

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable William P. Keesley, Circuit Court Judge

RECEIVED
AUG 08 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEVIN LAMAR GARY,

APPELLANT

APPELLATE CASE NO. 2016-001603

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DAVID SPENCER
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, S.C. 29202-1987
(803) 576-1800

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD JULY 25-27, 2016	1
READING OF THE INDICTMENTS.....	6
COURT’S PRELIMINARY REMARKS TO JURY	9
OPENING STATEMENT BY MR. SHELLENBERG	21
OPENING STATEMENT BY MS. BRIGHTHOP	25
TESTIMONY	
JARANAMO CONE, JR.	
Direct Examination by Ms. Walker	31
TREVOR HOLT	
Direct Examination by Mr. Shellenberg	40
Cross Examination by Ms. Williams	47
SHAWN GAUSE	
Direct Examination by Ms. Walker	49
Cross Examination by Ms. Eigenbrot	58
Redirect Examination by Ms. Walker.....	64
Recross Examination by Ms. Eigenbrot.....	65
VANETIA RILEY	
Direct Examination by Ms. Walker	67
Cross Examination by Ms. Eigenbrot	76
Redirect Examination by Ms. Walker.....	87
Recross Examination by Ms. Eigenbrot.....	88
TAMMY COOK	
Direct Examination by Mr. Shellenberg	89
Voir Dire Examination by Ms. Eigenbrot.....	94
OBJECTION TO EXPERT QUALIFICATION	96
<i>IN CAMERA</i> PROFFER OF COOK’S TESTIMONY	100
COURT’S RULING	99, 101

TESTIMONY

TAMMY COOK

Direct Examination (continued) by Mr. Shellenberg.....	103
Cross Examination by Ms. Eigenbrot.....	103
Redirect Examination by Mr. Shellenberg.....	105

JOHN SULLIVAN

Direct Examination by Ms. Walker.....	106
Cross Examination by Ms. Eigenbrot.....	115

MARK ALLEN JONES

Direct Examination by Mr. Shellenburg.....	125
Voir Dire Examination by Ms. Williams.....	127
Direct Examination (continued) by Mr. Shellenburg.....	129
Cross Examination by Ms. Williams.....	138
Redirect Examination by Mr. Shellenburg.....	142

STATE RESTS.....	143
------------------	-----

MOTION FOR DIRECTED VERDICT ON ABHAN CHARGE.....	144
--	-----

COURT'S RULING.....	145
---------------------	-----

MOTION FOR DIRECTED VERDICT ON MAYHEM CHARGE.....	145
---	-----

TAKEN UNDER ADVISEMENT.....	154
-----------------------------	-----

TESTIMONY

ANTONIO ADAMS

Direct Examination by Ms. Brighthop.....	160
Cross Examination by Ms. Walker.....	175
Redirect Examination by Ms. Brighthop.....	181
Recross Examination by Ms. Walker.....	183

MARY BETH HALE

Direct Examination by Ms. Williams.....	185
Cross Examination by Ms. Walker.....	196
Redirect Examination by Ms. Williams.....	211
Recross Examination by Ms. Walker.....	212

COLLOQUY REGARDING DEFENDANT'S RIGHTS.....	214
--	-----

TESTIMONY (continued)

KEVIN GARY

Direct Examination by Ms. Eigenbrot	220
Cross Examination by Ms. Walker	252
Redirect Examination by Ms. Eigenbrot.....	291
Recross Examination by Ms. Walker.....	292

DEFENSE RESTS	293
---------------------	-----

<i>JACKSON V. DENNO</i> HEARING	294
---------------------------------------	-----

TESTIMONY

JOHN SULLIVAN

Direct Examination (in camera) by Ms. Walker.....	295
Cross Examination (in camera) by Ms. Eigenbrot.....	299

COURT'S RULING	301
----------------------	-----

TESTIMONY IN REPLY

JOHN SULLIVAN

Direct Examination by Ms. Walker	303
Cross Examination by Ms. Eigenbrot	314
Redirect Examination by Ms. Walker.....	317
Recross Examination by Ms. Eigenbrot.....	317

RENEWAL OF MOTIONS FOR DIRECTED VERDICT.....	319
--	-----

COURT'S RULING DENYING D.V. ON ABHAN CHARGE.....	326
--	-----

COURT'S RULING GRANTING D.V. ON MAYHEM CHARGE	327
---	-----

CHARGE CONFERENCE.....	332
------------------------	-----

DEFENSE MOTION ON ORDER OF CLOSINGS	336
---	-----

COURT'S RULING	338
----------------------	-----

CLOSING ARGUMENT BY MS. EIGENBROT.....	341
--	-----

CLOSING ARGUMENT BY MS. WALKER	359
--------------------------------------	-----

DEFENSE RENEWAL OF REQUEST TO CHARGE.....381

 COURT’S RULING331

JURY CHARGE382

PARTIAL JURY RECHARGE406

VERDICT409

RENEWAL OF OBJECTIONS AND MOTIONS414

SENTENCING414

 IMPOSITION OF SENTENCE.....428

STATE’S EXHIBIT NO. 40 (Statement of Defendant)431

INDICTMENT.....434

CERTIFICATE OF COUNSEL436

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NOS. 1-32 (photographs)**

1 State of South Carolina
2 County of Richland

Court of General Sessions

3
4

5 State)
6)
7 v.)
8 Kevin L. Gary, Sr.)
9 Defendant.)

Transcript of Record
14-GS-40-6211

10
11

July 25 - 27, 2016
Columbia, South Carolina

12
13

B E F O R E:

14
15

The Honorable William P. Keesley, Judge; and a jury.

16
17

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

18
19

Meghan L. Walker, Assist. Solicitor
Jeremiah J. Shellenberg, II, Assist. Solicitor
Attorneys for the State

20
21

Megan A. Eigenbrot, Assist. Public Defender
Rebecca S. Williams, Assist. Public Defender
Cheslyne Brighthop, Assist. Public Defender
Attorneys for the Defendant

22
23

24
25

Stacy L. Sheppard, RPR
Circuit Court Reporter

I N D E X

1	I N D E X	
2	<u>WITNESS</u>	<u>PAGE</u>
3	Opening Statement	
	By Mr. Shellenberg	94
4	By Ms. Brighthop	98
	Jaranamo Cone, Jr.	
5	Direct Examination By Ms. Walker	104
	Trevor Holt	
6	Direct Examination By Mr. Shellenberg	113
	Cross-Examination By Ms. Williams	120
7	Shawn Gause	
	Direct Examination By Ms. Walker	122
8	Cross-Examination By Ms. Eigenbrot	131
	Redirect Examination By Ms. Walker	137
9	Recross-Examination By Ms. Eigenbrot	138
	Vanetia Riley	
10	Direct Examination By Ms. Walker	147
	Cross-Examination By Ms. Eigenbrot	156
11	Redirect Examination By Ms. Walker	167
	Recross-Examination By Ms. Eigenbrot	168
12	Tammy Cook	
	Direct Examination By Mr. Shellenberg	169
13	Voir Dire By Ms. Eigenbrot	174
	In Camera Exam By Mr. Shellenberg	180
14	Direct Exam Cont. By Mr. Shellenberg	183
	Cross-Examination By Ms. Eigenbrot	183
15	Redirect Exam By Mr. Shellenberg	185
	John Sullivan	
16	Direct Examination By Ms. Walker	186
	Cross-Examination By Ms. Eigenbrot	195
17	Mary Beth Hale (In Camera)	
	Examination By the Court	206
18	Mark Allen Jones	
	Direct Examination By Mr. Shellenberg	223
19	Voir Dire By Ms. Williams	225
	Direct Exam Cont. By Mr. Shellenberg	227
20	Cross-Examination By Ms. Williams	236
	Redirect Examination By Mr. Shellenberg	240
21	Antonio Adams	
	Direct Examination By Ms. Brighthop	259
22	Cross-Examination By Ms. Walker	273
	Redirect Examination By Ms. Brighthop	279
23	Recross-Examination By Ms. Walker	281
	Mary Beth Hale	
24	Direct Examination By Ms. Williams	283
	Cross-Examination By Ms. Walker	294
25	Redirect Examination By Ms. Williams	309
	Recross-Examination By Ms. Walker	310

	I N D E X	
1	<u>WITNESS</u>	<u>PAGE</u>
2	Kevin L. Gary, Sr.	
3	Direct Examination By Ms. Eigenbrot	318
	Cross-Examination By Ms. Walker	350
4	Redirect Examination By Ms. Eigenbrot	389
	Recross-Examination By Ms. Walker	390
5	John Sullivan (In Camera)	
	Direct Examination By Ms. Walker	393
6	Cross-Examination By Ms. Eigenbrot	397
	John Sullivan	
7	Direct Examination By Ms. Walker	401
	Cross-Examination By Ms. Eigenbrot	412
8	Redirect Examination By Ms. Walker	415
	Recross-Examination By Ms. Eigenbrot	415
9	Closing Argument	
	By Ms. Eigenbrot	439
10	By Ms. Walker	457
11	Charge of the Court	480
12	Verdict of the Jury	507
13	Sentence of the Court	527
14	Certificate of Reporter	529
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Photograph		125
4	S-2	Photograph		125
5	S-3	Photograph		126
6	S-4	Photograph		126
7	S-5	Photograph		126
8	S-6	Photograph		126
9	S-7	Photograph		126
10	S-8	Photograph		127
11	S-9	Photograph		127
12	S-10	Photograph		127
13	S-11	Photograph		127
14	S-12	Photograph		127
15	S-13	Photograph		127
16	S-14	Photograph		127
17	S-15	Photograph		127
18	S-16	Photograph		130
19	S-17	Photograph		129
20	S-18	Photograph		117
21	S-22	Photograph		117
22	S-28	Photograph		119
23	S-29	Photograph		118
24	S-31	Photograph		118
25	S-32	Photograph		118

1 E X H I B I T S

2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-36	Recording of 9-1-1 Call		191
4	S-37	Recording of Jail Phone Call		193
5	S-38	Map		107
6	S-39	Advice of Rights		404
7	S-40	Statement of Defendant		405
8	S-41	Diagram		375
9	C-1	Defense Requested Voir Dire	48	
10	C-2	Jury Note	62	
11	C-3	Jury Note	62	
12	C-4	Jury Note	70	
13	C-5	Jury Note	70	
14	C-6	Jury Note	142	
15	C-7	Jury Note	315	
16	C-8	Jury Note	502	
17	C-9	Jury Note	503	

18

19

20 (All State's Exhibits were premarked by the
 21 Solicitor's Office and not the court reporter prior
 22 to trial and not introduced during trial.)

23

24

25

1 doubt about whether the question applies to you or
2 not, please discuss it with me and let me resolve
3 the doubt. If I ever ask you anything that you
4 prefer to discuss more privately, just let me know
5 you want to come down front and we'll talk about it
6 on the side.

7 You need to understand that this is a court of
8 record, and basically what that means is that
9 Ms. Sheppard over there is taking down everything we
10 say. Part of my job is to make sure that she's able
11 to put down an accurate record, so I have to make
12 sure that the person speaking has been identified.
13 So the very first thing we're going to do if you
14 stand and speak is I'm going to have you identify
15 yourself by your name and your juror number.

16 If you don't know your juror number, I think
17 you've got it on the badge here, but we can look it
18 up. Things will go quicker for you and you'll get
19 out of here sooner this week if you can remember
20 your juror number.

21 Now, the cases that you've been brought up here
22 to potentially serve as jurors on arise from two
23 indictments. In one indictment, it is alleged that
24 Kevin Lamar Gary committed the offense of assault
25 and battery of a high and aggravated nature. In the

1 other indictment, it's alleged that Mr. Gary
2 committed the offense of mayhem.

3 Now, I'm going to read these indictments to
4 you, but I need to express to you that an indictment
5 is not evidence of anything. An indictment is a
6 charging paper. It's merely the formal means by
7 which someone is charged and brought to trial. It
8 has no evidentiary value at all.

9 Now, the indictment for assault and battery of
10 a high and aggravated nature reads that Kevin Lamar
11 Gary did, in Richland County, on or about March 25,
12 2014, commit an assault and battery of a high and
13 aggravated nature upon -- is that Jaranamo?

14 **MS. WALKER:** Yes, Your Honor.

15 **THE COURT:** J-a-r-o-n-a-m-o {sic}, Jaranamo
16 Cone, constituting an unlawful act of violent injury
17 to the person of the purported victim that resulted
18 in great bodily injury and/or the act was caused by
19 means likely to produce death or great bodily
20 injury. Specifically, it's alleged that Jaranamo
21 Cone suffered facial fractures and damage to his eye
22 or eyes.

23 The other indictment for mayhem charges that
24 Mr. Gary did, in Richland County, South Carolina, on
25 or about March 25, 2014, maliciously and

1 intentionally mutilate and/or maim Jaranamo Cone
2 rendering a part of Jaranamo Cone's body useless
3 causing Jaranamo Cone to become unable to defend
4 himself and/or fight, which is alleged to be in
5 violation of the code section set forth in the
6 indictment.

7 Now, upon his arraignment on these charges,
8 Mr. Gary has entered pleas of not guilty. He is
9 presumed to be innocent. It is incumbent upon the
10 State of South Carolina having brought these charges
11 to prove every essential element of each offense
12 charged beyond a reasonable doubt.

13 Now, I'll be asking you a series of questions.
14 These questions are designed to find out from you if
15 you or anybody close to you has ever been through
16 something similar, if you know anything at all about
17 the case, if you have any connection of any kind
18 with anybody in the case, those sorts of things.
19 The purpose for the questions is to enable us to
20 select a jury that is fair and impartial. And if
21 you keep that goal in mind, I think the questions
22 will make more sense to you as we go along.

23 Now, is Mr. Kevin Lamar Gary in the courtroom?

24 **MS. EIGENBROT:** Yes, Your Honor.

25 **THE COURT:** Mr. Gary, I need you to stand and

1 (The jury was duly sworn at 3:14 P.M.)

2 **THE COURT:** All right. Ladies and gentlemen,
3 I'm going to take probably about ten minutes and go
4 over some things with you and then I'll recognize
5 the attorneys who will talk to you. I'm going to
6 begin by telling you how I usually operate as far as
7 a jury is concerned and then I'm going to tell you
8 how I expect the case to begin. I won't go through
9 all the different stages, but I'll go through how
10 we'll get started. And then I'm going to give you
11 some instructions you have to follow throughout the
12 trial.

13 Usually, I'll start with the jury at 10:00 A.M.
14 We usually break for lunch around one o'clock.
15 Normally, you're on your own for lunch. I typically
16 give the juries an hour to an hour and a half for
17 lunch and then we start back between 2:00 and 2:30.
18 And we usually break for the day between 5:00 and
19 5:30.

20 Now, sometimes we have to vary that schedule.
21 And once we give the case to you to decide, we
22 normally wait on you to decide it, but you know as
23 much as I know about how your day is likely to go.

24 Today we may have to stop a little bit earlier.
25 I volunteer to do a court at night two nights a week

1 and one's in Edgefield and one's in Lexington, and
2 the one tonight's in Edgefield. So it's an hour and
3 a half drive. I've got to get there by 6:00. So
4 that's all on me. It doesn't have anything to do
5 with these folks, that's just something I've been
6 volunteering to do for 20 years now. So -- and
7 tomorrow I know we have an issue with scheduling a
8 witness which may extend the break around lunch time
9 a little bit. We'll just have to see how it goes.

10 Okay. Now, the way the case is going to begin
11 is that you're going to first hear the opening
12 statements of the attorneys. In the opening
13 statements, the attorneys are not permitted to
14 engage in argument. An opening statement is an
15 introduction, an outline, an overview. It cannot
16 extend into what we refer to as argument.

17 Once the opening statements are finished, then
18 I'm going to call upon the State to present its
19 case. The State brought these two charges against
20 Mr. Gary and the State has the entire burden of
21 proof. The State has to prove every essential
22 element of each offense charged beyond a reasonable
23 doubt. So I'll recognize the State's attorney, we
24 call them Solicitors, in an effort to present
25 evidence in an attempt to meet that burden.

1 You have two separate and distinct charges
2 here. I'll instruct you on them at the end of the
3 trial, but each indictment is separate and distinct
4 and it's to be evaluated in that fashion.

5 When the State finishes presenting its case in
6 chief, the Solicitor will advise me that the State
7 rests. At that point, I have to send you out of the
8 courtroom and discuss legal issues with the
9 attorneys. When you come back in after that, I'll
10 tell you where we go from there, but that's how
11 we'll get started. Those are the landmarks you can
12 be looking for as we go along.

13 Now, it's really important that you understand
14 some things. First, that oath that you just took
15 was one in which you promised us that you're going
16 to decide the cases based on the evidence and the
17 law, so you need to know where those things come
18 from. The evidence comes from the sworn testimony
19 of witnesses. Evidence can also come in the form of
20 exhibits. An exhibit can be anything tangible
21 that's marked in the record like a photograph, a
22 map, a chart, a record, an audio, video, something
23 like that.

24 If something is an exhibit, you will have it
25 with you in the jury room when you decide the case.

1 Now, the reason I'm telling you that is because it's
2 not unusual for an attorney to have something like a
3 small photograph and show it to you from a distance
4 or hand it into the jury box and ask you to
5 circulate it around while you're trying to also pay
6 attention to what's going on on the witness stand.
7 So just realize that all of the exhibits go back
8 with you in the jury room when you decide the case.

9 What the lawyers say is not evidence. I want
10 you to pay attention to what they say, they
11 facilitate the introduction of the evidence, but
12 what comes out of the lawyers' mouths is not
13 evidence. The evidence comes from the witnesses and
14 the exhibits.

15 Now, there is one exception to that rule about
16 what the lawyers saying not being evidence and if it
17 happens in this case, I'll tell you about it,
18 otherwise I won't burden you with it.

19 So the evidence comes from the witnesses and
20 the exhibits. The law comes from me. It's my job
21 to decide what law applies to the case and tell it
22 to the jury at the end of the trial. It's also my
23 job to rule on what evidence is admissible, rule on
24 legal issues, things like that, and preside over the
25 trial.

1 There are two judges in this courtroom. I'm
2 the judge of the law. You're the other judge. And
3 you must understand that you are the only judge of
4 the facts. Only you are going to get to decide such
5 things as whether evidence is believable or not.
6 Only you get to decide what weight, if any, to put
7 on evidence. Those things are entirely your
8 prerogative and I'm not going to invade your
9 province.

10 Now, while you've promised us that you're going
11 to decide the case based on the evidence and the law
12 and you must do that, I'm not telling you to leave
13 your common sense at home. We want you to use your
14 common sense. We want you to use your sense of
15 logic and reason and your good judgment. It just
16 makes good common sense that you keep an open mind
17 about these cases and you don't make up your mind
18 until you've heard all of the evidence and you know
19 what law applies.

20 So there's a rule that I've already mentioned
21 to you that I have to repeat again, it's difficult
22 to follow, but you must follow it, and that rule is
23 you're not to discuss this case among yourselves
24 until I tell you to, wait till you've got all the
25 information before you start talking about the case

1 in any way. Don't talk about the people involved in
2 the case, what just happened in the courtroom, what
3 you just saw or heard, don't discuss anything about
4 the case in any way at all until I tell you to.
5 You'll have no doubt about when that is and then we
6 wait on you.

7 Now, don't discuss the case with anybody else,
8 family members, friends, anybody else until you've
9 been discharged from jury duty for the whole week.
10 If anybody attempts to contact you and discuss the
11 case with you, report that to me so I can deal with
12 it, give me the best description of who it was and
13 how it occurred.

14 Again, I don't know of any media coverage of
15 this trial, but if there should be any, get away
16 from it, don't let yourselves be exposed any further
17 and report to me what you may have seen, heard or
18 read through the media and do that at the first
19 opportunity that you have.

20 Now, I mentioned to you, ladies and gentlemen,
21 that you're not to do independent investigation and
22 I gave you some examples. In the old days, I used
23 to tell juries don't go over to the law school and
24 look up law. Well, nowadays you have computers and
25 you have Internet and you can go on and you can do

1 all these types of word searches and you can look up
2 law. Don't do that. It's dangerous if you do that.

3 You may find a perfectly valid principle of
4 law, but you don't understand the context of it.
5 That's why I'm here. I'm supposed to put all those
6 things into context and explain it to the jury at
7 the end of the trial. So do not do any independent
8 investigation in the way of looking up law.

9 Once you find out where this is alleged to have
10 occurred, don't go out there and look around. There
11 are procedures we have if a jury needs to go to the
12 scene and we can transport a jury to the scene if
13 that's necessary, but usually in most trials, it's
14 covered with photographs or descriptions or maps and
15 things. So don't go out there and look around. You
16 don't know if something's changed, you don't know
17 what the situation may be. We have protections
18 built into the system and if you do it on your own,
19 we won't know about it and you will have gone done
20 an end run around all of the protections. So don't
21 do independent investigations.

22 Don't do word searches or name searches to try
23 to find out about anything related to this case in
24 any way or anybody related to this case in any way.

25 Now, I'm going to read to you in a moment an

1 instruction. I don't know if they gave it to you
2 downstairs or not or wherever you got organized this
3 morning, it may have been next door. This is an
4 instruction that the Chief Justice, the former Chief
5 Justice, told all of us we have to read to every
6 jury in every case, civil or criminal.

7 And before I read it to you, it's kind of
8 written in some legalese, so I usually try to
9 explain it in more common language because that's
10 the way I like things explained to me. I've told
11 you most of what's in there. A lot of what I'm
12 going to read to you is redundant, it will be
13 repetitive of what you already know, but I want to
14 give you a little bit of context.

15 I mentioned the Internet and I mentioned
16 computers and cell phones. Folks, when I tell you
17 not to discuss a case with anybody, that means don't
18 go on the Internet and post on some social media
19 site something about your experience on the jury,
20 not until you're through with jury duty. I mean, to
21 tell you not to talk about a case and then let you
22 put something on Facebook or one of the other social
23 media sites is worse than going out in front of the
24 courthouse and screaming about the case. It goes
25 out and it completely violates the instruction I've

1 given you. So don't -- don't write about the trial
2 you're in, your experience on this in any way until
3 you're completely through with jury duty.

4 Now, when I say that you're going to notice --
5 it also mentions in here about court officials,
6 people like that. If you form some opinion about
7 the court officials, either me or somebody else, and
8 something's upset you, I certainly want to know
9 about that, but don't post it on social media,
10 again, until the trial is over.

11 Now, I'm going to read this to you: While
12 you're on the jury and until your jury service is
13 concluded, you're not to discuss the case with
14 others, including other jurors, except as authorized
15 by the Court.

16 You're not to read or listen to any news
17 reports about the case.

18 You're not to use a computer, a cell phone or
19 any other electronic device with communication
20 capabilities while attending the trial or during
21 deliberations. Those devices may be used during
22 lunch breaks or extended breaks, but only to obtain
23 allowable information and not to obtain or disclose
24 information that's prohibited.

25 You're not to use a cell phone, a computer, any

1 other electronic device with communication
2 capabilities, nor are you to use any other method to
3 obtain or disclose information about the case when
4 you're not in court. And information about the case
5 includes, but is not limited to, the following types
6 of things: Any information about a party, a
7 witness, an attorney or a court officer, any news
8 accounts of the case, any information collected
9 through juror research on any topics raised or
10 testimony offered by any witnesses, any information
11 collected through juror research on any other topic
12 that the juror might think would be helpful in
13 deciding the case.

14 Now, those last two bother me a little bit, the
15 way they're written, because I've told you don't do
16 juror research, so they're telling you not to share
17 it. Don't get confused. Don't do it in the first
18 place. Don't do juror research.

19 Okay. We're getting to the end of my comments.

20 I want to explain to you about taking notes.
21 If you wish to take notes, that's fine with me. The
22 judges who do not allow jurors to take notes usually
23 express the reason as they're concerned that when
24 one juror writes something down and another juror
25 just has a mental recollection, that the person who

1 wrote it down will have an undue amount of sway or
2 influence with the jury. I don't buy into that at
3 all. You know what you remember, you know what you
4 heard, you know what you saw and whether you wrote
5 it down or not, I rely on you to understand what the
6 situation is.

7 But if we do allow you to take notes, they
8 require us to have three rules. So here they are:
9 First, when you leave the courtroom, except when you
10 go back to your deliberations, you have to leave the
11 notes in the courtroom. So what you usually do is
12 we can give you a pad and pencil and you just write
13 your name on it. If you want to write it on
14 something you have, you need to make sure you write
15 it on something that we can throw away because --
16 I'm going to tell you that in a moment, but you have
17 to leave your notes in the courtroom. We take them
18 up when there's an extended break, but we don't read
19 anybody's notes. We never read their notes.

20 When the trial -- when you go back to the jury
21 room to deliberate, you may have the notes with you,
22 but you cannot physically show them to another
23 juror. Now, you may look at them and you may say
24 whatever you like, but you cannot say, here, see
25 right here, I wrote it down. You can't physically

1 show your notes to another juror.

2 And the third rule is that at the end of the
3 trial, whatever notes you've taken have to be
4 obliterated. We usually shred them. If they're on
5 something that can't be shredded, we just take a
6 black magic marker and mark through them.

7 So if you want to take notes, you tell the
8 bailiff, we'll get you a notepad. And if you want
9 to write them on something that you've got, that's
10 fine too, but we have to be able to destroy it at
11 the end of the trial.

12 The last thing, thank you. Folks, I'm not
13 going to sit up here and repeatedly thank you. I
14 know you've got other places to be. I know you've
15 got other things to do. I understand that.

16 I promise you that it's one of my pet peeves to
17 have a jury waiting on us. It drives me nuts.
18 There will be hurry up and wait in this trial if
19 it's like every other trial I've ever done, but
20 here's the only thing I can promise you and that is
21 that if you're waiting on us, we're working.
22 There's not going to be a situation where we're out
23 here goofing off and you're back there waiting on
24 us, that's not going to happen. If you're waiting,
25 we're working.

1 I thank you very much for your service. I
2 probably won't say it nearly enough, but I want you
3 to know that the reason I don't sit here and
4 repeatedly say it is because I think it cheapens it.
5 I appreciate your service.

6 Now, to honor my commitment to you, I'm going
7 to be quiet in a moment. Do any of y'all want to
8 have a notepad that don't have one?

9 (There was no response.)

10 **THE COURT:** Okay. If you change your mind
11 later, just let the bailiff know. I invite your
12 close attention.

13 Solicitor, you're recognized for your opening
14 statement.

15 **MR. SHELLENBERG:** Thank you, Your Honor. May
16 it please the Court.

17 **THE COURT:** Yes, sir.

18 OPENING STATEMENT

19 **MR. SHELLENBERG:** Kevin Gary nearly beat
20 Jaranamo Cone to death. Because he would not be
21 disrespected, he attacked Jaranamo Cone, punched him
22 in the face repeatedly. And when Jaranamo Cone fell
23 to the ground, he began bashing his head against the
24 cement. Mr. Cone suffered facial fractures, a
25 lacerated tongue, he nearly choked on his own blood,

1 bleeding on his brain, a ruptured left eye that he
2 ultimately had to get removed. That's why we're
3 here today.

4 Because of the defendant's actions, he's
5 charged with assault and battery of a high and
6 aggravated nature and mayhem. Now, in the State of
7 South Carolina, assault and battery of a high and
8 aggravated nature is defined as unlawfully injuring
9 another that causes either great bodily injury or
10 death. And mayhem is defined as purposely or
11 intentionally mutilating or maiming the victim or
12 another that renders or disables a part of their
13 body and makes them unable to fight back or defend
14 themselves. When Jaranamo Cone lost his left eye,
15 he was unable to do either one of those things.

16 See, Mr. Cone was a maintenance man. He was
17 called to the defendant's address to fix some broken
18 toilets. He pulled up. He parked out front. They
19 lived in an apartment. He parked out in front of
20 the apartment, went inside, and inside was the
21 defendant's girlfriend, Mary Hale, and roommate,
22 Antonio Adams, started working on the toilets.

23 And a short time later, the defendant came home
24 and, apparently, the defendant wanted to park in the
25 parking place that Mr. Cone was in. So he came

1 inside, went upstairs to confront him, tell him to
2 move his truck and they started arguing. Argument
3 went downstairs, they argued a little bit more. And
4 then finally decided the defendant's just going to
5 pay somebody to fix the toilet and Mr. Cone's going
6 to leave. So Mr. Cone goes to leave and slams the
7 door on his way out and, according to the defense,
8 brushes the diaper of the defendant's six-month-old
9 child.

10 Now, at this point, the argument's over, the
11 door's closed, the defendant's inside the house, the
12 defendant's girlfriend's inside the house, the
13 defendant's roommate is inside the house and
14 Jaranamo Cone is walking back to his truck. But the
15 defendant would not be disrespected, and he came
16 rushing out of the house and attacked Jaranamo Cone
17 and started hitting him repeatedly.

18 And Mr. Cone did not throw a punch, we know
19 because we have a witness, an independent witness,
20 who lived above the defendant, Vanetia Riley, who
21 heard the commotion downstairs and looked out her
22 window and she saw the defendant hitting Jaranamo
23 Cone again and again. And when he fell to the
24 ground, he started bashing his head against the
25 cement.

1 And when he was laying on the ground and he was
2 asking for help, the defendant didn't call 9-1-1,
3 the defendant's girlfriend didn't call 9-1-1, the
4 defendant's roommate didn't call 9-1-1. In fact,
5 the defendant, Ms. Riley saw, walked back into the
6 house and got a bag, carried it out, put it in his
7 car and then hit Mr. Cone a couple more times when
8 he came back.

9 Jaranamo Cone was taken to the emergency room
10 where he was treated by Dr. Mark Jones for the
11 injuries I told you about. He had bleeding on his
12 brain, he had facial fractures, his tongue was
13 lacerated where he was almost choking on his own
14 blood and his left eye was ruptured where it
15 ultimately had to be removed amongst other injuries.
16 And you'll get to see a few pictures of his
17 injuries. You'll get to see what Mr. Cone looked
18 like after the incident.

19 You'll also get to see the injuries to the
20 defendant. He's got a small cut on his knuckle and
21 you'll get to see a picture of that. And you'll get
22 to hear the phone call that the defendant made to
23 his girlfriend's dad where he said he had to do what
24 he had to do. And what he had to do was beat
25 Jaranamo Cone.

1 Ladies and gentlemen, at the end of this trial,
2 we'll come back before you and we're going to ask
3 that you hold the defendant responsible for his
4 actions that day and you find him guilty of assault
5 and battery of a high and aggravated nature and
6 mayhem. Thank you.

7 **THE COURT:** Thank you, Solicitor.

8 All right. Defense counsel is recognized for
9 opening statement.

10 **MS. BRIGHTHOP:** Thank you, Your Honor. May it
11 please the Court.

12 **THE COURT:** Yes, ma'am.

13 **MS. BRIGHTHOP:** What do you do when your back
14 is against the wall? Now, we have often been in
15 situations where our back has been against the wall.
16 But for those of you who may not be familiar with
17 that, let me explain to you how it feels.

18 When your back is against the wall, you feel
19 pressure. It's an overwhelming pressure. It's
20 pressure to make a decision quickly. It's pressure
21 to act immediately. And you have to make this
22 decision when you have very limited options. Often
23 times you only have one option. When your back is
24 against the wall, emotions are all over the place.
25 You're nervous, you're scared, you're intimidated,

1 you're helpless.

2 My client, Kevin Gary, was in a situation where
3 his back was literally against the wall. On March
4 25th, 2014, in the afternoon, Kevin was coming home
5 after running a couple of errands. When he was
6 about to park in his usual parking space, he noticed
7 that Mr. Cone, the maintenance worker for the
8 apartment complex, was double parked. So he was
9 taking up two parking spaces. Now, he was a little
10 annoyed by that, but it wasn't a big deal.

