 right wrist, was unable to place the handcuff
22 because of the actions of the defendant on the
23 left wrist, as a result that suspect fled.

24 Based upon all of that, I decline to
25 grant a motion -- I decline your motion to grant

1 a new trial.

2 MR. LANIER: Thank you, Your Honor.

3 THE COURT: Anything further before we
4 begin with sentencing?

5 MR. LANIER: No, Your Honor.

6 THE COURT: Mr. Mastantuno.

7 MR. MASTANTUNO: Yes, Your Honor.

8 On priors, he has a strong arm robbery,
9 a assaulting a police officer while resisting
10 arrest, and a ---

11 THE COURT: And when were those,
12 Mr. Mastantuno?

13 MR. MASTANTUNO: Yes, Your Honor.
14 Those are from July of 2003. And then in
15 December 2005, resisting arrest, as well.

16 THE COURT: What was the sentence he
17 received in July of '03?

18 MR. MASTANTUNO: Seven years suspended
19 upon eleven months and three years' probation
20 for the strong arm robbery and eleven months for
21 the assaulting a police officer while resisting
22 arrest.

23 THE COURT: And what did he receive on
24 the resisting arrest?

25 MR. MASTANTUNO: Six months,

1 Your Honor.

2 THE COURT: How long has he been in
3 custody on this charge?

4 MR. MASTANTUNO: I believe he was in
5 custody for a substantial period of time. He was
6 out on bond, and then he recently was picked up
7 and no bond was provided for the new charges,
8 pending charges. So I would say a few months.

9 THE COURT: Mr. Mastantuno, does the
10 victim wish to address the Court?

11 MR. MASTANTUNO: No, Your Honor.

12 THE COURT: All right. Mr. Lanier,
13 I'll be happy to hear from you regarding
14 sentencing.

15 MR. LANIER: Thank you, Your Honor.

16 Mr. Brooks was in jail for two months
17 on these charges, made bond, and then within a
18 couple of months after that he was arrested in
19 the charges in Williamsburg County, and he's been
20 incarcerated since then.

21 When did you get arrested for the
22 Williamsburg charges?

23 (Mr. Lanier and the defendant confer.)

24 MR. LANIER: September the 3rd of '08
25 he was arrested on the Williamsburg County

1 charges, and he's been in custody since that
2 time.

3 As you heard, Your Honor, he's 23 years
4 of age. With him in the courtroom are his mother
5 and his brother.

6 And, Your Honor, you've heard his
7 record and, you know, I leave the sentencing up
8 to the Court.

9 THE COURT: Mr. Brooks, is there
10 anything you wish to tell the Court?

11 THE DEFENDANT: Yes, ma'am.

12 MR. LANIER: Stand up.

13 (The defendant stands.)

14 THE DEFENDANT: I'm 23 years old. I
15 have three kids. My oldest son is seven years
16 old, you know.

17 That's my family right there. That's
18 my mother, and that's my brother, you know.

19 This -- this with Mr. -- what is his
20 name?

21 MR. LANIER: Taylor.

22 THE DEFENDANT: Mr. Taylor. I totally
23 understand, you know, the severity of the charge,
24 and I totally understand that he -- he was
25 assaulted, you know, but the sentencing of the

1 charge, that's -- that is really steep, and I
2 must admit it's really steep. I wouldn't wish a
3 whole lot of time on my worst enemy. That's
4 basically what I'm trying to say.

5 I ask that you, when you -- when you
6 grant your sentence that you do it with -- with
7 the contents of your heart, you know, what you --
8 what you feel. You know, that's -- that's
9 basically, that's all I ask.

10 Mr. Taylor, I have never got to spoke
11 to you, you know. I know you, you know. Me and
12 you had a real good relationship, you know. I
13 don't have no bad feelings about you, you know.
14 You were assaulted, you know, but there's nothing
15 I can do about that except to say, you know, that
16 I hope God will continue to bless you, you know,
17 and that you keep God in front whatever you do.
18 Because for me, that's what I will do, you know.

19 I have had a record when I was young,
20 while I was young, and now I'm growing -- growing
21 older, and I'm becoming more of a man.

22 So I ask that -- that the Court be
23 lenient on me and give me the sentence that you
24 feel as though is reasonable. That's all --
25 that's all I can ask.

