

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger L. Couch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ASHLEY PRICE TINDALL, III

APPELLANT

APPELLATE CASE NO 2017-000808

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 7 (911 CALL)**

JURY CHARGE

1 On the other hand, if you think there's a real
2 possibility that the defendant is not guilty, then you
3 must give the defendant the benefit of the doubt and
4 find the defendant not guilty.

5 Now, I told you at the beginning of the trials,
6 and I tried to go over with you that we have had
7 different functions in this trial, different duties.
8 And, again, it's been my responsibility to preside over
9 the case.

10 I've had to rule on certain questions concerning
11 the admissibility of evidence that's offered or the
12 appropriateness of questions being asked or testimony
13 being offered, and I will tell you, you should only
14 consider the matters that we allowed into the record of
15 the case. So, if there's anything that I overruled or
16 did not allow in, you should not consider those matters
17 at all in reaching a verdict in this case.

18 Again, you only consider the matters that were
19 allowed into the record of the case. You're to
20 consider the testimony which has been presented from
21 the witness stand, the exhibits that may have come into
22 the record through that testimony, and any exhibits
23 made a part of the record by agreements or stipulations
24 of counsel.

25 I had the additional duty to charge you the law

JURY CHARGE

1 applicable to this case, I've told you. And as the
2 presiding Judge, I've told you that I'm the sole Judge
3 of the law, and it's your duty as jurors to accept and
4 apply the law as I now state it to you. If you came
5 into the courtroom on Monday with any idea or notion as
6 to what the law is or what the law ought to be, I'm
7 going to tell that you, you must leave that notion
8 outside of the jury room before deliberations.

9 It's your job, under the oath that you've taken,
10 to accept the law exactly as I give it to you, and
11 apply it to the facts as you determine those facts to
12 be. Because I emphasized to you earlier, you, the
13 jury, are the sole judges of the facts in this case.
14 Don't take from anything that I say or do during the
15 trial of the case, or even during my charge on the law,
16 to indicate to you that I have an opinion one way or
17 the other as to how you determine the facts in this
18 case. The law does not allow me an opinion on the
19 facts.

20 I have no opinion as to how you should determine
21 the facts in this case. The determination of the facts
22 is a matter solely left up to you, the jury, to
23 determine. It's your duty as jurors to determine the
24 effect, the value, the weight, and the truth of the
25 evidence that you've heard during this case.

JURY CHARGE

1 Now, in deciding a case, a jury has the right to
2 use two different kinds of evidence as we describe it
3 under the law. And you may say, well, what do you mean
4 by different kinds of evidence? What I mean by that is
5 that the law divides evidence into either what we refer
6 to as direct evidence or circumstantial evidence.

7 Direct evidence is evidence where a witness claims
8 to have direct knowledge of the facts upon which that
9 witness is testifying. Now, the best example of that
10 is someone who claims to have been an eye witness to
11 the event, or been present and actually experienced
12 what they're testifying about. They're testifying
13 directly on the facts they're seeking to prove through
14 that testimony. So, that's what we mean by direct
15 evidence.

16 Circumstantial evidence is different from that.
17 Circumstantial evidence is proof of a chain of facts or
18 circumstances that indicate the existence of some other
19 fact. It's been described by courts as proof of
20 collateral facts from which a main fact could be
21 reasonably inferred.

22 Now, that's a lot of lawyer talk, in my opinion.
23 It's a little too fancy for what I like to give as an
24 example of what I mean by proof of a fact by
25 circumstantial evidence. So, let me give you my very

JURY CHARGE

1 simplistic example. Let's say, last night before you
2 went to bed, you walked to the window in your room,
3 looked outside. You noticed the moon was shining.
4 Clear night. Beautiful night. You went to bed and
5 slept well all night. Didn't wake up at all. So the
6 next morning you get up, the sun's shining outside, you
7 walk over to that same window in your bedroom you were
8 at the night before. You look outside and you see the
9 sun's shining, but when you look a little closer, you
10 notice some things. There's water dripping out of all
11 the trees. There's puddles in the road or driveway in
12 front of the house that weren't there the night before.
13 Maybe the lawn and the shrubbery are all covered with
14 water outside your window.

15 Now, you slept all night. You didn't see it rain,
16 you didn't hear it rain, but from the collateral facts
17 that you know to be true -- water dripping from the
18 trees, puddles that were there that weren't there the
19 night before, water on everything in the yard -- from
20 those facts you know to be true, you could reasonably
21 infer that at sometime during the night it rained. So,
22 that's what I mean by proof of collateral facts from
23 which a main fact can be reasonably inferred.

24 So, circumstantial evidence describes something
25 other than the fact that it might prove. Now, the law

JURY CHARGE

1 doesn't make a distinction between the weight or value
2 you, the jury, can give to either kind of evidence.
3 Nor is there a greater degree of certainty required of
4 circumstantial evidence than that of direct. I will
5 tell you as jurors you have the right to weigh all of
6 the evidence in the case, direct and circumstantial
7 evidence. And after weighing all of the evidence,
8 deciding the effect and the value of that evidence, if
9 you are not convinced of the Defendant's guilt beyond a
10 reasonable doubt, you must find the defendant not
11 guilty. On the other hand, if you are firmly convinced
12 of the defendant's guilt beyond a reasonable doubt, you
13 must find the defendant guilty. Now, I told you at the
14 beginning of the trial, and I think you probably
15 realize I was exactly right, part of your job
16 necessarily requires that you decide the credibility of
17 the witnesses that you hear during the case. And
18 credibility means believability. It's your duty as
19 jurors to analyze and evaluate the evidence you've
20 heard. You make a determination as to which evidence
21 convinces you of its truth in determining believability
22 of witnesses. You have the right to believe one
23 witness against all the others. You could believe all
24 the others against one. I told you at the beginning of
25 the trial, you can believe all of, part of, or none of

JURY CHARGE

1 what a witness may have testified to during the case.

2 I tell you that you have the right to consider,
3 using your own good common sense, whether or not a
4 witness exhibited to you an interest, a bias, or a
5 prejudice, or any other motive in testifying in this
6 case. And you've had the ability to observe the
7 witnesses as they testify, the way they delivered their
8 testimony. Use your good common sense, make a
9 determination as to which evidence convinces you of its
10 truth. It's one of your jobs that you will necessarily
11 have to do in order to complete your responsibilities
12 in this case.

13 Now, let me mention one thing to you. As I go
14 over the charges, you may hear, and generally it is
15 true that for a charge to be valid there is an element
16 normally of some kind of intent required. Intent is
17 the mental state required by a particular offense to
18 exist for the crime to have been committed. The mental
19 states can be such things as purpose, intent,
20 knowledge. In some cases, recklessness or criminal
21 negligence.

22 Criminal intent is an element of a crime that must
23 be proven by the State beyond a reasonable doubt. And
24 criminal intent is always a matter that has to be
25 determined by the jury from the circumstances.

JURY CHARGE

1 surrounding the event.

2 Now, I say that because none of us have the
3 ability to be present when an event occurs, at that
4 very moment, open up somebody's head and look at their
5 brain and be able to tell scientifically what they
6 intended to do when they did the particular act. So,
7 we can't do that by direct evidence or by scientific
8 evidence. So, criminal intent is always a matter that
9 must be determined by the jury from the circumstances
10 that surrounded the situation.

11 Now, criminal intent is, I will tell you, is a
12 mental state. It's a conscious wrongdoing. It's up to
13 you to determine what the defendant intended to do at
14 the time the event occurred based on the circumstances
15 that you find that have been shown to have existed at
16 that time.

17 Now, during the trial, there was some evidence
18 given of prior inconsistent statements that may have
19 been made by several -- by witnesses involved in this
20 case. In other words, statements which are not
21 consistent with their present testimony in the trial.
22 I tell you as a jury, you can use this evidence to
23 decide whether or not to believe the witness.