11 He walked into the house and he actually sees
12 Mr. Cone, that wasn't a surprise either. He had
13 been having some issues with his clogged toilets so
14 he had put in a work order for his toilets to be
15 fixed. When he saw Mr. Cone in the house, he just
16 said to him, Would it be problem if you move your
17 truck?

18 Now, Mr. Cone's response is what's very
19 surprising. His exact words were, I can't believe
20 you're telling me to move my truck when I'm in your
21 house cleaning your shit. Those were the words that
22 Mr. Cone said.

23 Now, Mr. Gary did not like that, as anyone
24 wouldn't like that. He had children in the house.
25 His children were there, and Mr. Adams, the roommate

1 of Kevin, his child was there. So he just calmly
2 told him, Keep the profanity down, stop talking so
3 loud.

4 Now, some words were exchanged and there was a
5 point where Mr. Cone actually shoulder bumped Kevin
6 Gary. At that point, Kevin told Mr. Cone, You need
7 to leave. You need to get out of my apartment and I
8 will get someone else to fix my toilet.

9 As Mr. Cone was leaving, he slammed the door
10 and it actually or almost hit, it grazed the diaper
11 of Kevin's seven-month-year-old son. Now,
12 fortunately, I know that y'all are wondering if
13 anything happened to the little boy, he was
14 unharmed, so that's a good thing. So Kevin was
15 walking out to the office, the front office, he knew
16 that he needed to report Mr. Cone. As Kevin is
17 walking out of the door, Mr. Cone reaches back at
18 Kevin as if he were about to choke him. So Kevin
19 defends himself, he throws a punch.

20 Now, I forgot to mention to you that Kevin, at
21 the time, was around 190 pounds. He was five
22 nine -- five seven actually. Now, Mr. Cone is a
23 little bit bigger than him. He's a little under six
24 feet. He's well over 200 pounds.

25 Kevin will be able to tell you exactly what

1 happened that day. He vividly remembers a big hand
2 coming towards him and, at that moment, he was
3 scared and he was intimidated, he was helpless. At
4 that moment, Kevin's intent was to defend not harm.

5 Now, unfortunately, the fight or the attack
6 didn't stop there. There was at one point where
7 Kevin actually punched Mr. Cone to get him off him
8 after he was about to choke him, Mr. Cone falls to
9 the ground, but immediately gets right back up. So
10 to ensure that he was not going to get attacked, he
11 punched him again. He was defending himself.

12 There is actually one point where Kevin yells,
13 Stay down, stay down. And yells for Mary Beth to go
14 to the front desk to get some help.

15 Now, the State will call a few witnesses to
16 prove their theory. They have the burden of proof
17 in this case. They have to prove every element of
18 the charges brought against my client, Kevin, and
19 they must prove that beyond a reasonable doubt.

20 Now, the State, Mr. Shellenberg, he did give
21 you the definitions of assault and battery of a high
22 and aggravated nature and mayhem, but he failed to
23 emphasize how important it is that they prove that
24 Kevin's actions were unlawful. What it basically
25 boils down to is they have to prove to you that

1 Kevin did not act in self-defense and they have to
2 prove that to you beyond a reasonable doubt.

3 Now, we've heard a little bit about the
4 neighbor, Ms. Riley. I know they're going to call
5 her today. She is considered an eyewitness in this
6 case.

7 Now, you're probably thinking, my job is easy;
8 we have someone that saw everything; she's going to
9 testify, tell me what happened; I know exactly what
10 happened now because Ms. Riley has told us. And
11 that's wrong. It's wrong because there is an issue
12 with Ms. Riley's testimony. She did not see it from
13 the very beginning. She was in her apartment. She
14 saw the middle of the fight, but did not see it from
15 the very beginning, so she did not see where
16 Mr. Cone tried to choke Kevin.

17 Now, we will agree, the State and the defense,
18 will agree that there was an injury, but we will not
19 agree that the injury was unlawful and that
20 Mr. Gary's actions were unlawful.

21 Vanetia Riley -- Vanetia Riley, that's her
22 name, she will testify. They will likely call
23 Mr. Cone to the stand, but Mr. Cone doesn't remember
24 anything. Kevin is the only person that can tell
25 you what happened from the very beginning to the

1 very end.

2 Now, your job as a juror is to listen to
3 everything that the State has to offer, everything
4 that the defense has to offer, that's your job, to
5 listen to all that evidence. And I want you to pay
6 close attention to what you hear, but I also want
7 you to pay close attention to what you don't hear.
8 If I were in your shoes, I would want to know that I
9 had every piece of information needed in order to
10 figure out what happened that day, but I'll tell you
11 now you will not because the State's witnesses,
12 either they don't remember or they didn't see it.

13 What do you do when your back is against the
14 wall? Kevin was literally in that situation. What
15 would you do? Thank you.

16 **THE COURT:** Thank you, Ms. Brightop.

17 Call your first witness, Solicitor.

18 **MS. WALKER:** Thank you, Your Honor. The State
19 calls Jaranamo Cone.

20 **THE COURT:** Would you come around, please?

21 JARANAMO CONE, JR.,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Please have a seat. State your
24 full name for the record.

25 **THE WITNESS:** Jaranamo Cone, Jr.

1 **MS. WALKER:** May it please the Court, Your
2 Honor.

3 **THE COURT:** Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. WALKER:

6 **Q** Mr. Cone, can you tell me where you currently
7 live? You don't have to give me an address, just
8 the city is fine.

9 **A** Actually, it's Augusta.

10 **Q** In Augusta?

11 **A** Yeah.

12 **Q** How long have you lived in Augusta?

13 **A** Since the incident. We had just bought the
14 house right before the attack.

15 **Q** I want to take your attention back to 2014 --
16 well, let me ask you this: Are you currently
17 employed?

18 **A** No.

19 **Q** Were you employed in 2014?

20 **A** Yes.

21 **Q** What was your job then?

22 **A** I was a maintenance technician.

23 **Q** And where were you a maintenance technician?

24 **A** St. Andrews Pointe.

25 **Q** Is that here in Columbia?

1 **A** It was in Columbia, yeah.

2 **Q** What is St. Andrews Pointe?

3 **A** It is a -- I think it's a 123-unit apartment
4 complex.

5 **Q** Okay. Speak up and speak clearly so that the
6 court reporter can hear you and the jurors can hear
7 everything you say.

8 **A** I believe it's a 123-unit apartment complex.

9 **Q** And as the maintenance -- technician you said?

10 **A** Yes.

11 **Q** As the maintenance technician at St. Andrews
12 Pointe, can you tell the jury about what your duties
13 were?

14 **A** Just about anything that needed repair. It was
15 my job to go out and do heating and air, plumbing,
16 air conditioning, electric, whatever.

17 **Q** And did you have the occasion to respond to the
18 apartment of Kevin Gary back in June of 2014 -- I'm
19 sorry -- back in March of 2014?

20 **A** Yes.

21 **Q** And do you recall that day clearly?

22 **A** Up until I got to my truck, yeah.

23 **Q** Okay. Tell me -- what time did you get to work
24 that day?

25 **A** I had a doctor's appointment that morning, so

1 I'm really not sure what time I got there. It was
2 probably -- I know it was after 12:00.

3 **Q** And, at some point, I guess you went to
4 Mr. Gary's apartment?

5 **A** Yeah. I went to the office first, checked in,
6 got the work order.

7 **Q** And tell us what happened once you got to
8 Mr. Gary's apartment.

9 **A** Well, I went in and did my initial check up,
10 went back to my truck, got the tools that I needed
11 to at least attempt to do what was necessary there.
12 I had been there before. I was out a week before
13 that sick and there was a lot of stuff going on in
14 his apartment, so it needed a lot of work. So I
15 went back to the truck, got my tools and went back
16 inside.

17 **Q** And, at some point, did Mr. -- I guess, did you
18 have any issues inside of the apartment before
19 Mr. Gary came home?

20 **A** No.

21 **Q** And, at some point, did Mr. Gary arrive at the
22 apartment?

23 **A** Yes.

24 **Q** Tell us what you remember about him arriving at
25 the apartment.

1 **A** I remember him coming in and asking me, you
2 know, to move my truck, which I thought was kind of
3 wild because there's spaces in front. Each
4 apartment has two spaces.

5 **Q** Do the apartments have assigned parking spaces?

6 **A** No.

7 **Q** I want to show you what's been marked as
8 State's Exhibit Number 38 right here. So you said
9 there were different spaces that anyone could park
10 at?

11 **A** Yeah. It basically was --

12 **Q** And do you recognize this?

13 **A** Yes.

14 **MS. WALKER:** Your Honor, at this point, the
15 State seeks to move Exhibit Number 38 into evidence.

16 **THE COURT:** Any objection?

17 **MS. EIGENBROT:** Without objection, Your Honor.

18 **THE COURT:** Mark it in evidence, please.

19 (State's Exhibit Number 38, map, admitted
20 into evidence.)

21 **MS. WALKER:** Thank you, Your Honor.

22 BY MS. WALKER:

23 **Q** At St. Andrews Pointe, you said you parked at
24 one of the spaces near his apartment?

25 **A** Yeah, closest to it because I needed to run

1 back and forth to get a bunch of tools and things.

2 **Q** Okay. And I'm sorry, I didn't mean to
3 interrupt you, continue. You said you thought it
4 was wild because...

5 **A** Because there were so many spaces out there. I
6 mean, just, you know, there's actually kind of like
7 two in front of each apartment. So I kind of
8 assumed that, you know, you can't park there, you
9 can park some place, you know, right next to me or
10 whatever. So I just really didn't put much --

11 **Q** Do you remember what, if anything, you said to
12 him about his request?

13 **A** He was continuously talking about it. And, at
14 first, I just kind of was, you know, blowing him off
15 because it just didn't make sense, you know,
16 considering what I was involved in at the time.

17 **Q** And what were you doing at the time of his
18 request?

19 **A** Snaking toilets and was taking -- actually, I
20 had to -- there were three toilets I was supposed to
21 fix and a marble sink top that I was supposed to
22 replace that was destroyed.

23 **Q** Now, I don't know what you mean when you say
24 snaking toilets. Can you explain that, please?

25 **A** The -- if a plunger doesn't work, you got to go

1 deep, and it's -- it's kind of like -- kind of like
2 a coiled item. You've got to go really deep and try
3 to clean them out.

4 **Q** I guess, unclog it?

5 **A** Yeah.

6 **Q** Okay. I understand now.

7 At some point, did y'all's conversation about
8 your moving your truck escalate?

9 **A** Yeah, it did actually. And, at that point, I
10 just grabbed my stuff, you know. And he did
11 mention, you know, let somebody else do it and I
12 kind of laughed because my supervisor, it had been a
13 week and he hadn't done it, so -- it's only him and
14 me. So, you know, I just grabbed my stuff and I
15 figured, you know, either I needed some help, I'd
16 get my supervisor to help me do it, you know. It
17 was a lot going on in that apartment. It was a lot,
18 so.

19 **Q** And, I guess, where in the apartment were you
20 initially when you first got there?

21 **A** You know, that's -- I remember trying to figure
22 out -- well, I wanted to at least do at least one of
23 the toilets, try to get at least one of them opened.
24 So I may have been all over the house at that point.
25 There's two bathrooms upstairs and one downstairs.

1 And I believe when I confronted -- when I dealt with
2 him, it was on the first floor.

3 Q Okay. And what, if anything, happened as you
4 were leaving the apartment?

5 A I just -- I had my -- the snake was rolled up
6 in one hand and my other tools were in my other
7 hand. And I made it to my truck and that's the last
8 thing I remember.

9 Q You have tools in your right hand?

10 A Right, and --

11 Q And your left hand?

12 A Yeah. I had channel locks, screwdrivers, all
13 sorts of stuff.

14 Q Now -- you said that's the last thing you
15 remember?

16 A That's the last thing I remember.

17 Q Kevin Gary, the man whose apartment you were
18 at?

19 A Uh-huh.

20 Q Do you see him in the courtroom?

21 A Yeah.

22 Q Can you point him out?

23 A He's right there {indicating}.

24 Q What's he wearing?

25 A Gray shirt.

1 Q With the tie?

2 A Yeah.

3 Q What's your next memory after that?

4 A Hospital. I think I was asking for water and
5 they told me they couldn't give me any.

6 Q Why were you in the hospital, Mr. Cone?

7 A For my injuries. They had a trach in my
8 throat. I had a stomach tube. The eye was
9 bandaged. I didn't know it was gone -- well, you
10 know, it wasn't anymore good.

11 Q Before this attack, could you see out of
12 your -- both of your eyes?

13 A Oh, yeah. Oh, yeah, definitely.

14 Q Can you see out of both of your eyes now?

15 A No.

16 Q Which eye can you not see out of?

17 A Left eye. It's a prosthetic.

18 Q I'm sorry. Go ahead with the injuries you
19 suffered.

20 A The two brain bleeds, the shoulder somehow --
21 my left shoulder somehow got shattered, something
22 went crazy in there, so I had a doctor work on that.
23 The tongue was lacerated. It was pretty much almost
24 off. I've got no taste in that part of my mouth
25 now. Geez, what else?

1 Q That's okay. We'll talk to the doctor about
2 that.

3 A Okay.

4 Q You said that you were a maintenance worker at
5 the time?

6 A Yeah.

7 Q Do you work now?

8 A No.

9 Q Why don't you work, Mr. Cone?

10 A Unsteady, going to PTSD counseling and
11 hospitals and --

12 MS. EIGENBROT: Objection, Your Honor;
13 relevance.

14 THE COURT: Hold on a second.

15 Do you want to be heard?

16 MS. WALKER: No, Your Honor. I can move on.

17 THE COURT: All right. Disregard the last
18 statement of the witness, ladies and gentlemen.

19 You may continue.

20 BY MS. WALKER:

21 Q Do your injuries -- are your injuries still
22 inhibiting your daily activities?

23 A Yes.

24 MS. WALKER: Beg the Court's indulgence, Your
25 Honor.

1 **THE COURT:** Yes, ma'am.

2 (Pause.)

3 **MS. WALKER:** Your Honor, I have no further
4 questions for the witness.

5 Thank you, sir.

6 **THE COURT:** Cross?

7 **MS. EIGENBROT:** Your Honor, I have no questions
8 for Mr. Cone.

9 **THE COURT:** Thank you, sir. You may step down.
10 Call your next witness.

11 **MR. SHELLENBERG:** State calls Trevor Holt.

12 TREVOR HOLT,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Please have a seat. State your
15 full name for the record.

16 **THE WITNESS:** Trevor Holt.

17 DIRECT EXAMINATION

18 BY MR. SHELLENBERG:

19 **Q** Good afternoon, Investigator Holt. Where are
20 you employed?

21 **A** Richland County Sheriff's Department.

22 **Q** And how long have you been with them?

23 **A** I've been assigned to the forensic science unit
24 since 2008. I've been with Richland County
25 Sheriff's Department since December of '95.

1 **Q** Can you give a little bit of your educational
2 background, please?

3 **A** Sure. In addition to in-house competency
4 testing and yearly proficiency testing, I also
5 attended and received the continuing education
6 workshops in-service formal training, ethics,
7 provided by the Richland County Sheriff's
8 Department; crime scene investigation, McClary
9 and Associates; blood pattern analysis with Findley
10 and Associates; DNA overview and forensic pathology,
11 Dr. Amick and Dr. Garvin; advanced crime scene
12 photography and techniques, McClary and Associates;
13 advanced blood pattern analysis with Findley and
14 Associates; crime scene processing, Institute of
15 Police Technology and Management; fingerprint
16 reconstruction and comparison, South Carolina
17 Criminal Justice Academy; forensic anthropology and
18 archeology with William Stephens; shooting incident
19 documentation and reconstruction, Carolina
20 Forensics; advanced blood pattern analysis, that's
21 with Bevel, Gardner and Associates; crime scene
22 reconstruction, Bevel, Gardner and Associates;
23 ethics in forensic science, West Virginia
24 University; scientific evidence and reconstruction,
25 Center for Forensic Research and Education; shooting

1 analysis reconstruction training through forensic
2 training sources.

3 I'm also a member of the International
4 Association of identification, South Carolina
5 Division of International Association. And I'm also
6 certified as a crime scene investigator with the
7 International Association of Identification.

8 **Q** Okay. All right. In layman's terms, what does
9 a crime scene investigator do?

10 **A** We respond to all types of crime scenes. We
11 identify, document, collect, process items related
12 to the crime, attend autopsies, process vehicles,
13 other related items of evidentiary value, and, of
14 course, testify in local, state and federal court.

15 **Q** And did you become involved in the case on
16 March 28th of 2014?

17 **A** I did.

18 **Q** And what kind of case were you responding to?

19 **A** Assault and battery high and aggravated.

20 **Q** And what did you do?

21 **A** At the request of Investigator Carwell, I
22 photographed a Kevin Gary. I observed an injury to
23 the right hand, which was photographed with and
24 without a scale.

25 **Q** I'm going to show you what has been marked as

1 State's 18, 20, 22, 25, 29, 31, 32 and 34.

2 (Pause.)

3 **Q** So you arrived at the hospital?

4 **A** Yes.

5 **Q** And I'm going to show you what has been marked
6 as State's 18, 20, 22, 25, 29, 31, 32, 34 and 28.

7 Do you recognize those?

8 **A** I do.

9 **Q** And what do you recognize those as?

10 **MS. WILLIAMS:** Your Honor, objection.

11 **THE COURT:** Yes, ma'am.

12 **MS. WILLIAMS:** Objection under our previous
13 motion in pretrial.

14 **THE COURT:** Let me see which ones you're
15 talking about.

16 And did y'all mean the 28th?

17 **MS. WALKER:** Yes, sir.

18 **THE COURT:** The indictment says 25th.

19 **MR. SHELLENBERG:** No. On the 28th is when he
20 went in the hospital, Your Honor.

21 **THE COURT:** Okay.

22 (Whereupon, a bench conference was held off
23 the record, in the presence of the jury, but out of
24 the hearing of the jury.)

25 **THE COURT:** The Rule 403 objection is sustained

1 as to 20, 25, 34. At this stage, it is granted --
2 sustained as to those photographs. As to Number 18,
3 22, 29, 31, 32 and 28, the objection's overruled.

4 **MS. EIGENBROT:** Thank you, Your Honor.

5 **THE COURT:** Not at this point. Now, there may
6 be a later witness, I don't know.

7 **MR. SHELLENBERG:** Yes, sir.

8 BY MR. SHELLENBERG:

9 **Q** Can you tell the court what these are pictures
10 of?

11 **A** I have these as photographs of a Mr. Cone.

12 **MR. SHELLENBERG:** Your Honor, at this time, I
13 move 18 and 22 into evidence.

14 **THE COURT:** Subject to previous objection?

15 **MS. WILLIAMS:** Yes, subject to previous
16 objection.

17 **THE COURT:** Mark those in evidence, please,
18 ma'am.

19 **MR. SHELLENBERG:** Thank you, Your Honor. May I
20 publish them to the jury?

21 **THE COURT:** You've got to let her mark them.

22 (State's Exhibit Numbers 18 and 22,
23 photographs, admitted into evidence.)

24 BY MR. SHELLENBERG:

25 **Q** I'm going to show you 29, 31, 32. What are

1 those?

2 **A** I have these as photographs of Mr. Cone, facial
3 and the right hand.

4 **Q** And what was the significance of taking the
5 picture of the right hand?

6 **A** Just to document that I did not observe any
7 type of injury to the hand.

8 **THE COURT:** Wait a second. Are you moving
9 those? You move those in?

10 **MR. SHELLENBERG:** I'm sorry, Your Honor. Can I
11 move 29, 31 and 32 into evidence?

12 **THE COURT:** Did you say 29 or 39?

13 **MR. SHELLENBERG:** 29, 31 and 32.

14 **THE COURT:** Subject to previous objection?

15 **MS. WILLIAMS:** Yes, Your Honor.

16 **THE COURT:** Mark them in evidence, please,
17 ma'am.

18 **MR. SHELLENBERG:** Thank you, Your Honor.

19 (State's Exhibit Numbers 29, 31 and 32,
20 photographs, admitted into evidence.)

21 BY MR. SHELLENBERG:

22 **Q** And, finally, will you look at State's 28?
23 What do you recognize that as?

24 **A** I have this as an injury to Mr. Gary's right
25 hand.

1 **Q** And did you observe any other injuries on
2 Mr. Gary?

3 **A** Just the right hand.

4 **MR. SHELLENBERG:** Your Honor, at this time, I
5 move State's 28 into evidence.

6 **MS. WILLIAMS:** No objection, Your Honor.

7 **THE COURT:** Without objection.

8 (State's Exhibit Number 28, photograph,
9 admitted into evidence.)

10 **MR. SHELLENBERG:** May we publish it for the
11 jury?

12 **THE COURT:** Yes, sir.

13 BY MR. SHELLENBERG:

14 **Q** Do you typically take pictures of all injuries
15 to both victim and defendant?

16 **A** Yes, we make every attempt.

17 **MR. SHELLENBERG:** Beg the Court's indulgence.

18 **THE COURT:** Yes, sir.

19 **MR. SHELLENBERG:** No further questions, Your
20 Honor.

21 **THE COURT:** Cross?

22 **MS. WILLIAMS:** Thank you, Your Honor. May it
23 please the Court?

24 **THE COURT:** Yes, ma'am.

25

1 CROSS-EXAMINATION

2 BY MS. WILLIAMS:

3 Q Good afternoon, Investigator Holt. You were
4 called on March 25th to an incident location, of
5 2014?

6 A Not the actual incident location. I was -- I
7 responded to Richland Memorial Hospital, which is
8 Palmetto Richland now. And the photographs of
9 Mr. Gary were taken at the Richland County Sheriff's
10 Department, 5623 Two Notch Road.

11 Q So you didn't actually go to the crime scene
12 itself?

13 A No, ma'am.

14 Q And you took the picture of Mr. Kevin Gary on
15 the 25th?

16 A Yes, ma'am.

17 Q And then you went to Richland Palmetto Hospital
18 and took pictures of Mr. Cone on the 28th?

19 A Mr. Cone -- yeah. Mr. Cone was also
20 photographed on the 25th.

21 Q Okay. I just wanted that clarified.

22 Now, these photos that you have taken, they
23 show injuries?

24 A Yes.

25 Q They show an injury to Mr. Gary's hand?

1 **A** Yes.

2 **Q** On that one, the injury is a small abrasion?

3 **A** I would agree with that.

4 **Q** So you agree State's Exhibit 28 shows a small
5 abrasion on the hand?

6 **A** Correct.

7 **Q** And you had stated that on Defense {sic}
8 Exhibit 31 and 32, you took those pictures to
9 indicate you did not see any?

10 **A** Correct.

11 **Q** And then the others are of Mr. Gary's face --
12 excuse me -- Mr. Cone's face?

13 **A** Yes, ma'am, taken at Richland, yes, ma'am.

14 **Q** You weren't there when these injuries happened?

15 **A** No, ma'am.

16 **Q** So you can't comment on how they happened?

17 **A** Correct.

18 **Q** And is it true that certain injuries may not
19 show up until later?

20 **A** Correct.

21 **Q** So something like bruising from perhaps being
22 choked, that wouldn't necessarily show up the day
23 of?

24 **A** Correct.

25 **MS. WILLIAMS:** Beg the Court's indulgence.

1 **THE COURT:** Yes, ma'am.

2 (Pause.)

3 **MS. WILLIAMS:** No further questions, Your
4 Honor. Thank you.

5 **THE COURT:** Redirect?

6 **MR. SHELLENBERG:** Nothing further, Your Honor.

7 **THE COURT:** Thank you, sir. You may step down.
8 Call your next witness.

9 **MS. WALKER:** Your Honor, the State calls Shawn
10 Gause.

11 SHAWN GAUSE,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please have a seat. State your
14 full name for the record.

15 **THE WITNESS:** Shawn Gause.

16 DIRECT EXAMINATION

17 BY MS. WALKER:

18 **Q** Good afternoon, sir.

19 **A** Good afternoon.

20 **MS. WALKER:** May it please the Court, Your
21 Honor?

22 **THE COURT:** Yes, ma'am.

23 BY MS. WALKER:

24 **Q** Sir, can you tell me where you're currently
25 employed?

1 **A** The U.S. Secret Service.

2 **Q** And what did you do -- I guess, how long have
3 you been with the Secret Service?

4 **A** A little over a year and a half now.

5 **Q** And where are you -- where is your office
6 located?

7 **A** In Brooklyn, New York.

8 **Q** Did you come down here for purposes of this
9 trial?

10 **A** I did.

11 **Q** Can you tell me where you were employed before
12 you went to go work in Brooklyn?

13 **A** The Richland County Sheriff's Department.

14 **Q** And what were your duties at the sheriff's
15 department?

16 **A** When I left, I was an investigator. Before
17 that, I worked as a deputy on the road.

18 **Q** I want to take your attention back to March of
19 2014. Did you respond to St. Andrews Pointe
20 Apartments?

21 **A** Yes, I did.

22 **Q** And is that located here in Richland County?

23 **A** Yes.

24 **Q** And what was the purpose of responding -- what
25 was your purpose of responding to St. Andrews

1 Pointe?

2 **A** We received a call for a fight in progress.

3 **Q** And, at that point, did you have any
4 information about what sort of altercation was
5 taking place?

6 **A** I don't recall there being much in the way of
7 details other than multiple units responding for
8 that.

9 **Q** Can you describe for the jury what you observed
10 once you got to St. Andrews Pointe?

11 **A** When I arrived, we already had several deputies
12 that got there before me, so they were already
13 handling the situation. And one of the parties
14 involved was already transported by EMS. There was
15 a lot of blood on the ground, on a vehicle, on a
16 door, and the deputies were speaking with one of the
17 residents at the apartment.

18 **Q** Let me show you what's been marked as State's
19 Exhibits Number 1 and 2 and ask you if you recognize
20 these?

21 **A** Yes, I do.

22 **Q** And how do you recognize those?

23 **A** It's the way that the apartments look in the
24 St. Andrews Commons and just familiar with the
25 complex from responding.

1 **Q** And do those fairly and accurately depict what
2 you observed on the day in which you responded to
3 that location for this case?

4 **A** Yes.

5 **MS. WALKER:** Your Honor, at this point, the
6 State seeks to move Exhibits Number 1 and 2 into
7 evidence.

8 **MS. EIGENBROT:** No objection, Your Honor.

9 **THE COURT:** Mark those in evidence, please.

10 (State's Exhibit Numbers 1 and 2,
11 photographs, admitted into evidence.)

12 BY MS. WALKER:

13 **Q** Number 1 is -- what apartment number is this?

14 **A** 805.

15 **Q** And was there something significant about
16 apartment number 805, the door?

17 **A** You can see the blood that's on the door from
18 the altercation.

19 **Q** You said there was blood in another area of
20 that apartment complex as well?

21 **A** Yes.

22 **Q** And what area was that?

23 **A** That was the -- on the asphalt in the parking
24 lot directly in front of the apartment, as well as a
25 car that was parked nearby.

1 **Q** And starting with the asphalt, I want to show
2 you State's Exhibits Number 3 through 7 and ask you
3 if you recognize these?

4 **A** Yes.

5 **Q** Do they fairly and accurately depict what you
6 saw on the scene that day?

7 **A** They do.

8 (Pause.)

9 **MS. WALKER:** Your Honor, at this point, the
10 State seeks to move Exhibits 3 through 7 into
11 evidence.

12 **MS. EIGENBROT:** No objection.

13 **THE COURT:** Mark those in evidence, please.

14 (State's Exhibit Numbers 3 through 7,
15 photographs, admitted into evidence.)

16 BY MS. WALKER:

17 **Q** Now, these, I guess, are the parking spaces at
18 St. Andrews Pointe?

19 **A** Yes, that's correct.

20 **Q** 5 and 6 as well?

21 **A** Yes.

22 **Q** And, lastly, Exhibit Number 7?

23 **A** That's correct.

24 **Q** You said there was blood on a car as well?

25 **A** Yes.

1 **Q** Show you State's Exhibits 8 through 15, see if
2 you recognize those.

3 **A** Yes.

4 **Q** And do those fairly and accurately depict what
5 you observed on the scene that day?

6 **A** Yes.

7 (Pause.)

8 **MS. WALKER:** Your Honor, at this point, the
9 State seeks to move Exhibits Number 8 through 15
10 into evidence.

11 **MS. EIGENBROT:** No objection.

12 **THE COURT:** Mark those in evidence, please.

13 (State's Exhibit Numbers 8 through 15,
14 photographs, admitted into evidence.)

15 BY MS. WALKER:

16 **Q** These are in the parking spaces?

17 **A** Yes.

18 **Q** While you were on scene, did you speak to Kevin
19 Gary?

20 **A** I did.

21 **Q** And what was the purpose of speaking to
22 Mr. Gary?

23 **A** Just to find out what happened with the fight
24 that occurred and why we were called there.

25 **Q** And did he speak with you?

1 **A** He did.

2 **THE COURT:** There's no Denno hearing needed?

3 **MS. EIGENBROT:** No, Your Honor.

4 **THE COURT:** Go ahead.

5 BY MS. WALKER:

6 **Q** And what, if anything, did he say to you?

7 **A** He explained that the maintenance worker was
8 called to repair a clogged toilet and there was an
9 argument inside the apartment over feces that were
10 still on the toilet. It escalated. So he demanded
11 that the maintenance worker leave the apartment.

12 On the way out of the apartment, he stated that
13 the maintenance worker brushed against him. And
14 when he went to leave the door, there was a small
15 child in a diaper, and when he -- he said he slammed
16 the door and when the door slammed, it brushed the
17 diaper of the child. I also asked, you know, if it
18 injured the child in any way and he advised me that
19 there was no injuries, that it didn't phase the
20 child. It was just brushed the diaper.

21 He told me that he wasn't going to have someone
22 disrespect him in that way and he went after him to
23 go outside. And when he was outside leading to the
24 parking lot, he told me that the maintenance worker
25 turned around and started choking him, so he hit

1 him, they hit each other. And when the maintenance
2 worker stopped hitting him, that he stopped hitting
3 back.

4 **Q** And I want to show you State's Exhibit Number
5 17. Is this the man you spoke with that day?

6 **A** Yes, that is.

7 **Q** And does this fairly and accurately represent
8 the way he looked after being choked and beaten?

9 **A** Correct.

10 **MS. WALKER:** Your Honor, at this point, the
11 State seeks to move Exhibit Number 17 in evidence.

12 **MS. EIGENBROT:** Without objection.

13 **THE COURT:** Mark that in evidence, please.

14 (State's Exhibit Number 17, photograph,
15 admitted into evidence.)

16 BY MS. WALKER:

17 **Q** Did you notice any injuries to the face or neck
18 of Kevin Gary?

19 **A** No, I did not.

20 **Q** Did he point out any injuries to his face or
21 neck?

22 **A** He did not.

23 **Q** Did you notice a laceration to his hand?

24 **A** Yes.

25 **Q** I want to show you State's Exhibit Number 16

1 and ask you if you recognize that?

2 **A** Yes, I do.

3 **Q** And does this fairly and accurately depict the
4 injury to the defendant's hand?

5 **A** Yes. Yes, it does.

6 **MS. WALKER:** Your Honor, at this point, the
7 State seeks to move Exhibit Number 16 into evidence.

8 **MS. EIGENBROT:** No objection.

9 **THE COURT:** Mark it in evidence, please.

10 (State's Exhibit Number 16, photograph,
11 admitted into evidence.)

12 BY MS. WALKER:

13 **Q** After responding to the scene and speaking to
14 the defendant -- I want to ask you this: Was the
15 victim present on the scene when you got there?

16 **A** He was not.

17 **Q** Do you know where he was?

18 **A** At Richland Memorial Emergency Room.