1 THE COURT: Mr. Lanier, does
2 Mr. Brooks' mother or brother wish to address the
3 Court?

4 MR. LANIER: Do either one of you wish
5 to address the Court?

6 THE COURT: Ms. Brooks, if you'll --
7 I'm sorry. If you'll state your name and spell
8 your last name for the court reporter, please.

9 MS. SMALLS: My name is Valerie Smalls,
10 S-M-A-L-L-S.

11 THE COURT: Yes, ma'am. I'll be happy
12 to hear from you.

13 MS. SMALLS: Your Honor. Your Honor,
14 my son didn't plan to attack Mr. Taylor. It
15 wasn't malicious.

16 Everybody was at a party, drinking. He
17 had two sisters out there, and he's a very over
18 protective, chauvinistic person. And every time
19 they drank, had a glass of alcohol, the girls
20 told me, he would trick them and drink it, and he
21 was drinking to keep them from drinking. He was
22 trying to get them to leave because he didn't
23 want them around all those boys.

24 And his action was because of alcohol.
25 And I have found out in the past that he was

1 drinking alcohol with some of these things that
2 he used to do in the past.

3 And he started to understand that he
4 had an alcoholic problem, and he moved away to
5 Goose Creek, and he was doing good.

6 Because the day that that happened, I
7 left the country, and I begged him to go with me
8 because I want him to see that there's another
9 world out there. And he said no, mom, I -- and
10 he had his hair cut. He was looking clean cut.

11 He said, "I got a job."

12 I said, "Well, that's good."

13 And he said, "I got a job."

14 And he was working for a while, and
15 that same day he got his first paycheck. And
16 they all wanted to celebrate because my daughter
17 was trying to make it on "American Idol." And
18 they all was drinking, and everybody's happy that
19 he got a job, and things got out of hand.

20 And that's all I have to say.

21 THE COURT: Thank you, Ms. Smalls.

22 Anything further, Mr. Lanier?

23 MR. LANIER: No, Your Honor.

24 THE COURT: Mr. Brooks, please stand.

25 (The defendant and Mr. Lanier stand.)

1 THE COURT: Taking into account your
2 prior history which according to the solicitor
3 you have two resisting arrests, this will make
4 your third assault on a police officer.

5 Mr. Brooks, regardless of your feelings
6 or whatever you protected that you were out in
7 that situation, Officer Taylor and Officer
8 Shannon were there to protect you and to protect
9 your sisters and to protect the citizens of
10 St. Stephens, and it is only through respect of
11 law enforcement that we can live in a law abiding
12 and safe society.

13 You have shown to this Court that you
14 have no respect for law enforcement, for the laws
15 of this state, or for yourself. Your mother and
16 your brother have sat through this trial, and
17 they have listened to your actions.

18 It's the order of the Court,
19 Mr. Brooks, on indictment 2008-GS-08-1728 that
20 you be committed to the State Department of
21 Corrections for a term of ten years. It's the
22 order of the Court on indictment 2008-GS-08-1729
23 that you be committed to the State Department of
24 Corrections for a term of two years. These
25 indictments are to run consecutive.

1 Good luck to you, sir.

2 We're in recess.

3 (Whereupon, the trial is concluded at
4 approximately 6:50 p.m.)

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1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley,
4 Court Reporter for the Ninth Judicial Circuit of
5 the State of South Carolina, do hereby certify
6 that the foregoing is a true and accurate
7 transcript of record of the proceedings had and
8 the evidence introduced in the hearing of the
9 captioned case, pages 3 through 256, inclusive,
10 relative to appeal, in the Court of General
11 Sessions for Berkeley County, Moncks Corner,
12 South Carolina, on the 12th and 13th days of
13 January 2009.

14 I do further certify that I am neither
15 of kin, counsel, nor interest to any party
16 hereto.
17
18
19

20 May 14, 2009
21

22 Brenda Cooley

23 Brenda Cooley

24 Circuit Court Reporter
25

2011 - CP - 08 - 2266²⁶¹

STATE OF SOUTH CAROLINA) In the Court of Common Pleas

County of Berkeley

2011 AUG 19 AM 10:22

Altony Brooks 313010

Full name and prison number, if any, of applicant.