24 You may also use this evidence of earlier
25 contradictory statements to determine the truth of

JURY CHARGE

1 those statements, the earlier statements. It's up to
2 you, the jury, to decide whether to believe the earlier
3 statements or the testimony that might have been given
4 at trial. If a witness is shown to have knowingly
5 testified untruthfully concerning a material matter,
6 you may consider this in determining whether to trust
7 the witness's testimony as to other matters.

8 Remember, you're the sole judges of the facts.
9 You can reject all of, part of, or none of what a
10 witness may have testified to. Or you can give the
11 testimony the weight you think it deserves.

12 Now, the first charge I want to talk to you about,
13 as far as the criminal charges are concerned, is
14 assault and battery of a high and aggravated nature.
15 Now, assault and battery of a high and aggravated
16 nature is an unlawful act of violent injury to the
17 person of another accompanied by circumstances of
18 aggravation. An assault occurs when a person
19 unlawfully attempts or offers to commit a violent
20 injury upon another person, and has the present ability
21 to carry out or complete the attempted injury. An
22 assault is the intentional creation of a reasonable
23 fear of immediate bodily harm. It is not necessary
24 that the attempted injury or harm take place for an
25 assault to occur.

JURY CHARGE

1 So, I'm going to kind of break this down into
2 assault, battery, and then we're going to put it back
3 together. Let me give a fairly simple example of what
4 I'm talking about here. Let's say today, if I met you
5 in the hallway in the courthouse and we were going in
6 opposite directions, and as we approached each other, I
7 walked right up to you, and I got within just a couple
8 of feet from you, and then all of a sudden, I pulled
9 back my fist as if to hit you. Now, an assault is
10 defined as when a person attempts or offers to commit a
11 violent injury to another person and has the present
12 ability to carry out the attempted injury. I'm within
13 arm's length of you, I've drawn back my fist as if to
14 hit you, I have committed an assault at that point in
15 time.

16 Now, a battery is the second step of that crime,
17 and a battery is defined as the unlawful touching of
18 another person by a person who has committed an
19 assault. An unlawful touching can be caused by part of
20 the accused -- of the defendant's body or by an object
21 that the accused puts into motion. A battery is the
22 completion of the assault by using or applying force to
23 another person, however slight, if it's done in a rude,
24 angry, or resentful manner, and without legal
25 justification for doing so.

JURY CHARGE

1 So, if you use that earlier example I gave you, I
2 walked up to you in the hall, I got within a foot of
3 you, I pulled back my fist as if to hit you, and then I
4 brought it forward and I applied force to you, that
5 would be the battery. That would be the completion of
6 an assault and battery in a case. Now -- so, that's
7 the assault and battery.

8 Next, for this charge, which is assault and
9 battery of a high and aggravated nature, the State must
10 also prove a circumstance of aggravation.
11 Circumstances of aggravation include such things as the
12 use of a deadly weapon, the intent to commit a felony,
13 the infliction of serious bodily injury, a great
14 disparagy (sic) in either the ages or the physical
15 conditions of the parties. Those are kinds of things
16 -- those are examples of circumstances of aggravation.
17 So, those are the kinds of things that can aggravate an
18 original assault and battery.

19 Now, the second indictment is possession of a
20 weapon during the commission of a violent crime. I
21 will tell you that under South Carolina law, assault
22 and battery of a high and aggravated nature is
23 classified as a violent crime.

24 Now, the Defendant is charged with the possession
25 of a weapon during the commission or attempt to commit

JURY CHARGE

1 a violent crime, and the State must prove in that case
2 -- and, again, beyond a reasonable doubt -- all of
3 these, the State has to prove everything beyond a
4 reasonable doubt -- they must prove that the defendant
5 was in the possession of a firearm or visibly displayed
6 what appeared to be a firearm during the commission of
7 a violent crime.

8 Now, a firearm means a gun, a machine gun, a
9 rifle, a revolver, a pistol, any weapon which is
10 designed or may be designed to expel a projectile.
11 That's what we mean by a firearm. Now, in order for
12 the defendant to be guilty of possession of a weapon
13 during the commission of a violent crime you must first
14 find the defendant guilty of committing the violent
15 crime. So, that is an element of this offense. In
16 other words, the defendant must first be guilty of the
17 violent crime before you can consider this particular
18 charge, because that is an element of the crime.

19 Now, when we define crimes, there are what we call
20 lesser-included offenses. That means an offense that
21 you can consider if the State has not proved the higher
22 crime. So, the parties have agreed that we should
23 submit to you the offense of assault and battery in the
24 second degree as a lesser-included offense. So, if you
25 were to find that the State did not prove assault and

JURY CHARGE

1 battery of a high and aggravated nature, you have the
2 then right to consider whether they did prove the
3 lesser offense of assault and battery in the second
4 degree.

5 Now, assault and battery in the second degree is
6 when another person offers again or attempts to injure
7 another with the present ability to do so. And either
8 moderate bodily injury to the other person results, or
9 moderate bodily injury to the other person could have
10 resulted. Now, moderate bodily injury means physical
11 injury that involves prolonged loss of consciousness or
12 that causes temporary or moderate disfigurement, or
13 temporary loss of the function of a bodily member, or
14 injury that requires medical treatment, when the
15 treatment requires the use of regional or general
16 anesthesia, or the injury that results in either a
17 fracture or dislocation. Now, moderate bodily injury
18 does not include a one-time treatment or subsequent
19 observation for scratches or abrasions or bruises or
20 any other minor injuries that do not ordinarily require
21 extensive medical care. So, that's the definition of
22 assault and battery in the second degree.

23 Now, in this case, the Defendant has raised the
24 defense of self-defense. And I will tell you,
25 self-defense is a complete defense. And if it is

JURY CHARGE

1 established, then you must find the defendant not
2 guilty. And I will tell you, under our law, the State
3 has the burden of disproving self-defense by proof
4 beyond a reasonable doubt. If you have a reasonable
5 doubt of the defendant's guilt after considering all of
6 the evidence, including evidence of self-defense, then
7 you must find the defendant not guilty.

8 On the other hand, if you have no reasonable doubt
9 of the defendant's guilt after considering all of the
10 evidence, including any evidence of self-defense, then
11 you must find the defendant guilty.

12 Now, there are several elements that have to be
13 proven before self-defense can be a complete defense,
14 and each of these has to be proven. Any one -- a
15 failure to prove any one of them would result in a
16 failure of the defense to be available. First, the
17 first element is, the defendant must be without fault
18 in bringing on the difficulty. If the defendant's
19 conduct was of the type which was reasonably calculated
20 to, and it did provoke an assault, the defendant would
21 be at fault in bringing on the difficulty, and would
22 not be entitled to an acquittal based on self-defense.
23 A defendant who provokes or initiates an assault would
24 not be entitled to an acquittal based on self-defense
25 unless the defendant had withdrawn from the conflict

JURY CHARGE

1 and communicates the withdrawal by words or acts to the
2 adversary.

3 Now, I will tell you, self-defense is not
4 available to a person who uses language which is so
5 contemptuous that a reasonable person would expect it
6 to bring on a physical encounter and which did actually
7 contribute to a physical encounter. Now, the second
8 element of -- and that's the -- my completion of the
9 element of -- to be without fault in bringing on the
10 difficulty.

11 The second element of the defense is that the
12 defendant was either actually in imminent danger of
13 death or serious bodily injury, or that the defendant
14 actually believed that he or she was in imminent danger
15 of death or serious bodily injury. If the defendant
16 was actually in imminent danger, it must be shown that
17 the circumstances would have warranted a person of
18 ordinary firmness and courage to strike the first blow
19 or the blow in self-defense to prevent their death or
20 serious bodily injury. If the defendant believed that
21 he was in imminent danger of death or serious bodily
22 injury, it must be shown that a reasonably prudent
23 person of ordinary firmness and courage would have had
24 that same belief in those same circumstances.

25 In deciding whether a defendant was actually or

JURY CHARGE

1 believed that he was in imminent danger of death or
2 serious injury, you should consider all of the facts
3 and circumstances surrounding the event including the
4 physical condition and characteristics of both the
5 defendant and the victim.