19 **Q** After responding, I guess, to the scene and
20 speaking to the defendant in this case, did you have
21 any further involvement with this investigation?

22 **A** I wrote the incident report. The initial
23 incident report I should say.

24 **MS. WALKER:** I beg the Court's indulgence, Your
25 Honor.

1 **THE COURT:** Yes, ma'am.

2 (Pause.)

3 **MS. WALKER:** Your Honor, I don't have any
4 further questions for this witness.

5 **THE COURT:** Thank you.

6 Cross?

7 **MS. EIGENBROT:** Thank you, Your Honor. May it
8 please the Court?

9 **THE COURT:** Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. EIGENBROT:

12 **Q** Good afternoon, Deputy Gause.

13 **A** Good afternoon.

14 **Q** I guess not deputy anymore; right? You're
15 Secret Service.

16 **A** Correct.

17 **Q** So all the way from Brooklyn, huh?

18 **A** Uh-huh.

19 **Q** So you were subpoenaed by the State to be here
20 today?

21 **A** Yes.

22 **Q** And, Mr. Gause, you were dispatched at 6:11
23 P.M.; correct?

24 **A** Around that time. I don't recall the exact
25 time.

- 1 Q Would a copy of your incident report help
2 refresh your recollection?
- 3 A Yes.
- 4 Q (Ms. Eigenbrot hands document to witness.)
- 5 A That's correct, 6:11 P.M.
- 6 Q And you arrived at 6:19 P.M.; correct?
- 7 A That's correct.
- 8 Q And you testified that when you arrived,
9 several other deputies were already on the scene?
- 10 A Correct.
- 11 Q Along with the fire department?
- 12 A I don't recall.
- 13 Q But EMS had already arrived as well?
- 14 A Yes.
- 15 Q So there were several other people on scene?
- 16 A Correct.
- 17 Q There were also several residents from St.
18 Andrews Pointe out and about; correct?
- 19 A I don't recall specifically.
- 20 Q But Mr. Cone had already been transported to
21 the hospital?
- 22 A The maintenance worker? I don't recall his
23 name, but, yes.
- 24 Q And my client, Mr. Kevin Gary, was still on
25 scene; correct?

1 **A** Yes.

2 **Q** He stayed on scene as was his girlfriend Mary
3 Beth?

4 **A** Yes.

5 **Q** You spoke to Kevin?

6 **A** Yes.

7 **Q** And he kind of gave you a rendition of what
8 happened; is that correct?

9 **A** Correct.

10 **Q** Specifically, he told you why Mr. Cone was at
11 the residence?

12 **A** Yes.

13 **Q** He indicated that Mr. Cone and him had a verbal
14 disagreement in the residence?

15 **A** That's correct.

16 **Q** On Mr. Cone's way out, he physically brushed
17 him with his shoulder; is that right?

18 **A** Correct.

19 **Q** And then slammed the door hitting Kevin's
20 child; correct?

21 **A** That's not exactly how I described it.

22 **Q** In your incident report, you described it as
23 brushing the child?

24 **A** Correct.

25 **Q** But they did -- Kevin told you the child fell

- 1 down?
- 2 **A** No.
- 3 **Q** No?
- 4 **A** No. He actually told me that it didn't phase
5 the child, that it just brushed the diaper of the
6 child. It didn't actually hit the child itself.
- 7 **Q** But he did indicate to you that he then went
8 outside?
- 9 **A** Yes.
- 10 **Q** And Mr. Cone choked him?
- 11 **A** That's correct.
- 12 **Q** He has maintained from the beginning he was
13 choked?
- 14 **A** That's what he stated to me.
- 15 **Q** And this, again, is -- you arrived maybe,
16 approximately, 15 to 20 minutes after this
17 incident's been reported; correct?
- 18 **A** Eight minutes after we received the call.
- 19 **Q** And it was -- believe the noted time was 6:00
20 P.M.?
- 21 **A** That was an approximate time.
- 22 **Q** Yes, sir.
- 23 **A** That's correct.
- 24 **Q** But when you spoke to Kevin, he was
25 cooperative?

1 **A** Yes.

2 **Q** He very readily told deputies what was going
3 on; is that correct?

4 **A** That's correct.

5 **Q** He actually is the one that approached the
6 deputies?

7 **A** I was not there when the first deputies
8 arrived.

9 **Q** But, to your knowledge, he was completely
10 cooperative?

11 **A** He was cooperative with the questions that I
12 asked him.

13 **Q** At the time when you were on scene, the area
14 was not canvassed for further witnesses at the time;
15 correct?

16 **A** I don't recall what deputies attempted to
17 contact other residents there; I did not.

18 **Q** But you did not speak with anybody else. And
19 then Mr. Gary was transported?

20 **A** That's correct.

21 **Q** To headquarters?

22 **A** Yes.

23 **Q** And I think we've gone over some of these
24 pictures. I'm going to show you what we've marked
25 as State's Exhibit Number 2. And this is the

1 picture, you said, of Mr. Gary's front door?

2 **A** That's correct.

3 **Q** And there was some blood splatter on the front
4 door; correct?

5 **A** Correct.

6 **Q** And that would indicate a closer proximity to
7 the front door at some point?

8 **A** Yes.

9 **Q** Correct. And then there's also several
10 photographs of some -- what appeared to be blood in
11 the parking lot; correct?

12 **A** Yes.

13 **Q** Do you recall how far the front door is from
14 the parking lot?

15 **A** Not in feet, but it's over a car length away.

16 **Q** Would you agree if I said maybe 15 to 20 feet?

17 **A** That's about right.

18 **Q** Okay. And with your experience with Richland
19 County, are you familiar with any type of crime
20 scene like blood splatter evidence?

21 **A** To an extent.

22 **Q** And most of this blood found in the parking lot
23 is what they call dropping blood. Would that be
24 correct?

25 **A** I'm not familiar with the exact terminology.

1 **Q** And there's also something called transfer
2 blood. Are you familiar with any of those terms?

3 **A** Not enough to testify on on the exact terms.

4 **Q** And I want to also note those were all of the
5 pictures taken at the crime scene; correct?

6 **A** Yes.

7 **Q** Or to your knowledge?

8 **A** To my knowledge, yes.

9 **Q** There weren't any pictures of tools located on
10 the ground?

11 **A** Not that I recall.

12 **MS. EIGENBROT:** Thank you.

13 Beg the Court's indulgence.

14 **THE COURT:** Yes, ma'am.

15 (Pause.)

16 **MS. EIGENBROT:** No further questions. Thank
17 you.

18 **THE COURT:** Redirect?

19 **MS. WALKER:** Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. WALKER:

22 **Q** Did Mr. Gary describe his emotion when he
23 walked out of his apartment to go after Mr. Cone to
24 you?

25 **A** Yes.

1 Q And how did he describe his emotion to be?

2 A I don't remember the exact words, but --

3 Q Would having your incident report help you?

4 A I have it here.

5 Q Okay.

6 A With the way that he explained it to me, he
7 sounded angry because he felt that he was
8 disrespected and -- just one moment, I'm sorry.

9 Q Yes, sir.

10 A He felt disrespected as if he was challenged in
11 his apartment, so that's why he went after the
12 maintenance worker outside.

13 MS. WALKER: Thank you, sir. I don't have any
14 further questions.

15 MS. EIGENBROT: Just briefly, Your Honor.

16 RE-CROSS-EXAMINATION

17 BY MS. EIGENBROT:

18 Q Mr. Gause, this statement that Mr. Gary gave
19 you on scene was not recorded in any way; correct?

20 A Correct.

21 Q You didn't have a recording device on your
22 person?

23 A I did not.

24 Q And so when you were speaking to him, this is
25 more of a summary of what he's told you; right?

1 **A** That's correct.

2 **Q** This is not a verbatim testimony from him;
3 correct?

4 **A** That's correct.

5 **MS. EIGENBROT:** Thank you. No further
6 questions.

7 **THE COURT:** Anything else of this witness?

8 **MS. WALKER:** Nothing from the State, Your
9 Honor.

10 **THE COURT:** Thank you, sir. You may step down.

11 **MS. WALKER:** Your Honor, may he be released
12 from his subpoena so he can go back to New York?

13 **MS. EIGENBROT:** No objection.

14 **THE COURT:** You're free to go. Thank you, sir.

15 **THE WITNESS:** Thank you, Your Honor.

16 **THE COURT:** All right. Are we going to recess
17 now?

18 **MS. WALKER:** Yes, Your Honor.

19 **MS. BRIGHTHOP:** Yes, Your Honor.

20 **THE COURT:** All right. Ladies and gentlemen, I
21 need you back in the jury room in the morning at
22 10:00 A.M. Please remember all of those admonitions
23 and please remember that if something has happened,
24 if you've gotten sick or there's some problem that
25 prevents you from being here that it's a true

1 **MS. EIGENBROT:** No, Your Honor.

2 **THE COURT:** All right. Tell Ms. Campbell,
3 Mallory Campbell, Juror Number 33, that she's one of
4 the 12 jurors and bring them in, please.

5 (The jury enters the courtroom at 10:07
6 A.M.)

7 **THE COURT:** All right. Juror Number 33,
8 Ms. Campbell, is substituted for Ms. Hinks, Juror
9 Number 127. Where is Ms. Campbell? You're going to
10 be one of the 12 jurors.

11 All right. We're going to continue with the
12 State's case, ladies and gentlemen.

13 Call your next witness.

14 **MS. WALKER:** Thank you, Your Honor. The State
15 calls Vanetia Riley.

16 VANETIA RILEY,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Please have a seat. State your
19 full name for the record.

20 DIRECT EXAMINATION

21 BY MS. WALKER:

22 **Q** State your full name.

23 **A** Vanetia Riley.

24 **Q** Will you spell your last name?

25 **A** R-i-l-e-y.

1 **MS. WALKER:** And do you need her first name
2 spelled as well?

3 **COURT REPORTER:** Yes, please.

4 **THE WITNESS:** V-a-n-e-t-i-a.

5 BY MS. WALKER:

6 **Q** Ms. Riley, can you tell me what city you
7 currently live in?

8 **A** Columbia.

9 **Q** And how long have you lived here in Columbia?

10 **A** About ten years.

11 **Q** At some point, did you live at St. Andrews
12 Pointe Apartment Complex?

13 **A** Yes.

14 **Q** And when was that?

15 **A** Now.

16 **Q** You still live there?

17 **A** Uh-huh.

18 **Q** And how long have you lived there?

19 **A** About eight years.

20 **Q** I want to take your attention back to March of
21 2014. At that point in time, did you know Jaranamo
22 Cone?

23 **A** Yes.

24 **Q** And how did you know him?

25 **A** The maintenance man.

- 1 Q And what about Kevin Gary? Did you know him?
- 2 A Yes.
- 3 Q And how did you know him?
- 4 A My neighbor.
- 5 Q When you say your neighbor, can you describe
6 how close y'all's apartments were to one another?
- 7 A Right next door.
- 8 Q And were y'all facing the parking lot or were
9 y'all facing a different area?
- 10 A The parking lot.
- 11 Q Facing the parking lot.
- 12 I want to take your attention back to March
13 24th of 2014. There became a time in which you were
14 aware of a disturbance at St. Andrews Pointe?
- 15 A Yes.
- 16 Q Can you tell the jury how you first became
17 aware that there was something going on?
- 18 A There was a loud bang, sounded like a door.
19 And my mirror seemed like it was going to fall off
20 the wall because it was so hard.
- 21 Q Your apartment shook?
- 22 A Yes.
- 23 Q Once your apartment shook, what did you do?
- 24 A Ran to the window.
- 25 Q What, Ms. Riley, if anything, did you see once

1 you ran to the window?

2 **A** When I ran to the window, I could just hear --
3 like, I seen Jaranamo walking towards the parking
4 lot.

5 **Q** And then what did you see?

6 **A** Then I heard, like, foot, like, just, like,
7 coming after and then --

8 **Q** Go ahead.

9 **A** It was coming, like, fast, like, really fast
10 and then he was just attacked.

11 **Q** Who was attacked?

12 **A** Jaranamo.

13 **Q** When you say he was attacked, can you describe
14 in what way he was attacked? Was he facing the
15 person who attacked him?

16 **A** No. He was facing the parking lot.

17 **Q** He was attacked from behind?

18 **A** Yes.

19 **Q** And when you say attacked, can you kind of
20 describe those physical actions for me?

21 **A** He just started beating him. And then he,
22 like, he just beat him, beat him, beat him. And
23 then he got -- he was trying to get up a little bit.
24 And he hit him up against my truck that was right in
25 the park and he fell down and he started hitting his

1 head into the concrete.

2 Q Okay. Let me slow you down. When you say he
3 started beating him, who started beating who?

4 A Kevin started beating Jaranamo.

5 Q When you say Kevin, you're referring to the
6 defendant?

7 A Yes.

8 Q When you said he fell down, who fell down?

9 A Jaranamo.

10 Q And once Jaranamo fell down what, if anything,
11 happened next?

12 A He started --

13 Q And when you say he, use their names so that
14 way we can keep it straight, okay?

15 A Okay. Kevin started beating Jaranamo's head
16 into the concrete that's below the sidewalk right by
17 my truck.

18 Q What kind of truck did you have at that point?

19 A Kia, a black Kia.

20 Q Let me show you State's Number 17. Is that
21 your Kia {indicating}?

22 A Yes.

23 Q And I guess -- are either of these your
24 apartment?

25 A Yes.

1 Q Which one's your apartment?

2 A I can't tell because I'm normally not parked in
3 this park: I'm normally parked in the park over.

4 Q Okay. But, I guess -- does this show the
5 proximity of the apartments to what you were
6 actually seeing?

7 A Yes.

8 Q And where -- and, I guess, you said this is
9 your car {indicating}?

10 A Yes.

11 Q And what are you doing as -- what are you doing
12 as this -- as this beating is going on?

13 A Screaming and trying to get the phone. I
14 started dialing 9-1-1 on my cell phone. I hung it
15 up and called it on my house phone.

16 Q And I want to go back to you describing this
17 beating. Did you ever see Mr. Cone throw any
18 punches?

19 A He wasn't able to.

20 Q Why wasn't he able to?

21 A He was constantly being beat.

22 Q At some point in time, did the beating stop?

23 A Yes.

24 Q Describe that for me.

25 A He stopped beating him and then some -- a guy

1 pulled him off of him and --

2 Q Did you recognize the guy?

3 A I seen him over there before.

4 Q Okay. Go ahead.

5 A He pulled him off of him and told him to come
6 on. And then -- Jaranamo was on the ground and
7 Kevin was pulled off of him by the guy and then he
8 ran in the house.

9 Q Who ran in the house?

10 A Kevin. And then he ran back out with the guy
11 and then they just threw something in the car. And
12 as he ran over there, he stepped on him.

13 Q Who stepped on who?

14 A Kevin stepped on Jaranamo.

15 Q While Jaranamo was already on the ground?

16 A Yes.

17 Q What happened next?

18 A And the guy left and then Kevin came back and
19 started beating him again.

20 Q Kevin beat who again?

21 A Jaranamo.

22 Q At this point in time is Jaranamo fighting back
23 in any way?

24 A He can't.

25 Q What happened next?

1 **A** Someone ran across the street and got the lady
2 from the office. And Jaranamo kind of, like, turned
3 like he was going to try and get up, but I guess he
4 didn't have enough strength and he just hollered,
5 like, hurt and help, and fell back.

6 **Q** And fell back down?

7 **A** Well, just a little bit to the point where he
8 raised up to say something and then he went back
9 down.

10 **Q** Did the defendant say anything that you could
11 hear at that point? At any -- at any point in this
12 beating?

13 **A** Yeah. He was -- he was angry, I guess. And he
14 was, like, going back and forth and saying, You came
15 at me about a little bit of weed.

16 **THE COURT:** Say that again. I didn't
17 understand you.

18 BY MS. WALKER:

19 **Q** Speak up a little bit.

20 **A** He was, like, going back and forth angry and
21 saying that Jaranamo came at him about a little bit
22 of weed.

23 **Q** He came at me about a little bit of weed?

24 **A** Yeah.

25 **Q** The man that you saw deliver the beating on

1 that day, do you see him here in the courtroom?

2 **A** Yes.

3 **Q** Can you point him out for me?

4 **A** (Witness complies.)

5 **Q** What's he wearing?

6 **A** A blue shirt.

7 **MS. WALKER:** Beg the Court's indulgence, Your
8 Honor.

9 **THE COURT:** Yes, ma'am.

10 (Pause.)

11 BY MS. WALKER:

12 **Q** Y'all's front doors at St. Andrews Pointe, how
13 close are they to the -- to the sidewalk and parking
14 lot area?

15 **A** It's about a little sidewalk difference in
16 them.

17 **Q** Is it closer than this or am I too close to
18 you?

19 **A** A little bit too close.

20 **Q** {Indicating}?

21 **A** About there.

22 **Q** About here is from this distance from the front
23 door to the sidewalk?

24 **A** Yeah.

25 **MS. WALKER:** Thank you, Ms. Riley. I don't

1 have any other questions.

2 **THE COURT:** Cross?

3 **MS. EIGENBROT:** Thank you, Your Honor. May it
4 please the Court.

5 **THE COURT:** Yes.

6 CROSS-EXAMINATION

7 BY MS. EIGENBROT:

8 **Q** Good morning, Ms. Riley.

9 **A** Good morning.

10 **Q** How are you today?

11 **A** Good.

12 **Q** You were Mr. Kevin Gary's neighbor; correct?

13 **A** Yes.

14 **Q** On March 25th, 2014?

15 **A** Yes.

16 **Q** You lived right next door to him?

17 **A** Yes.

18 **Q** How long had you been neighbors at that point
19 in time?

20 **A** Not long.

21 **Q** Would you say six months?

22 **A** It was just months. I'm not sure exactly how
23 long.

24 **Q** That's fine. But you'd seen him before?

25 **A** Yes.

- 1 **Q** You'd spoken to him before?
- 2 **A** Yes.
- 3 **Q** But you wouldn't call each other friends?
- 4 **A** No.
- 5 **Q** You're not the neighbors that talk on a regular
6 basis; right?
- 7 **A** I don't talk to my neighbors.
- 8 **Q** And you did have one occasion to speak with
9 him; correct?
- 10 **A** Yes.
- 11 **Q** And that's because you were smelling marijuana?
- 12 **A** Yes.
- 13 **Q** And you believed it was Kevin and his roommate;
14 correct?
- 15 **A** Yes.
- 16 **Q** So you confronted him about that?
- 17 **A** Yes.
- 18 **Q** You went to the front office at some point as
19 well; right?
- 20 **A** Yes.
- 21 **Q** And the front office asked you -- basically
22 told you to handle it yourself?
- 23 **A** They just told me to be a friendly neighbor and
24 try and ask about it.
- 25 **Q** That's what you did?

1 **A** Yes.

2 **Q** And, Ms. Riley, you stated that you called
3 9-1-1; correct?

4 **A** Yes.

5 **Q** You told the operator that you saw Mr. Cone on
6 the ground?

7 **A** I'm not sure what I told her. I was --

8 **Q** But you said someone -- you told her that --
9 you did report that someone had followed him;
10 correct?

11 **A** Uh-huh.

12 **Q** She asked you if you saw who followed him?

13 **A** I'm not sure.

14 **Q** You're not sure. Would it reflect -- or
15 refresh your recollection if I could play the 9-1-1
16 call for you?

17 **A** Yes.

18 (Whereupon, recording of 9-1-1 call was
19 played.)

20 **Q** Ms. Riley, do you remember that phone call now?

21 **A** Yes.

22 **Q** And in that phone call, you told the
23 operator -- the operator asked you what happened?

24 **A** Yes.

25 **Q** And she asked if you had seen what happened?

- 1 **A** Yes.
- 2 **Q** Your answer was no at the time?
- 3 **A** Yes.
- 4 **Q** She asked if you saw who was fighting the
5 maintenance man; correct?
- 6 **A** Yes.
- 7 **Q** And you said no at that time; correct?
- 8 **A** Yes.
- 9 **Q** But you knew Mr. Gary?
- 10 **A** Yes.
- 11 **Q** And you told them you didn't see anything;
12 right?
- 13 **A** Yes.
- 14 **Q** You just saw Mr. Cone on the ground?
- 15 **A** Yes.
- 16 **Q** Police arrive shortly afterwards?
- 17 **A** Yes.
- 18 **Q** After you called 9-1-1. So did EMS?
- 19 **A** Uh-huh.
- 20 **Q** You have to say yes or no.
- 21 **A** Yes. I'm sorry.
- 22 **Q** Thank you.
- 23 Did you ever go outside?
- 24 **A** No.
- 25 **Q** You stayed inside?

- 1 **A** Yes.
- 2 **Q** So you didn't go tell the police what you saw?
- 3 **A** No.
- 4 **Q** And you didn't tell EMS what you saw?
- 5 **A** No.
- 6 **Q** You don't speak to the police until March 27th
- 7 of 2014; correct?
- 8 **A** Yes.
- 9 **Q** And that's after they contacted you?
- 10 **A** No, they didn't contact me.
- 11 **Q** Okay. Now, Ms. Riley, you testified that you
- 12 were screaming at some point?
- 13 **A** Uh-huh. Yes.
- 14 **Q** So you were upset and worked up; right?
- 15 **A** Yes.
- 16 **Q** But you heard the 9-1-1 call?
- 17 **A** Yes.
- 18 **Q** Now, you were in your upstairs bedroom window?
- 19 **A** Yes.
- 20 **Q** That's correct; right? You said you heard a
- 21 slam?
- 22 **A** Yes.
- 23 **Q** And you go straight to your window?
- 24 **A** Yes.
- 25 **Q** Can you describe to the jury what the front

1 part of your apartment complex looks like?

2 **A** Like the siding and everything?

3 **Q** Uh-huh.

4 **A** Just siding, just regular vinyl siding, I
5 guess.

6 **Q** I'm going to show you what was marked as
7 State's Exhibit 1. What is that?

8 **A** That's my neighbor's apartment.

9 **Q** Okay. And what is this right here
10 {indicating}? This part of the -- the front part of
11 the apartment complex?

12 **A** That's the top of the window; right?

13 **Q** Right. So this is, like, a little bit of an
14 overhang for the upstairs levels; correct?

15 **A** Yes.

16 **Q** So there's a little bit of space from your
17 front door to where the -- your top bedroom window
18 would have been; correct?

19 **A** Yes.

20 **Q** So when you look down from your bedroom window,
21 you cannot see Mr. Gary's front door; correct?

22 **A** No.

23 **Q** And you testified today that when you went to
24 the window, you see Mr. Cone walking; is that
25 correct?

1 **A** Yes.

2 **Q** And, Ms. Riley, you did give a statement to the
3 police at some point; right?

4 **A** Yes.

5 **Q** And when you gave that statement, you wanted to
6 tell the police everything you remember?

7 **A** Yes.

8 **Q** You wanted to tell them the truth?

9 **A** Yes.

10 **Q** And you wanted to make sure they had a good
11 understanding of what happened; right?

12 **A** Yes.

13 **Q** Ms. Riley, is this a copy of your statement?

14 **A** Yes.

15 **Q** Is that your signature down there at the
16 bottom?

17 **A** Yes.

18 **Q** Would you please look at page two for me?

19 **A** (Witness complies.)

20 **Q** And about halfway down, the investigator asked
21 you, When you looked out the window after hearing
22 the bang, what was the first thing you saw? Can you
23 tell me what your response was at that time? Do you
24 see where I'm looking?

25 **A** Yes. I looked out and saw Jaranamo on the

1 ground.

2 Q So when you first looked out the window, you
3 actually saw him on the ground?

4 A I didn't.

5 Q He was not walking?

6 A He was actually walking.

7 Q So you, at that time, on March 26th, I believe
8 it was, you told the police -- you told the police
9 on March 26th, you saw him on the ground originally;
10 is that correct?

11 A Yes.

12 Q Now, you also mentioned the other guy?

13 A Yes.

14 Q Do you remember his name?

15 A Well, I didn't know any of their names at the
16 time.

17 Q But he -- you recognized him?

18 A Yes.

19 Q He was somebody that lived with Kevin or was
20 there?

21 A Well, I seen him over there.

22 Q You seen him over there. And you testified
23 that he was the one that went to the car; correct?

24 A They both went to the car.

25 Q But he was the one that --

1 **A** He left in the car.

2 **Q** He did leave in the car?

3 **A** Yes.

4 **Q** Now, let's go back to your statement. You said
5 Jaranamo -- well, you testified today that Jaranamo
6 was on the ground and couldn't get off the ground;
7 correct?

8 **A** Yes.

9 **Q** And that was right by your truck?

10 **A** Yes.

11 **Q** Which was backed into the spot; correct?

12 **A** Yes.

13 **Q** And Mr. Cone's truck was also there; isn't that
14 right?

15 **A** I think so.

16 **Q** Do you remember how it was parked?

17 **A** It wasn't parked right.

18 **Q** Wasn't parked right?

19 **A** No.

20 **Q** But he was parked there?

21 **A** Yes.

22 **Q** Would you recognize maybe the back of his truck
23 if I showed you a picture?

24 **A** I may.

25 **Q** This is State's Exhibit 12. Would that be the

1 back of his truck?

2 **A** I'm not sure.

3 **Q** You're not sure, okay.

4 But you said Mr. Cone never got up; he
5 basically stayed there?

6 **A** Well, he did try to get up.

7 **Q** But he was in between your truck and his not
8 correctly parked truck; right?

9 **A** Yes.

10 **Q** So he didn't move from that spot?

11 **A** Not that I know of. I'm not sure.

12 **Q** At some point, Mr. Gary is bending over
13 Mr. Cone; correct?

14 **A** Yes.

15 **Q** His back is to you?

16 **A** Yes.

17 **Q** So he's standing over Mr. Cone?

18 **A** Yes.

19 **Q** And you said Mr. Cone seemed to be laying
20 partly in the parking lot?

21 **A** Yes.

22 **Q** So was his head in the parking lot and his feet
23 in the sidewalk area?

24 **A** No.

25 **Q** Okay. So he was fully in the parking lot?

1 **A** Yes.

2 **Q** Okay. But Mr. Gary was standing over him?

3 **A** Yes.

4 **Q** And he had his back to you?

5 **A** Yes.

6 **Q** And you said, at some point -- and when you
7 spoke to police originally, you said, at some point,
8 that you did see the female run to the front office;
9 correct?

10 **A** Yes.

11 **Q** And she brought back the apartment lady;
12 correct?

13 **A** Yes.

14 **Q** And they were calling for help as well?

15 **A** The apartment -- yes.

16 **Q** And the guy that left, he came back at some
17 point; correct?

18 **A** I didn't see him.

19 **Q** You didn't see him. But you stayed inside;
20 right?

21 **A** Yes.

22 **Q** You did not go outside at all?

23 **A** Not that I can remember.

24 **Q** And, Ms. Riley, this was approximately 6:00
25 P.M.; correct?

1 **A** It was after I got off work.

2 **Q** What time did you get off work that day?

3 **A** At five -- a little after 5:00.

4 **Q** And there are other people in this apartment
5 complex; right?

6 **A** Yes.

7 **Q** And there were other people outside at some
8 point?

9 **A** There was a lady that came by and tried to help
10 him.

11 **Q** Did you see that woman talk to police?

12 **A** I'm not sure.

13 **MS. EIGENBROT:** Beg the Court's indulgence.

14 **THE COURT:** Yes, ma'am.

15 (Pause.)

16 **MS. EIGENBROT:** Thank you, Ms. Riley.

17 Appreciate your testimony today.

18 **THE COURT:** Redirect?

19 REDIRECT EXAMINATION

20 BY MS. WALKER:

21 **Q** Ms. Riley, listening to the 9-1-1 call, when
22 you made that call, did you want to get involved in
23 this case?

24 **A** No, because I was scared.

25 **Q** Why were you scared?

1 **A** Because the way he was beating him.

2 **Q** Were you still going to have to live there
3 where this defendant lived?

4 **A** Yes, but I was ready to go then.

5 **Q** Is he your neighbor now?

6 **A** No.

7 **Q** Do you feel more comfortable talking now that
8 he's not your neighbor anymore?

9 **A** Somewhat.

10 **Q** And the only person you saw throwing any blows
11 or bashing anyone's head that day was who?

12 **A** My neighbor.

13 **Q** What's his name?

14 **A** Kevin.

15 **MS. WALKER:** Thank you, Ms. Riley. I don't
16 have anymore questions.

17 **THE COURT:** Recross?

18 **MS. EIGENBROT:** Just briefly.

19 RECCROSS-EXAMINATION

20 BY MS. EIGENBROT:

21 **Q** Ms. Riley, you said you'd be more comfortable
22 if he wasn't living next door to you; correct?

23 **A** Yes.

24 **Q** Talking to the police and telling them what you
25 saw would have made them take him to jail; correct?

1 **A** I guess.

2 **Q** So speaking to them and telling them what you
3 saw that day would have probably made the police
4 remove him from that area that day; correct?

5 **A** They already had removed him.

6 **MS. EIGENBROT:** Thank you. Nothing further.

7 **THE COURT:** Thank you, ma'am. You may step
8 down.

9 Call your next witness, please.

10 **MR. SHELLENBERG:** State calls Tammy cook.

11 TAMMY COOK,

12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please have a seat. State your
14 full name for the record.

15 DIRECT EXAMINATION

16 BY MR. SHELLENBERG:

17 **Q** Good morning, Ms. Cook.

18 **A** Good morning.

19 **Q** And where are you employed?

20 **A** I work for Fort Jackson EMS.

21 **Q** And how long have you been with them?

22 **A** I've been there just for two months.

23 **Q** And who were you with prior to that?

24 **A** Richland County EMS.

25 **Q** And how long were you with Richland County?

1 **A** Over 12 years.

2 **Q** And what did you do for Richland County EMS?

3 **A** I was a paramedic crew chief.

4 **Q** And what does that entail?

5 **A** I'm basically in charge of advanced life
6 support for any patients. I'm in charge of the crew
7 and the patients that are on the ambulance.

8 **Q** And how many people are on the crew?

9 **A** Usually a paramedic and an EMT.

10 **Q** And what was your -- paramedic or EMT, or what
11 was your title on the crew?

12 **A** Paramedic crew chief.

13 **Q** Crew chief, okay. And were you working back in
14 March of 2014?

15 **A** Yes, sir.

16 **Q** And did you respond to an incident at St.
17 Andrews Pointe?

18 **A** Yes, sir.

19 **Q** Can you tell the court a little bit about what
20 you saw when you arrived?

21 **A** We saw a black male on the ground, pool of
22 blood around his head. He was conscious and moving
23 around.

24 **Q** Now, you say he was conscious and moving. How
25 was he moving?

1 **A** Not very purposefully, maybe trying to get up.

2 **Q** And I believe in your report, you referred to
3 him as being combative?

4 **A** Yes, sir.

5 **Q** What does that mean for a patient to be
6 combative?

7 **A** It -- usually it is due to trauma or a medical
8 condition. They don't really know what they're
9 doing. They may fight you physically.

10 **Q** Let me stop you right there. Did Mr. Cone
11 attempt to fight you physically?

12 **A** He wasn't -- he was -- he was fighting us, but
13 he -- I don't -- I don't believe that he knew what
14 he was doing. He was -- when we were trying to
15 control the bleeding to his face and his head, he
16 was trying to pull away.

17 **Q** Did he understand what was going on?

18 **A** No, I don't believe he did at all.

19 **Q** And when you talked -- when you were evaluating
20 him, what kind of injuries did you see?

21 **A** He had several lacerations to his head, his
22 face, his mouth. His eye was -- looked seriously
23 injured.

24 **Q** And in what way did his eye look injured?