CLERK OF COURT
BERKELEY COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

v.

Berkeley County

Name of Respondent

FILED
2011 AUG - 19 AM 11:41
CLERK OF COURT
BERKELEY COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention BROAD River Correctional Institution
4410 BROAD River RD Columbia SC 29910
2. Name and location of Court which imposed sentence Berkeley County General Sessions
500 CALHOUN AVE COURT OF COMMON PLEAS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 16-9-420 Aiding escape of custody of OFFICERS-2008-GS-08-1729
 - (b) 17-25-0030 1st Assault + Battery of ... Aggravated Nature
 - (c) 2008-GS-08-1728 2008-08-08-1728
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-13-09 - consecutive 2 years
 - (b) 1-13-09 - ...
 - (c) ...

Ab

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) ☒ after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. STATE OF SOUTH CAROLINA COURT OF APPEALS
 ii. N/A
 iii. N/A

(b) the result in each such Court to which you appealed:

- i. AFFIRMED
 ii. N/A
 iii. N/A

(c) the date of each such result:

- i. Entered December 1, 2010 Filed December 31, 2010
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. N/A
 iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) N/A
 (c) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel See Attach sheet
 (b) _____
 (c) Attach sheet

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attach

(b) _____

(c) Att

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

NA

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NA

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NA

(d) any other petitions, motions or applications in this or any other Court?

NA

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. NA

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. MITCHELL LAMIER PO BOX 1340 MONKS CORNER, VA 24451
- ii. IVANDA CARTER
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. COURT OF GENERAL SESSIONS TRIAL
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

MAINTENANCE OF FULL SENTENCE, SENTENCE VACATE AND Remanded
FOR TRIAL

19. Are you now under sentence from any other court that you have not challenged?

NO

20 11 - CP - 08 - 2266STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

VERIFICATION

I, Alton Brooks, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alton Brooks

Sworn to and subscribed before me

This 1 day of Aug, 20 11Eugene Kutt S.
Notary Public for South CarolinaMy Commission Expires 2016

FILED
2011 AUG 19 AM 10:22
CLERK OF COURT
- FIVE -

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Alton Brooks, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Alton Brooks
Applicant

Sworn to and subscribed before me

This 16 day of Aug, 20 11Eugene Kutt S.
Notary Public for South CarolinaMy Commission Expires: 2016

Anthony Brooks (313000)
 4460 Broad R. 132 RD
 Columbia S.C 29210

RECEIVED

AUG 17 2011

BRCI
 MAILROOM

29421-0210

MARY P. BROWN
 CLERK OF COURT
 COMMON PLEAS COURT
 POST OFFICE BOX 219
 MONKS CORNER S.C 29461

MARY P. BROWN
 CLERK OF COURT
 COMMON PLEAS COURT
 POST OFFICE BOX 219
 MONKS CORNER S.C 29461

2011 AUG 19 AM 9:21 AM 9:30

LEGAL MAIL

SALEUDA UNIT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	2011-CP-08-2266
	)	
Altony Brooks, #313000.	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for post-conviction relief filed August 4, 2011 and received by Respondent on August 31, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the October 2008 term of the Berkeley County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2008-GS-08-1728) and aiding escape from custody of officer (2008-GS-08-1729). J. Mitchell Lanier, Esquire, represented the Applicant. The Applicant proceeded to trial on January 12-13, 2009, after which a jury found him guilty as indicted. The Honorable Kristi L. Harrington sentenced him to confinement for ten (10) years for ABHAN and two (2) years for aiding escape from custody of officer. The sentences were to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Wanda H. Carter, Esquire, of the South Carolina Commission on Defense, represented Applicant

on appeal. Following full briefing, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Brooks, Op. No. 2010-UP-570 (S.C. Ct. App. filed December 31, 2010). The Remittitur was issued on January 20, 2011.