6 Now, I've mentioned to you that a defendant does
7 not have to show that he was actually in danger. It's
8 enough for the defendant to show that he believed that
9 he was in imminent danger, and that a reasonable person
10 of ordinary firmness and courage would have had the
11 same belief. A defendant has the right to act on
12 appearances even though the defendant's beliefs may
13 have been mistaken. It's up to you, the jury, to
14 decide whether the defendant's fear of immediate danger
15 of death or serious bodily injury was reasonable, and
16 whether it would have been felt by a person of ordinary
17 firmness and courage, given the same situation.

18 Words accompanied by hostile acts, depending on
19 the circumstances, can establish self-defense. And you
20 have the right to consider sizes, ages, and weights of
21 both the defendant and the victim into considering this
22 defense. I will tell you that intoxication by the
23 victim can be considered in deciding whether the
24 defendant's fear of death or bodily injury was
25 reasonable.

JURY CHARGE

1 The next element, that there's no other way to
2 avoid the danger. The final element of self-defense is
3 that the defendant had no other probable way to avoid
4 the danger of death or serious bodily injury than to
5 act as the defendant acted in this particular instance.

6 Now, on the duty to retreat, if a defendant is on
7 his or her own property, then the defendant has no duty
8 to retreat before acting in self-defense. The
9 defendant has no duty to retreat if by doing so would
10 have increased the danger of being seriously injured or
11 killed in the situation. And a person cannot be
12 required to make an exact calculation as to the degree
13 or amount of force which may be needed to avoid serious
14 bodily injury or harm.

15 Therefore, in self-defense, the defendant has the
16 right to use the force needed to avoid his own death or
17 serious bodily injury. The force used in self-defense
18 does not have to be limited to the degree or amount of
19 force used by the victim in initiating the attack. The
20 defendant has the right to use so much force as
21 appeared to be necessary for complete self-protection,
22 in which a person of ordinary reason and firmness would
23 have believed might have been needed to prevent death
24 or serious bodily harm.

25 Now, I will tell you that under the law of

JURY CHARGE

1 self-defense, the defendant may take actions in
2 self-defense in the defense of others. The right to
3 intervene and protect another person is subject to the
4 same rules and limitations as that right of
5 self-defense I just described to you.

6 The defendant, therefore, has the right to act in
7 self-defense of a person who has been assaulted by
8 someone else. To show that the person being defended
9 had the right to self-defense, it must be shown that
10 the person being defended and the defendant were both
11 without fault in bringing on the difficulty. If the
12 conduct of the person being defended or the defendant
13 was of the type reasonably calculated to and did
14 provoke the assault, then the person would be at fault
15 in bringing on the difficulty and would not have the
16 right of self-defense of another person.

17 The defense of another person is excusable if the
18 defendant had reasonable grounds to believe, and in
19 good faith did believe, that the person being defended
20 was in imminent danger of death or serious bodily harm.
21 In deciding whether the defendant actually was, or that
22 the defendant actually believed that the person being
23 defended was in danger, you should consider again the
24 facts and circumstances surrounding the event.

25 And a defendant does not have to show that the

JURY CHARGE

1 person being defended was actually in danger. It's
2 sufficient for him to act on appearances, if you find
3 that the defendant reasonably believed that the person
4 was in imminent danger. The defendant has the right to
5 act on appearances even though the defendant's beliefs
6 may have been mistaken in that event.

7 Now, the duty to retreat in the case of defending
8 another person is like that that I described to you
9 earlier. In order to be entitled to defend another,
10 the person defended must have no other probable way to
11 avoid the danger or death and -- than to act as the
12 defendant did in that case, where the person being
13 defended had no duty to retreat, the defendant,
14 likewise, has no duty to retreat. If the person
15 defended was on his or her own premises, then the
16 defendant had no duty to retreat before acting in
17 defense of another. And the defendant is not required
18 to retreat if in doing so it would increase the risk of
19 serious bodily injury. Now, Mr. Odell.

20 JUROR: Yes.

21 THE COURT: You're going to be the foreperson of
22 the jury.

23 JUROR: Great.

24 THE COURT: That means you're going to be the
25 person who is going to be conducting the discussions of

JURY CHARGE

1 the jury. You'll be, I guess, presiding over the
2 discussions, of the jury. If the jury has a question
3 during deliberations, it will be your responsibility to
4 write it on a piece of paper, once you've agreed on the
5 form of the question, and submit it to me and I'll
6 decide what the appropriate answer should be.

7 And I'll mention to you, I can't answer every
8 question you might have in deliberations. I've told
9 you, I can't get involved in your decisions on the
10 facts. So if your question has something to do with
11 the decision on the facts, I can't get involved in
12 that. But I'm not asking you to edit any questions.
13 Submit any question the jury has to me, I'll decide
14 what the appropriate answer is once I've gone over the
15 question and discussed it with the attorneys.

16 I'm going to give you a verdict form in just a
17 minute. It's a little complicated, but I'll go over it
18 with you, so hopefully you'll understand it and we'll
19 have an agreement on how we're going to handle that.
20 And it will be your job to fill out that form once the
21 jury begins to reach verdicts on the questions that
22 we're presenting.

23 Now, I'm going to remind you, as I told you at the
24 beginning of the trial, before you reach a verdict on
25 any of the issues presented to you, that verdict has to

JURY CHARGE

1 be unanimous. Each and every one of the 12 jurors who
2 are in deliberations must agree upon that verdict
3 before it's the verdict of the jury. Only then should
4 it be recorded on the verdict form. Once the verdict
5 form has been completed, then you will return -- let
6 the bailiff know that it's been completed, we'll bring
7 everyone back into the courtroom for us to receive the
8 verdict. Now, I've gone cover a good bit with you. I
9 want to be sure I haven't misspoken in what I've said
10 to you, and I'm going to over a couple of more things.
11 We have to agree on what documents go back into the
12 jury room with you.

13 So, we've got some housekeeping matters we're
14 going to take care of before I ask you to begin your
15 deliberations. So, Mr. Odell, I'll ask you to go back
16 to the jury room. Don't allow any discussions at this
17 point in time. You'll be coming back in just a few
18 minutes, and we'll give you your final instructions at
19 that time.

20 (Jury exits the courtroom at
21 11:10 a.m.)

22 THE COURT: All right. Objections or exceptions
23 to the charge from the State?

24 MR. OSBORNE: Yes, Your Honor. And I might have
25 this wrong, but I believe the language of, the State

COLLOQUY

1. must also prove -- and I'm talking about ABHAN -- the
2 State must also prove a circumstance of aggravation, I
3 believe aggravation is a requirement in the old ABHAN
4 statute. I don't think that followed through in the
5 new ABHAN statute. I think the new ABHAN statute took
6 aggravation out and substituted that with great bodily
7 injury to another person or the act was accomplished by
8 means likely to produce death or great bodily injury.

9 THE COURT: All right. Let me take a look at that
10 then. The new statute is -- I may have picked up the
11 wrong one when I picked it up. I think I did, so I
12 will make that correction.

13 MR. OSBORNE: And, Your Honor, just in an
14 abundance of caution, and I don't know if the Defense
15 is going to ask for this, but I -- and maybe I just
16 misheard it -- to make it abundantly clear to the jury
17 that we carry the burden of disproving self-defense.

18 THE COURT: I did charge that to you, that you
19 have the burden of disproving. Started off that way,
20 but -- and the verdict form indicates that.

21 MR. OSBORNE: Okay. Thank Your Honor.

22 THE COURT: Yes, sir.

23 MR. LOIGNON: No objections.

24 THE COURT: All right. Now, I'm going to ask you
25 to come forward. Let's go over the exhibits. And if

COLLOQUY

1 you'll segregate the ones that will be going back to
2 the jury. There was a stipulation that I recall, and I
3 pulled it up, I don't know that that stipulation needs
4 to be read to the jury:

5 MR. OSBORNE: No.

6 THE COURT: Okay. So, I'm going to -- why don't I
7 -- we're in agreement that this is a stipulation.

8 MR. OSBORNE: Yes.

9 *(Whereupon, Court's Exhibit No(s). 1 marked for*
10 *identification and received in evidence.)*

11 THE COURT: So I'm going to have it marked as an
12 exhibit, not to go to the jury. Because it has to do
13 with entering exhibits and things of that nature. So
14 this will be a court's exhibit not to go to the jury.