25 **A** He had a lot of swelling. The eye actually was

1 protruding out of the eye socket. There was blood
2 in the eye and looked like there might have been
3 blood behind the eye causing the eye to push out.

4 **Q** And is it common for a person who may or may
5 not -- who may have been rendered unconscious to be
6 combative?

7 **A** Absolutely.

8 **Q** And when you get out there, do you evaluate the
9 patient?

10 **A** Yes. We evaluate him by asking him simple
11 questions, who are you, do you know where you are,
12 what happened. We check their vitals, their pulse
13 rate, their respirations, reaction in their pupils.

14 **Q** I want to ask you about that. When you checked
15 his reactions in his pupils, was there any reaction
16 in his left eye?

17 **A** None at all.

18 **Q** And what does that tell you?

19 **A** Usually that's indicative of a head injury or a
20 serious eye injury.

21 **Q** And did anyone else out there receive
22 treatment?

23 **A** No. There were no other patients that we saw
24 on scene.

25 **Q** And were you able to tell what these injuries

1 were consistent with?

2 **MS. EIGENBROT:** Objection, Your Honor.

3 **THE COURT:** Yes, ma'am.

4 **MS. EIGENBROT:** I think that renders an opinion
5 at this point and she's not been qualified.

6 **MR. SHELLENBERG:** That's fine, Your Honor. I
7 can lay a foundation.

8 **THE COURT:** All right.

9 BY MR. SHELLENBERG:

10 **Q** Can you give the Court a little bit of
11 background about your experience and your training
12 in the emergency medical field?

13 **A** I went to -- I had -- I went to EMT school for
14 about nine months. And then after that, I went to
15 paramedic school. Prior to this specific incident,
16 I've ran hundreds of trauma calls, medical calls.

17 **Q** And how long have you been doing this?

18 **A** Approximately, 12 and a half years.

19 **Q** And you've seen hundreds of trauma calls in
20 that time?

21 **A** Yes, sir.

22 **Q** And you have to make -- I believe you said you
23 were the chief?

24 **A** Yes, the crew chief.

25 **Q** Crew chief. So in that -- does that -- do you

1 have to make assessments of patients when you arrive
2 on the scene as the crew chief?

3 **A** Yes, sir.

4 **MR. SHELLENBERG:** Your Honor, at this time, I
5 move to have her admitted as an expert in emergency
6 medical services.

7 **THE COURT:** Voir dire?

8 **MS. EIGENBROT:** Yes, Your Honor.

9 VOIR DIRE

10 BY MS. EIGENBROT:

11 **Q** Ms. Cook, you've been over a little bit about
12 your schooling. Can you tell us exactly what EMT
13 school is?

14 **A** You basically -- it's an emergency medical
15 technician.

16 **Q** How long is it?

17 **A** It's about nine months.

18 **Q** And what kind of training do you receive from
19 EMT school?

20 **A** They teach you how to take vitals, assess a
21 patient, patient injuries, medical history, certain
22 types of medical issues such as diabetes, seizures,
23 trauma.

24 **Q** Then you went to paramedic school. Is that
25 very similar or is it something different?

- 1 **A** It's more advanced.
- 2 **Q** And how long was that?
- 3 **A** That was a little over a year.
- 4 **Q** When you're an EMT, do you have to have any
5 type of degree from a college or --
- 6 **A** No. Actually, I believe just a high school
7 diploma.
- 8 **Q** Have you written any peer review articles in
9 regards to being an EMT?
- 10 **A** Occasionally, yes.
- 11 **Q** Do you recall when those were?
- 12 **A** They've been throughout my time.
- 13 **Q** Do you remember how many?
- 14 **A** I'd say -- I'd say probably over 200.
- 15 **Q** That you wrote?
- 16 **A** That I wrote? No, ma'am, I haven't written
17 anything. I'm sorry. I thought you meant read.
- 18 **Q** That's okay. You've read several articles?
- 19 **A** Yes.
- 20 **Q** And have you testified in court before?
- 21 **A** Yes.
- 22 **Q** How many times?
- 23 **A** Four.
- 24 **Q** Have you ever been qualified as an expert?
- 25 **A** No, I don't believe so.

1 **MS. EIGENBROT:** Beg the Court's indulgence.

2 **THE COURT:** Yes, ma'am.

3 (Pause.)

4 **MS. EIGENBROT:** Your Honor, I do have a matter
5 of law.

6 **THE COURT:** Ladies and gentlemen, please step
7 in the jury room. Don't discuss the case. If
8 you're taking notes, leave them in the courtroom.

9 (The jury retires to the jury room.)

10 **THE COURT:** Yes, ma'am.

11 **MS. EIGENBROT:** Your Honor, under Rule 702, I
12 don't believe Ms. Cook can be qualified as an expert
13 to render any type of opinions, specific opinions,
14 about how he could have obtained -- Mr. Cone could
15 have obtained these injuries. When I discussed
16 asking if she'd ever written any peer review
17 articles, she said no. While reading several of
18 them, she'd never written any of her own herself.
19 And while she has testified in court, she's never
20 been qualified as an expert.

21 And based on -- and while school seems to teach
22 them how to make brief assessments of the injuries
23 themselves, I don't believe it teaches them to
24 render an opinion such that she can testify as an
25 expert in court on a specific type of injury or how

1 that injury was obtained. EMTs are trained to go to
2 the scene, make an assessment of the -- of an
3 individual and make decisions about treatment and
4 transporting them to the hospital. I don't believe
5 she's qualified as an expert to testify as to how he
6 could have obtained these injuries.

7 **THE COURT:** Yes, sir.

8 **MR. SHELLENBERG:** Your Honor, in her
9 experience, she's responded to over -- she testified
10 that she's responded to over a hundred to 200 trauma
11 calls. Over 12 years, she's responded to multiple
12 scenes, she's been able to assess injuries, there
13 were calls by various types of trauma. She clearly
14 has experience in assessing and deciding what
15 injuries and what treatment need to be done over the
16 course of 12 years.

17 Whether she's written any peer review articles
18 or not is not relevant as to whether she can be a
19 expert or -- not relevant, but is not necessary in
20 order to have her be admitted as an expert witness.
21 Everybody's got to be qualified the first time, Your
22 Honor.

23 **THE COURT:** What is it you want to ask her?

24 **MR. SHELLENBERG:** I just want to ask her, in
25 her opinion, what caused these injuries and what are

1 they most consistent with?

2 **THE COURT:** And what would your answer be?

3 **THE WITNESS:** I would have to say some type of
4 object or a fist.

5 **THE COURT:** Anything else?

6 **MR. SHELLENBERG:** That's all I want to ask her.

7 **THE COURT:** Anything else?

8 **MS. EIGENBROT:** Yes, just briefly, Your Honor.

9 I just want to point out that this goes to a fact in
10 issue in this case. I don't -- I just, again, don't
11 believe the training expertise -- or training she's
12 received allows her to be qualified as an expert.
13 It's giving -- she's giving an opinion about a fact
14 in issue that the jury has to make a determination
15 of. And, again, I don't believe she's qualified as
16 an expert.

17 **THE COURT:** Anything else?

18 **MR. SHELLENBERG:** Your Honor, we're not asking
19 her to give an opinion on the ultimate issue. We're
20 just asking her as to what caused the injuries, not
21 who did it, not -- and nothing else to do with that.

22 **MS. EIGENBROT:** Your Honor, our contention and
23 part of our defense is that Mr. Cone repeatedly fell
24 over on his own volition, and as such, some of these
25 injuries he sustained were of his own doing.

1 **THE COURT:** Anything else?

2 **MR. SHELLENBERG:** No, Your Honor.

3 **THE COURT:** There's not a sufficient foundation
4 for me to allow the witness to testify on this. She
5 hasn't laid a foundation as to how she reached this
6 opinion. I don't know if she knows about what the
7 other witnesses testified about, what's in the
8 reports, I don't know any of that.

9 And while I acknowledge common sense would tell
10 you that somebody who's been on as many calls as she
11 has, has probably seen a whole lot of things, I just
12 don't think there's enough of a foundation, one, for
13 her to testify that she's qualified to say what
14 caused the injury, and, two, for her to give an
15 opinion about this specific injury when she hasn't
16 told us how she arrived at the opinion.

17 And I'd have to send her out of the courtroom
18 before I say anymore because I don't want to say
19 things that might taint her testimony, but if y'all
20 need to put anything else on the record, that's
21 fine, let me know.

22 **MR. SHELLENBERG:** Yes, Your Honor.

23 **THE COURT:** Yes, what?

24 **MR. SHELLENBERG:** Can I go ahead and attempt to
25 lay a foundation for it?

1 **THE COURT:** Sure. You can make whatever
2 proffer you wish.

3 Are y'all calling the doctor?

4 **MR. SHELLENBERG:** Yes, Your Honor.

5 **THE COURT:** Okay. Go ahead.

6 IN CAMERA EXAMINATION

7 BY MR. SHELLENBERG:

8 **Q** Ms. Cook, did you have a chance to evaluate the
9 injuries?

10 **A** Yes.

11 **Q** And what did you -- what's your evaluation of
12 the injuries?

13 **A** There were several lacerations to his head, his
14 face and his lip and his left eye.

15 **Q** And what is that consistent with?

16 **A** It appeared to be several injuries either from
17 an object hitting his head and his face.

18 **Q** And how did you make that determination?

19 **A** You could see the lacerations, the different
20 points.

21 **Q** In your years of experience, have you been out
22 to many scenes where somebody's been hit with
23 something or somebody's been hit with a fist?

24 **A** Yes.

25 **Q** Were those injuries consistent with the

1 injuries you saw then?

2 **A** Absolutely.

3 **Q** Have you been out to scenes where somebody has
4 fallen down?

5 **A** Yes.

6 **Q** And were those injuries consistent with
7 somebody who has fallen down?

8 **A** Not at all.

9 **MR. SHELLENBERG:** Your Honor, I think, at this
10 time, she's provided how she's going to be able to
11 tell that she can do it. She's been out to multiple
12 scenes, she's done this for 12 years.

13 **THE COURT:** My ruling does not change based on
14 that testimony.

15 Ma'am, would you step back outside, please?

16 **THE WITNESS:** Yes, sir.

17 (Witness leaves the courtroom.)

18 **THE COURT:** All right. She has not testified
19 -- as far as the foundation to give the opinion, if
20 she were qualified as an expert, she's not testified
21 as to anything except that she made this
22 observation. She hasn't, to my knowledge, talked to
23 any of the witnesses.

24 Beating somebody's head against the concrete
25 could cause the same type of thing. I mean, I don't

1 understand --

2 **MR. SHELLENBERG:** That's fine, Your Honor. We
3 won't ask for an opinion.

4 Can I ask the same questions about her having
5 responded to a scene where somebody's fallen down
6 and her having responded to a scene where somebody's
7 been punched and whether they're consistent with
8 those injuries?

9 **THE COURT:** No. It's an opinion. That is an
10 opinion. She would have to be qualified as an
11 expert witness to render that opinion. Call the
12 doctor. It's a self-defense claim, as I understand
13 it.

14 What's the dispute about them being in a fight
15 and throwing fists?

16 **MR. SHELLENBERG:** That's fine, Your Honor.

17 **THE COURT:** Bring the jury in -- I'm sorry --
18 bring the witness in.

19 (Witness returns to the courtroom.)

20 **THE COURT:** Would you take the stand again for
21 me, please, ma'am?

22 (Witness resumes the witness stand.)

23 **THE COURT:** Do either of you need to make any
24 further proffer outside the presence of the jury?

25 **MS. EIGENBROT:** No, Your Honor.

1 **MR. SHELLENBERG:** No, Your Honor.

2 **THE COURT:** Ready for the jury, Solicitor?

3 **MR. SHELLENBERG:** Yes, Your Honor.

4 **THE COURT:** Bring the jury in.

5 (The jury returns to the courtroom.)

6 **THE COURT:** The objection's sustained. You may
7 continue, Solicitor.

8 **MR. SHELLENBERG:** Thank you, Your Honor.

9 DIRECT EXAMINATION cont.

10 BY MR. SHELLENBERG:

11 **Q** If there was anyone else on the scene who had
12 any injury or needed any treatment, would you have
13 given it to them?

14 **A** Absolutely.

15 **MR. SHELLENBERG:** Thank you. I have no further
16 questions.

17 **THE COURT:** Cross?

18 **MS. EIGENBROT:** Thank you, Your Honor. May it
19 please the Court.

20 **THE COURT:** Yes.

21 CROSS-EXAMINATION

22 BY MS. EIGENBROT:

23 **Q** Ms. Cook, you told Mr. Shellenberg that during
24 your assessment, Mr. Cone had been combative;
25 correct?

1 **A** Yes.

2 **Q** He was moving around?

3 **A** Yes.

4 **Q** He was not sitting still?

5 **A** No.

6 **Q** And you did create a report when this incident
7 occurred; correct?

8 **A** Yes.

9 **Q** And that's something you normally do when you
10 go out to a scene; correct?

11 **A** Yes.

12 **Q** Do you have a copy of that report?

13 **A** I do.

14 **Q** Would you look at page two with me, please,
15 near the top?

16 **A** (Witness complies.)

17 **Q** Where it says, Neurological Exam, loss of
18 consciousness. What was your answer there?

19 **A** I put, No loss of consciousness.

20 **MS. EIGENBROT:** Thank you, Ms. Cook. I have no
21 further questions.

22 **THE COURT:** Redirect?

23 **MR. SHELLENBERG:** Briefly, Your Honor.

24 ****

25 ****

1 REDIRECT EXAMINATION

2 BY MR. SHELLENBERG:

3 Q Will you go to the bottom of page two of your
4 report?

5 A Yes.

6 Q Where you have Impressions and Diagnosis.

7 A Yes.

8 Q And what was your impression?

9 A That he was bleeding, he had open wounds and
10 there was a change in responsiveness.

11 Q And right below that, what did you put there?

12 A An altered level of consciousness due to
13 traumatic injury.

14 Q Traumatic injury to where?

15 A To the head, face, eye and lip.

16 Q And if anyone else would have come and asked
17 for any care, would y'all have given it to them and
18 put it in this report?19 A Yes. We would have transported that patient.
20 And if not, we would have called another unit and
21 stayed on scene until that unit arrived.

22 MR. SHELLENBERG: Thank you.

23 THE COURT: Recross?

24 MS. EIGENBROT: I'm sorry, Your Honor, no.

25 THE COURT: Thank you, ma'am. You may step

1 down.

2 Call your next witness, please.

3 **MS. WALKER:** Your Honor, the State calls
4 Investigator Sullivan.

5 JOHN SULLIVAN,
6 having been duly sworn, testified as follows:

7 **THE CLERK:** Please have a seat. State your
8 full name for the record.

9 **THE WITNESS:** John Sullivan.

10 DIRECT EXAMINATION

11 BY MS. WALKER:

12 **Q** Sir, can you tell me where you're currently
13 employed?

14 **A** Currently employed with Aiken County Sheriff's
15 Department.

16 **Q** And what do you do for the Aiken County
17 Sheriff's Department?

18 **A** I'm a deputy on the road.

19 **Q** And how long have you been with Aiken?

20 **A** Since June.

21 **Q** And where were you employed prior to going to
22 the Aiken County Sheriff's Department?

23 **A** I was employed with Richland County Sheriff's
24 Department.

25 **Q** And what did you do -- well, I guess, how long

1 were you there?

2 **A** I was there for ten years.

3 **Q** And what did you -- what did you do at the
4 Richland County Sheriff's Department?

5 **A** First, of course, I was on road patrol, but
6 prior to leaving, I was an investigator for a couple
7 years.

8 **Q** And did you have specific crimes that you
9 investigated?

10 **A** My specific area was property crimes,
11 burglaries, but we -- once every -- for about one
12 week every two months, we would work an evening
13 shift where we get any type of crime.

14 **Q** And in March of 2014, did you -- were you
15 working those evening shift hours?

16 **A** I was. I was working evening shift.

17 **Q** And did you become aware of an assault that had
18 taken place at St. Andrews Pointe Apartments?

19 **A** I did.

20 **Q** And is that apartment complex located here in
21 Richland County?

22 **A** It is.

23 **Q** I want to ask you about how you first became
24 aware of this assault.

25 **A** I was notified that there were region -- our

1 Region 4 deputies, which is that area, what it's
2 called, were out with an aggravated assault and they
3 requested investigator assistance.

4 **Q** Do investigators get involved on, I guess,
5 lesser assaults, simple assault and batteries?

6 **A** Normally, we do not.

7 **Q** What makes an assault rise to the level of an
8 investigator becoming involved?

9 **A** One of the instances, due to the nature of the
10 injuries.

11 **Q** At some point in time, were you able to see the
12 defendant in this case?

13 **A** I did.

14 **Q** And I guess in assault and batteries, is it
15 important for you to be able to see the defendant as
16 he appears at that point in time?

17 **A** It is.

18 **Q** Can you tell the jury why that's important?

19 **A** We want to see if we notice any injuries on the
20 defendant.

21 **Q** And when you made contact with the defendant,
22 did you notice any injuries?

23 **A** The only injury I saw was on his right hand.
24 It was a small laceration in between his knuckles.

25 **Q** I want to show you State's Exhibit Number 16.

1 Is this the injury you're talking about?

2 **A** That is it.

3 **Q** What about his face, head, neck? Did you see
4 any injuries to them?

5 **A** I looked because of the -- I looked; I didn't
6 notice any injuries on him.

7 **Q** I want to show you what's been marked as
8 State's Exhibit Number 17. Is this the way he
9 appeared to you that day?

10 **A** It is.

11 **Q** At some point in time, did you become aware of
12 the victim's injuries in this case?

13 **A** I did.

14 **Q** And, at that point in time, what, if any,
15 injuries were you aware of?

16 **A** There was another investigator that went to the
17 hospital. He notified us that the -- Mr. Jaranamo
18 Cone had injuries to his eye where he was possibly
19 going to lose it. He had multiple facial fractures
20 and he also had, possibly, bleeding on the brain.

21 **Q** And, at that point in time, did you know that
22 he ultimately would lose his left eye?

23 **A** At that time, we did not know that; I did not.

24 **Q** Were you able to make contact with the
25 witnesses in this case?

1 **A** I did.

2 **Q** Specifically, Ms. Hale?

3 **A** I did make contact with her.

4 **Q** And Mr. Antonio Adams?

5 **A** Yes.

6 **Q** And who is he?

7 **A** He was, I guess, a roommate, but he was there
8 during the time this all happened.

9 **Q** I want to talk to you about Vanetia Riley. Did
10 you speak with her?

11 **A** I did.

12 **Q** Why was it important to speak with Ms. Riley?

13 **A** She was an independent witness; therefore, she
14 is going to tell us exactly what she saw and how she
15 saw it because she doesn't have any -- show any type
16 of favoritism.

17 **Q** When you are doing these investigations, do you
18 try to find any type of independent witnesses?

19 **A** Yes.

20 **Q** We heard a 9-1-1 call from Ms. Riley. Have you
21 listened to that 9-1-1 call before?

22 **A** I did.

23 **Q** And is there an additional 9-1-1 call?

24 **A** There is.

25 **MS. WALKER:** Your Honor, both the State and the

1 defense have stipulated to those calls coming in
2 without the custodian being required. It's State's
3 Exhibit Number 37 and I'd like to move into
4 evidence.

5 **MS. EIGENBROT:** No objection, Your Honor.

6 **MS. WALKER:** I'm sorry, Your Honor, State's
7 Exhibit Number 36.

8 **THE COURT:** Mark it in evidence, please.

9 (State's Exhibit Number 36, recording of
10 9-1-1 call, admitted into evidence and played for
11 the jury.)

12 BY MS. WALKER:

13 **Q** You reviewed that phone call?

14 **A** I did.

15 **Q** And did you review Ms. Riley's phone call?

16 **A** I did.

17 **Q** In terms of canvassing areas where a crime
18 takes place, what is y'all's ultimate goal?

19 **A** Ultimate goal is find out exactly what
20 happened.

21 **Q** And do that how?

22 **A** Through interviews of independent witnesses.

23 **Q** Do you ever experience difficulty in witnesses
24 coming forward?

25 **A** We do.

1 **Q** And why is that?

2 **A** A lot of times people do not want to get
3 involved with the police because they are scared.

4 **Q** Do you find that to be more common when the
5 suspect is a member of that community?

6 **A** It's very common especially with neighbors.

7 **Q** At some point, were you -- when did you, I
8 guess, first meet Mr. Cone?

9 **A** It was several -- several weeks, a couple
10 months later.

11 **Q** And were you able to get a statement from him
12 at that point?

13 **A** I did get a statement from him at that point.

14 **Q** Why the delay between the incident date and
15 when you got a statement from the victim in this
16 case?

17 **A** Initially, he was intubated, but then another
18 reason I found out was he had an injury to his
19 tongue where it was almost severely -- it was
20 completely off so he couldn't talk.

21 **Q** I want to talk to you about jail phone calls.
22 Are you familiar with those?

23 **A** I am.

24 **Q** And what are they?

25 **A** Any time a inmate or a prisoner makes a phone

1 call from the jail, it is on a recorded line and we
2 as investigators have access to that.

3 **Q** And when you say it's on a recorded line, are
4 the parties aware that they're being recorded?

5 **A** Prior to them even being connected, it says,
6 All phone calls are recorded.

7 **Q** And did you review certain calls in this case?

8 **A** I did.

9 **MS. WALKER:** Your Honor, at this time, through
10 stipulation, State moves State's Exhibit Number 37
11 into evidence.

12 **MS. EIGENBROT:** No objection.

13 **THE COURT:** Mark it in evidence, please.

14 (State's Exhibit Number 37, recording of
15 jail phone call, admitted into evidence.)

16 **MS. WALKER:** Permission to publish, Your Honor.

17 **THE COURT:** Sure.

18 (Whereupon, State's Exhibit Number 37 was
19 played for the jury.)

20 BY MS. WALKER:

21 **Q** During that phone call or any other phone call
22 that you reviewed, did he complain of anything other
23 than a swollen hand?

24 **A** That was it, just his hand.

25 **Q** Initially, what was the charge that you charged

1 the defendant with?

2 **A** Assault and battery of a high and aggravated
3 nature.

4 **Q** And why was that?

5 **A** Due to the injuries that the victim sustained.

6 **Q** And, at some point in time, did you get more
7 information about those injuries?

8 **A** I did.

9 **Q** And what was that?

10 **A** That he lost the use of his left eye.

11 **Q** And was he charged with an additional crime?

12 **A** He was.

13 **Q** And what was that?

14 **A** Mayhem.

15 **Q** The man that you saw on the day of this -- who
16 you saw at headquarters on the day of this incident,
17 do you see him in the courtroom?

18 **A** I do.

19 **Q** Can you point him out?

20 **A** He's the gentleman in between the two ladies
21 wearing the blue shirt {indicating}.

22 **MS. WALKER:** Thank you, sir. I don't have any
23 further questions at this point.

24 **THE COURT:** Cross-examination?

25 **MS. EIGENBROT:** Thank you, Your Honor. May it

1 please the Court.

2 **THE COURT:** Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MS. EIGENBROT:

5 **Q** It's still investigator?

6 **A** Deputy now.

7 **Q** But you were an investigator; correct?

8 **A** I was.

9 **Q** With Richland County?

10 **A** Yes.

11 **Q** All right. Investigator Sullivan, you became a
12 part of this investigation after the fact; correct?

13 **A** That's correct.

14 **Q** You never actually were on scene?

15 **A** No.

16 **Q** Correct? But in preparation for the
17 investigation, in reviewing stuff, you would review
18 the pictures other deputies and investigators took;
19 correct?

20 **A** I did.

21 **Q** You reviewed incident reports other deputies
22 wrote?

23 **A** I did.

24 **Q** And you then spoke to witnesses; correct?

25 **A** I spoke to some witnesses prior to looking at

1 the report, but I did.

2 **Q** And you've seen these pictures; correct?

3 **A** Yes, I have.

4 **Q** I'm going to show you what's been marked as
5 State's Exhibit 2. And that's a door; correct?

6 **A** Yes.

7 **Q** And there's blood spatter on the door; correct?

8 **A** I would assume that's blood.

9 **Q** And then we've heard some testimony about where
10 this incident took place in the parking lot, or part
11 of the incident. And we heard Ms. Riley testify
12 about her vehicle being involved; correct?

13 **A** Yes.

14 **Q** And that she drove a Kia?

15 **A** Yes.

16 **Q** I'm going to show you what's been marked as
17 State's Exhibit 9.

18 **A** Uh-huh.

19 **Q** Okay. And that is a Kia tire; correct?

20 **A** Yes, I see the -- okay. Yes.

21 **Q** And it has some blood spatter on it?

22 **A** Yes.

23 **Q** And then I'm going to show you what's been
24 marked as State's Exhibit 12 and 13. This would
25 appear to be a different vehicle; is that correct?

- 1 **A** Definitely 12; I assume 13.
- 2 **Q** Tires are different, isn't that right, or at
3 least from that last picture?
- 4 **A** Yes.
- 5 **Q** Okay. And especially in 12, they noted some
6 blood spatter right around -- underneath the
7 vehicle?
- 8 **A** Yes.
- 9 **Q** And on this one, it's by this tire; is that
10 correct?
- 11 **A** That's correct.
- 12 **Q** And these are -- these are two different
13 vehicles. They're obviously parked in different
14 areas; correct?
- 15 **A** Yes.
- 16 **Q** So someone was bleeding in two different areas?
- 17 **A** Unless they were side by side.
- 18 **Q** But we don't have pictures of exactly how the
19 trucks were placed; correct?
- 20 **A** I don't think so, no.
- 21 **Q** You indicated you spoke to the witnesses;
22 right?
- 23 **A** I did.
- 24 **Q** And you spoke -- you actually did not speak to
25 Mr. Gary; correct?

1 **A** I did.

2 **Q** You were present when Investigator Carwell --
3 when the interview was done?

4 **A** Yes, I took the statement.

5 **Q** Okay. So you were -- that was shortly after he
6 was arrested; correct?

7 **A** Yes.

8 **Q** So that was the same day?

9 **A** It was.

10 **Q** And then later you go talk to Mary Beth;
11 correct?

12 **A** Yes.

13 **Q** And she was identified as his girlfriend?

14 **A** Yeah, that's correct.

15 **Q** And living in the house with him; correct?

16 **A** She said she stayed a few days out of the week.

17 **Q** And you spoke with her later that day?

18 **A** I did.

19 **Q** And Kevin was taken to jail the -- that same
20 night; correct?

21 **A** Yes.

22 **Q** Do you recall what time?

23 **A** According to my report -- well, he was arrested
24 at 9:00, but when he was transported, I don't have
25 that time.

- 1 **Q** But it would have been after nine o'clock?
- 2 **A** Yes, it would have been after 9:00.
- 3 **Q** And you spoke to Mary Beth maybe an hour or two
- 4 hours later?
- 5 **A** I have to look. Yeah. I have I spoke to
- 6 her -- or I took the statement at 11:31 P.M.
- 7 **Q** And when individuals are arrested at the jail,
- 8 they have to get booked; right?
- 9 **A** Yes.
- 10 **Q** The booking process can take a couple of hours;
- 11 correct?
- 12 **A** Possibly, yeah.
- 13 **Q** They have to do fingerprints; right?
- 14 **A** Yeah, fingerprints, photos.
- 15 **Q** Take pictures. They don't have access to a
- 16 phone during the booking process?
- 17 **A** They do once they're fingerprinted and
- 18 photographed.
- 19 **Q** But those, again, are jail phones that are all
- 20 recorded; correct?
- 21 **A** Yes.
- 22 **Q** And then you spoke to Ms. Riley the next day;
- 23 correct?
- 24 **A** Yes, the next day.
- 25 **Q** On the 26th?

1 **A** Uh-huh. That's correct.

2 **Q** And you contacted her?

3 **A** I was notified that she was a witness.

4 **Q** And it says you made contact?

5 **A** I made contact with her.

6 **Q** And then you were able to speak to Mr. Adams?

7 **A** I was.

8 **Q** He's also a roommate?

9 **A** Yes. From what I understand, he's a roommate.

10 **Q** And that was -- you spoke to him on the 26th;
11 correct?

12 **A** That is correct.

13 **Q** And he came in and gave a written statement on
14 the 27th?

15 **A** Yes, he did.

16 **MS. EIGENBROT:** Beg the Court's indulgence.

17 **Q** In any of these pictures you saw, you didn't
18 see any tools; correct?

19 **A** In those pictures, no.

20 **Q** Nobody mentioned tools being in the yard?

21 **A** No.

22 **Q** No witnesses said they saw tools near the
23 scene; correct?

24 **A** No.

25 **MS. EIGENBROT:** Beg the Court's indulgence.

1 (Pause.)

2 **MS. EIGENBROT:** Thank you. No further
3 questions.

4 **THE COURT:** All right. Redirect?

5 **MS. WALKER:** No, Your Honor.

6 **THE COURT:** Thank you, sir. You may step down.
7 Ladies and gentlemen of the jury, we'll take a
8 break for 10 or 15 minutes. Don't discuss the case.
9 If you have notes, leave them in the courtroom,
10 please.

11 (The jury retires to the jury room.)

12 **THE COURT:** Court's in recess for ten minutes.

13 (Brief recess.)

14 **THE COURT:** State ready for the jury?

15 **MS. WALKER:** Your Honor, that's -- our last
16 witness will be the doctor. We took him out of
17 order to try to take up as much of the morning.

18 **THE COURT:** I'm sorry.

19 **MS. WALKER:** No, I'm sorry. I just didn't have
20 an opportunity to tell you before you left the
21 bench.

22 **THE COURT:** I apologize. I should have asked
23 you.

24 All right. So what time did y'all tell the
25 doctor to be here?

1 **MS. WALKER:** Your Honor, he can't be here until
2 1:45. I think he's on call right now, so he can't
3 leave the hospital. He can be here at 1:45 and then
4 we'd finish up with him. And I think they have some
5 witnesses they want to call.

6 **THE COURT:** So tell the jury 2:00?

7 **MS. WALKER:** Yes, Your Honor, that will be
8 perfect.

9 **THE COURT:** Is that all right?

10 **MS. EIGENBROT:** Yes, Your Honor. Thank you.

11 **THE COURT:** All right. Bring the jury in,
12 please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Yesterday, ladies and gentlemen, I
15 mentioned to you that at a certain point, I knew
16 that we were going to have a scheduling conflict
17 regarding one of the witnesses. It depended on how
18 fast we went through the other witnesses and we've
19 gone through them pretty quickly.

20 So the next witness that's scheduled for the
21 State is a doctor and he is going to be here at two
22 o'clock. So I apologize, I didn't know that when I
23 took the break, I would have told you then. I
24 really can't do anything with y'all until two
25 o'clock, so you have a long lunch break.

1 And you should -- you should be in the jury
2 room, please, at 2:00 P.M. We'll get started.
3 You'll hear from the doctor. You'll probably, I'm
4 not certain of this, but you'll probably get all the
5 evidence in today. And probably tomorrow we'll
6 bring you back and go through the arguments, the
7 closing arguments, and the charge where I tell you
8 the law. So that's what it looks like right now.

9 I hope you have a pleasant lunch. Remember all
10 of those admonitions I gave you about not discussing
11 the case and leaving your notes in the courtroom.
12 And I need you in the jury room at two o'clock.
13 Thank you.

14 (The jury was excused for lunch.)

15 **THE COURT:** I want to ask you all, since we've
16 got this extended break, for some help. I have
17 never seen or heard of a mayhem charge in South
18 Carolina. I went and got my books, and I did some
19 reading yesterday. And I went and got my books this
20 morning from the office in Lexington, and I do have
21 something on mayhem. I put it on the Listserv
22 yesterday for the circuit judges and I got very
23 little response from all of the circuit judges.