Attached herewith and incorporated herein by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated January 20, 2011.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

December 9, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

ALTONY BROOKS, #313000

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

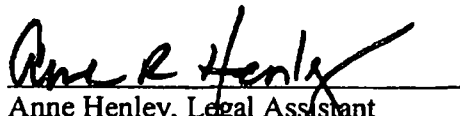
2011-CP-08-2266

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Sharon Capers, Esquire
6650 Rivers Avenue
Charleston, SC 29406

DATED this 9th day of December, 2011


 Anne Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2011-CP-08-2266
	)	
	)	
ALTONY BROOKS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

April 22, 2015
Charleston, South Carolina

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, JUDGE

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

LANCE BOOZER, ESQ.
Attorney for the Applicant

JOSHUA THOMAS, ESQ.
Attorney for the State

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

INDEX TO PROCEEDINGS

PAGE

PROCEEDINGS

3

CERTIFICATE OF THE COURT REPORTER

15

INDEX TO EXHIBITS

No exhibits were introduced

Altany Brooks v State of South Carolina
(2011-CP-08-2266)
April 22, 2015

PROCEEDINGS

THE COURT: Good morning. This is the case of Anthony [sic] Brooks, number 313000 versus the State of South Carolina under docket number 2011-CP-08-2266. Present and appearing is the defendant being represented by his attorney, Mr. Lance Boozer. The State is present represented by Mr. Joshua Thomas. Are we ready to begin Mr. Boozer?

MR. BOOZER: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. BOOZER: Lance Boozer on behalf of Mr. Brooks. Judge, I believe there may be an issue with the caption of Anthony Brooks. It's actually A-L-T-O-N-Y.

THE COURT: What is the name?

MR. BOOZER: A-L-T-O-N-Y ---

THE COURT: Altany; that was my mistake. It was spelled correctly. My mind went to Anthony on that; I'm sorry.

MR. BOOZER: And Your Honor, it's come to my attention that there have been a couple of filings which have been made -- I believe I received one Thursday evening from Berkeley County of Clerk of Court as well as last night or yesterday afternoon ---

THE COURT: --- yes, sir ---

Altony Brooks v State of South Carolina
(2011-CP-08-2266)
April 22, 2015

1 MR. BOOZER: --- regarding relieving me as counsel.

2 THE COURT: Relieving you as counsel or request to
3 relieve you?

4 MR. BOOZER: A request for relief of counsel by Mr.
5 Brooks. I believe that probably needs to be addressed
6 with the court.

7 THE COURT: All right. Mr. Brooks please stand.

8 [Whereupon, the defendant complies]

9 THE COURT: Mr. Brooks, you are requesting to have
10 your attorney relieved and I think you filed it last
11 Thursday is that correct?

12 MR. BROOKS: Yes, sir. I filed a motion to relieve
13 counsel and I filed an amendment. Did y'all get the
14 amendment?

15 THE COURT: I don't know. Why do you want to fire
16 your attorney?

17 MR. BROOKS: I move to fire -- motion to relieve my
18 counsel due to the fact that he is in conspiracy with the
19 State. My whole case is pertaining with you know
20 conspiracy and voluntary servitude you know -- to
21 slavery, obstruction of justice, perjury and you know
22 various claims. And the counsel that are being appointed
23 they are not adequately representing me and not doing the
24 things that I'm asking them to do such as ---

25 THE COURT: --- how many attorneys have you had in

Altony Brooks v State of South Carolina
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April 22, 2015

1 this case?

2 MR. BROOKS: I've had approximately three attorneys
3 in this case, you know. I brought the issue before Judge
4 Cooper; I'm pretty sure that you are aware of it because
5 this case has been going on for a substantial period of
6 time.

7 THE COURT: I really don't know a whole lot about
8 your case. I just came down to Charleston so I'm fresh
9 to it. This is the first time I've ever met you.

10 MR. BROOKS: Yes, sir. The issue that I've got is
11 they are calling my family and they're telling my family
12 certain things that I can catch more time and things of
13 this nature. And you know just telling my family lies
14 and impeding and frustrating my litigation and my family
15 they believe in me but when these individuals come and
16 tell these lies and these individuals are ---

17 THE COURT: --- we're here on a PCR matter. I'll
18 tell you what I'll do. I'll give you the option; you can
19 release Mr. Boozer as your attorney and proceed today on
20 your own or you can have Mr. Boozer be your attorney for
21 today.