15 (Discussion off the record.)

16 THE COURT: All right. So we've reached an
17 agreement as the items that are going back to the jury
18 from the State?

19 MS. GINSBURG: Yes, Your Honor.

20 THE COURT: And from the Defense?

21 MR. LOIGNON: Yes, Your Honor.

22 THE COURT: All right. And I've had you look at
23 the verdict form that I prepared. Any objection from
24 the State?

25 MS. GINSBURG: None, Your Honor.

COLLOQUY

1 THE COURT: Any from the Defense?

2 MR. LOIGNON: No, Your Honor.

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

4 (Jury enters the courtroom at

5 11:17 a.m.)

6 ADDITIONAL JURY CHARGE

7 THE BAILIFF: All jurors present and seated, Your
8 Honor.

9 THE COURT: Thank you very much. All right.
10 Ladies and gentlemen of the jury, there's one
11 correction I need to make to my charge. There was a
12 recent change a couple of years ago in the assault and
13 battery statute. This offense occurred after that
14 change, and I gave you a definition that occurred
15 before the change. So let me be sure I've corrected my
16 definitions of assault and battery of a high and
17 aggravated nature.

18 Now, the definition of an assault and battery has
19 not changed, so what I told you about someone walking
20 up to someone and pulling back their fist and then
21 bringing it forward and touching them, that is what an
22 assault and battery is.

23 What has changed is the assault and battery of a
24 high and aggravated nature. We no longer call for
25 aggravated events. And let me just read the definition

ADDITIONAL JURY CHARGE

1 to you, or the charge to you on that particular charge.
2 A person commits the offense of assault and battery of
3 a high and aggravated nature if the person unlawfully
4 injures another person and, A, great bodily injury to
5 another person results; or, B, the act is accomplished
6 by means likely to produce death or great bodily
7 injury.

8 Now, great bodily injury means bodily injury which
9 causes a substantial risk of death, or which causes
10 serious permanent disfigurement or protracted loss or
11 impairment of the function of a bodily member or organ.
12 I'm going to go over that with you again so that we --
13 I've sufficiently explained to you the difference.

14 A person commits the offense of assault and
15 battery of a high and aggravated nature if the person
16 unlawfully injures another person and, A, great bodily
17 injury to another person results; or, B, the act is
18 accomplished by means likely to produce death or great
19 bodily injury. Great bodily injury means bodily injury
20 which causes a serious -- causes a substantial risk of
21 death or which causes serious permanent disfigurement,
22 or protracted loss or impairment of the function of a
23 bodily member or organ."

24 So, that is the definition of an assault and
25 battery of a high and aggravated nature. Now, Madam

ADDITIONAL JURY CHARGE

1 Bailiff, if you'll step over for just a second, please.
2 If you'll take that to Mr. Odell for me. Now, sir,
3 I've given you a couple of documents, and let's go over
4 them. You have -- which one do you have on top? Do
5 you have the verdict form?

6 JURY FOREMAN: The indictments are on top.

7 THE COURT: Okay. There are the two indictments.
8 Those are the actual indictments for you to review
9 during your deliberations, and those are available to
10 you so that you can look at them as far as what the
11 charges are.

12 Now, I do want to go over the verdict form with
13 you, and let's talk about that. It has at the top, the
14 name of the county and state we're in, the circuit. It
15 has the names of the parties that are involved in the
16 case. Now, the first question we ask you pertains to
17 the defense of self-defense. And as I told you, the
18 State has the burden of disproving the defense of
19 self-defense beyond a reasonable doubt.

20 The question to you is, that the State has
21 disproved the defense of self-defense beyond a
22 reasonable doubt, and the defendant is not entitled to
23 the defense. Now, you can answer yes to that. And if
24 you do that, then the instruction is for you to go on
25 and answer the following questions.

ADDITIONAL JURY CHARGE

1 If the jury unanimously finds no, that the
2 defendant is entitled to the defense, and is not guilty
3 for that reason, that would be the complete verdict in
4 the case. You would stop, sign the form, and you would
5 have completed the verdict in the matter. So do you
6 understand the question asked, did the State disprove
7 the defense of self-defense beyond a reasonable doubt?

8 JURY FOREMAN: Yes, Your Honor.

9 THE COURT: If you answered yes, they did, then
10 you must consider the charges. If you find no, they
11 must not disprove it, then he's entitled to the defense
12 and he would be then acquitted. So do you understand
13 how that would work?

14 JURY FOREMAN: Yes, sir.

15 THE COURT: Now, if you were to answer yes to that
16 first question, that the State did disprove the defense
17 of self-defense, you would then consider the indictment
18 on assault and battery of a high and aggravated nature.
19 If you -- and the choices below that, of course, are
20 either not guilty or guilty. If you answer not guilty,
21 then you would answer -- you would go to Question 3,
22 which has to do with the lesser-included offense.

23 Now, if you answered guilty, that he's been found
24 guilty of the higher offense, you would never go to
25 Number 3 because it's the lesser-included offense. But

ADDITIONAL JURY CHARGE

1 then you would have to consider 2A, which is the charge
2 of possession of a weapon during the commission of a
3 violent crime. And, again, the choices are not guilty
4 or guilty. So, depending on your answer to Number 1,
5 you'll either stop or you'll go on and answer the other
6 questions.

7 Depending on your answer to Number 2, if it's not
8 guilty, then you must consider the lesser-included
9 offense, and you would not answer 2A at all because the
10 lesser-included offense is not classified as a violent
11 crime. So, do you understand the difference?

12 JURY FOREMAN: Yes, sir.

13 THE COURT: Okay. If you have any questions on
14 how to fill it out, submit them to me. I'll be glad to
15 come back. It's a little confusing, but each time you
16 reach a verdict, it'll give you instructions as to
17 where you should proceed with the answer of the
18 question. Once you fully completed the form, verdicts
19 have been reached, you'll sign it, knock on the door,
20 let the bailiff know that you've reached a verdict.
21 Let me caution you about a couple of things.

22 We are now at 11:30. I'm going to direct the
23 clerk to go ahead and take a lunch order for you. It
24 takes about an hour for food to get here. Now, if the
25 jury decides you don't want us to order you lunch, then

ADDITIONAL JURY CHARGE

1 we won't do that. I'll let you tell us -- tell the
2 clerk when they get in there, if you wish to do that or
3 not.

4 But anytime either a bailiff or a clerk is in your
5 jury room, stop your deliberations. Don't talk about
6 the case until they've completed their tasks and left
7 the room. The jury should only deliberate when only
8 jury members are in the room. So don't discuss the
9 case if someone else is in the room during that period
10 of time.

11 So, if you do wish for us to order your lunch,
12 we'll be glad to do that for you. If you feel like you
13 don't need for us to do that, then we won't do that.
14 It's up to you as to how we would proceed on that. So
15 you understand how that should be handled?

16 JURY FOREMAN: Yes, sir.

17 THE COURT: Okay. And if you have any problems or
18 difficulties; just knock on the door, let the bailiff
19 know, we'll try to deal with any difficulties or
20 problems you have. Now, I understand there is a method
21 by which you could play any recordings that are in
22 evidence back there. If you have any problems, if you
23 want to listen to recordings, you have the right to do
24 so. If you have any difficulty, again, let us know,
25 we'll be glad to make that available to you as well.

ADDITIONAL JURY CHARGE

1 All right. So at this point in time I'm going to ask
2 that the members of the jury -- not the alternate -- to
3 return to the jury room and begin deliberations. Sir,
4 I'm going to ask you to remain seated. So at this
5 time, you may retire, begin your deliberations. We
6 will send the exhibits back to you.