24 I'm going to have some questions about whether
25 this is double jeopardy or not in this instance.

1 I'm going to have some questions about what the
2 elements are. So whatever South Carolina authority
3 you've got, because what little bit I was able to
4 read yesterday indicated that in the common law, it
5 may have been this element about disabling or
6 rendering useless a part of the body so that the
7 victim is less able to fight and defend himself,
8 that they may have been abandoned over the years. I
9 don't know -- if it's abandoned, then I don't see
10 any difference between it and assault and battery of
11 a high and aggravated nature.

12 And I compliment you for finding it, maybe
13 y'all do that all the time over here, but I've never
14 seen it, never heard of it and seemed to shock most
15 of my fellow circuit judges.

16 We're at ease.

17 Remember all of those admonitions, sir?

18 **DEFENDANT:** Yes, sir, Judge.

19 **THE COURT:** You be back whenever they tell you
20 to be back, no later than 2:00 P.M.

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Thank you.

23 **MS. EIGENBROT:** Thank you, Your Honor.

24 (Whereupon, there was a luncheon recess.)

25 **THE COURT:** State ready for the jury?

1 **THE COURT:** Are you ready?

2 **MS. WALKER:** Yes, Your Honor.

3 **THE COURT:** Defense ready?

4 **MS. WILLIAMS:** Yes, Your Honor.

5 **THE COURT:** Bring in the jury.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Thank you very much for your
8 patience, ladies and gentlemen. We're now going to
9 continue with the State's case.

10 Call your next witness.

11 **MR. SHELLENBERG:** The State calls Dr. Mark
12 Jones.

13 **THE COURT:** Come around, please, over here.

14 MARK ALLEN JONES,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please have a seat and state your
17 full name.

18 **THE WITNESS:** My name is Mark Allen Jones.

19 DIRECT EXAMINATION

20 BY MR. SHELLENBERG:

21 **Q** Good afternoon, Dr. Jones. Can you tell me a
22 little bit about your training and education?

23 **A** Sure. I was trained for medical school in
24 Tennessee. I did six years of general surgery in
25 trauma, critical care fellowship here in Columbia,

1 South Carolina. I completed all of that training in
2 2010. I've been on staff at Palmetto Health
3 Richland Trauma Center since that time as a trauma
4 and critical care surgeon.

5 **Q** Where were you an intern? Where did you do
6 your internship?

7 **A** Here in Columbia at Palmetto Health USC,
8 general surgery program.

9 **Q** And what are you doing now?

10 **A** I'm a full-time trauma and emergency surgeon at
11 Palmetto Health Richland Level 1 Trauma Center.

12 **Q** How long have you been doing that?

13 **A** As an attending since June of 2010, a little
14 over six years.

15 **Q** And have you ever testified as an expert
16 before?

17 **A** I have.

18 **Q** In what?

19 **A** In what?

20 **Q** What were --

21 **A** In this very similar setting of a case that I
22 was involved as an attending surgeon for.

23 **Q** Okay. And how many times have you been an
24 expert?

25 **A** Maybe three that I've actually ended up here,

1 called many times or subpoenaed many times, but I
2 don't always end up here, so it's hard for me to
3 remember exactly how many times I've been.

4 **Q** I certainly understand that. When you have
5 been called and qualified as an expert, you've
6 talked about surgery?

7 **A** Yes, ma'am. Trauma surgery, surgical critical
8 care, emergency surgery, that's my area of
9 expertise.

10 **Q** Okay. Have you testified as to the causes of
11 certain injuries?

12 **A** I would say I've not testified in a forensics
13 capacity, if that's what you're referring to.

14 **Q** So it's more, like, about the medical process
15 and what you do in the surgery?

16 **A** Injuries, management of such, and the surgical
17 management and critical care management of those
18 injuries, yes, ma'am.

19 **MS. WILLIAMS:** Thank you.

20 **THE WITNESS:** Sure.

21 **MS. WILLIAMS:** No objection, Your Honor.

22 **THE COURT:** He is so recognized. You may
23 continue.

24 **MR. SHELLENBERG:** Thank you, Your Honor.

25

1 DIRECT EXAMINATION cont.

2 BY MR. SHELLENBERG:

3 Q Dr. Jones, were you working on March 24th of
4 2014?

5 A Yes.

6 Q And where were you working?

7 A At Palmetto Health Richland.

8 Q And what were you doing that day?

9 A I was the attending trauma surgeon on call.

10 Q What does that mean to be the attending trauma
11 surgeon?

12 A That means the lead surgeon, completed all
13 training.

14 Q So if someone's brought in an ambulance, you're
15 the one -- and that needs surgery, they come to you?

16 A That's right, yes.

17 Q Did Jaranamo Cone come in that day?

18 A Yes.

19 Q And were you the attending on his case -- I
20 guess, on his --

21 A I was the surgeon called for his case after he
22 was evaluated by the emergency department staff,
23 yes, sir.

24 Q And what kind of shape was he in when he got to
25 the emergency room?

1 **A** The gentleman had sustained obvious trauma to
2 his head and face. The reason I was called
3 initially was because the physicians in the
4 emergency department were concerned about his
5 ability to maintain his breathing or his airway due
6 to those injuries. And so, at that point, they
7 called us in the event that we would be needed to
8 support them in securing the airway.

9 **Q** Let me stop you right there. What was the
10 issue with his airway?

11 **A** Primarily, he had several facial fractures,
12 lacerations, as well as lacerations to his tongue,
13 cuts --

14 **Q** And what's a laceration?

15 **A** So a cut that's bleeding, a bleeding cut of
16 some variety would be a laceration.

17 **Q** And what is a facial fracture?

18 **A** A broken bone in the face.

19 **Q** And do you remember how many bones he had
20 broken in his face?

21 **A** My recollection through review of the record is
22 that he had fractures to his nasal bone or the bones
23 of the nose as well as to some of the sinuses, which
24 are the bones, I don't know if I'm allowed to point,
25 but of the face here {indicating} along where the

1 sinus is inside of the face.

2 **Q** And what was done -- what was done for the
3 issues with breathing?

4 **A** So, initially, our concern is that if someone
5 has facial injuries or bleeding inside of their
6 mouth from these lacerations to the tongue or cuts
7 to the tongue or other injuries, that those can,
8 one, swell. And if that swells, that the airway can
9 -- or the breathing tube can be compromised by the
10 swelling and then you can't pass air. And the other
11 is that from the ongoing bleeding, that he can
12 aspirate that blood into his lungs and potentially
13 have a complication from that.

14 So in that -- along that line, what we do is we
15 place a breathing tube to make sure that we have
16 appropriate access to the airway to be able to
17 support him.

18 **Q** I'm going to show you what has been marked as
19 State's 18. And what has been done to Mr. Cone in
20 that picture?

21 **A** So, at this point, in this picture, he has --
22 he has a breathing tube in place at this time. We
23 would call that an endotracheal tube. He also has a
24 smaller tube that's going into his mouth that would
25 be going into his stomach, that's called an

1 orogastric tube to decompress the gas and fluid from
2 the stomach. And I can't see it in the picture, but
3 because he's got the breathing tube, he would be on
4 a ventilator supporting his breathing at this point.

5 **Q** Was he not breathing on his own at that point
6 or is it because of the cuts to the tongue that you
7 put in the breathing tube?

8 **A** So he like -- he could breathe on his own. I
9 can't tell you exactly in that snapshot in time
10 whether he was still because even -- even in this
11 setting when we put an emergency breathing tube in,
12 we would give him medications to sedate him and
13 essentially paralyze his muscles to be able to get
14 the tube in. So depending on exactly when that
15 picture was taken, he may or may not have been
16 breathing on his own, but if he were not, it would
17 have been because of the medications.

18 **Q** What other injuries did he suffer to his head?

19 **A** So he also had traumatic brain injury, which
20 there's -- he had sustained two specific types. One
21 is called a subdural hematoma and the other is
22 called subarachnoid hemorrhage. Both of those are
23 bleeding around the space of the brain within the
24 skull.

25 **Q** What is -- if you can just give me the layman's

1 term for that.

2 **A** So within the skull, the brain lives in a
3 fluid. And when it bleeds, it bleeds into that
4 space around the skull, and that would be the
5 subdural -- the subdural hematoma. The subarachnoid
6 hemorrhage is very similar. It's a specific layer
7 that -- inside the skull where the blood can be
8 collected. But in very simple terms, it's bleeding
9 in and around the brain.

10 **Q** And can you tell what these injuries were
11 caused by?

12 **A** I can't tell a hundred percent what the
13 injuries were caused by.

14 **Q** Or what type of trauma?

15 **A** The injuries are consistent with a blunt force
16 to the head and face is the best I think that I can
17 probably say specifically.

18 **Q** And what injuries did he sustain to his eyes?

19 **A** His left eye was ruptured. So we call that a
20 globe rupture, but it was a rupture of the globe
21 itself, the actual eyeball.

22 **Q** And what does it mean to be ruptured?

23 **A** Opened, cracked open. I'm trying to think of a
24 simple way to say that, but to be disrupted. The
25 eye is a closed ball, but if it gets broken open,

1 that would be ruptured.

2 **Q** And could these injuries have been fatal?

3 **A** Absolutely. I think the injuries definitely
4 could have been fatal in a setting, obviously, of
5 not being somewhere where the treatment could be
6 provided.

7 **Q** What was the ultimate -- ultimately done to
8 Mr. Cone's left eye?

9 **A** Some time later, he had his left eye removed
10 per the medical record. I was not involved in that
11 portion of his care, but I have reviewed that
12 portion of the medical record.

13 **Q** And what was Mr. Cone's chief complaint before
14 he had it taken out?

15 **A** Persistent chronic pain to the eye related to
16 the rupture or the breakage of the eyeball.

17 **Q** All of these injuries were caused by blunt
18 force trauma?

19 **A** To the best -- to the best of my knowledge and
20 expertise, that's what they were consistent with,
21 yes.

22 **Q** And you have experience with blunt force
23 trauma?

24 **A** Yes, unfortunately.

25 **Q** You have experience with blunt force trauma

1 from a fall?

2 **A** Yes. You know, I mean, we see a lot of falls.
3 There are a lot of variations on falls. Obviously,
4 high-level falls, low-level falls are different.

5 **Q** And do you have experience with blunt force
6 trauma from being struck with a fist or a weapon?

7 **A** Yes. I mean, I see a lot of folks who are
8 reportedly assaulted. Again, without -- and being
9 an expert in forensics, you know, I often take --
10 we, on the medical side of things, take the word of
11 those who tell us and bring folks to us as to what
12 the specific mechanism of injury was, but we
13 definitely see a lot of folks who are involved in
14 altercations, assaults and injuries of that variety,
15 yes.

16 **Q** Were these injuries more consistent with being
17 struck with a fist than a fall?

18 **MS. WILLIAMS:** Objection, Your Honor.

19 **THE COURT:** Yes, ma'am.

20 **MS. WILLIAMS:** The witness has testified that
21 he can't speak to that without -- that would be
22 something falling past the expertise. He would need
23 to be a forensic person.

24 **THE COURT:** Do you wish to be heard?

25 **MR. SHELLENBERG:** Yes, Your Honor. Beg the

1 Court's indulgence.

2 **THE COURT:** Sure.

3 (Pause.)

4 BY MR. SHELLENBERG:

5 **Q** Doctor, when there's a slight fall, what type
6 of injuries do you typically see?

7 **THE COURT:** Hold on a second. The question is
8 withdrawn. Do you remember that question, the last
9 one?

10 **THE WITNESS:** Are you talking to me, sir?

11 **THE COURT:** Yes, sir.

12 **THE WITNESS:** Yes, I remember the last
13 question.

14 **THE COURT:** Okay. You may answer the last
15 question. He withdrew, I assume, the other one.
16 Okay?

17 **THE WITNESS:** Okay. Yes, sir.

18 BY MR. SHELLENBERG:

19 **Q** With a slight fall, what type of injuries do
20 you see?

21 **A** Typically, if someone falls, you say slight
22 fall, falls from standing or trips and falls, we'll
23 see minor injuries, scrapes, cuts. I mean, we can
24 see -- occasionally, we can see even a minor inter
25 -- a minor traumatic brain injury similar to that,

1 what we described, but to a minor degree. And there
2 can be some of these types of injuries in isolation.
3 It would be uncommon to see this collection of
4 injuries from a minor fall.

5 **Q** And with a blunt force trauma from being struck
6 with a fist or a weapon, what type of injuries do
7 you typically see?

8 **A** Typically, the force of impact would be higher
9 with those sorts of injuries. Again, the collection
10 of injuries can be similar; however, when you put
11 all of them -- all of the injuries that this
12 particular individual suffered, in my opinion, would
13 not be consistent with a low-level fall.

14 **MS. WILLIAMS:** Objection, Your Honor.

15 **THE COURT:** Yes, ma'am.

16 **MS. WILLIAMS:** I believe they're eliciting
17 testimony of him giving an opinion as to what would
18 have caused the injury, which he stated earlier that
19 he cannot give, that's not his expertise.

20 **THE COURT:** Objection's overruled.

21 **MR. SHELLENBERG:** Thank you, Your Honor. Beg
22 the Court's indulgence.

23 BY MR. SHELLENBERG:

24 **Q** Can you please restate your answer to that
25 question?

1 **A** No, ma'am.

2 **Q** And as you testified earlier, you normally, in
3 the medical field, you take the word of what people
4 are telling you happened?

5 **A** That's right.

6 **Q** Because you're not focused on law enforcement
7 and getting whoever allegedly did this to them;
8 right?

9 **A** Absolutely not.

10 **Q** You're focused on healing them?

11 **A** That's correct.

12 **Q** Now, you were able to review his whole chart
13 before coming here today?

14 **A** I think so.

15 **Q** Okay. You would be familiar with -- you rely
16 on the -- a chart for a patient?

17 **A** Sure.

18 **Q** So if you were looking to see -- before making
19 a decision, you would look -- refer to the chart?

20 **A** Yes.

21 **Q** And you'd be able to read those charts and
22 interpret what others had written there?

23 **A** I think so, yes.

24 **Q** Okay. And that would be something that you
25 would rely on, potentially?

1 **A** Yes. I use the medical record every day to
2 guide decisions, yes, ma'am.

3 **Q** That's why they write them down, right, because
4 there's a lot more people than just you trying to
5 heal people?

6 **A** Sure.

7 **Q** This is a part of -- can you state what that
8 is? Are those medical records?

9 **A** These are medical records, yes.

10 **Q** At the top, does it say Jaranamo Cone?

11 **A** It does.

12 **Q** And I've already turned it to page 477.

13 **A** Yes.

14 **Q** And in that, that's the notes from
15 consultations?

16 **A** It does say Consultations at the top, yes,
17 ma'am.

18 **Q** And about midway through the page under
19 Professional Services, one of the notes states
20 there, it's talking about Mr. Cone's eye?

21 **A** Okay. Let me see.

22 I see what you're referring to, yes, ma'am.

23 **Q** Okay. So it said that -- it was talking about
24 the tongue and it said, He will open his right eye
25 to voice. That's what that says?

1 **A** Yes. He will open his right eye to voice, yes.

2 **Q** That means somebody saying, Mr. Cone, and
3 opening the eye?

4 **A** That's right.

5 **Q** And then it says, He apparently had congenital
6 blindness in his left eye?

7 **A** That's what it states, yes, ma'am.

8 **Q** And I'd like to -- if you wouldn't mind turning
9 the page to 475.

10 **A** Yes.

11 **MS. WILLIAMS:** Beg the Court's indulgence.

12 **THE COURT:** Yes, ma'am.

13 (Pause.)

14 **BY MS. WILLIAMS:**

15 **Q** I'm sorry. If I could direct you to page 469.
16 I apologize about that.

17 **A** Okay.

18 **Q** And this is under -- in the middle of the page,
19 it says, Medical Decision Making?

20 **A** I'm there.

21 **Q** And in there, does it also say that, Patient's
22 left eye is fixed and dilated; however, he was blind
23 in this eye previous to this assault, according to
24 his wife?

25 **A** That's what it states, yes, ma'am.

1 **Q** And that would be simply used to determine when
2 you're looking at this eye, everything to go into
3 it?

4 **A** That's true. So the import -- the importance
5 of the preexisting eye blindness is such that to
6 make the determination to whether or not the current
7 injury is related to not being able to see out of
8 the eye. That's different from a rupture of the
9 eyeball itself. That still could be and presumably
10 was an acute finding in conjunction. But at
11 baseline, according to this record from the
12 emergency department staff, the wife said that he
13 was previously blind.

14 **MS. WILLIAMS:** Thank you. No further
15 questions. Thank you.

16 **THE COURT:** Redirect?

17 **MR. SHELLENBERG:** Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SHELLENBERG:

20 **Q** Dr. Jones, what is congenital blindness?

21 **A** Using the word congenital implies that the
22 blindness was present throughout the whole life.
23 That would typically be how that word is used.

24 **Q** Does that mean that he could not see at all?

25 **A** In the most simple way that word is used,

1 blind, that would mean that. However, one would
2 have to go back and know from previous eye records
3 and that sort of thing whether he had complete
4 blindness or partial blindness or whether there was
5 a modifier to that. I would not have any way to
6 know that from that statement that I just read from
7 the chart.

8 **MR. SHELLENBERG:** Thank you, Your Honor.

9 **THE COURT:** Recross?

10 **MS. WILLIAMS:** No, Your Honor.

11 **THE COURT:** Thank you, Doctor. You may step
12 down.

13 Is he released from his subpoena?

14 **MS. WALKER:** Yes, Your Honor.

15 **THE COURT:** Do you need him to stay?

16 **MS. EIGENBROT:** No, Your Honor.

17 **THE COURT:** Thank you, Doctor. You're free to
18 go.

19 Any other witnesses for the State?

20 **MS. WALKER:** No, Your Honor. At this time, the
21 State rests.

22 **THE COURT:** Thank you.

23 All right. Ladies and gentlemen of the jury, I
24 told you when I went through that preliminary
25 instruction section with you that when we reach this

1 point of the trial, I have to stop and send you out
2 of the courtroom and discuss legal issues with the
3 attorneys. This usually takes about 20 minutes.
4 And I will get you back out here as soon as I
5 possibly can. Do not discuss the case in any way.
6 If you would, please, follow the bailiff.

7 (The jury retires to the jury room.)

8 **THE COURT:** Are there any motions?

9 **MS. EIGENBROT:** Yes, Your Honor. The defense
10 would like to, at this time, make a motion for a
11 directed verdict. In the light most favorable to
12 the State, the facts presented thus far, the State
13 has not proven beyond a reasonable doubt that
14 self-defense did not exist in this case. I believe
15 that is what the burden is at this point, as we have
16 made a plea for self-defense, Your Honor.

17 We've heard from State witnesses that would
18 indicate Mr. Gary, on the day of the incident, had
19 indicated that the actual physical altercation did
20 not begin until Mr. Jaranamo Cone began choking him.
21 We understand it was right outside of his residence,
22 Your Honor, but that is what his statement has been,
23 that is what the officer testified to.

24 The other witness we heard from, Your Honor, is
25 Ms. Riley, Ms. Vanetia Riley. She gave an

1 indication that she could not see the -- see
2 Mr. Gary's front door. There was clearly some
3 evidence on the front door that would indicate this
4 altercation began taking place closer to the front
5 door than it would have out in the parking lot or in
6 the street based on the photographs presented, Your
7 Honor. So we would move, at this point, the State
8 has not met its burden even in the light most
9 favorable to them.

10 **THE COURT:** The motion's respectfully denied.

11 Anything else?

12 **MS. EIGENBROT:** And, Your Honor, could we
13 address the double jeopardy issue at this time?

14 **THE COURT:** You may.

15 **MS. EIGENBROT:** Your Honor, from what I can
16 find thus far, I have not been able to find any
17 specific elements related to mayhem minus the fact
18 that all -- pretty much all other states or other
19 common law definitions would give indication there
20 was some malicious, permanent type of injury. I be
21 -- which I think equates to serious bodily injury,
22 which is what ABHAN was designed to prosecute, Your
23 Honor.

24 I believe with the -- and under Blockburger,
25 Your Honor, I think the malicious intent and the

1 injury itself all fall under the statute of ABHAN,
2 and as such, it would be a double jeopardy issue at
3 this point.

4 **THE COURT:** Do y'all want to read that article
5 I just sent to you?

6 **MS. WALKER:** Your Honor, I don't have a way to
7 access e-mail down here, but I think we may have it.
8 I may have already printed it. Can I approach and
9 make sure we're looking at the same thing?

10 **THE COURT:** Yes, ma'am, that's it.

11 **MS. WALKER:** And I've given a copy of that to
12 defense counsel.

13 **THE COURT:** Judge Hill had responded to the
14 Listserv request yesterday and told me I may -- just
15 said, You may want to look at this article. I
16 didn't realize it was an article he wrote until my
17 law clerk pulled it up this morning.

18 But now this is -- this is like the title page,
19 but this is not the article.

20 **MS. WALKER:** Your Honor, when we printed this
21 off, the only thing that we had was this...

22 **THE COURT:** Well, let me tell you what my
23 concern was. First of all, the concern was I've
24 never heard of this being charged, and that doesn't
25 mean you can't do it. I may not -- I'm not the

1 oldest judge holding court, but I'm up there pretty
2 close, which just means I've been around longer,
3 that may or may not be relevant either. But I was a
4 prosecutor, I was a public defender and I was a
5 lawmaker and I've never heard of this being brought
6 up in South Carolina. Again, neither here nor there
7 if it exists.

8 When I started reading about it, my concern was
9 that I don't know what the common law crime elements
10 are because it seems like these things have changed
11 over the years, and we're talking about the 1600s
12 and the 1700s. And so what I read that was of
13 particular concern to me was the indication that, as
14 the law progressed in the English common law, that
15 they were moving away from this concept about the
16 injury being done to defeat somebody's ability to
17 defend themselves, the victim's ability to defend
18 themselves.

19 Now, when I was practicing law and for many
20 years after I became a judge, I subscribed to a book
21 that not a whole lot of people seem to subscribe to,
22 but I was given some advice when I was a public
23 defender that as far as being able to say that you
24 covered the elements of the crime with your client
25 when it came back on post-conviction relief, one of

1 the good things to have was this book that's written
2 by John R. Ferguson, who is a lawyer in Laurens who
3 I don't really think practices much criminal law.
4 And he goes through and puts the elements down.

5 So I looked at the book I have, and the last
6 version I bought was in 2005, but this hasn't
7 changed that I know of since 2005. And it says that
8 mayhem is a felony under the common law. It carries
9 not less -- it carries three months to ten years.
10 If there's a weapon, you confiscate the weapon. And
11 the elements are an intentional -- intentional and
12 malicious mutilation and maiming of another to
13 disable or render useless a part of his body so that
14 he is less able to fight or to defend himself.

15 The article I read which I -- I want y'all to
16 read it before you make your argument, so I'll give
17 you a few minutes, but the article Judge Hill wrote
18 goes to this issue about that fourth element, to
19 disable or render useless a part of his body so that
20 he is less able to fight or to defend himself. And
21 I think Judge Hill is saying that it seems like
22 jurisdictions are moving away from that element. If
23 that's the case, I'm almost a hundred percent
24 certain that ABHAN would include everything.

25 I also have a concern, and I'll hear you all

1 out before I make up my mind, I also have a concern
2 as to whether there is any evidence, and it may be
3 that I'll make this ruling at the end of all the
4 evidence, that there's any evidence that this was
5 intentionally done to disable a part of his body,
6 the victim's body, so that he was unable to defend
7 himself. The permanent injury, the rendering
8 useless is to his eye. It's not like cutting off a
9 hand or breaking a leg or things like that. And now
10 I've got evidence from the doctor that he was blind,
11 at least to some degree, before the incident
12 occurred.

13 So those are my concerns. You all can think
14 about that, mull it over, but I do commend you to
15 read what Judge Hill wrote. And if you haven't had
16 a chance, I'll give you a chance.

17 Do I have the Solicitor on your case? We'll be
18 at ease for a little while. I've got to talk to
19 them about another matter.

20 (Brief Recess.)

21 **THE COURT:** All right. What else do y'all need
22 to put on the record?

23 **MS. WALKER:** Your Honor, the State relies -- if
24 it pleases the Court, Your Honor.

25 **THE COURT:** Sure.

1 **MS. WALKER:** On State versus Carson, 274 S.C.
2 316, and I can pass a copy of this up as well just
3 to address a few of the points that you made. The
4 appellant in that case argued that this was a case
5 about misprision of a felony. At that point, the
6 court had this finding in their order:

7 Appellant argues against our recognition of the
8 offense on the grounds it has lain dormant for so
9 long and is without precedent in this state.
10 However, this argument was not raised in the court
11 below and by exception and is therefore improperly
12 before us on the first time for appeal. We note,
13 however, that had such an argument been raised and
14 preserved, it would not -- it would yet be
15 unpersuasive. It is clear that the common law will
16 not be impliedly changed, but only by clear and an
17 unambiguous legislative enactment will the settled
18 rules of common law be eroded.

19 So in terms of parts of the common law not
20 applying, I think what -- and Judge Hill's article
21 says, All malicious injuries which disable or
22 disfigure a person. And he specifically notes the
23 putting out of an eye, which is what we have in this
24 case.

25 Your Honor, the --

1 **THE COURT:** How is that not the same -- all
2 right. Then go to the Blockburger test. How is
3 that not the same element, the same facts to prove
4 -- you see I'm not --

5 **MS. WALKER:** I think because mayhem requires
6 malice and ABHAN does not. So there's an additional
7 element, which is why we were eliciting testimony
8 from people like Vanetia Riley about him being
9 angry; him saying, He came at me over a little bit
10 of weed; what was his demeanor when you saw him, he
11 appeared to be angry; the repeated bashing of this
12 victim's head into the concrete, Your Honor. The
13 additional element of malice is why that testimony
14 was elicited.

15 In terms of the eye in this case, Mr. -- I
16 guess, Dr. Jones testified to what congenital
17 blindness usually means, but then he also went on to
18 say, Sometimes you can be partially blind, sometimes
19 you can -- you can see out of the eye. The victim's
20 testimony, Your Honor, was that before this beating,
21 he could see out of the eye. They talked about his
22 truck being in the parking space, he could drive.
23 And he testified that now he can no longer see out
24 of the eye, he has a prosthetic eye and can no
25 longer drive.

1 In terms of this specifically rendering someone
2 helpless and unable to defend himself, a, you know,
3 good way to be able to defend yourself, Your Honor,
4 the State argues is that you'd be able to see your
5 attacker. And even if you can't see them as well as
6 somebody with 20/20 vision, the ability that you
7 have to see them at your state is impaired once
8 someone bashes your eye -- your face causing the eye
9 to rupture.

10 So the additional element, Your Honor, the
11 analysis in Carson says that just because, you know,
12 a law is dormant doesn't mean that it can't be used
13 by the State in prosecution. We would think that
14 the testimony of Ms. Riley, the testimony of
15 Mr. Cone gets us beyond a directed verdict. And
16 whether or not he, you know, and whether or not he
17 did it with malice -- Mr. Gary did this with malice
18 or whether or not his vision was so impaired before
19 as to render the fact that his eye was ruptured and
20 replaced with a prosthetic irrelevant, I think that
21 would be an issue of fact for the jury.

22 Thank you for allowing me to be heard, Judge.

23 **THE COURT:** Yes, ma'am.

24 Do y'all wish to be heard?

25 **MS. EIGENBROT:** Thank you, Your Honor. May it

1 please the Court.

2 Your Honor, actually, when I was told they were
3 going forward on this mayhem charge, I began doing
4 the same thing that Your Honor did, was trying to
5 research this offense. I was unable to find any
6 case law or anything in reference to mayhem except
7 for articles that are very similar to Judge Hill's
8 indicating that this charge has been subsumed by
9 many aggravated assault charges in most other
10 states. I believe here it is the same situation in
11 South Carolina.

12 I think the injury that mayhem requires is
13 almost to -- almost exact same as what an ABHAN
14 charge requires is serious bodily injury. The
15 definition of serious bodily injury or great bodily
16 injury includes a permanent disfigurement.

17 I believe any type of assault has to include
18 some type of intent and malicious intent at that.
19 So I don't necessarily believe there's an extra
20 element that would keep -- that would keep this from
21 being a double jeopardy issue. And based on what
22 has been offered thus far, I do think this is more
23 appropriately charged as ABHAN, which is what he was
24 initially charged with, and that mayhem should be
25 dismissed.

1 (Pause.)

2 **THE COURT:** I'm going to take the ruling under
3 advisement, but I will tell y'all that.-- I need to
4 look up the malice component that's been argued now,
5 but, the definition in the statute for assault and
6 battery of a high and aggravated nature, the
7 definition's in section 16-3-600: Great bodily
8 injury means bodily injury which causes a
9 substantial risk of death or which causes serious,
10 permanent disfigurement or protracted loss or
11 impairment of the function of a bodily member or
12 organ.

13 That element seems to me to be the same in a
14 Blockburger analysis as what is being argued as one
15 of the elements of malice. So the question is, that
16 I have, is what authority is there now for South
17 Carolina as to what the elements of mayhem are?
18 Because from what I'm reading, there apparently was
19 a statute of some type enacted in England, and
20 that's referencing Judge Hill's article, and it
21 looks like that there was a movement away from the
22 fourth element of mayhem, to disable or render
23 useless a part of his body so that he is less able
24 to fight or to defend himself.

25 If that fourth element is not there and if the

1 malice component is not substantially different, the
2 criminal intent is not substantially different, then
3 it seems to me that what you're charging him for in
4 mayhem is exactly the same thing you're charging him
5 for with ABHAN; you're just charging him twice,
6 which is a double jeopardy violation.

7 And, again, I commend you for the effort, but I
8 just -- I'm really struggling with this when there
9 is nothing out there except Ferguson's book, which
10 doesn't really say where he got these elements from
11 and whether he was looking at the 1600's version of
12 it or the 1700's version of it or what, not a single
13 reference have I been given to any case in South
14 Carolina, recorded case, that -- where somebody has
15 been convicted of mayhem that sets forth the
16 elements of it. And if I don't know what the
17 elements are in 2016 for the common law, I really am
18 struggling with how I can let a jury find both ABHAN
19 and mayhem.

20 I'll think about it. You all can see what you
21 can come up with in the interim.

22 **MS. WALKER:** Your Honor?

23 **THE COURT:** Yes, ma'am.

24 **MS. WALKER:** And I'm asking just so I know
25 where to go in my research tonight, 14-1-50 would

1 apply in this case, right, that all and every part,
2 of the common law of England, where it is not
3 altered by the code or inconsistent with the
4 Constitution or laws of this State, is hereby
5 continued in full force and in effect in the same
6 manner as before the adoption of that section?

7 So if there's not anything to the contrary of
8 what the common law is, as was read in the book you
9 just discussed, that it would be -- that common law
10 would still be in full effect or am I
11 misunderstanding?

12 **THE COURT:** I need to know what the common law
13 of England was. I mean, it's not like in the old
14 days when I could rattle off what assault and
15 battery of a high and aggravated nature was under
16 the common law. I can rattle all of the elements
17 off of different offenses.

18 Y'all haven't given me a single case that sets
19 out the elements of mayhem. You have only given me
20 the assertion that it's the common law. So I start
21 looking about the common law and what I found out is
22 that the common law was evolving and as it evolved,
23 it got to a point where they were dropping the
24 fourth element. If the fourth element was dropped
25 in 1750, then I've got a different analysis to make

1 than if the fourth element still persists in South
2 Carolina now.

3 The reason I can't be any clearer is because of
4 what I said earlier, I've never heard or seen this
5 charge in South Carolina, so I know of no help to me
6 on it except Judge Hill miraculously wrote this
7 article. I've got Ferguson's book which has the
8 four elements.