22 MR. BROOKS: Well, I filed a motion to intervene in
23 this action as a living breathing man, Altony Brooks ---

24 THE COURT: --- well that's real good and that's
25 fine and if you want to try this case as a living human

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1 being as yourself I'll give you the opportunity to do
2 that. Do you want to do that?

3 MR. BROOKS: What I'm saying is that under the
4 straw man corporation under title ---

5 THE COURT: --- don't give me that. That is
6 ridiculous. I'm going to tell you right now that's a
7 ridiculous theory you're looking at. Do you want Mr.
8 Boozer to be your attorney today or whoever's attorney
9 today or do you want to try it on your own?

10 MR. BROOKS: Well, he can represent the straw man
11 corporation ---

12 THE COURT: --- okay, well that's fine. He'll stay
13 here; you'll represent the straw man who is also known as
14 Altany Brooks. Are you ready to proceed?

15 MR. BROOKS: And I'll represent the secured party.

16 THE COURT: You can do whatever you want to. I'll
17 let you present your case, all right.

18 MR. BROOKS: Yes, sir. And I'd like to file a
19 motion under Rule 22 to interplead this action as well to
20 release or to bother any liability that they have on the
21 straw man corporation as well, Your Honor.

22 THE COURT: Denied. Are you ready to proceed Mr.
23 Boozer ---

24 MR. BROOKS: --- Your Honor, I filed ---

25 THE COURT: --- for the straw man? Yes sir, let me

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1 speak to your attorney.

2 MR. BOOZER: Your Honor, just so ---

3 MR. BROOKS: --- I object, Your Honor.

4 THE COURT: No sir, be quiet. I'll have your case
5 thrown out if you make any more disruptions in this
6 court. Do you understand that?

7 MR. BROOKS: I move to represent ---

8 THE COURT: --- do you understand that?

9 MR. BROOKS: I'll represent myself, Your Honor.

10 THE COURT: Okay. Yes sir, Mr. Boozer. I'm
11 addressing Mr. Boozer at this time; not you or some other
12 fictional being ---

13 MR. BROOKS: --- what I am saying is I will relieve
14 him. I'll relieve him and I will represent myself ---

15 THE COURT: --- okay. Mr. Boozer, you may leave
16 the courtroom and this man can represent himself. He
17 does not want you. Apparently the straw man doesn't want
18 you either, so I'm going to relieve you as counsel and
19 you may go if you like.

20 MR. BOOZER: Thank you, Your Honor. May I just for
21 purposes of the record have Mr. Brooks advised of the
22 potential downfalls of representing himself?

23 THE COURT: You may and I'll let you do that on
24 your own and then you can tell me you've done that at the
25 time then we will proceed. Mr. Brooks and his friend can

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(2011-CP-08-2266)
April 22, 2015

1 represent himself.

2 [Whereupon, Mr. Boozer confers with Mr. Brooks]

3 MR. BROOKS: I'm representing myself.

4 THE COURT: Okay. So you want Mr. Boozer to be
5 gone and he doesn't need to do anything for you is that
6 correct?

7 MR. BROOKS: No, that is not correct. Like I said
8 I would like him to represent the straw man.

9 THE COURT: He can't do that. He represents
10 people. He doesn't represent straw men; he represents
11 people. So do you want him to represent you or not?

12 MR. BROOKS: Well, Your Honor, like I said I object
13 to you violating judicial canons. You're violating --
14 you are not upholding the integrity of the judiciary ---

15 THE COURT: --- here's my question. Here's my
16 question; I'm not going into all that. Do you want him
17 to represent you or not?

18 MR. BROOKS: He's not ready to represent me. He
19 hasn't been on my case long enough to even ---

20 THE COURT: --- are you ready to represent him?

21 MR. BOOZER: Your Honor, I am ready to proceed ---

22 THE COURT: --- okay ---

23 MR. BOOZER: --- but I do believe he has some
24 issues with what I have done with ---

25 THE COURT: --- just because it's a new attorney --

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1 just because you come up to court and get a new attorney
2 every time you ask for one doesn't mean the case doesn't
3 go forward, so here's what we're going to do. We're
4 either going to go forward today with Mr. Boozer or you
5 can represent ---

6 MR. BROOKS: --- I don't have a problem going
7 forward.

8 THE COURT: Okay.

9 MR. BROOKS: I do not have a problem with that at
10 all. I would like to amend my application due to the
11 fact that I will be impeded by arbitrary governmental
12 intrusions and I would like to amend my application to
13 present substantial claims that I have today to going
14 forward ---

15 THE COURT: --- well, you can do that after today
16 but we're going to go forward today. Are you ready to
17 call your first witness?