7 (Jury exits the courtroom at
8 11:24 p.m.)

9 THE COURT: All right. Sir, you're Mr. Jameson;
10 is that right?

11 ALTERNATE JUROR: Yes, sir.

12 THE COURT: You've been serving as the alternate
13 throughout the trial, and I want to thank you for being
14 here and assisting us in that regard. The rules say
15 that when the jury retires to begin their
16 deliberations, your job's completed. All 12 are in
17 there, they're considering the case. And so I am to
18 release you from any further responsibility in this
19 case. And I don't think we're starting another trial,
20 so you're through for the week. So the clerk, once you
21 step out, they'll take care of taking you -- getting
22 you taken care of to be off the jury. This ends your
23 service.

24 I will tell you throughout the trial that I've
25 instructed you not to talk about the case. You now

ALTERNATE RELEASED

1 have the right to talk about it. But I will tell you,
2 you also have the right not to talk about it. A
3 citizen doesn't owe anyone any explanation for what
4 they do on a jury. You're not required to discuss it
5 with anybody unless you wish to do that. So it would
6 be up to you as to how you handle that situation. I
7 will tell you, and I don't think this is going to
8 happen, but if anyone were to try to harass you or
9 bother you about anything in connection with your jury
10 service, call the clerk's office and we'll take the
11 appropriate action should that occur. So, I don't
12 think that will be a problem.

13 And they're going to give you a voucher, I think
14 they'll mail it to you next week, for your jury pay.
15 Don't plan to retire on that check, it's not going to
16 be sufficient to do that. It's all the law allows us
17 to pay you, and it is certainly not enough for the time
18 that you've spent, but you'll be getting that. And I'm
19 sure if you need a letter or a note for your work, as
20 to where you've been all week, the clerk will be glad
21 to provide that to you as well.

22 ALTERNATE JUROR: Okay. Thank you.

23 THE COURT: But I do want to thank you for your
24 presence. You were necessary to be here. Had we had a
25 problem with any of the jurors during the week you

ALTERNATE RELEASED

1 would have been required to fill in. And it would have
2 allowed us to go ahead and finish the case and not have
3 to start it over again. So thank you for being here.
4 I hope you've learned some things as we've gone along,
5 and we appreciate your service.

6 ALTERNATE JUROR: I did. Thank you.

7 THE COURT: Thank you. Any objections to my final
8 instructions from the State?

9 MS. GINSBURG: None, Your Honor.

10 THE COURT: Any from the Defense?

11 MR. LOIGNON: No, Your Honor.

12 THE COURT: All right. We'll be in recess until
13 either a question's asked or a verdict's reached.
14 Thank you very much.

15 (Recess began at 11:29 a.m.)

16

17

18 (Question received at 12:05 p.m.)

19 THE COURT: The jury has submitted a question.
20 They're asking me to please clarify the definition of
21 assault and battery in the second degree.

22 I'm going to bring the jury back in and just
23 recharge that offense and see if that responds to the
24 question appropriately.

25 Bring the jury in, please.

ALTERNATE RELEASED

1 (Jury enters the courtroom at []
2 p.m.)

3 THE BAILIFF: All jurors present, Your Honor.

4 THE COURT: Thank you. Mr. Odell, I've received a
5 question from the jury, And it states can I please
6 clarify the definition of assault and battery in the
7 second degree?

8 Mr. Odell, before I answer the question, of
9 course, the assault and battery in the second degree
10 has been charged because it's a lesser-included offense
11 under the original charge, assault and battery of a
12 high and aggravated nature.

13 Would it be helpful if I go through both charges,
14 or do you want me to just go through the one charge?

15 THE FOREPERSON: Yes, Your Honor. Both charges.

16 THE COURT: All right. Then let me go over with
17 you then assault and battery of a high and aggravated
18 nature first. That's the indicted charge. A person
19 commits the offense of assault and battery of a high
20 and aggravated nature if the person unlawfully injures
21 another person, and great bodily injury to another
22 person results, or the act is accomplished by means
23 likely to produce death or great bodily injury.

24 Now, great bodily injury means bodily injury which
25 causes a substantial risk of death, or which causes

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1 serious, permanent disfigurement, or protracted loss or
2 impairment of the function of a bodily member or organ.

3 Now, assault and battery in the second degree.

4 And, again, the definition of assault and battery for
5 both of these offenses would be the same. I described
6 that to you, so I'm not going over that with you,
7 that's the putting somebody in fear of injury and then
8 carrying out the injury.

9 Assault and battery in the second degree, it is
10 when another person offers or attempts to injure
11 another person with the present ability to do so, and
12 either moderate bodily injury to another person results
13 or moderate bodily injury to another person could have
14 resulted.

15 Moderate bodily injury means physical injury that
16 involves prolonged loss of consciousness or that causes
17 temporary or moderate disfigurement, or temporary loss
18 of the function of a bodily member or organ, or injury
19 that requires medical treatment when the treatment
20 requires the use of regional or general anesthesia, or
21 injury that results in a fracture or dislocation.

22 Moderate bodily injury does not include one time
23 treatment and subsequent observation of scratches,
24 cuts, abrasions, bruises, burns, splinters, or other
25 minor injuries that ordinarily do not require extensive

ALTERNATE RELEASED

1 medical care.

2 So the difference between the two offenses is the
3 degree of injury that occurs or could have occurred
4 from the event.

5 So, do you understand the definitions?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: Did that answer the question?

8 THE FOREPERSON: Yes, Your Honor.

9 THE COURT: Okay. Then you may retire and
10 continue your deliberations.

11 (Jury exits the courtroom at
12 12:12 p.m.)

13 THE COURT: Any objections to my response from the
14 State?

15 MS. GINSBURG: No, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. LOIGNON: No, Your Honor.

18 THE COURT: All right. The question will be made
19 a court's exhibit and part of the record. Thank you
20 very much.

21 *(Whereupon, Court's Exhibit No(s). 2 marked for*
22 *identification and received in evidence.)*

23 (Recess.)

24 MS. GINSBURG: Your Honor, may I briefly clarify
25 for the possession of a weapon during the commission of

ALTERNATE RELEASED

1 violent crime, does your charge -- I'm sorry, we didn't
2 bring a computer -- does it say, language similar to if
3 a person is in possession of a firearm or visibly
4 displays what appears to be a firearm?

5 THE COURT: It does.

6 MS. GINSBURG: Okay. Thank Your Honor.

7 THE COURT: The charge that I gave says that it's
8 statements proved beyond a reasonable doubt, the
9 defendant was in possession of a firearm or visibly
10 displayed what appears to be a firearm, or visibly
11 displayed a knife during the commission.

12 MS. GINSBURG: Thank Your Honor.

13 THE COURT: And so I think it is limited to either
14 a firearm or a knife.

15 MS. GINSBURG: Right, Your Honor.

16 THE COURT: Is that correct; do you agree with
17 that?

18 MS. GINSBURG: I do. And then knife is defined
19 additionally in that statute.

20 THE COURT: Well, I don't know that knife is
21 really an issue in this case, but that's what the
22 statute says.

23 MS. GINSBURG: Right, Your Honor.

24 THE COURT: Any objection to me recharging it in
25 that fashion from the Defense?

ALTERNATE RELEASED

1 MR. LOIGNON: No, Your Honor.

2 THE COURT: Any from the State?

3 MS. GINSBURG: Nothing, Your Honor.

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

5 (Jury enters the courtroom at
6 12:43 p.m.)

7 THE BAILIFF: All jurors are present, Your Honor.

8 THE COURT: Thank you. All right. Ladies and
9 gentlemen of the jury, I've received two inquiries.
10 The first one that I will deal with is concerning the
11 events of possession of a weapon during the commission
12 of a violent crime. I'm going to go over that charge
13 with you again so that I'm sure that we have an
14 understanding on it.

15 The question is, in reference to the indictment
16 for the possession of a weapon during the commission of
17 a violent crime, would this be limited to a knife or a
18 gun only?