9 But put the common law issue aside, if I
10 decided with you on that, you still have the double
11 jeopardy issue. You've still got whether the
12 elements that you're proving on mayhem are the same
13 as the ones you're proving, is there -- does each
14 one have a -- one that is different? And it seems
15 to me, off the top of my head with this limited
16 research, that mayhem is more of a lesser-included
17 offense, perhaps, than a separate crime or it's the
18 same elements under the Blockburger case.

19 **MS. WALKER:** Thank you, Your Honor.

20 **THE COURT:** I mean, misprison of a felony, I've
21 probably done a hundred of those in my career
22 easily. So they're talking about misprison being
23 antiquated?

24 **MS. WALKER:** At that time, Your Honor, they
25 were.

1 **THE COURT:** Well, I've been around a long time,
2 but -- I mean, misprision of a felony was not
3 something that was foreign to courts in South
4 Carolina. We did them all the time. People got
5 indicted for it all the time.

6 I'm not trying to make new law, but it looks
7 like I might one way or the other. I'm just trying
8 to sort through as best I can what the status is.
9 I'm not trying to be a legislator, I've done that.
10 I'm not trying to be a member of the Supreme Court
11 or the Court of Appeals. I'm just trying to figure
12 out what I tell that jury and do I tell the jury
13 there's three elements to it, do I tell the jury
14 there's four elements to it, do I tell the jury
15 there's a difference between the intent that's
16 required for assault and battery of a high and
17 aggravated nature versus the intent that's required
18 for mayhem?

19 I mean, what am I going to tell the jury? And
20 if I don't know what to tell the jury, they're not
21 going to know what to do.

22 Do y'all have any witnesses? Have you finished
23 your motions?

24 **MS. EIGENBROT:** Yes, Your Honor. We're
25 finished with our motions. We do have witnesses.

1 **THE COURT:** Are you ready to proceed?

2 **MS. EIGENBROT:** Yes, Your Honor.

3 **THE COURT:** Are y'all ready? The State ready?

4 **MS. WALKER:** Yes, Your Honor.

5 **THE COURT:** Bring in the jury.

6 I took the ruling under advisement.

7 (The jury returns to the courtroom.)

8 **THE COURT:** All right. Ladies and gentlemen of
9 the jury, I told you that when the State rested, I
10 had to confer with the attorneys, and we've done
11 that. And now what we're going to do is we're going
12 to turn our attention to -- give the defense an
13 opportunity to present evidence for you to consider
14 in deciding whether the State has met its burden of
15 proof or failed to meet its burden of proof.

16 Now, as I told you at the outset, the defendant
17 is presumed to be innocent. He has no obligation to
18 prove anything at all, but he is offered the -- his
19 side is offered the ability to present evidence for
20 you to consider in deciding whether the State has
21 met its burden of proof or failed to meet its burden
22 of proof. And that's where we are in the case.

23 Let me see the attorneys back up here. I'm
24 sorry.

25 (Whereupon, a bench conference was held off

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

3 **THE COURT:** Call your first witness, please.

4 **MS. BRIGHTHOP:** The defense calls Antonio
5 Adams.

6 **THE COURT:** Mr. Adams, I need you to come to
7 this gentleman right here.

8 ANTONIO ADAMS,
9 having been duly sworn, testified as follows:

10 **THE CLERK:** Please have a seat. State your
11 full name for the record.

12 **MS. BRIGHTHOP:** May it please the Court.

13 **THE COURT:** Yes, ma'am.

14 **MS. BRIGHTHOP:** Beg the Court's indulgence.

15 **THE COURT:** Yes, ma'am.

16 (Pause.)

17 **MS. EIGENBROT:** Your Honor, may we approach?

18 **THE COURT:** Sure.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 **THE COURT:** All right. Ms. Brightshop.

23 **MS. BRIGHTHOP:** Thank you.

24 *****

25 *****

1 DIRECT EXAMINATION

2 BY MS. BRIGHTHOP:

3 Q Good afternoon. How are you?

4 A I'm fine.

5 Q All right. Can you please state your name and
6 spell your last name for the court reporter?

7 A Antonio Adams, A-d-a-m-s.

8 Q All right. Mr. Adams, what do you do?

9 A I work at --

10 **THE COURT:** Hold on a second.

11 BY MS. BRIGHTHOP:

12 Q What is your date of birth, Mr. Adams?

13 A 2/19/88.

14 **THE COURT:** Go ahead.

15 BY MS. BRIGHTHOP:

16 Q What do you do?

17 A I work at Amazon and Bogart's.

18 Q And is that here in Columbia?

19 A Yes, ma'am.

20 Q Do you know why you're here today?

21 A Yes, ma'am.

22 Q And why are you here, Mr. Adams?

23 A Because of the incident that occurred at our
24 apartment.

25 Q Okay. Do you know Kevin Gary?

1 **A** Yes, ma'am.

2 **Q** And do you know why he's here today?

3 **A** Yes, ma'am.

4 **Q** What's his role in this case today?

5 **A** He's the defendant.

6 **Q** Could you point him out to the jury?

7 **A** Right there {indicating}.

8 **THE COURT:** Can you speak up a little bit,
9 please?

10 **THE WITNESS:** I'm sorry.

11 BY MS. BRIGHTHOP:

12 **Q** Now, Mr. Adams, how do you know Kevin Gary?

13 **A** We went to school, middle school together,
14 childhood friends, our fathers knew each other, so
15 -- we kind of played ball together.

16 **Q** Okay. How else do you know Kevin Gary?

17 **A** That's it, other than just being roommates.

18 **Q** Okay. Y'all were roommates?

19 **A** Yeah.

20 **Q** So how long did y'all live together?

21 **A** Roughly, four months, five months.

22 **Q** And were y'all living together around March
23 25th, 2014?

24 **A** Yes, ma'am.

25 **Q** Okay. What apartment complex were y'all

1 living?

2 **A** St. Andrews Pointe. I don't remember the exact
3 apartment number, but St. Andrews Pointe.

4 **Q** St. Andrews Pointe, okay. When a maintenance
5 request was submitted, did you submit that request
6 or does Kevin submit that request?

7 **A** Any request from the front office or
8 maintenance or anything was through Kevin and Beth.

9 **Q** Okay. So has there ever been a maintenance
10 request -- or was there ever a maintenance request
11 that was filled out by Kevin?

12 **A** To my knowledge, yes.

13 **Q** Okay. And did a maintenance worker ever come
14 out to your apartment?

15 **A** Yes, ma'am.

16 **Q** What was his name?

17 **A** I don't know his name.

18 **Q** Would you be able to recognize him?

19 **A** Yes, I can recognize him, but I don't know his
20 name.

21 **Q** Do you see him in the courtroom today?

22 **A** I believe he's over here {indicating}, yeah,
23 behind the TV.

24 **Q** Okay. Do you remember Mr. Cone coming to the
25 residence in March 2014, March 25th to be exact?

1 **A** Yes, ma'am.

2 **Q** Do you know why he was coming?

3 **A** He came to fix the toilet, the upstairs toilet.

4 **Q** Okay. Did you ever talk to Mr. Cone?

5 **A** No, ma'am.

6 **Q** So did you have any interaction with Mr. Cone?

7 **A** The only interaction I had with him was after I
8 was called downstairs to deescalate things.

9 **Q** Okay. So you said to deescalate things. Who
10 called you downstairs?

11 **A** Beth.

12 **Q** And you were upstairs?

13 **A** Yes, ma'am.

14 **Q** And what did Beth say to you?

15 **A** She just screamed my name --

16 **MS. WALKER:** Objection; hearsay.

17 **MS. BRIGHTHOP:** I'll withdraw my question.

18 **THE COURT:** Disregard the last statement of the
19 witness.

20 BY MS. BRIGHTHOP:

21 **Q** So you went downstairs and what did you see?

22 **A** They were just standing face-to-face by the --

23 **Q** Who is they?

24 **A** Kevin and Mr. Coney.

25 **Q** Mr. Cone.

- 1 **A** Mr. Cone.
- 2 **Q** So how did -- you said they were standing
3 face-to-face?
- 4 **A** Uh-huh.
- 5 **Q** How did they appear?
- 6 **A** I mean, they were chest to chest. And, I mean,
7 they apparently were yelling and screaming.
- 8 **Q** Okay. What happened next?
- 9 **A** I told Kevin to calm down. And Kevin had been
10 telling Mr. Cone to leave, you know, he didn't have
11 to continue fixing our toilets; he can leave. And
12 then when I came downstairs, I guess eventually
13 that's when he decided to leave because that's when
14 he left once I came downstairs.
- 15 **Q** Okay. So Mr. Cone did leave?
- 16 **A** Yes, ma'am.
- 17 **Q** What happens as he was leaving?
- 18 **A** As he left, he opened the door extremely wide
19 and slammed it hard and shook the apartment.
- 20 **Q** Okay. So he left the apartment. Then what
21 happens?
- 22 **A** Then that's when I opened the door and asked
23 him, you know, like, why are you slamming the door?
- 24 **Q** Okay.
- 25 **A** And that's when the altercation occurred.

1 **Q** Was there anyone else that was present in the
2 apartment?

3 **A** It was me, Kevin, Beth, the youngest son. I
4 want to say the daughter, Kevin's daughter was
5 there, too. I think -- I think, yeah. So, what is
6 that? One, two, three, five people total.

7 **Q** Okay. And where was Kevin's youngest son?

8 **A** When I came downstairs, he was by the front
9 door.

10 **Q** So he was by the front door?

11 **A** Yeah, he was by the front door and the window.
12 He stands -- he likes to stand in the window --

13 **Q** Okay.

14 **A** -- and watch -- well, look out the window,
15 that's what he likes to do. But that's where he was
16 at, in that area by the front door when I came
17 downstairs.

18 **Q** Okay. So how close was Kevin's son to the
19 window?

20 **A** Right next to the wall.

21 **Q** Okay. So Mr. Cone, you said he exited the
22 door?

23 **A** Yes, ma'am.

24 **Q** What -- where was Kevin at the time?

25 **A** Kevin, if I recall correctly, was still

1 standing by the bathroom downstairs, if I recall
2 correctly.

3 Q Okay. So when Mr. Cone -- did he eventually
4 get out of the door?

5 A Yes, ma'am.

6 Q And as he left the door, did -- where did Kevin
7 go? Did Kevin stay in the apartment?

8 A Once he left and I opened the door and asked
9 him, why did he slam the door like that, and Kevin
10 came beside me and went outside, and that's when
11 them two got into an altercation.

12 Q Okay. What did you see Mr. Cone do?

13 A Mr. Cone, I didn't see him do anything
14 specifically, but they both were throwing blows.

15 Q Okay. Did you ever see Mr. Cone reach --

16 MS. WALKER: Objection; leading.

17 BY MS. BRIGHTHOP:

18 Q Okay. So once you -- you say you were out, you
19 saw Mr. Gary and Mr. Cone outside?

20 A Uh-huh.

21 Q Okay. And what did you observe then?

22 A Them just throwing blows and Kevin knocked him
23 down. And once he knocked him down, he tried to
24 help him a couple times. He proceeded to keep
25 trying to get up and he kept falling over. And

1 neighbors started coming out. I think it was around
2 the time that the kids were let out of school, so we
3 had a lot of kids out in the parking lot. And I
4 believe Beth ran to get the lady from the front
5 office because she came over, and just a bunch of --
6 a lot of stuff going on at the time.

7 **Q** Who all was out there when this was occurring?

8 **A** I know for a fact I was in the doorway, Kevin,
9 Mr. Cone. And those are the only three people I can
10 say for a fact that were out there.

11 **Q** Okay. Now, you said that you saw Mr. Gary
12 actually try to help Mr. Cone a couple of times?

13 **A** Uh-huh.

14 **Q** At what point did you see this?

15 **A** This was after the altercation. After he
16 knocked him down and he was bleeding, he told him,
17 Just don't get up, because he kept trying to get up.
18 I mean, that's instinct, you know, trying to get up,
19 and he just kept falling down, falling down. He
20 fell down at least three times.

21 **Q** Okay. And where were they located, Mr. Cone
22 and Mr. Gary?

23 **A** They were right by his front tire on his truck.

24 **Q** Okay.

25 **MS. BRIGHTHOP:** Beg the Court's indulgence.

1 **THE COURT:** Yes, ma'am.

2 (Pause.)

3 BY MS. BRIGHTHOP:

4 **Q** Okay. As all this was happening, where were
5 you located?

6 **A** In the doorway.

7 **Q** Okay. Did you ever go back to the apartment?

8 **A** Go back inside?

9 **Q** Yes.

10 **A** Yes, I did.

11 **Q** Okay. And what did you do while you were in
12 the apartment?

13 **A** I grabbed all of my recreational tools for
14 marijuana and things of that nature and got rid of
15 it before the cops came.

16 **Q** Okay. So you went back to the apartment to get
17 that. And what did you do after that, after you got
18 your recreational tools?

19 **A** Got -- I got rid of it. I left and went and
20 threw it in the woods and came back.

21 **Q** Okay.

22 **MS. BRIGHTHOP:** Beg the Court's indulgence.

23 **THE COURT:** Yes, ma'am.

24 (Pause.)

25 BY MS. BRIGHTHOP:

1 **Q** All right. Mr. Adams, did you give a statement
2 in this case?

3 **A** Yes, ma'am.

4 **Q** And I'm going to approach you with this
5 statement.

6 **MS. BRIGHTHOP:** May I approach the witness,
7 Your Honor?

8 **THE COURT:** Yes, ma'am.

9 **MS. WALKER:** I would object, Your Honor. This
10 is improper refreshing of the witness' memory.

11 **THE COURT:** Do you wish to be heard?

12 **MS. BRIGHTHOP:** Your Honor, I'm just trying to
13 lay the foundation to see if he recognizes his
14 statement.

15 **THE COURT:** Unless it goes to some issue of
16 being consistent or inconsistent after a charge of
17 inconsistency is raised or he says he doesn't
18 remember something, I don't know how you do that.

19 **MS. BRIGHTHOP:** Okay.

20 BY MS. BRIGHTHOP:

21 **Q** Mr. Adams, do you remember giving a statement
22 in this case?

23 **A** Yes, ma'am.

24 **Q** And did you give that statement under oath?

25 **A** I don't understand the question.

1 **Q** When you gave the statement, did you sign the
2 statement?

3 **A** Yes, ma'am. I gave the statement at the
4 Richland County, what, police station.

5 **Q** And was that statement truthful?

6 **A** Yes, ma'am.

7 **Q** Okay.

8 **MS. BRIGHTHOP:** Beg the Court's indulgence.

9 **THE COURT:** Yes, ma'am.

10 (Pause.)

11 BY MS. BRIGHTHOP:

12 **Q** Do you remember who actually reached for who
13 first during the fight?

14 **A** No, ma'am.

15 **MS. BRIGHTHOP:** Your Honor, now may I approach
16 the witness with his statement?

17 **THE COURT:** I don't know. You can approach
18 him, yes, ma'am.

19 **MS. BRIGHTHOP:** Okay. Do you have a copy of
20 his statement?

21 **MS. WALKER:** Yes. Thank you.

22 BY MS. BRIGHTHOP:

23 **Q** If you saw your statement, would that refresh
24 your recollection of what happened that night or
25 that afternoon?

1 **A** I mean, I'm pretty confident I remember what
2 happened.

3 **Q** Okay. Well, would you like to see a copy of
4 your statement?

5 **MS. WALKER:** Objection, Your Honor. He's
6 confident he remembers what happened. He's answered
7 the question. This would be improper again.

8 **THE COURT:** Do you wish to be heard?

9 **MS. BRIGHTHOP:** No, Your Honor.

10 **THE COURT:** Do y'all need to confer?

11 **MS. BRIGHTHOP:** Yes, Your Honor.

12 **MS. WILLIAMS:** Beg the Court's indulgence.

13 **THE COURT:** Sure.

14 (Pause.)

15 BY MS. BRIGHTHOP:

16 **Q** So, Mr. Adams, it is your testimony today that
17 you didn't know who reached for who during the
18 fight?

19 **A** Yes, ma'am.

20 **Q** Here's a copy of your statement. I'm going to
21 read from your statement and I'll ask that you
22 follow along.

23 **MS. BRIGHTHOP:** Beg the Court's indulgence.

24 **THE COURT:** Yes, ma'am.

25 (Pause.)

1 BY MS. BRIGHTHOP:

2 Q I'm going to ask you to read something from
3 your statement. It's in the middle of the
4 paragraph. I've noted it right here {indicating}.
5 Would you read that for me?

6 A After the guy reached for Kevin, Kevin hit him
7 once or twice and the guy fell.

8 Q Thank you. So do you remember giving this
9 statement to the police?

10 A Yes, ma'am.

11 **BAILIFF:** She needs to use the restroom.

12 **THE COURT:** All right. Ladies and gentlemen,
13 we'll be at ease. Y'all step back into the jury
14 room, please. Don't discuss the case.

15 (The jury retires to the jury room.)

16 **THE COURT:** We're at ease for a few minutes.
17 I need you to stay there, if you would, please.

18 (Brief Recess.)

19 **BAILIFF:** Your Honor, they're ready.

20 **THE COURT:** Bring them in.

21 (The jury returns to the courtroom.)

22 **THE COURT:** You may continue, Ms. BrightHop.

23 **MS. BRIGHTHOP:** Thank you, Your Honor.

24 BY MS. BRIGHTHOP:

25 Q Now, Mr. Adams, do you have a criminal history

1 or have you ever been convicted of anything?

2 **A** Yes, ma'am.

3 **Q** Okay. And what is that?

4 **A** I've been convicted of grand larceny, and that
5 was a felony, and minor traffic violations.

6 **Q** Okay. Now, I know before the recess, things
7 were a little confusing, so I just want to make sure
8 that in your statement you say, After the guy
9 reached for Kevin, that you did give a statement --

10 **MS. WALKER:** Objection, Your Honor.

11 **THE COURT:** Yes.

12 **MS. WALKER:** She's leading. She's reading a
13 statement. I don't think the form of the question
14 is proper.

15 **THE COURT:** Do you wish to be heard?

16 **MS. BRIGHTHOP:** I apologize. I'll rephrase my
17 question.

18 **THE COURT:** All right.

19 BY MS. BRIGHTHOP:

20 **Q** Like I said, there was a little more confusion
21 before the recess. So you did give a statement in
22 this case?

23 **A** (Witness nodded head.)

24 **Q** And I just want to confirm what you read in
25 this statement.

1 **A** Yes, ma'am.

2 **Q** So you did -- did you see someone reach for
3 Kevin?

4 **A** Yes, ma'am.

5 **Q** And who was that guy?

6 **A** That was Mr. Cone.

7 **MS. BRIGHTHOP:** Thank you. No further
8 questions.

9 **THE COURT:** Cross?

10 **MS. WALKER:** Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WALKER:

13 **Q** Mr. Adams, hi. I'm Meghan Walker. You and I
14 spoke over the phone, but we've never met.

15 **A** Yes, ma'am.

16 **Q** When was the last time you spoke to the
17 defendant in this case?

18 **A** Maybe a week ago.

19 **Q** A week ago?

20 **A** Uh-huh.

21 **Q** Do y'all still live together?

22 **A** No, ma'am.

23 **Q** When did y'all stop living together?

24 **A** After that incident, they put us out.

25 **Q** And has y'all's relationship grown more distant

1 since this happened?

2 **A** Yes, ma'am.

3 **Q** And I guess y'all don't hang out anymore?

4 **A** Well, I mean, I went to North Carolina --

5 **Q** Will you do me a favor? Will you speak up just
6 a little bit?

7 **A** Yes, ma'am. I went to North Carolina and
8 started working at a Wingstop. So it was kind of
9 difficult for us to continue hanging out.

10 **Q** Right, but y'all don't hang out as much as you
11 used to?

12 **A** No, ma'am.

13 **Q** Do you still have a copy of the statement that
14 you gave?

15 **A** No, ma'am.

16 **Q** Or that she let you see.

17 You said on direct examination that you saw the
18 defendant in this case go and try to help the victim
19 up?

20 **A** Yes, ma'am.

21 **Q** Did you ever tell that to law enforcement?

22 **A** I don't recall.

23 **Q** You don't recall whether or not you told them?

24 **A** Yeah.

25 **Q** If I gave you -- if I let you review your

1 statement, would that let you know whether or not
2 you put that in your statement?

3 **A** If it's in there.

4 **MS. WALKER:** May I approach the witness, Your
5 Honor?

6 **THE COURT:** Yes.

7 BY MS. WALKER:

8 **Q** Just review that and see if you ever told law
9 enforcement that the defendant went to go help the
10 victim.

11 **A** No, ma'am.

12 **Q** You never said that before?

13 **A** No, ma'am.

14 **Q** And, in fact, this is the first time you've
15 ever said that you saw the defendant trying to help
16 the victim up; right?

17 **A** Well, this is the first time I've said it in
18 here.

19 **Q** And you spoke to the defendant a week ago?

20 **A** Yeah, about a week ago.

21 **Q** Were you home before the defendant got there
22 that day?

23 **A** Yes, ma'am.

24 **Q** Okay. And were you at home with Mr. Cone
25 before the defendant got there that day?

- 1 **A** Yes, ma'am.
- 2 **Q** Did you have any problems with Mr. Cone?
- 3 **A** No, ma'am.
- 4 **Q** Was he loud or boisterous towards you?
- 5 **A** No, ma'am.
- 6 **Q** And, at some point, you saw Mr. Cone lying on
7 the sidewalk bleeding; right?
- 8 **A** Uh-huh.
- 9 **Q** But you didn't stick around at that point?
- 10 **A** No, ma'am.
- 11 **Q** You didn't call 9-1-1?
- 12 **A** No, ma'am.
- 13 **Q** You didn't try to help him?
- 14 **A** No, ma'am.
- 15 **Q** You went and got your weed?
- 16 **A** Yes, ma'am.
- 17 **Q** And when you say recreational supplies, what
18 are those?
- 19 **A** That's like a bong.
- 20 **Q** Okay. Because if the cops are coming, you've
21 got to get the illegal stuff out of the house?
- 22 **A** The illegal stuff.
- 23 **Q** The illegal stuff; right?
- 24 **A** Yes.
- 25 **Q** So, at that point, your friend -- where is

1 Kevin when this is going on?

2 **A** He's right over Mr. Cone.

3 **Q** That he's helping him?

4 **A** Yeah.

5 **Q** Right.

6 **A** He's telling him to stop getting up.

7 **Q** I got you.

8 **A** And Beth went to the office to get the help.

9 **Q** But Beth is gone?

10 **A** Uh-huh.

11 **Q** Man bleeding from the head?

12 **A** Yes, ma'am.

13 **Q** Bleeding from the face?

14 **A** Yes, ma'am.

15 **Q** He looks like he's in bad shape; right?

16 **A** Yes, ma'am.

17 **Q** You didn't call 9-1-1?

18 **A** No, ma'am.

19 **Q** You didn't try to help him?

20 **A** No, ma'am.

21 **Q** And, at some point, you actually had to get

22 Kevin to stop hitting him; right?

23 **A** No, I didn't have to get Kevin to stop hitting

24 him.

25 **Q** You didn't stop him and say, Come on, bro?

1 **A** Yeah, but that's not me getting him to stop
2 hitting him. I just told him --

3 **Q** What does, Come on, bro, mean?

4 **A** Stop.

5 **MS. BRIGHTHOP:** Objection, Your Honor; asked
6 and answered.

7 **THE COURT:** Overruled.

8 BY MS. WALKER:

9 **Q** So what does, Come on, bro, mean?

10 **A** Stop.

11 **Q** Stop?

12 **A** Yeah.

13 **Q** And I guess there was a period of time that you
14 didn't see what, if anything, anyone was doing to
15 Mr. Cone in this case; right?

16 **A** Huh-huh.

17 **Q** Because you were gone?

18 **A** Because I left.

19 **Q** Because you had to throw the weed and the weed
20 supplies in the woods?

21 **A** Yes, ma'am.

22 **Q** While the maintenance man almost bled to death
23 on the ground?

24 **A** Yes, ma'am. But help was on the way.

25 **Q** Excuse me?

1 **A** Help was on the way.

2 **Q** How did you know that?

3 **A** Because Beth went to get help.

4 **Q** Was there a doctor at the front office?

5 **A** And I'm no doctor either.

6 **Q** But you didn't call for a doctor?

7 **A** No, ma'am.

8 **MS. WALKER:** I don't have any further
9 questions.

10 **THE COURT:** Redirect?

11 **MS. BRIGHTHOP:** Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BRIGHTHOP:

14 **Q** Mr. Adams.

15 **A** Yes, ma'am.

16 **Q** You mentioned that you spoke to the defendant a
17 week ago.

18 **A** Yes, ma'am.

19 **Q** Why did you speak to the defendant?

20 **A** Actually just calling to check up on him.

21 **Q** Okay.

22 **A** And I actually got the subpoena papers after
23 that.

24 **Q** So y'all didn't talk about the case?

25 **A** No, ma'am.

1 **Q** Now, why didn't you call the police or call
2 9-1-1?

3 **A** Because, honestly, my main concern was my
4 freedom.

5 **Q** Okay. Did you hear Mary Beth call the police
6 or go to the front desk?

7 **A** No. I saw her running to the front office.

8 **Q** You saw her run to the front office?

9 **A** Yes.

10 **Q** Okay.

11 **A** And the front office lady coming back towards
12 where the altercation was at.

13 **Q** Okay. And when the front lady -- you saw the
14 -- did you see the front lady coming back?

15 **A** Yes, ma'am.

16 **Q** Okay. And when the front lady came back, what
17 happened?

18 **A** She was telling Kevin to back away, leave him
19 alone, leave him alone, because I guess she thought
20 he was still trying to, I don't know, fight with him
21 or whatever, but...

22 **Q** And what was Mr. Cone doing at the time?

23 **A** Mr. Cone was -- he was just dazed, out of it.
24 He was trying to get up. He kept falling back down
25 trying to get up. He couldn't get his balance.

1 **MS. BRIGHTHOP:** Thank you. No further
2 questions.

3 **THE COURT:** Recross?

4 **MS. WALKER:** Your Honor, may the witness step
5 down?

6 **THE COURT:** I'm sorry?

7 **MS. WALKER:** May the witness step off the
8 witness stand?

9 **THE COURT:** Do you have recross?

10 **MS. WALKER:** Yes, Your Honor.

11 **THE COURT:** Sure.

12 Keep your voice up, though. I can barely hear
13 you.

14 **THE WITNESS:** I'm sorry.

15 (Witness leaves the witness stand.)

16 RECROSS-EXAMINATION

17 BY MS. WALKER:

18 **Q** That's okay. You're soft spoken. This lady in
19 the blue is going to take down everything that you
20 say.

21 How was Mr. Cone on the ground? Like, if this
22 was the parking lot, how was he laying on the
23 ground?

24 **A** He was laying on his back. This would be his
25 truck.

1 Q So he was laying on his back?

2 A By his front tire.

3 Q Okay. And so I guess -- why don't you turn
4 this way and face the court reporter so that way she
5 can hear you better, okay.

6 And when you say, He's getting up and falling
7 down, can you show me what you mean by that?

8 A I mean, I can't show you, but as far as him
9 laying on his back, him getting up and --

10 Q He was standing all the way up?

11 A No, not -- he's trying to get his balance.
12 He's stumbling as he's trying to get up.

13 Q Just demonstrate for me what you mean.

14 A He's on the ground.

15 Q Yes, sir. Hold on one second. Let me move
16 this out of the way so everybody can see.

17 A He's trying to get up {indicating}. So he
18 can't get his feet under him, so he's stumbling.
19 His truck is right here. So every time he's hitting
20 his head and he's trying to get up and falling down,
21 get up, falling down.

22 Q But he's falling from this high; right? He's
23 not standing all the way up and going straight down?

24 A No, ma'am, he's not standing completely up.

25 Q Okay. He stumbling?

1 **A** Yes, ma'am, trying to get --

2 **Q** I understand.

3 **MS. WALKER:** I don't have any further
4 questions.

5 **COURT REPORTER:** I didn't hear the last part.

6 **MS. WALKER:** He said, Trying to get his
7 balance.

8 **THE COURT:** Is that what you said?

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** Any other questions of the witness?

11 **MS. BRIGHTHOP:** No, Your Honor.

12 **THE COURT:** Thank you, sir. You can go back.
13 Call your next witness.

14 **MS. WILLIAMS:** Your Honor, the defense would
15 call Mary Beth Hale.

16 MARY BETH HALE,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Please have a seat. State your
19 full name for the record.

20 **THE WITNESS:** Mary Beth Hale is my full name.

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 **Q** Good afternoon, Ms. Hale. Ms. Hale, do you
24 know Kevin Gary?

25 **A** I do.

1 **Q** How do you know him?

2 **A** He's the father of my children.

3 **Q** How long have you known him?

4 **A** Six years plus.

5 **Q** Were you together -- how long have you been
6 romantically together?

7 **A** Off and on, five.

8 **Q** You said he's the father of your children. How
9 many children do you have?

10 **A** Three, but two together.

11 **Q** Did you have all three of them on March 25th,
12 2014?

13 **A** I had two. I was pregnant with one.

14 **Q** How far along were you?

15 **A** About seven months.

16 **Q** Do you remember where you were on March 25th,
17 2014?

18 **A** I was -- apartment 805 in St. Andrews. I was
19 sitting on the couch watching TV with my
20 six-month-old son.

21 **Q** Who else was in the home?

22 **A** A roommate, Antonio, his children and my
23 daughter.

24 **Q** Okay. How old were his children?

25 **A** Around the same age as my oldest daughter,

- 1 around five and six.
- 2 Q Did anyone else show up at the home?
- 3 A Yes, ma'am, Mr. Cones {sic}.
- 4 Q Who -- how did you know Mr. Cone?
- 5 A He's our maintenance man in our apartment.
- 6 Q What was he there for?
- 7 A To fix a reoccurring issue with our toilets
- 8 we've been complaining about for months really.
- 9 Q What was the issue?
- 10 A They wouldn't flush. If one flushed, the other
- 11 one backed up or it didn't fully flush at all.
- 12 Q Was it just one toilet?
- 13 A It was all three. We had two full baths, one
- 14 in the master, one in the hallway upstairs and a
- 15 half bath downstairs.
- 16 Q When Mr. Cone got there, what did he do?
- 17 A He went upstairs, just went upstairs and
- 18 started working, I assume.
- 19 Q Did he have anything with him?
- 20 A No, ma'am.
- 21 Q How long was he there for?
- 22 A A pretty good while. I can't exactly give a
- 23 timeframe. I wasn't too much worried about him
- 24 doing his job.
- 25 Q Did anyone else come to the home while Mr. Cone

1 was there?

2 **A** Yes. Mr. Gary came back from running errands
3 for me.

4 **Q** Okay. And Mr. Gary, what did he do when he got
5 home?

6 **A** He went upstairs.

7 **Q** Do you know what he did after that?

8 **A** I heard talking.

9 **Q** Could you make out what was being said?

10 **A** Not clearly, no, ma'am.

11 **Q** What was the tone of the conversation?

12 **A** A little intense.

13 **Q** Could you just explain a little bit more what
14 you mean by that?

15 **A** I heard, like, loud talking pretty much. How
16 could I explain it? It wasn't, like, loud talking
17 like you're talking to make someone hear you; it was
18 more like a forceful, loud tone.

19 **Q** Would you recognize Kevin's voice?

20 **A** Yes, ma'am.

21 **Q** Was that the voice that you heard?

22 **A** No, ma'am.

23 **Q** What happened next?

24 **A** Next I noticed Mr. Gary and Mr. Cones walking
25 downstairs exchanging words.