18 MR. BOOZER: I am Your Honor but I do want to be
19 sure that he wants me to represent him that is here today
20 or whether he wants to proceed on his own.

21 THE COURT: Do you want to proceed on your own or
22 do you want him to represent you because he doesn't
23 represent straw men.

24 MR. BROOKS: I mean I told you -- I said that I
25 want him to represent the straw man corporation ---

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1 THE COURT: --- he doesn't do that. He does not
2 represent fictitious people but he will represent you.
3 Do you want him to represent you?

4 MR. BROOKS: Like as I said Your Honor, he is going
5 to represent the fictitious corporation ---

6 THE COURT: --- he doesn't represent fictitious
7 people in this type of court. Do you want him to
8 represent you or not?

9 MR. BROOKS: This is a court of equity.

10 THE COURT: Sir, do you want him to represent you
11 or not?

12 MR. BROOKS: I would like him to represent the
13 straw man corporation ---

14 THE COURT: --- all right, thank you. Mr. Boozer,
15 you don't have to represent the straw man. You may leave
16 the courtroom if you would like.

17 MR. BOOZER: Is that an order, Your Honor?

18 THE COURT: I'm telling you, you cannot represent a
19 fictitious entity that is not here in court today. You
20 just have no ability to do that.

21 MR. BOOZER: And I've discussed that with my
22 client. I am prepared to represent the person who has
23 filed this application.

24 THE COURT: And I understand that and as an officer
25 of the court you are being a good officer of the court.

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1 You are ready, willing, and able to represent Mr. Brooks
2 but Mr. Brooks does not want you to represent him. Is
3 that correct Mr. Brooks?

4 MR. BROOKS: No, but it's correct that I have a
5 commitment order where it has the straw man corporation
6 as the commitment order and had the straw man corporation
7 and committed I am being ---

8 THE COURT: --- that's not a valid order of this
9 court ---

10 MR. BROOKS: --- I am being held ---

11 THE COURT: --- I'm not going to -- this is the
12 last time I'm warning you. If you talk over me I am
13 going to dismiss your case do you understand that? So
14 the question is and this is the only question that it is
15 narrowing down to is do you want Mr. Boozer to represent
16 you?

17 MR. BROOKS: I would like Mr. Boozer to -- it's
18 conflicting, Your Honor. You're asking me to do
19 something that that...

20 THE COURT: What I'm going to find is that this is
21 your case and you don't want to proceed and therefore I'm
22 going to dismiss the case.

23 MR. BROOKS: I would like to proceed.

24 THE COURT: Okay. Do you want to represent
25 yourself or you want Mr. Boozer to represent you?

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1 MR. BROOKS: So you're saying I will not be able to
2 present my case ---

3 THE COURT: --- if you want to present your case by
4 yourself you may do so.

5 MR. BROOKS: So you're saying that under -- you're
6 using State v Stuckey [phonetic]? You're using State v
7 Stuckey [phonetic] as the denial to not allow me to
8 present my claim -- to present my case?

9 THE COURT: You can. Would you like to present
10 your case?

11 MR. BROOKS: What I'm saying is I want to submit my
12 case then I want to file a motion to -- a motion to -- I
13 would say a motion as co-counsel.

14 THE COURT: Your motion is not timely made. So he
15 is not your co-counsel. He's either going to be your
16 attorney ---

17 MR. BROOKS: --- I said me as my co-counsel I'm
18 going to represent myself as co-counsel ---

19 THE COURT: --- Mr. Boozer, here's what I'm going
20 to do. This is the only rational way to handle this.
21 This gentleman wants to represent himself. He has the
22 absolute right to represent himself. He wants you to
23 represent some fictitious entity which I'm not going --
24 as an officer of the court I'm not going to make you do.
25 So what I'm going to do at this point in time since he

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(2011-CP-08-2266)
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1 does not want you, you have no further responsibility in
2 this case. You may get your pleadings and stuff and you
3 may leave the courtroom and go back to your office. He
4 as his own person may begin this trial in five minutes.
5 Thank you. I'll give him a minute to get his stuff
6 together.