19 The charge is, the defendant is charged with
20 possession of a weapon during the commission of or
21 attempt to commit a violent crime. The State must
22 prove beyond a reasonable doubt that the defendant was
23 in possession of a firearm or visibly displayed what
24 appeared to be a firearm, or visibly displayed a knife
25 during the commission of a violent crime.

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1 A firearm means any type of gun, machine gun,
2 automatic rifle, revolver, pistol, or any weapon which
3 will and is designed to or may be converted so as to
4 expel a projectile.

5 A knife means an instrument or tool with a sharp
6 cutting blade, whether or not fastened to a handle. In
7 order to find the defendant guilty of the possession of
8 a weapon during the commission of a violent crime, you
9 must first find the defendant guilty of either
10 committing a violent crime or attempting to commit a
11 violent crime. And I will tell you that assault and
12 battery of a high and aggravated nature is classified
13 under our laws as a violent crime.

14 So, the statute is limited to either a firearm or
15 a knife. However, the statute says, it can be a
16 firearm or what appears to be a firearm. So, I can't
17 tell you that it has to be.

18 You follow the distinction, I hope, Mr. Odell.

19 THE FOREPERSON: Yes.

20 THE COURT: All right. Now, the other question I
21 think two of the jurors wanted to make a phone call to
22 either employers or family. I will allow them to do
23 that. I'll ask that they step out of the jury room
24 while they make those calls. A bailiff will have to be
25 present and listen to the call to be sure that no

ALTERNATE RELEASED

1 communication is made with anyone concerning any aspect
2 of the case. So, a bailiff will have to be present
3 during those phone calls.

4 You may retire to the jury room and continue your
5 deliberations.

6 THE FOREPERSON: Thank you.

7 (Jury exits the courtroom at []
8 p.m.)

9 THE COURT: Any objections to my response from the
10 State?

11 MS. GINSBURG: None, Your Honor.

12 THE COURT: Any from the Defense?

13 MR. LOIGNON: No, Your Honor.

14 THE COURT: All right. The questions will be made
15 exhibits of the court. Thank you very much.

16 *(Whereupon, Court's Exhibit No(s). 3-4 marked for*
17 *identification and received in evidence.)*

18 (Recess.)

19 THE COURT: I've been informed that a verdict has
20 been reached. Is the State ready to receive the
21 verdict?

22 MS. GINSBURG: Yes, Your Honor.

23 THE COURT: The Defense ready to receive the
24 verdict?

25 MR. LOIGNON: Yes, Your Honor.

VERDICT

1 THE COURT: Let's bring the jury in.

2 (Jury enters the courtroom.)

3 THE BAILIFF: All jurors present, Your Honor.

4 THE COURT: Thank you. Mr. Odell, I have been
5 informed by the bailiffs the verdict is reached; is
6 that true?

7 THE FOREPERSON: Yes, Your Honor.

8 THE COURT: If you'll pass the form to the
9 bailiff, please.

10 Thank you, sir. The clerk may publish the
11 verdict.

12 THE CLERK: May I have the Defendant stand,
13 please.

14 The verdict form in the matter of the State of
15 South Carolina versus Ashley Price Tindall, III,
16 Defendant, as to the defense of self-defense, we, the
17 jury, unanimously find that the State has disproved the
18 defense of self-defense beyond a reasonable doubt, and
19 the Defendant is not entitled that defense.

20 Question 2, as to the Indictment Number
21 16GS10-5793, for assault and battery of a high and
22 aggravated nature, we, the jury, unanimously find the
23 Defendant, Ashley Price Tindall, III, guilty. As to
24 the Indictment Number 16GS10-5794, for use of a deadly
25 weapon in the commission of a violent crime, we, the

VERDICT.

1 jury, unanimously find the Defendant, Ashley Price
2 Tindall, III, guilty.

3 Obviously, Question 3 is non-applicable. Signed
4 by the foreperson of the jury on March 23rd, 2017.

5 Ladies and gentlemen of the jury, if this was your
6 verdict, please raise your right hand.

7 (Jurors respond.)

8 THE CLERK: Thank you. Please let the record
9 reflect that all 12 jurors raised their right hand.

10 THE COURT: Thank you. You can be seated.
11 "Anything further from the State before I release
12 the jury?

13 MS. GINSBURG: Nothing further, Your Honor.

14 THE COURT: Anything further from the Defense
15 before I release the jury?

16 MR. LOIGNON: No, Your Honor.

17 THE COURT: All right. Ladies and gentlemen of
18 the jury, I want to thank you very much for your
19 attention in this case, your attention to your duties
20 and responsibilities. At this point in time, I'll make
21 you aware, we're not starting any other jury trials
22 this week, so this will end your jury service for the
23 week.

24 As you leave, the bailiffs will be checking you
25 out. Next week you'll receive a voucher for your jury

VERDICT

1 pay and travel. It's not going to be a very large
2 check, but it's all the law allows us to pay you.
3 Certainly not enough for the time and effort you've put
4 into the case.

5 Throughout this trial I have told you not to
6 discuss this case with anyone. I will tell you now,
7 you have the right to do so, you have the right not to
8 do so. A citizen owes no one an explanation for what
9 they've done in jury service. So you're not required
10 to discuss this unless you choose to do that.

11 I don't think this will happen, but should anybody
12 attempt to bother you or harass you about your service
13 on the jury, call the clerk's office immediately.

14 Appropriate action will be taken should that occur.

15 So the bailiffs will check you out. If you need a
16 letter excusing you from work or something of that
17 nature, they'll be glad to assist you in getting that.

18 Again, thank you for your efforts this week, and
19 at this time you're free to go, except Mr. Odell.
20 You're going to need to meet with the clerk for a
21 moment to sign some things on the indictment. So if
22 you'll wait just a minute.

23 Thank you very much. You're free to go at this
24 time.

25 (Jury exits the courtroom at

VERDICT

1 1:30 p.m.)

2 (Pause.)

3 THE COURT: Thank you, sir. Now, you're free to
4 go. Appreciate your help.

5 (Pause.)

6 THE COURT: Sentencing sheets?

7 MS. GINSBURG: Yes, Your Honor, may I approach?

8 THE COURT: Yes, ma'am. If you'll pass those up.

9 MS. GINSBURG: Thank you. Judge, I may have not
10 checked the serious on the

11 Possession of a weapon -- oh, I'm sorry.

12 THE COURT: I'm sorry?

13 MS. GINSBURG: I'm sorry, Judge. I don't think I
14 checked serious for assault and battery of a high and
15 aggravated nature. I believe it's serious.

16 THE COURT: You didn't what?

17 MS. GINSBURG: On the sentencing sheet, Judge,
18 where there's an indication of violent and non violent.

19 THE COURT: It's been marked as violent, but not
20 serious.

21 MS. GINSBURG: I believe it is serious, Judge.

22 THE COURT: I think it is, too.

23 MS. GINSBURG: Yes. And that's why I apologize
24 for not marking that.

25 THE COURT: Okay. I'll mark it. Bailiff, if

SENTENCING

1 you'll pass this down to the Defense counsel. I'll
2 need for him to sign the sentencing sheets for me.

3 You're going to need to make him available. He
4 needs to sign the sentencing sheet for me, so you're
5 going to have to uncuff his -- I guess he's right
6 handed? I'm not sure.

7 THE DEPUTY: Yes, sir.

8 THE COURT: All right. Mr. Ashley Tindall, having
9 been found guilty by a jury of your peers of the
10 offenses of assault and battery of a high and
11 aggravated nature, and possession of a weapon during
12 the commission of a violent crime. At this time, I
13 will consider the appropriate sentencing. I'll be
14 happy to hear from your attorney. I'll give you an
15 opportunity to speak. If there's anyone present who
16 would like to speak on your behalf, I'll be more than
17 happy to hear from them in considering the possible
18 sentence in this matter.