- 1 **Q** Okay. When you mean {sic} exchanging words,
2 what do you mean?
- 3 **A** Mr. Gary's asking Mr. Cones to leave the home.
- 4 **Q** What was -- how did Mr. Cone appear to you?
- 5 **A** Angry. He seemed frustrated, irritated.
- 6 **Q** What was he doing?
- 7 **A** He was walking downstairs and he went into our
8 half bath. Like I mentioned before, that also was a
9 problem, we had a problem with that toilet. He went
10 in and they was exchanging words. I was sitting on
11 the couch kind of confused.
- 12 **Q** Once they were both downstairs, Mr. Gary and
13 Mr. Cone, what happened then?
- 14 **A** Mr. Gary kept asking him to leave.
- 15 **Q** What did Mr. Cone do?
- 16 **A** He's cussing some more. Then I noticed him
17 taking his shoulder and walking through Mr. Gary's
18 chest.
- 19 **Q** Okay. Can you describe a little bit more about
20 what you mean by that?
- 21 **A** Mr. Gary was facing him asking him to leave
22 because we do have children in the home and his
23 manner wasn't appropriate. Mr. Cones got angry and
24 just forcefully took his shoulder and walked
25 directly into Mr. Gary's chest.

1 **Q** What were you thinking when you saw this?

2 **A** I didn't know what to think. I was kind of
3 confused really, like, what brought everything on.

4 (Cell phone ringing in audience.)

5 **THE COURT:** Who's phone is ringing?

6 (Pause.)

7 BY MS. WILLIAMS:

8 **Q** Sorry, Ms. Hale, focus you back in on this. So
9 when Mr. Cone came and put his shoulder into
10 Mr. Gary is what you said.

11 **A** Yes, ma'am.

12 **Q** What -- how did you react?

13 **A** I got scared. I even told him to leave.

14 **Q** What happened then?

15 **A** Next I remember Mr. Antonio coming downstairs
16 and I asked him to kind of settle the situation
17 because I didn't know what's going to happen, you
18 know, when someone bumps, but he stayed calm and
19 asked him to leave. Then Mr. Cones walks out the
20 door and slams the door.

21 **Q** Okay. I want to take you back. You said, He
22 stayed calm. Who are you talking about?

23 **A** Mr. Gary.

24 **Q** Can you describe how Mr. Gary or Kevin looked
25 to you after he was hit by Mr. Cone?

- 1 **A** Concerned, a little scared, frustrated.
- 2 **Q** And you stated that Mr. Cone finally left?
- 3 **A** Yes, ma'am.
- 4 **Q** And he slammed the door?
- 5 **A** Yes, ma'am.
- 6 **Q** Can you describe how he left?
- 7 **A** He was walking towards the door, like, very
- 8 aggressively, fast pace. You know how you get in an
- 9 argument, you're just like {indicating noise} and
- 10 just walk out, storm out really. After he slams the
- 11 door, he hits my son with the door.
- 12 **Q** How did you know he hit your son with the door?
- 13 **A** My son was crying.
- 14 **Q** Is there anything about how he slammed the door
- 15 that you remember?
- 16 **A** Opens it up and just slams. It shook the whole
- 17 house.
- 18 **Q** What happened next?
- 19 **A** Next I remember Mr. Antonio open the door and
- 20 Kevin walked past him.
- 21 **Q** How did Kevin walk past him?
- 22 **A** With urgency.
- 23 **Q** How did he seem to you at that point in time?
- 24 **A** A little bit focused, like a little scared,
- 25 focused. What I mean by focused, like he had a

1 place to go.

2 **Q** What emotions would you -- did you perceive
3 from him?

4 **A** Scared.

5 **Q** So when he left the home, what happened next?

6 **A** Next I went to go get my son from the door to
7 make sure he was okay. He had a scratch from the
8 door, but he seemed to be okay. I put him in the
9 walker, make sure the kids were okay because they
10 were there crying. My oldest daughter was scared.
11 Antonio's kids were scared. I made sure they were
12 okay. And when I went to go pick up my son, I seen
13 Mr. Cone's hand on his throat.

14 **Q** On whose throat?

15 **A** Mr. Gary's.

16 **Q** What did you think was happening when you saw
17 that?

18 **A** He was choking him. Like, I didn't know what
19 to think to be honest with you.

20 **Q** What were you thinking at the time?

21 **A** He really did attack him. Like, I have no
22 idea. Why would you attack somebody? Like, why
23 would you -- when a person walks out the door, what
24 made him choke him?

25 **Q** How were you feeling at this point?

- 1 **A** I was scared.
- 2 **Q** Now, after you calmed the children down, what
3 did you do?
- 4 **A** I ran outside to get help.
- 5 **Q** What did you see?
- 6 **A** I see Mr. Cones on the ground.
- 7 **Q** How was he on the ground?
- 8 **A** He was laying on the ground and he was
9 bleeding.
- 10 **Q** Okay. Did you see anyone else?
- 11 **A** Mr. Gary, that was it.
- 12 **Q** Where was Mr. Gary?
- 13 **A** Over top of him.
- 14 **Q** Okay. What was Mr. Gary doing?
- 15 **A** Just standing over top of him.
- 16 **Q** How did he seem to you at that point in time?
- 17 **A** Really frightened, like, oh, my God what just
18 happened type of look.
- 19 **Q** What did you do?
- 20 **A** I went to go to the main office, which is
21 really close by and I got help from our landlord.
- 22 **Q** How far away is the front office from your
23 front door?
- 24 **A** You can see it. It's not that far from the
25 door. It's, like, from right here to the

1 thermostat. It's not that far.

2 **Q** Why did you go there?

3 **A** My cell phone wasn't really working. I had a
4 prepaid and the signal out there really did stink.

5 **Q** So you were going to get help?

6 **A** Yes, ma'am.

7 **Q** How long were you gone?

8 **A** Not that long. Once I mentioned to her what
9 happened, we pretty much ran back.

10 **Q** Okay. Who was it that ran back with you?

11 **A** Forgive me, I forgot her name, but she's the
12 landlord that we have -- well, one of the people
13 that works in the office.

14 **Q** When you got back, what did you observe?

15 **A** It was so much chaotic. I noticed a whole
16 bunch of people around, Mr. Cones getting up and
17 falling down. We told him to stay down, don't get
18 up anymore, but he wasn't really listening.

19 **Q** When he was falling down, how was he falling?

20 **A** On his face, on his side, just every which way
21 really.

22 **Q** How did you feel at this point?

23 **A** I was really scared.

24 **Q** Was Kevin there?

25 **A** Yes.

- 1 **Q** What was he doing?
- 2 **A** Scared. He was standing there.
- 3 **Q** And there were a number of other people there?
- 4 **A** Yes, ma'am.
- 5 **Q** Do you remember, specifically, some of the
- 6 other people that were there?
- 7 **A** Mainly our neighbors, our next-door neighbor
- 8 was outside, people across the street was outside,
- 9 some children in the neighborhood getting off, I
- 10 guess, the after-school bus, I'm assuming that's
- 11 what it was.
- 12 **Q** You said your next-door neighbor?
- 13 **A** Yes, ma'am.
- 14 **Q** Was that Vanetia Riley?
- 15 **A** Yes, ma'am.
- 16 **Q** So she was actually outside?
- 17 **A** Yes, ma'am.
- 18 **Q** From what you witnessed, who started the fight?
- 19 **A** Mr. Cones.
- 20 **Q** Now, I know you didn't witness all of it --
- 21 **A** No, ma'am.
- 22 **Q** -- but what you witnessed, was Kevin defending
- 23 himself?
- 24 **A** Yes, ma'am.
- 25 **MS. WILLIAMS:** No further questions. Thank

1 you.

2 **THE COURT:** Cross?

3 **MS. WALKER:** Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. WALKER:

6 **Q** Okay. He threw his shoulder into Mr. Gary?

7 **A** Yes, ma'am.

8 **Q** I mean, he takes his shoulder and he thrust it
9 into his chest?

10 **A** Yes, ma'am.

11 **Q** And you remember that just as clearly as you
12 remember everything else?

13 **A** Yes, ma'am.

14 **Q** And that's been, from what you said, since day
15 one?

16 **A** Yes, ma'am.

17 **Q** Or did you say he brushed into him?

18 **A** He took his shoulder and placed it --

19 **Q** I'm asking you what you said initially.

20 **A** I never said brushed, not that I recall, ma'am.

21 **Q** I'm sorry?

22 **A** Not that I recall, ma'am.

23 **Q** You didn't say brush?

24 **A** Not that I recall, no.

25 **Q** Do you remember giving a statement to law

1 enforcement on March 25th of 2014?

2 **A** I do at 12 o'clock in the morning.

3 **Q** 11:31.

4 **A** Well, correction.

5 **Q** And would seeing your statement help refresh
6 your memory?

7 **A** Maybe, yes, ma'am.

8 **MS. WALKER:** Your Honor, may I approach the
9 witness?

10 **THE COURT:** Yes.

11 BY MS. WALKER:

12 **Q** Now, what did you say to law enforcement on the
13 day that this happened?

14 **A** I said brushed.

15 **Q** But today, I mean, he takes his shoulder and
16 shoved it into him?

17 **A** That's exactly what I said, yes, ma'am, but
18 there's still contact from shoulder to chest.

19 **Q** I understand what you're saying. It's just
20 kind of a degree of force; right?

21 **A** If you take it like that, but that's exactly
22 what I meant from that day.

23 **Q** And today you said that your baby was hurt?

24 **A** Yes, ma'am.

25 **Q** There was a scratch on your baby?

1 **A** I said that today? I said he was injured, yes,
2 ma'am.

3 **Q** What was his injuries?

4 **A** He had scratches, ma'am.

5 **Q** He had scratches?

6 **A** Yes, ma'am.

7 **Q** Do you ever remember telling law enforcement
8 that he had scratches on him?

9 **A** Actually, I did. They never noted it. I
10 actually begged the cops to take pictures of it, but
11 they were more focused on Mr. Cones, which I
12 understand, a man got injured --

13 **Q** Did you beg this investigator to take pictures
14 of it?

15 **A** He wasn't there that I recall. I just remember
16 police officers. He came to my home.

17 **Q** Do you remember -- did you ask him to take
18 pictures of it?

19 **A** No, ma'am.

20 **Q** Did you take pictures of it?

21 **A** No, ma'am.

22 **Q** Do you have a camera?

23 **A** I do. Well, the phone that I had wasn't really
24 great at the time.

25 **Q** Well, it was prepaid and --

1 **A** It was prepaid.

2 **Q** -- the service -- the signal was bad and maybe
3 you didn't have any minutes, but did the camera work
4 on it?

5 **A** I have one of those government free phones, so
6 it didn't have a camera on it.

7 **Q** So you didn't have a camera at all in the home?

8 **A** No.

9 **Q** Now, you said that at this point in time -- let
10 me back up. Before Kevin Gary got home, what was
11 the mood like in the house?

12 **A** It was relaxed. No one was talking to each
13 other. I was upstairs watching TV and Antonio was
14 up in his room where he mainly stayed.

15 **Q** So there was no confrontation or anything going
16 on?

17 **A** No.

18 **Q** When was the last time you'd spoken to
19 Mr. Gary?

20 **A** When we had lunch.

21 **Q** Today?

22 **A** Yes, ma'am.

23 **Q** You had a conversation with the defendant
24 today?

25 **A** Yes, ma'am.

- 1 Q Did you talk to him last night?
- 2 A No.
- 3 Q But today y'all had lunch together?
- 4 A Yes, ma'am.
- 5 Q Now, at some point, the defendant gets home?
- 6 A Uh-huh.
- 7 Q And then the voices kind of escalate?
- 8 A Yes, ma'am.
- 9 Q Everything had been fine before then?
- 10 A Yes, ma'am.
- 11 Q Now, you say things got so bad that even you
12 asked Mr. Gary -- Mr. Cone to leave?
- 13 A Yes.
- 14 Q Did you ever tell law enforcement that?
- 15 A No, but --
- 16 Q The previous time you testified, did you ever
17 mention that things were so bad?
- 18 A No.
- 19 Q No. This is the first time you've said that?
- 20 A Yes, ma'am.
- 21 Q And he leaves?
- 22 A Yes, ma'am.
- 23 Q The confrontation is over?
- 24 A Yes, ma'am.
- 25 Q You were safe inside of your home?

- 1 **A** Yes, ma'am.
- 2 **Q** Because, I mean, this man, at this point in
3 time, he's terrified you; right?
- 4 **A** (Witness nodded head.)
- 5 **Q** I need you to say yes or no so she can take it
6 down.
- 7 **A** Oh, sorry. Yes.
- 8 **Q** That's fine. And he's terrified the defendant?
- 9 **A** He's terrified of us?
- 10 **Q** No. He has terrified the defendant?
- 11 **A** Yes, yes.
- 12 **Q** So, at that point, the doors are closed, you
13 are in the safety and protection of your own home;
14 right?
- 15 **A** Correct.
- 16 **Q** And the confrontation was over?
- 17 **A** Yes, ma'am.
- 18 **Q** And you checked on your baby. And he's, I
19 guess, scarred, right, literally and figuratively?
- 20 **A** Yes, ma'am.
- 21 **Q** And it's so bad that you put your baby in his
22 walker and leave the home?
- 23 **A** Yes, ma'am.
- 24 **Q** So he's not that --
- 25 **A** Its like when you have a kid and it scrapes his

1 knee and the baby cries, but it's not too damaging,
2 you still have a scratch.

3 **Q** Right. I mean, it was -- he was okay, well
4 enough for you to put him in his walker and leave
5 the house?

6 **A** Yes.

7 **Q** What was Mr. Cone -- Mr. Gary's profession at
8 this time?

9 **A** I'm sorry? Repeat that.

10 **Q** What was he doing for a living?

11 **A** Oh, he was working security at one place before
12 and he was working at Brickyard.

13 **Q** So he was a security guard?

14 **A** Yes.

15 **Q** And you said on direct examination that you
16 immediately went to get the lady from the front
17 office whose name you can't remember?

18 **A** Well, I immediately went to go get my son. I
19 was kind of -- yes, ma'am.

20 **Q** And then after that, you went to go get the
21 lady?

22 **A** Yes, ma'am.

23 **Q** And you said you weren't gone --

24 **A** I wasn't really gone that long.

25 **Q** Do you remember saying that you were gone four

1 or five minutes?

2 **A** To me, that's not that long, but to another
3 person, it could be, yes, ma'am.

4 **Q** But you remember saying you were gone five
5 minutes?

6 **A** Yes, ma'am.

7 **Q** And you don't know what was happening to the --

8 **A** No, ma'am.

9 **Q** -- victim in this case while you were gone?

10 **A** No, ma'am.

11 **Q** Or who was doing it to him?

12 **A** No, ma'am.

13 **Q** Do you know Vanetia Riley?

14 **A** She's our neighbor. I've never really spoken
15 to her like that.

16 **Q** Did y'all have any sort of animosity towards
17 one another?

18 **A** No, ma'am.

19 **Q** And today you described this defendant's
20 emotions as he was scared and terrified?

21 **A** Yes, ma'am.

22 **Q** Do you remember describing him as being angry?

23 **A** Not really.

24 **Q** Do you remember speaking about this on April
25 20th of 2015?

1 **A** Not really.

2 **Q** Do you remember giving --

3 **THE COURT:** You need to speak up, please.

4 **THE WITNESS:** I'm sorry. Not really, no, sir.

5 BY MS. WALKER:

6 **Q** Do you remember giving a statement and there
7 was a court reporter like there is now taking down
8 everything you said?

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

10 **Q** Okay. That was April 20th of last year, okay.
11 And you were asked about his emotional state; right?

12 **A** Uh-huh.

13 **Q** And the defendant was angry? And you said,
14 Yes.

15 **A** Yes.

16 **Q** So now you remember saying yes?

17 **A** Yes. I mean, I would be angry, too. I'd be
18 scared and terrified. It's a roll of emotions,
19 though, to be honest.

20 **Q** No. Go ahead. Finish what you need to say.

21 **A** Oh, like, yes, I did say he was angry. I mean,
22 I would be angry too, you know, with that
23 situation --

24 **Q** Right. Anger is a natural feeling when someone
25 slams --

1 **A** Yes.

2 **Q** -- the door to your house?

3 **A** Yeah.

4 **THE COURT:** Hold on a second. Y'all are
5 talking over each other. Please don't do that.

6 BY MS. WALKER:

7 **Q** Anger is a natural feeling when someone --

8 **A** Yes.

9 **Q** -- slams the door --

10 **A** Right.

11 **THE COURT:** You're still doing it.

12 BY MS. WALKER:

13 **Q** Let me get the question out and then you can
14 answer, okay?

15 **A** Yes, ma'am.

16 **THE COURT:** Well, don't cut her off either.

17 **MS. WALKER:** Yes, Your Honor.

18 BY MS. WALKER:

19 **Q** Anger is a natural emotion when someone slams
20 the door to your house?

21 **A** Yes.

22 **Q** And so he was angry that day?

23 **A** Yes.

24 **Q** Once he went out of that door, he was angry?

25 **A** I would assume so, yes.

1 **Q** And you said today that you did not call 9-1-1
2 because your signal was bad?

3 **A** Yes, ma'am. I know I tried, but it wasn't
4 working.

5 **Q** Have you ever told anybody before that you
6 tried to call 9-1-1?

7 **A** Not that I remember.

8 **Q** This is the first time you've ever said you
9 tried to call 9-1-1?

10 **A** Yes, ma'am.

11 **Q** Do you recall saying that you didn't call
12 9-1-1; you went to go get the landlord because it
13 was her employee that got hurt?

14 **A** That's true.

15 **Q** So you didn't try to call 9-1-1?

16 **A** I did try to call 9-1-1, but it didn't go
17 through. I'm sorry. I just didn't say what I had
18 to say -- I needed to say --

19 **Q** I can't hear you.

20 **A** I'm a soft talker. I'm sorry.

21 **Q** Let me see if I can adjust that microphone.

22 **THE COURT:** What did you say first --

23 **THE WITNESS:** Is that better? A little bit
24 maybe?

25 **THE COURT:** Just put unintelligible. I don't

1 know what else to say.

2 Ma'am, she has to take down everything you say.
3 So if you speak, please speak loudly enough for her
4 to hear you and the jury to hear you.

5 **THE WITNESS:** I'm sorry, Your Honor.

6 BY MS. WALKER:

7 **Q** And when you came back from going to go get the
8 lady at the front desk, what state was the victim in
9 this case in?

10 **A** Disoriented, I would assume, because he was --

11 **Q** I'm talking physically.

12 **A** Oh, he was bleeding. That's all I really
13 remember seeing was just the blood.

14 **Q** A lot of blood or a little blood?

15 **A** It was a lot.

16 **Q** A lot of blood. And the -- I guess, is this
17 your fiancé?

18 **A** No, ma'am.

19 **Q** Boyfriend?

20 **A** No, ma'am. He's just the father of my
21 children.

22 **Q** Okay. He's the father of your children?

23 **A** Yes.

24 **Q** At what state was he in physically?

25 **A** He just had marks around his throat. That's

1 all I remember seeing.

2 **Q** You saw marks around his throat?

3 **A** At the time, yes, ma'am.

4 **Q** Let me show you State's Exhibit Number 17. Can
5 you point out the marks that were around his throat
6 for me?

7 **A** The marks was right here {indicating} around
8 the time that it happened, but people -- the redness
9 around someone's throat can come and easily go.
10 Everybody's different. Like, I get bruised really
11 easy, somebody might not, and goes away really
12 quickly.

13 **Q** So the red marks were coming and going while
14 you were sitting out there?

15 **A** They were there when I saw it, but they could
16 have easily went away.

17 **Q** Did you ever tell law enforcement about the red
18 marks?

19 **A** No, ma'am.

20 **Q** Did you think it was important to tell them
21 about these things?

22 **A** Well, when they did ask me, it was almost
23 midnight. And after what just happened, I was
24 really shaken up. So it wasn't every memory and
25 event that was happening. It was kind of crazy. So

- 1 if I did left anything out, I'm sorry.
- 2 Q And so you left out the thrusting his shoulder
3 into his chest; right?
- 4 A Yes, ma'am.
- 5 Q And you left out the red marks; right?
- 6 A Yes, ma'am.
- 7 Q And you left out that your son -- this was your
8 son; right?
- 9 A Yes, ma'am.
- 10 Q That your son was injured?
- 11 A (Witness nodded head.)
- 12 Q You have to say yes or no.
- 13 A Yes, ma'am. I'm sorry.
- 14 Q And you left out that you tried to call 9-1-1?
- 15 A Correct.
- 16 Q And, at some point, before the police officers
17 arrive, you and Kevin Gary are on the scene; right?
- 18 A Yes, ma'am.
- 19 Q But Antonio Adams has left?
- 20 A I don't believe so. I wasn't too sure where he
21 was.
- 22 Q Was he standing with you?
- 23 A He was staying with us.
- 24 Q No. Was he standing with you?
- 25 A Oh, no, ma'am.

1 **Q** But you and Kevin are there together; right?

2 **A** When the cops -- before the cops came? I was
3 still -- let me get my memory straight. I don't
4 want to mess up too much. Coming from the office --
5 no, ma'am. I believe I was inside with the
6 children. Yes, ma'am, I was inside with the
7 children.

8 **Q** So you'd gone back inside?

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

10 **Q** So then how were you outside to recall all of
11 the neighbors and the children that were present at
12 the scene?

13 **A** Because when I was walking back from the office
14 and they hear everything that was going on, I seen
15 people coming from their homes.

16 **Q** And this was at six o'clock at night; right?

17 **A** I believe so.

18 **Q** And then you saw people coming from their
19 homes?

20 **A** Yes, ma'am.

21 **Q** And children getting off the school bus?

22 **A** Yes, ma'am.

23 **Q** At six o'clock?

24 **A** Around six o'clock. I don't really remember
25 what time it was exactly.

1 **MS. WALKER:** Beg the Court's indulgence.

2 **THE COURT:** Yes, ma'am.

3 (Pause.)

4 **MS. WALKER:** Your Honor, I don't have any
5 further questions. Thank you.

6 **THE COURT:** Redirect?

7 **MS. WILLIAMS:** Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. WILLIAMS:

10 **Q** Ms. Hale, how are you feeling today?

11 **A** I'm a little nervous.

12 **THE COURT:** I didn't understand.

13 BY MS. WILLIAMS:

14 **Q** A little louder.

15 **A** A little nervous.

16 **Q** Have you done -- have you done this a lot?

17 **A** Yes.

18 **Q** For this particular case?

19 **A** (Witness nodded head.)

20 **Q** And this happened over two years ago?

21 **A** Yes, ma'am.

22 **THE COURT:** Do you need to stop?

23 **THE WITNESS:** No, Your Honor. I'm fine.

24 **THE COURT:** Go ahead.

25 BY MS. WILLIAMS:

1 **Q** Take your time. Why are you testifying here
2 today?

3 **A** To tell the truth about what happened. I may
4 have left some details out, but considering
5 everything that went on, you might get jumbled from
6 here and there, but I know what I saw. I was there
7 inside the home. I saw Mr. Cones put his hands
8 around his throat. I'm here to tell my truth of
9 what happened.

10 **MS. WILLIAMS:** Thank you.

11 **THE COURT:** Recross?

12 **MS. WALKER:** Thank you, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. WALKER:

15 **Q** In terms of this case and in terms of your
16 ability to help Mr. Gary, has he ever told you
17 before that if you didn't do certain things, he
18 wasn't coming home?

19 **A** No.

20 **Q** Do you know that the jail phone calls are
21 recorded?

22 **A** Yes, ma'am.

23 **Q** Did he ever tell you if you don't do certain
24 things, that he wasn't coming home?

25 **A** Not that I recall.

1 Q Not that you recall?

2 A Yes, ma'am.

3 MS. WALKER: Okay. I don't have any further
4 questions.

5 THE COURT: Anything else for the witness?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Thank you, ma'am. You may step
8 down.

9 Ladies and gentlemen, we're going to take a
10 short break. I'll tell you whether we're going to
11 recess for the day or continue going when you get
12 back in. Don't discuss the case yet. If any of
13 y'all have those child care issues you let me know
14 about, you need to let me know about them now, send
15 me a note if you have a child care issue.

16 (The jury retires to the jury room.)

17 THE COURT: Mr. Gary, I need to go over some
18 things with you. I usually go over them earlier,
19 but I called the attorneys up to the bench to let
20 them know that I omitted it and they said we could
21 just do it now, you weren't going to be the first
22 witness to testify for the offense. I need your
23 responses under oath.

24 *****

25 *****

1 KEVIN L. GARY, SR.,

2 having been duly sworn, testified as follows:

3 **THE COURT:** You understand, Mr. Gary, that
4 we've reached the stage of the trial where if you
5 wish to testify, you may?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** You understand that you have no
8 obligation to testify; no one can force you to
9 testify?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** You have an absolute right to
12 remain silent. And if you choose not to testify,
13 I'm going to tell that jury they cannot hold your
14 silence against you in any way at all. They can't
15 discuss it in the jury room, that it's not to enter
16 their minds in making the decision of whether you're
17 guilty or not guilty. You understand?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now, if you choose to testify,
20 obviously you subject yourself to cross-examination.
21 You understand that?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** The decision about whether you
24 testify or not is your decision to make and yours
25 alone. Do you realize that?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** I expect that you might confer with
3 your attorneys, family members, friends, anybody
4 whose opinion you value on important decisions, but
5 ultimately it's your call. You're the person on
6 trial, you're the person who has to decide whether
7 you're going to testify or not. You understand
8 that?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** At this point, has anybody
11 attempted to exercise any type of undue influence to
12 get you to testify or not testify?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** Whatever decision you make, it will
15 be your own decision, made of your own free will?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Does he have a prior criminal
18 record that would subject him to impeachment?

19 **MS. EIGENBROT:** Your Honor, his prior record is
20 a simple possession of marijuana and a driving under
21 suspension.

22 **THE COURT:** Okay. Mr. Gary, I'm going to make
23 a finding now that you understand that you have a
24 right to testify, you have a right not to testify.
25 If you choose not to testify, I'm going to tell the

1 jury they cannot hold your silence against you in
2 any way at all. You understand that the decision is
3 yours to make and yours alone. And I'm going to
4 find, at this point, that whatever decision you've
5 made is your own decision, made of your own free
6 will.

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** You understand?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** I'm going to maintain that finding
11 so that -- I'm not going to change it. If anything
12 does occur and you are improperly influenced in any
13 way or threatened or coerced or intimidated into
14 testifying or not testifying, you must let me know
15 that immediately. You understand?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Are you fully satisfied with the
18 services of your attorneys at this point?

19 **DEFENDANT:** Yes, I am, sir.

20 **THE COURT:** All right. Thank you. Have a
21 seat.

22 Do y'all know how long he would take to
23 testify?

24 **MS. EIGENBROT:** Your Honor, I would suspect
25 maybe 20, 30 minutes. I don't know how long

1 cross-examination would be.

2 **THE COURT:** All right. I've got a note from
3 the Foreperson, but it's on behalf of the alternate,
4 Mr. Loftis, wanting to know if he can make a phone
5 call related to a child care issue. I honestly
6 think this is a good place to stop, so why don't we
7 do that.

8 **MS. EIGENBROT:** Yes, sir.

9 **THE COURT:** All right. Bring the jury back in.
10 (The jury returns to the courtroom.)

11 (Court's Exhibit Number 7, jury note, marked
12 for identification.)

13 **THE COURT:** After conferring with the
14 attorneys, ladies and gentlemen, it appears to me
15 that this is probably the best place to stop for the
16 day. So I need you back here tomorrow, please, at
17 10:00 A.M. I still think you'll get the case
18 tomorrow. You may have another extended lunch break
19 while we work through some legal issues, but I
20 expect you'll get the case tomorrow.

21 I hope you have a pleasant evening. Remember
22 all of those admonitions. I need you in the jury
23 room at 10:00 A.M. Thank you.

24 (The jury was excused for the day.)

25 **THE COURT:** If y'all find anything tonight on

1 mayhem or on these issues that we talked about,
2 would you e-mail it to me? I'll try to check my
3 e-mail later tonight or first thing in the morning.

4 **MS. WILLIAMS:** Certainly, Your Honor.

5 **THE COURT:** Make sure you e-mail it to me not
6 just to Anna because they use the same name. They
7 just put J after mine for judge and LC for law clerk
8 for Anna.

9 All right. Mr. Gary.

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** I'm going to let you stay out
12 tonight. I thought I might take you into custody,
13 but I'm going to let you stay out tonight, but,
14 again, no contact with any of these witnesses.

15 **DEFENDANT:** Yes, sir, Judge.

16 **THE COURT:** The safest thing for you and for
17 everybody, but you in particular, is that you avoid
18 any kind of contact, that way nobody can claim
19 something was said that wasn't said or something was
20 done or wasn't done, something was interpreted in
21 some way or not.

22 **MS. WALKER:** Your Honor, just briefly, this was
23 the same admonition that you gave him yesterday and
24 he had lunch with one of the witnesses today,
25 according to her testimony, so that does cause some

1 concern for the State.

2 **THE COURT:** I understand. I appreciate it.
3 It's a much closer call today than it's been in the
4 past. I've already said what I'm going to do.

5 **DEFENDANT:** Thank you, Judge.

6 **THE COURT:** Court's in recess till 10:00 A.M.

7 (The proceedings were concluded for July 26,
8 2016.)

9 (The following proceedings were held on July
10 27, 2016.)

11 **THE COURT:** Do you have additional witnesses?

12 **MS. EIGENBROT:** Yes, Your Honor.

13 **THE COURT:** Is the defendant going to testify?

14 **MS. EIGENBROT:** He is.

15 **THE COURT:** Mr. Gary, your lawyer tells me you
16 wish to testify; is that correct?

17 **DEFENDANT:** Yes, sir, Your Honor.

18 **THE COURT:** Is that your own decision, made of
19 your own free will?

20 **DEFENDANT:** Yes, sir, Your Honor.

21 **THE COURT:** Thank you.

22 Is the State ready for the jury?

23 **MS. WALKER:** Yes, Your Honor, we're ready.

24 **THE COURT:** Defense?

25 **MS. EIGENBROT:** Yes, sir.

1 **THE COURT:** Bring in the jury.

2 (The jury enters the courtroom at 10:09
3 A.M.)

4 **THE COURT:** Call your next witness.

5 **MS. EIGENBROT:** Your Honor, the State -- or the
6 defense calls Kevin Gary.

7 **THE COURT:** Come around, please.

8 **MS. WALKER:** Your Honor, may we approach?

9 **THE COURT:** Go ahead and swear him.

10 KEVIN L. GARY, SR.,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Please have a seat. State your
13 full name for the record.

14 **THE COURT:** Yes, ma'am.

15 **THE WITNESS:** Kevin Lamar Gary, Sr.

16 (Whereupon, a bench conference was held off
17 the record, in the presence of the jury, but out of
18 the hearing of the jury.)

19 DIRECT EXAMINATION

20 BY MS. EIGENBROT:

21 **Q** Good morning, Kevin.

22 **A** Good morning, Ms. Megan.

23 **Q** Kevin, I need you to speak real loudly, okay.

24 The whole jury has to hear you, the Judge has to
25 hear you, and the court reporter has to hear you,

- 1 okay?
- 2 **A** Yes, ma'am.
- 3 **Q** You're a little nervous; right?
- 4 **A** Extremely nervous.
- 5 **Q** Can you tell the jury how old you are?
- 6 **A** Twenty-seven.
- 7 **Q** A little louder, okay?
- 8 **A** Twenty-seven years old.
- 9 **Q** And where are you from?
- 10 **A** Columbia, South Carolina.
- 11 **Q** Do you live in Columbia now?
- 12 **A** Yes, ma'am.
- 13 **Q** And are you working currently?
- 14 **A** Yes, ma'am. I work full-time at the Ruth Chris
- 15 Steak House and I also work at Quality Cuts
- 16 Landscaping.
- 17 **Q** What do you do at Ruth Chris?
- 18 **A** I'm a chef.
- 19 **Q** What does that include?
- 20 **A** Preparing fruits, vegetables, meats, any type
- 21 of food that the Ruth Chris serves, preparing them
- 22 and serving them.
- 23 **Q** And what kind of hours are you working at Ruth
- 24 Chris?
- 25 **A** I wake up at 3:00 in the morning. I clock in

1 at 4:00 in the morning at Ruth Chris, get off at
2 12:00. And then I do Quality Cuts Landscaping from
3 12:00 to 8:00.