7 [Whereupon, court takes a brief recess]

8 THE COURT: All right. Mr. Brooks are you ready to
9 proceed?

10 MR. BROOKS: Your Honor, I'm trying to figure out
11 where all my family members are ---

12 THE COURT: --- do you want to call your first
13 witness?

14 MR. BROOKS: All my witnesses are not here, Your
15 Honor.

16 THE COURT: Well, that's your problem. Do you want
17 to call a witness? Do you want to take the stand?

18 MR. BROOKS: Your Honor, I'd ask you could you
19 remove these shackles ---

20 THE COURT: --- no sir, I'm not going to do that.
21 I don't have to do that. You can come to the witness
22 stand and testify though.

23 MR. BROOKS: No, but I would like to represent -- I
24 have to represent myself.

25 THE COURT: Yes, sir. Would you like to call a

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1 witness?

2 MR. BROOKS: No I'd like to move for summary
3 judgment on the pleadings, Your Honor.

4 THE COURT: All right, case is dismissed. Thank
5 you. If you will please prepare the order; case is
6 dismissed for failure to prosecute. Thank you.

7 MR. BROOKS: I know what time it is.

8 THE COURT: Thank you.

9 MR. BROOKS: I know what time it is.

10 THE COURT: Have a nice day sir.

11 MR. THOMAS: Thank you, Your Honor.

12 *****END OF TRANSCRIPT OF RECORD*****
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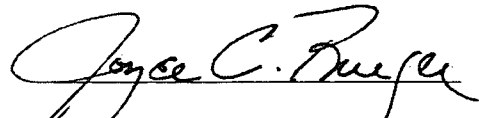
Altory Brooks v State of South Carolina
(2011-CP-08-2266)
April 22, 2015

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 22nd day of April, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

October 27, 2015


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
Altony Brooks, #313000,	)	Case No. 2011-CP-08-2266
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	(Failure to Prosecute)
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 4, 2011. Respondent made a timely Return on or about December 9, 2011. The Court finds as follows:

I. PROCEDURAL HISTORY

In October 2008, the Berkeley County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2008-GS-08-1728) and aiding escape from custody of an officer (2008-GS-08-1729). J. Mitchell Lanier, Esquire, represented Applicant. Applicant proceeded to trial on January 12-13, 2009 before the Honorable Kristi L. Harrington and a jury. The jury found Applicant guilty as indicted. Judge Harrington sentenced Applicant to consecutive terms of imprisonment for ten (10) years for ABHAN and two (2) years for aiding escape from custody of an officer.

Applicant filed a timely notice of appeal, and Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. Following full briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence.

State v. Brooks, Op. No. 2010-UP-570 (S.C. Ct. App. filed December 31, 2010). The Remittitur was returned to the circuit court on January 20, 2011.

The Court convened an evidentiary hearing into the application on April 22, 2015, at the Charleston County Courthouse. Lance S. Boozer, Esquire, appeared on behalf of Applicant. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Motion to Relieve Counsel

At the commencement of the evidentiary hearing, Applicant moved to relieve Mr. Boozer from representing him. In support of his motion, Applicant alleged Mr. Boozer was involved in a conspiracy with the State and merely represented the "straw man" corporate entity established in Applicant's name. The Court admonished Applicant that Mr. Brooks represented Applicant, and no such "straw man" existed. Nevertheless, Applicant insisted he would represent himself, and Mr. Boozer could represent the "straw man." After Mr. Boozer explained to Applicant the disadvantages of representing himself, Applicant again indicated his desire to represent himself, with Mr. Boozer representing his "straw man" corporation. The Court relieved Mr. Boozer from representing Applicant, and excused Mr. Boozer from the court room, as no "straw man" corporation was a party to this litigation.