19 So, at this time, Counsel, I'll hear from you.

20 MR. LOIGNON: Thank Your Honor. May it please the
21 Court.

22 As you heard during the course of this trial, Mr.
23 Tindall is a 51-year-old man, a lifetime resident of
24 the area. He does have a limited education, a fifth
25 grade education. He's unemployed. And he's supported

SENTENCING

1 by his wife, Sara, financially, and, of course, here
2 emotionally. Also has support from his daughter and
3 son-in-law, his brother-in-law, who have been here
4 throughout the course of this trial for him.

5 Mr. Tindall has no prior record in the last
6 25-plus years. His last conviction was in 1991, where
7 he got probation and successfully completed that. He
8 does have a prior assault conviction from 1984, and he
9 received probation for that as well.

10 So, he's not a career criminal, he's not one of
11 these repeat offenders. He's never been to prison. I
12 believe the State even conceded in closing arguments
13 that they do not believe him to be a monster, that he
14 was just out of control on that evening.

15 Mr. Tindall is remorseful that people were injured
16 in this case, and he's expressed that many, many times
17 and wished that he could have expressed that sooner.
18 He is remorseful. He spent two days in jail on this
19 charge prior to bonding out.

20 THE COURT: You said a few or two?

21 MR. LOIGNON: Two.

22 THE COURT: Two. Okay.

23 MR. LOIGNON: Yes, sir. We would ask the Court to
24 impose the minimum sentence on the possession of a
25 weapon.

SENTENCING

1 THE COURT: Now, my understanding of sentencing on
2 this is the possession of a weapon that says on -- what
3 I'm reading, it's mandatory, unless a greater mandatory
4 minimum sentence is required on the main events. In
5 this case, there's not a mandatory sentence on the main
6 event. So, I think we're looking at a five-year
7 mandatory sentence on that charge.

8 MR. LOIGNON: Correct. Five years non-violent for
9 that charge, which would equate to somewhere around two
10 and a half of actual time. So, what we would be asking
11 the Court to do is impose a concurrent sentence on the
12 ABHAN somewhere in the range of two to two and a half
13 years, Your Honor.

14 THE COURT: I see. All right. Is there anyone
15 who wishes to speak on

16 Mr. Tindall's behalf?

17 MR. LOIGNON: Anybody wish to speak?

18 THE COURT: Your name, please, ma'am.

19 MS. TINDALL: His daughter. I'm his daughter. My
20 name's Ashley Tindall. I'm 27 years old.

21 These accusations against my father are
22 outrageous. I have three children and he loves them
23 very, very dearly. He's never ever even threatened no
24 one before. They're just all best friends in the
25 neighborhood. They don't like him because he don't

SENTENCING

1 drink, he just sits at home. He hangs out by himself.

2 They throw parties every weekend. Every weekend.

3 He's a very good guy. He is very sensitive, and -- I

4 mean, he had to defend himself. But, I mean, I

5 understand that you got to get punished for what you

6 do, but please consider a lighter sentence because he's

7 been out of trouble for 25-plus years. He's been in

8 that same neighborhood for 22 years, and he's never had

9 a problem before. He's never had the cops come up for

10 a disturbance, nothing like that. I just ask that you

11 please just consider a lighter sentence.

12 THE COURT: All right. Thank you, ma'am. Anyone

13 else wishes to speak on his behalf?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: I know you do, but I'm talking to any

16 family members or friends.

17 All right. Now, I'll hear from you, Mr. Tindall.

18 Be happy to hear from you -- wait a second. Your wife

19 has stood.

20 MRS. TINDALL: I want to speak.

21 THE COURT: Your name again? I know your name,

22 but you have to put it on the record.

23 MRS. TINDALL: Sara Tindall. Sara Tindall.

24 THE COURT: Thank you, ma'am.

25 MRS. TINDALL: Yes. I just want everybody to know

SENTENCING

1 that he is a very loving husband. He does not treat me
2 bad. He does not control me. I do whatever I want
3 when I want. All these accusations are just
4 outlandish. We love each other to death. We do things
5 together all the time. We've been together 36 years,
6 been married 32, and we just -- he just doesn't deserve
7 this. He was defending himself, he does not deserve
8 this. He needs to come home.

9 THE COURT: Yes, ma'am. Well, I'm not here to try
10 the case again, but I am here to decide what to do
11 about sentencing. So I'll be happy to hear from you
12 about that.

13 MRS. TINDALL: As light a sentence as you can give
14 him.

15 THE COURT: Thank you, ma'am. Now, Mr. Tindall,
16 you indicated you'd like to speak, and you certainly
17 have the right to.

18 THE DEFENDANT: Thank you, sir. I would just like
19 to convey to you, Judge, that I am remorseful and I am
20 really sorry about what happened on July 4th, 2014.
21 And it has been quite a while since I have been in any
22 kind of trouble, and how the jurors have come to this
23 decision is beyond my belief, to tell you the truth.
24 As you've heard -- and I'm sorry, I'm a little
25 overwhelmed, sir. This is the first time I've found

SENTENCING

1 myself in this situation. And seeing my wife, both,
2 has lost our parents and our grandparents at a very
3 young age, and me and my wife are pretty much the only
4 immediate family that we have, each other. That's why
5 I care and love for her so much, sir. And to sentence
6 me to this amount of time would just -- it would be
7 devastating to me and my wife, and I would ask you to
8 please consider the lowest sentence so that I may be
9 able to get home to my wife again sometime in the near
10 future.

11 THE COURT: Thank you, sir. You can be seated.
12 I'll hear from the State about any prior record.

13 I understand that it's minimal, but it's there.
14 Is there a prior record?

15 MS. GINSBURG: Yes, Your Honor. In 1984, assault
16 and battery of a high and aggravated nature, possession
17 of nunchucks, shoplifting, trespassing, and simple
18 assault. In 1991, grand larceny.

19 THE COURT: Now, does any of the victims wish to
20 be heard?

21 MS. GINSBURG: Yes, Your Honor. Mr. Hilding would
22 like to be heard.

23 THE COURT: Sir, if you'll come forward, please.
24 If you'll come right over here to this column right
25 there, a good spot right there.

SENTENCING

1 State your name, sir.

2 MR. HILDING: Richard Hilding. I would just like
3 to say to the Court and the Judge, I believe you have
4 the right verdict right now. I'd also like to express
5 that Mr. Tindall's action that night have put at least
6 five families in terror, a lot of heartache, a lot of
7 personal problems over that incident that night, and
8 we've had to deal with it for 33 months.

9 Also, any man that can punch supposedly a good
10 friend that he knows is disability, has a disability,
11 in the face, that's supposed to be his good friend is a
12 very dangerous man. He yelled, screamed, and pushed
13 that man's nine-month pregnant daughter, that he also
14 knew for 20 years. If this is what he does to people
15 --

16 (Interruption by unidentified
17 person.)

18 MR. HILDING: -- that he knows for 20 years, he's
19 a very dangerous man. He put me in the hospital with a
20 weapon --

21 (Interruption by unidentified
22 person.)

23 THE COURT: Just one second. Now, I gave this
24 side an opportunity to speak. If you can't sit
25 quietly, leave the courtroom. If I hear anymore

SENTENCING

1 outbursts or statements, I'm going to treat it as
2 contempt of court. I can sentence people to up to one
3 year for contempt of court. You'll serve every day of
4 it. So if you can't control yourself, step outside
5 now.

6 UNIDENTIFIED PERSON: Yes, sir.

7 THE COURT: I'm sorry. We were interpreted.

8 MR. HILDING: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. HILDING: I was just going to finish with, he
11 was also able to hit a complete stranger in the head
12 with a deadly weapon, which I end up two days in the
13 hospital and have current things going. This man, I
14 believe, and I believe the Court's decision is a very
15 dangerous man. And I would ask that he got the maximum
16 sentence.

17 THE COURT: Thank you, sir.

18 MR. HILDING: Thank you, sir.

19 THE COURT: Anything other from the State that I
20 should consider in sentencing?

21 MS. GINSBURG: Yes, Your Honor. It's the State's
22 position that Mr. Tindall receive some active time,
23 understanding that he does have a limited record back
24 from 25 years ago. Additionally, that we'd ask that
25 probation to follow. You heard the testimony in this

SENTENCING

1 case of the injury

2 That the victim sustained and could have sustained
3 after being pistol whipped and almost being run over by
4 a truck... That's why we recommend just some active time
5 with probation to follow.

6 THE COURT: Thank you. Now, the possible maximum
7 sentence, I believe, on

8 The assault and battery of a high and aggravated
9 nature is 20 years; is that your understanding?

10 MR. LOIGNON: Yes, Your Honor.

11 THE COURT: Is that the State's understanding as
12 well?

13 MS. GINSBURG: Yes, it is, Your Honor.

14 THE COURT: You were retained to represent him in
15 the case; is that correct?

16 MR. LOIGNON: No, Your Honor, appointed.

17 THE COURT: Appointed. Okay.

18 MR. LOIGNON: Yes, sir.

19 THE COURT: All right. Mr. Tindall, if you would
20 please stand.

21 Mr. Tindall, as I indicated, the jury of your
22 peers has found you guilty of these two offenses. I do
23 note the fact that your record is a very old record,
24 it's not anything that's occurred recently.

25 However, I do note that that particular offense

SENTENCING

1 was for a similar offense to the one that you've been
2 convicted of in this case. That was an assault and
3 battery of a high and aggravated nature at that time.

4 In this particular case, it appears that you let
5 your temper get the better of you, created a
6 disturbance, which spilled over and went on for a
7 period of time resulting in injuries to people,
8 neighbors of yours. Not a situation that is tolerable
9 in our society. The jury's verdict was within the
10 evidence and proof that was presented during the trial.
11 So, I find that they were within their rights to make
12 the decisions that they've made.

13 I understand your age. You've over the age of 50.
14 My sentence is not intended to destroy your remaining
15 life, but perhaps serve as a means by which these
16 problems can be corrected. Perhaps you then could
17 return to society and be a productive member or family
18 member and someone who would be a good citizen from
19 that time forward. I hope so.

20 But at any rate, the sentence in this case is, in
21 the case of the assault and battery of a high and
22 aggravated nature, the sentence is six years, but I
23 have suspended that to service of 30 months with three
24 years of probation. I have ordered during your
25 probationary period that you not have contact with any

SENTENCING

1 of the victims in this case, and I include the
2 gentleman they refer to as Mr. Bob, as one of the
3 victims in this case. So, I'm ordering you not have
4 contact with them or the gentleman in this case during
5 the period of your probation; that you must complete
6 anger management counseling during that period of time;
7 you will be required to pay the appointed counsel's
8 fees as required by the probation office during that
9 time.

10 As to the possession of a weapon during the
11 commission of a violent crime, that carries a mandatory
12 five-year sentence, so I have sentenced you to five
13 years. In both cases, I've run those concurrently,
14 I've given you credit for the two days that you've
15 already served in this matter.

16 Good luck to you, sir. That concludes the
17 hearing. I would ask that if everyone on this side of
18 the courtroom would remain seated. Everyone in the
19 gallery on my left should leave the courtroom at this
20 time.

21 Ma'am, leave the courtroom now. Sir, if you would
22 step outside, this gentleman here. Sir, step outside
23 and let me know when they've have cleared the hallway.

24 THE BAILIFF: Yes, sir.

25 MS. GINSBURG: Your Honor, just to let you know,

554

AJG/0239727/20140706817
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2014010908B

ARREST WARRANT NUMBER
2016-GS-10-05793

DATE OF ARREST


07/05/2014

ACTION OF GRAND JURY

TRUE BILL SEP 12 2016
Foreperson of Grand Jury Date:

VERDICT

Guilty

 3/22/17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-10-05793

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016

THE STATE

VS.

ASHLEY PRICE TINDALL, III
W/M DOB: 05-10-1965

Indictment for

ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

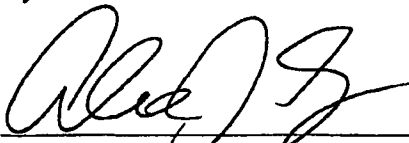
INDICTMENT

At a Court of General Sessions, convened September 2016, the Grand Jurors of Charleston County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

That in Charleston County , South Carolina on or about July 4, 2014, the Defendant, Ashley Price Tindall III, did commit an unlawful act of injury upon the victim, Richard Hilding, and as a result, the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALEXANDRA J. GINSBURG
ASSISTANT SOLICITOR

556

AJG/0239727/20140706817
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2014010908B

ARREST WARRANT NUMBER
2016-GS-10-05794

DATE OF ARREST
07/05/2014

ACTION OF GRAND JURY

TRUE BILL SEP 12 2016
Foreperson of Grand Jury Date:

VERDICT

Guilty

Ch. O'Neil 3/23/17
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-10-05794

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
SEPTEMBER TERM 2016

THE STATE

VS.

ASHLEY PRICE TINDALL, III
W/M DOB: 05-10-1965

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDK Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened September 2016, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about July 4, 2014, the Defendant, Ashley Price Tindall III, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Assault & Battery of a High & Aggravated Nature; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALEXANDRA J. GINSBURG
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ASHLEY PRICE TINDALL, III

AKA:
Race: White Non-Latino/Caucasian
Sex: M
DOB:
SS#:
Address: Fickling Hill Rd
City, State, Zip: Johns Island, SC 29455
DL#
SID# SC00424767

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-10-05793
A/W: 2016-GS-10-05793
Date of Offense: 07/04/2014
S.C. Code §: 16-03-0600(B)(1)
CDR Code #: 3411

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant-who was

[X] CONVICTED OF or [] PLEADS

TO: Assault & Battery Of A High And Aggravated Nature

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

[] NON-VIOLENT [X] VIOLENT [X] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is [X] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTEST: Alexander J. Ginsburg, Assistant Solicitor SC Bar # 102251
Ashley P. Tindall III, Defendant
Michael Loggin, Attorney for Defendant SC Bar # 101291

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections [] County Detention Center,
for a determinate term of 6 months/years or [] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 30 days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 7
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 3/23/17

[] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 2 days

[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
Obtain GED []

[] Set by SCDPPPS
Attend Voc. Rehab. Or Job Corp.

Recipient:
May serve W/E beginning

*Fine: \$
Substance Abuse Counseling []

§14-1-206 (Assessments 107.5%) \$
Random Drug/Alcohol Testing []

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$
pmts. of \$ Beginning

§56-5-2995 (DUI Assessment) \$12 \$
\$ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$
Other: 1. Must complete Anger Management

Proviso 61.6 (Public Def/Prob) \$500 \$ 500.00
Counseling

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
2. No contact w Bob Escottier +

§14-1-213 (Drug Court Surcharge) \$150 \$
Victim

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
[] Appointed PD or appointed other counsel,

3% to County (if paid in installments) \$ \$ 18.75
\$47.12 requires \$500 be paid to Clerk

TOTAL \$ 643.75
during probation.

Clerk of Court/Deputy Clerk: Called
Court Reporter: MONA MANLEY

Presiding Judge:
Judge Code: 2135
Sentence Date: 3/23/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

ASHLEY PRICE TINDALL, III

INDICTMENT/CASE#: 2016-GS-10-05794

A/W: 2016-GS-10-05794

Date of Offense: 07/04/2014

S.C. Code §: 16-23-0490

CDR Code #: 0549

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: SS#:

Address: Fickling Hill Rd

City, State, Zip: Johns Island, SC 29455

DL# SID# SC00424767

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

5 yrs mandatory

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Alexandra J. Ginsburg, Assistant Solicitor SC Bar # 102251

Ashley P. Tindall III Defendant

Michael Legner Attorney for Defendant SC Bar # 101291

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,

for a determinate term of 5 ~~days~~ months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 3/23/17

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 days

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Payment Terms: _____

Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 75.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75

TOTAL \$ 128.75

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Callie
Court Reporter: MONA TRANLY

Presiding Judge: _____
Judge Code: 2135
Sentence Date: 3/23/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of July, 2018.

RECEIVED
JUL 13 2018
SC Court of Appeals