B. Failure to Prosecute

The Court also admonished Applicant during his motion to relieve that the Court would not tolerate Applicant's failure to comply with the rules, and any failure to comply would result in the dismissal of his post-conviction relief action. After giving Applicant a brief recess to prepare to present his case, the Court recognized Applicant to call his first witness. In response,

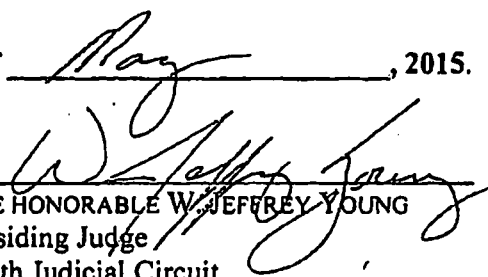
Applicant refused to call any witnesses.

Applicant has the burden of prosecuting his action, and the Court may properly dismiss an action for his neglect in proceeding with his cause. See, e.g. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). The Court may dismiss an action for "failure of the plaintiff to prosecute or to comply with [the rules of civil procedure] or any order of court." Rule 41(b), SCRPC. Furthermore, the Court has the inherent authority to dismiss an action for failing to prosecute the action or otherwise comply with the Court's orders. See Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) (citing Link v. Wabash Railroad Co., 370 U.S. 626 (1962)). Because Applicant refused to call any witnesses when directed to do so, he has failed to prosecute his action and failed to comply with the rules of court. Accordingly, the Court finds it proper to dismiss this action for Applicant's refusal to prosecute his action.

IT IS THEREFORE ORDERED:

1. The above captioned application is **DISMISSED WITH PREJUDICE** for failure of the Applicant to prosecute.

AND IT IS SO ORDERED this 1 day of May, 2015.


THE HONORABLE W. JEFFREY YOUNG
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina

MAS2007-09-03039

WITNESSES

Robert Ollic

St. Stephens Police Department

Robert J. Ollic

AGENCY CASE NUMBER

0708360

ARREST WARRANT NUMBER

H-924125

DATE OF ARREST

May 13, 2007

ACTION OF GRAND JURY

True Bill

Brian Keith
Foreperson of Grand Jury

Date: *10-15-08*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-08-1728

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2008

THE STATE

vs.

Altony Brooks

DOB: [REDACTED]

B/M

Indictment for

ABHAN

FILED
CLERK
BERKELEY COUNTY, S.C.

2008 OCT 15 PM 1:42

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

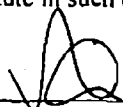
INDICTMENT

At a Court of General Sessions, convened on October 15, 2008 the Grand Jurors of Berkeley County present upon their oath:

ABHAN

That Altony Brooks did in Berkeley County, South Carolina, on or about August 16, 2007, willfully and unlawfully commit an assault and battery upon one Officer James Taylor of the St. Stephens Police Department, constituting an unlawful act of violent injury to Officer James Taylor, accompanied by circumstances of aggravation, to wit: did strike Officer James Taylor in the face causing serious bodily injury requiring him to seek medical attention. This in violation of the Common Law of the State of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. ALLEN MASTANTUNO
ASSISTANT SOLICITOR



1AS2007-09-03039

WITNESSES

Robert Ollic

St. Stephens Police Department

Robert J. Ollic Sr.

AGENCY CASE NUMBER

0708360

ARREST WARRANT NUMBER

H-924132

DATE OF ARREST

May 13, 2007

ACTION OF GRAND JURY

True Bill

Brian Keith
Foreperson of Grand Jury

Date: *10-15-08*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008-GS-08-1729

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2008

THE STATE

vs.

Altony Brooks

DOB [REDACTED]

B/M

Indictment for

Escape/Aiding Escape From Custody of
Officers

FILED
2008 OCT 15 PM 1:42
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

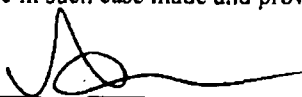
INDICTMENT

At a Court of General Sessions, convened on October 15, 2008 the Grand Jurors of Berkeley County present upon their oath:

Escape/Aiding Escape From Custody of Officers

That Altony Brooks did in Berkeley County, South Carolina, on or about August 16, 2007, unlawfully aid or assist an unknown subject of St. Stephen Police Department, in his endeavor to escape from Officer Shannon and Officer Taylor and did assist the suspect in avoiding capture. This done in violation of §16-9-420(A)(2), South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. ALLEN MASTANTUNO
ASSISTANT SOLICITOR