4 **Q** Kevin, do you have any children?

5 **A** Yes, ma'am, I do.

6 **Q** What are their names?

7 **A** My youngest daughter is Kaley Marie Gary, she's
8 three years old. My son is Kevin Lamar Gary, Jr. --
9 I'm sorry. My daughter's two. My son is three
10 years old. They're a year apart. And I also have a
11 seven year old that I've been raising since she was
12 16 months. She's not --

13 **COURT REPORTER:** I'm sorry. I didn't hear the
14 last part.

15 **THE WITNESS:** Oh, I also have been helping Mary
16 Beth Hale raise her daughter since she was 16
17 months. She'll be eight this year. She calls me
18 dad as well.

19 BY MS. EIGENBROT:

20 **Q** Is that Leah?

21 **A** Yes, ma'am, Leah Brooklyn Thomas.

22 **Q** And I think you already said that Kevin and
23 Marie are with Mary Beth?

24 **A** Yes, ma'am. All my kids are with Mary Beth
25 Hale.

1 **Q** Are you and Mary Beth currently in a
2 relationship?

3 **A** Due to this circumstance, our relationship has
4 kind of pretty much been tested. And, like, we're
5 still trying, but it's kind of hard whenever, you
6 know, we're not together like we used to be.

7 **Q** Kevin, do you recall March 25th, 2014?

8 **A** Yes, ma'am, I do.

9 **Q** Where were you living on that day?

10 **A** I was living at St. Andrews Pointe off of St.
11 Andrews Road in Columbia, South Carolina.

12 **Q** How long had you been living there?

13 **A** May I have some water, please?

14 Thank you very much.

15 **Q** You're welcome.

16 All right. How long were you living at St.
17 Andrews Pointe Apartments on March 25th, 2014?

18 **A** I moved in there October 17, so, approximately,
19 about six months.

20 **Q** And were you paying rent at the time?

21 **A** Yes, ma'am. My rent was 778.85 a month.

22 **Q** Who was living with you?

23 **A** Mary Beth Hale, Antonio Adams, myself, my son
24 was about six months, Leah was about five years old,
25 and Antonio Adams had his kids over every now and

1 then.

2 **Q** Now, Antonio's kids didn't live there with you?

3 **A** No, ma'am. They just -- they can come
4 whenever.

5 **Q** And what happened on March 25th, 2014?

6 **A** That's the day Jaranamo Cone attacked me.

7 **Q** Why was Mr. Cone at your home that day?

8 **A** He was there to repair some toilets in our
9 house.

10 **Q** Can you tell us what the issue was with the
11 toilets?

12 **A** Yes, ma'am. Whenever we did our walk-through
13 of the apartment in October, they gave us an
14 inspection sheet of the apartment and they told us
15 that anything that was wrong with the apartment, to
16 write it down on the inspection sheet that they'd
17 repair it at no cost to us, you know, before we
18 moved in. The apartment had brand new GE appliances
19 in the kitchen, carpet, you know, it was a nice,
20 clean apartment. The only thing we noticed that we
21 didn't really like was the toilets didn't flush all
22 the way and other than that, you know, the apartment
23 was brand new.

24 I had a baby on the way and I had just had my
25 son, we really needed a place. It was a nice spot,

1 so we took the apartment. And they told us that
2 they'd have it fixed within about ten days of us
3 moving in, so we didn't think it was a big deal.

4 **Q** So you moved in October and it's now March and
5 it still hasn't been fixed?

6 **A** Yes, ma'am. The first time the maintenance
7 technician arrived to do something with the toilets
8 was around November or December. It took about a
9 month and a half. In between that process, we had
10 been going back and forth to the office asking, you
11 know, how long it was going to take to, you know,
12 not trying to be rushing or nothing, but just asking
13 about how long would it take for them to get our
14 toilets fixed because we had three toilets.

15 We had three bedrooms, three bathrooms, so all
16 of the toilets weren't really flushing, so that was
17 an issue for us with so many people being in the
18 home. And one of the toilets had actually
19 overflowed with feces and urine, our guest bathroom.
20 It made a big mess, so we had to just try to clean
21 up. We couldn't just shut our door.

22 So we was going back and forth to the office
23 asking, you know, about how long was this going to
24 take. And they explained to us that there was work
25 orders ahead of ours that, you know, we'd have to

1 wait because there wasn't but X amount of
2 technicians, that we have to wait on the work
3 orders. So it took about a month and a half for
4 them to get out there the first time.

5 **Q** And on March 25th, were you home when Mr. Cone
6 arrived to fix the toilets?

7 **A** No, ma'am, I wasn't.

8 **Q** Where were you?

9 **A** I was out running errands that morning.

10 **Q** What did you see when you got home?

11 **A** The first thing I noticed was Mr. -- well, it
12 was a blue -- I didn't know whose truck it was, I
13 assumed it was Mr. Jaranamo's, but it was a blue
14 Dodge truck, 1500 Ram. It was double parked into
15 the front two parking spaces of our apartment.

16 **Q** When you say double parked, can you describe
17 how the truck was pulled into those spots?

18 **A** Yes, ma'am. Anytime, like, when you pull in,
19 like, if you pull in head first, you know, when
20 you're facing the sidewalk, instead of pulling
21 straight in, the front end was kind of angled so
22 that it took the -- it took two parking spots away.
23 It was pulled in at an angle.

24 **Q** And what did you do once you saw his -- or this
25 truck double parked in the parking lot?

1 **A** Well, I had to take my car -- we had just got a
2 brand new 2012 Dodge Avenger. We had just got it.
3 I had to take it and park it down at the end of our
4 apartment complex where it was an open parking spot
5 at.

6 The only reason I did that was because when we
7 moved out there, they explained to us that we only
8 were allowed two parking spots per apartment complex
9 because these apartments were lined up -- sorry --
10 apartments were lined up on a straight row. So they
11 showed us on our walk-through that each apartment
12 had two parking spots and that was to keep one home
13 from taking up more, you know, five parking spots
14 from when your neighbor might get home from work and
15 try to park. So they told us to not take up more
16 than two parking spots per apartment.

17 **Q** So you were under the impression you were
18 supposed to park there?

19 **A** I was told by the apartment supervisor when
20 they did our walk-through, they literally showed us
21 it's two parking spots per apartment, and they
22 explained to keep the overflow from one apartment
23 taking up too many parking spots.

24 **Q** So after you park your car a little bit further
25 down, what did you do then?

1 **A** I walked back up to my apartment, went inside
2 my home, seen Mary Beth downstairs on the couch
3 watching TV. She's about seven months pregnant, all
4 she did was really eat and watch TV.

5 But I went upstairs because I noticed, like I
6 said, the truck was in front of my home and I knew
7 that, you know, it was the maintenance technician.
8 I went upstairs and I approached him, I greeted him.
9 I always greet people. I worked in customer service
10 for about 12 years, so I always greet people with,
11 hey, how you doing, friendly smile.

12 **Q** Once you greeted him, do you ask him to move
13 his truck?

14 **A** Yes, ma'am. After I greeted him, I was like,
15 Hey, how you doing, sir? He was mopping up the
16 feces from the floor. He had his back to me when I
17 spoke to him. I said, Hey, how you doing today,
18 sir? He just kept mopping. He didn't turn around
19 and respond to me. So I said, okay. So I said,
20 Excuse me, whenever you get a chance, if you don't
21 mind, could you please go downstairs and straighten
22 up your truck?

23 And I even went out my way to explain why I was
24 asking him because I know it might sound crazy for
25 you to ask somebody to move their truck, but I

1 explained to him that his truck was double parked
2 and right now we just had our brand new car parked
3 all the way at the end of our apartment complex
4 where we can't visibly see it. So I asked him if he
5 -- whenever he got a chance -- I didn't say, stop
6 what you're doing -- Whenever you get a chance, if
7 you don't mind, could you please straighten up your
8 truck?

9 Q Kevin, I want to back up just a moment.

10 A Yes, ma'am.

11 Q You mentioned Mary Beth was on the couch.

12 A Downstairs, yes, ma'am.

13 Q Was anyone else in the home?

14 A I believe Antonio Adams was in his bedroom,
15 which was next to the guest bathroom that we were
16 actually standing in front of.

17 Q And I think you mentioned children. Were the
18 kids there?

19 A Yes, ma'am. Every day when I come home, the
20 kids always, like, run up to me, like, because,
21 like, we play a lot. So my -- Leah Brooklyn, the
22 five year old, was on my right side holding my hand
23 and Antonio Adams' daughter was maybe, like, two or
24 three years old, she was holding my left hand, so
25 she was right there why we were -- me and

1 Mr. Jaranamo Cone were talking.

2 **Q** And how did Mr. Cone respond when you asked him
3 to move the truck?

4 **A** Well, like I said, initially, he didn't respond
5 to my greeting. After I asked him to move my {sic}
6 truck, that's when he turned around and, like, with
7 his eyebrows, like, really up, like, You expect me
8 to stop cleaning up your shit to move my truck so
9 you can park. That was his response.

10 **Q** Did this make you angry?

11 **A** No, ma'am, it didn't make me angry. I was more
12 surprised that that was the response from the
13 maintenance technician at my apartment complex.

14 **Q** Did anyone else hear this exchange between you
15 and Mr. Cone?

16 **A** Yes, ma'am, my daughter and Antonio Adams'
17 daughter.

18 **Q** And was there any further conversation at that
19 point in time?

20 **A** Yes, ma'am. That's when I said, Oh, excuse me,
21 sir, if you don't mind, could you please straighten
22 up your language and, you know, be professional? I
23 pointed at the girls, like, the little kids. I'm
24 like, you know, it's little girls, you know, we
25 don't curse in front of kids, that's not how we

1 roll. So, you know, if you don't mind -- I wasn't
2 trying to like -- because he's older than me, so I
3 wasn't trying to tell him what to do, but I was just
4 asking him to be professional. I even used the
5 word, Could you please be professional, as I was
6 pointing at the girls.

7 **Q** And what did he do in response to you telling
8 him that?

9 **A** He turned back around and, like, he said --
10 went right back to cursing. Like, I heard him say
11 something about, I'm cleaning up your shit, you want
12 me to move my truck. Like, he was still in
13 disbelief that I had requested for him to move his
14 truck and he continued to curse. He used another --
15 a word that was profanity. So he just ignored my
16 request.

17 **Q** What happened after he responded in that
18 manner?

19 **A** He went on a little bit about me asking him to
20 clean up the feces and urine, and then he just said,
21 Fuck it, and threw the mop. Like, he literally
22 said, Fuck it, and threw the mop. It landed, like,
23 right in the toilet. Like, it was crazy. He just
24 threw it and it just {indicating noise}, but anyway,
25 it landed in the toilet. And he walked by me and he

1 went downstairs.

2 **Q** Did you follow him?

3 **A** Yes, ma'am. At the bottom of my stairs is my
4 doorway. As soon as you walk in my home, it leads
5 you right in front of my stairs. So if you're going
6 down the stairs, you walk into the door.

7 Now, I thought he was going to go downstairs
8 and exit the home because he said, Fuck it, and
9 threw the mop. So instead of him going out my home,
10 he went through my living room. I got another
11 bathroom downstairs. So I walked down thinking he
12 was going to, you know, repair the bathroom, the
13 other toilet.

14 **Q** What happened once you both got downstairs?

15 **A** Mary Beth was sitting there watching TV. Our
16 half bath is, like, immediately through our living
17 room and Mr. Jaranamo Cone went towards the
18 bathroom. He was -- I thought he was going to start
19 doing work, but he was still going on about the
20 request about me asking him to move his truck. And
21 I let him know then, you know, if you don't want to
22 do, you know, the service that you're here to do,
23 which is repair our toilets, I asked him to leave
24 the home. And I told him I would take it up with
25 the -- bless you {juror sneezes} -- I told him I

1 would take it up with the supervisors in the
2 apartment complex and we'd just get somebody else
3 out there with a better attitude who actually
4 wouldn't mind doing it.

5 **Q** What happened after you asked him to leave at
6 that point?

7 **A** He just, like, he was still, like, you know,
8 going on, like, he was kind of like rambling. You
9 know, the whole time we're kind of like talking and
10 we're trying to like -- he's talking and I'm letting
11 him know, Hey, look, man, if you don't want to do
12 the job, that's fine, you can leave.

13 Our apartment office is literally right in
14 front of our apartment. It's within walking
15 distance, so I could easily walk over. We were real
16 cool with some of the people in the apartment
17 complex, so I could easily just go over and ask them
18 to get somebody else out to my home, you know,
19 simple, easy, so.

20 **Q** Did you ask him to leave again?

21 **A** I asked him to leave probably five times in the
22 midst of us having that back and forth in front of
23 Mary Beth in the living room. It was like he was
24 going on about me asking him to move his truck. He
25 just couldn't believe that while he was mopping -- I

1 mean, I didn't really think it was that big of a
2 deal, honestly.

3 **Q** So you were in the living room; right?

4 **A** Yes, ma'am.

5 **Q** Where are you standing in the living room?

6 **A** I'm standing right in the middle of my living
7 room. It's not, like, a really huge living room,
8 but, you know, I'm in the middle, Mr. Jaranamo is
9 standing, like, kind of inside/outside the half bath
10 and Mary Beth's sitting behind me on the couch and
11 the girls are -- the kids are downstairs as well.

12 **Q** And did he eventually leave?

13 **A** Yes, ma'am, eventually.

14 **Q** What happened before he left?

15 **A** On the way out, out the door, like, I was
16 pointing at the door, like, you know, you don't want
17 to do your job, just, you know, you can hit the
18 door, that's cool. And on the way out, he took his
19 shoulder, like, he was walking, and instead of him,
20 like, walking around me, he just tried to, like,
21 walk, I guess, walk through me or, you know, he
22 created physical contact with his left shoulder.

23 **Q** How will you describe that contact?

24 **A** At the time, whenever it happened, it was kind
25 of like he was walking by, so it was like a hard

1 brush, like, you know, a little shoulder brush.

2 **Q** When you say hard, what do you mean by hard?

3 **A** Like, it wasn't, like, nothing that was super
4 crazy, but it was enough for him to try -- I guess,
5 he was trying to intimidate me or something; I don't
6 know what it was. It was instead of him walking
7 around me or saying excuse me in my living room or
8 anything, he just literally tried to walk through
9 me. I guess, he thought I was supposed to move on
10 his way out or something.

11 **Q** Was there enough space that he could have
12 walked around you?

13 **A** Oh, yeah, because my living room, we didn't
14 have any furniture. Like, all we had was a couch
15 and we had a TV stand. So you've got the whole
16 living room that you can access or walk around
17 without touching me.

18 **Q** So he's now made physical contact with you?

19 **A** Yes, ma'am.

20 **Q** Did you make any contact back?

21 **A** No, ma'am. Whenever he brushed me -- like,
22 most people whenever they brush you, they just keep
23 walking, like, yeah, I did it or whatever. He
24 actually stopped and we had -- we were face up at
25 one point, like, nose to nose, like, toe to toe

1 type, like, having a stand off, if you want. Like,
2 I guess he was waiting to see if I was going to
3 react or what I was going to do as far as the
4 physical contact part.

5 **Q** Do you remember if he's taller than you?

6 **A** Not exactly. I mean, I think we're about the
7 same height probably or something like that, I
8 think, because we was, like, eye-to-eye, so.

9 **Q** At this point, are you angry?

10 **A** At this point, I'm more, like, nervous. I'm,
11 like, frustrated. I'm kind of scared because, you
12 know, we're probably about the same height, but he's
13 a little bit thicker than me, so, and he's older
14 than me and he's, like, being aggressive. So this
15 situation is -- in my head, I'm like what's going
16 on? Is this, like, really -- what is going on? You
17 know, I'm confused.

18 **Q** Do you remember where Antonio was at this time?

19 **A** At some point or another, he had came
20 downstairs. He was standing off to my back left in
21 front of the window, next to the window and the
22 door.

23 **Q** All right. So, at this point, Mr. Cone's made
24 physical contact with you. Y'all are staring each
25 other down. What happens then?

1 **A** At that point, I think I heard Mary Beth motion
2 for Antonio to get me or something like that and I
3 heard Antonio say something like, nah, bro straight
4 or bro good or something like that. And that's when
5 I told him, I didn't ask him, I said, Get the fuck
6 out of my house. At this point, I didn't ask, I
7 said, Get the fuck out. Because you just physically
8 contacted me and this shit is not about to happen,
9 so -- excuse my language, I'm sorry -- but once that
10 happened, I didn't ask, I told him to get the fuck
11 out of my house.

12 **Q** Did he leave?

13 **A** Yes, ma'am.

14 **Q** Can you tell the jury how he left your home?

15 **A** He walked over to the door and, like, he just,
16 you know, he was pissed off, so he slung the door
17 open and he slammed it shut. And when he swung the
18 door open, my six-month-old son was actually sitting
19 in the doorway as this whole little verbal back and
20 forth was going on. My son was just -- he's always,
21 like, in front of the door or in front of the window
22 or by the stairs. Like, he used to like to climb up
23 and down them and stuff.

24 So he was just sitting over there in the
25 doorway and when he swung the door open, he hit my

1 son. And he slammed the door and shook my apartment
2 window. It made this loud boom. It was like a
3 shotgun had went off in my living room, like, just
4 the sound of it, like, boom and it shook the
5 windows. The glass, you could hear glass shaking.
6 I mean, it was -- I've never -- it was bad.

7 **Q** How did you react to that?

8 **A** Instinctively, I went straight towards the
9 door. You know, my son was in that area. I
10 instinctively moved towards my son.

11 **Q** Did you open the door?

12 **A** No, ma'am. I believe Antonio Adams opened the
13 door. He was standing right there. He had to open
14 the door. He said something like, What the fuck,
15 or, What's your problem, or something. I couldn't
16 really -- I mean, I --

17 **Q** And what happened once Antonio opened the door?

18 **A** I was going to -- because before Mr. Cone had
19 left, I was telling him, you know, Hey, man, if you
20 don't want to do the job, that's perfectly fine.
21 You know, anytime a person doesn't want to do a job,
22 you don't have to, you can quit, leave, go,
23 whatever. But I instructed him that if he didn't, I
24 was going to go report this to his supervisor
25 because, for one, the conduct in my home I didn't

1 appreciate, and, for two, we still had three broken
2 toilets and one bathroom with feces and urine in it.
3 So if he walked out of my home, we were still going
4 to be left with that.

5 And the whole point is to get it fixed, that's
6 the reason why the maintenance tech came. So if he
7 left that problem, I was going to have to go report
8 it because I know they had a work order and if he
9 came out to my home and didn't do the job, I was
10 still going to be left with that problem. So I let
11 him know I was going to go talk to his supervisor
12 immediately because we were tired of having crap in
13 that bathroom. We had it from October to March. So
14 I let him know I was going to go, you know, talk to
15 his supervisor and get somebody out here because
16 whether he does it, whether Santa Clause does it,
17 somebody needs to fix our toilets.

18 We're paying \$800 a month for rent without no
19 government assistance, that's my hard-earned money
20 and I was paying to house crap in my bathroom for
21 six months. My kids can't use the bathroom, we
22 can't use it, but we were paying for access to that
23 bathroom and we didn't have it. So I was going to
24 go report him and I told him that. I'm not trying
25 to be rude or anything.

1 **Q** That's okay. But you moved towards the door?

2 **A** Yes, ma'am. I moved towards the door and
3 Antonio opened it up, he was like, What the fuck,
4 bro, or, What the fuck, man, or whatever he said.
5 And I went to exit my home and Mr. Cone reached up
6 and choked me, like, grabbed me by my throat and
7 choked me up at my doorstep.

8 **Q** So you were still on your doorstep?

9 **A** Yes, ma'am. I was going to exit because he had
10 just slammed the door and went out. Antonio opened
11 the door right back up. Mr. Cone was still right
12 there in the area of the doorway. And I went to
13 exit my home because I needed to go report this crap
14 immediately. And I went to exit and he reached up
15 and grabbed my throat and choked me in the door.
16 Like, I remember seeing his big left hand come at
17 me, and he grabbed me by my throat, the back of my
18 head hit the door post.

19 That's when I knew he's trying -- this is --
20 he's trying to attack me, like, this is no longer a
21 verbal altercation, I'm being attacked. I had maybe
22 a split second to think about what was I going to
23 do. This dude's bigger than me, he's grabbing me,
24 he's being violent and aggressive and I wasn't even
25 prepared to fight, but I had to get ready within a

1 second or two to either defend myself or get hurt.

2 So once I noticed I was getting choked, then I

3 swung, I just started swinging.

4 **Q** Kevin, can you tell the jury a little bit about
5 how the outside of the apartments are set up?

6 **A** Yes, ma'am. You got your doorway in the front.
7 And you got your hedges on the left and right side.
8 They got some hedges or whatever. Over our doorway,
9 it's a little, like, a little hang or whatever that
10 covers your doorstep. Whenever it's raining, you
11 can actually stand under there, so you can't really
12 see down it because of the hang. But, you know,
13 it's like three or four little steps to get to the
14 sidewalk in the parking lot.

15 **Q** All right. So Mr. Cone has grabbed you with
16 his left hand?

17 **A** Yes, ma'am.

18 **Q** And where exactly does he -- where does he kind
19 of -- where are you exactly?

20 **A** I'm in my doorway, right in the doorway.

21 **Q** You said you hit your head?

22 **A** The back of my head hit the door. Like,
23 whenever he went {indicating}, because I was going
24 to walk out, so when he met me coming, he's a bigger
25 dude, his hand pushed my head back and it hit, like,

1 the right side of the door post or something.

2 That's how I knew this is, like, real.

3 **Q** Did you have time to react?

4 **A** I didn't have time to think. I didn't have
5 time to do nothing. It went from being we're
6 talking about my toilets to this man is choking me
7 on my doorstep at my house. Like, it didn't -- it
8 really -- the whole situation was just blowing my
9 mind from the way he responded earlier when I asked
10 him to stop cursing, just how -- the whole
11 situation, I didn't have time to think. It was
12 just --

13 **Q** Now, you said you started swinging?

14 **A** Yes, ma'am. I remember, like, once I remember,
15 like, being choked or whatever, it's, like, I just
16 remember swinging. Like, it wasn't no right, left,
17 left, right. It was just, just trying to get him
18 off me, like, trying to defend myself.

19 **Q** Do you remember how many times you swung?

20 **A** It was, like, maybe two or three. It wasn't a
21 lot. Like, it was {indicating noise} two or three.
22 We both exchanged, you know, he swung at me a couple
23 times, I swung at him. You know, we exchanged. And
24 I don't know if I landed a good blow, if he slipped.
25 I'm not going to say, you know, it was me, but he

1 fell at one point.

2 Q So you do hit him, though?

3 A Yes, ma'am. We both hit each other. We
4 exchanged blows.

5 Q And what happened once you hit him?

6 A Like I said, after a couple exchanges, he
7 eventually fell.

8 Q Do you remember where he was when he fell?

9 A I just remember being in the front yard. I
10 don't remember what step or nothing like -- I just
11 know we was in the front yard. It was -- we were
12 moving around.

13 Q And you said you're moving around. Where did
14 you go once he fell the first time?

15 A When he fell the first time, I just stood there
16 because he literally got right back -- he tried to
17 get right back up, you know, and he fell again. And
18 when he fell the second time, it was on his face in
19 the -- off the sidewalk -- onto the sidewalk -- I
20 mean, off of the sidewalk into the parking lot on
21 his face.

22 Q So you're in the parking lot now?

23 A Yes, he is. I'm just, like, standing off, kind
24 of looking like, watching him.

25 Q What happened -- what did you notice once

1 Mr. Cone fell that time?

2 **A** I heard him moan out like {indicating noise},
3 something like that. He moaned out real bad. And I
4 seen blood. And when he rolled over, his eye was
5 bleeding. And I -- I was like, oh, shit. Like, I
6 ran over there. Like, he was trying to get back up
7 still, but his eye was bleeding bad, like, it was
8 bleeding. Like, from that point, it wasn't no
9 longer a fight, it was about trying to, you know,
10 get him some type of help.

11 **Q** And what did you do once you noticed that he
12 was injured?

13 **A** I started screaming for Mary Beth because,
14 like, this happened really fast. This wasn't, like,
15 a four or five -- it probably happened in about 30
16 seconds from the door to the parking lot, a couple
17 blows and he was down. It happened really fast. So
18 from the time he fell, I just remember turning
19 around and screaming, Mary Beth, Beth, you know.
20 And she was already coming out the door, running,
21 you know. She was already on the way out, like,
22 screaming. And I'm like, Go get -- go get help, go
23 to the office, go get help. So she ran --

24 **Q** I think you said the front office is within
25 view of your apartment?

1 **A** Yes, ma'am. It's probably, like, from here to
2 maybe that -- maybe the outside of these jury doors
3 maybe or toward where the elevator is. You can
4 literally sprint over there real quick.

5 **Q** And what were you doing while Mary Beth went to
6 get help?

7 **A** I was trying to tell Mr. Jaranamo to stay down
8 because he was, you know, he was still -- I don't
9 know if he was still trying to fight or what his
10 deal was, but he was still trying to get up and make
11 moves, like -- and I was just trying to tell him to
12 stay down because he was hurt pretty bad and I
13 didn't think he needed to be moving.

14 **Q** Do you remember where you were standing when
15 you were trying to get him to stay still?

16 **A** I just remember being in the parking lot right
17 next to, I think, my neighbor's car. I was just,
18 like, standing around Mr. Jaranamo just trying to,
19 like, telling him, you know, please stay down.

20 **Q** Were you facing the parking lot or your
21 apartment?

22 **A** I was facing -- my back was to the apartments
23 like --

24 **Q** You were facing the parking lot?

25 **A** Yes. I was facing the parking lot. My back

1 was to my apartment. And I was, like, kind of
2 standing over Mr. Jaranamo. I don't think I even
3 physically touched him, I might have. I'm not going
4 to -- you know, I just remember telling him, Stay
5 down. I was standing over his body like -- because
6 he was trying to get up. You know, he fell over,
7 like, two or three times. And after, like, that
8 third time and that eye popped or whatever, I was
9 like, Bro, you need to just stay down. Like, Beth
10 go get help, call the police, get the police out
11 here, like, it was --

12 **Q** Did Mary Beth run to the front office?

13 **A** Yes, ma'am, because when she was coming out the
14 door, she was, like, really running and I'm like, Go
15 get help, don't even stop, don't even look, like,
16 just go get help, go get help. So she didn't even
17 really stop, she just {indicating noise} shot over
18 there, got the lady from the office and they ran
19 back over.

20 **Q** And so was help -- was help called at that
21 time?

22 **A** Yes, ma'am. The lady from the office, she was
23 actually somebody I didn't recognize. We always
24 dealt with Ms. Crystal, I think. Ms. Crystal was
25 the lady that did our walk-through and signed us up

1 for our apartment, so I always dealt with Ms.
2 Crystal. But this lady was somebody else in the
3 office; I didn't really recognize her.

4 **Q** But she called 9-1-1?

5 **A** Yes, ma'am. She came out, she was screaming
6 and yelling. I heard her phone call loudly. She
7 was screaming and yelling, frantic. She called the
8 police.

9 **Q** And did the police come?

10 **A** Eventually. It seemed like it took them -- it
11 seemed like everything took -- like, it seemed like
12 the first part was really fast, but then it seemed
13 like everything else took forever. Like, it seemed
14 like it took them a minute to get out there.

15 **Q** But the police did come --

16 **A** They did come.

17 **Q** Do you remember who else came out there?

18 **A** I remember it was maybe, like, ten Richland
19 County cars, it was EMT, fire department, like, the
20 whole nine. It was -- they had the whole parking
21 lot flooded.

22 **Q** Do you remember if any of your neighbors or
23 anybody else was outside?

24 **A** The only people I clearly remember is seeing
25 Antonio Adams, Mr. Jaranamo Cone, Mary Beth, myself,

1 the supervisor from the apartment who came and
2 called the police. It was neighbors out there. And
3 there was a school bus actually letting off, I
4 think, after-school kids. So parents was, like, all
5 over in the left side of our apartment. There was a
6 lot of people out there. There was a lot of
7 neighbors out there.

8 **Q** What happened once the police arrived?

9 **A** When the police got there, I heard one of the
10 officers saying something like they were looking for
11 a bunch of people. They thought he had got jumped.
12 So I immediately walked up to the officer and I
13 explained to him that I had got into an altercation
14 with Mr. Jaranamo Cone. I explained that he
15 attacked me on my doorstep, you know, he choked me,
16 and I didn't feel I had any option or any time to
17 think and I defended myself. I explained to him
18 that some of the damages may have been from me, but
19 he also fell face forward on the concrete several
20 times. I let them know all of that and they still
21 arrested me. They came back and locked me up, took
22 me to jail.

23 **Q** So you were arrested after you spoke to the
24 police?

25 **A** Yes, ma'am. I tried to cooperate thinking

1 like, okay, maybe I'm at home, you know, my kids
2 were here, you know, I got witnesses, he attacked
3 me, maybe the law would actually work for me, you
4 know. So I stayed and I tried to cooperate even
5 though I was scared as shit. Like, this dude was
6 down bad. I'm sorry, excuse my language.

7 **Q** Kevin.

8 **A** I'm very nervous.

9 **Q** I know. What happens after you're arrested?

10 **A** Ma'am?

11 **Q** What happens after you're arrested?

12 **A** Let me see, so -- okay. So, yeah, they put me
13 in handcuffs in front of my doorstep. And I asked
14 the officer, Why are you arresting me? I told you
15 he attacked me. I told you he choked me first. And
16 I said, Why am I being arrested? And they pointed
17 over at him, said, Look at him, why do you think?
18 And I said, But that was a result of him attacking
19 me. I was just defending myself, you know.

20 And I asked him to press -- I said, Well, can I
21 press charges as well because I was assaulted? And
22 they were like, Look at you, where is the bruises?
23 I don't see any bruises. He has blood all over him.
24 Where is your bruises? And I said, I don't know,
25 but I know I was attacked. I know I was assaulted.

1 I got hit. I got choked. I got hit inside of my
2 home. Like, why can't I press charges just because
3 he's injured? They didn't want to press charges on
4 him.

5 So -- and I asked them -- they was asking me,
6 Well, where are the visible bruises? I said, He
7 choked me, so take a picture of my neck. I have a
8 knot on the back of my head from -- and I felt two
9 knots from that door when I hit the door post.
10 Like, they didn't take no pictures of the back of my
11 head. They took a picture of my neck and my hand.

12 **Q** And they took pictures at the scene; right?

13 **A** Yes, ma'am, on the spot.

14 **Q** And once you were arrested, where do you go?

15 **A** One second, please.

16 All right. Once they arrested me, took me to
17 the investigator's office at Richland County.

18 **Q** Did you give a statement to the investigator as
19 well?

20 **A** I gave a statement to the police on the scene.
21 And then when they transferred me, I gave them
22 another statement to the investigator in the
23 investigator's office. It was, like, three of them
24 -- two or three of them. I gave, like, two
25 statements that day.

1 **Q** Did you tell the police at the headquarters
2 about your injuries?

3 **A** I told anybody. I told everybody. It was
4 officers that were just standing around. I was
5 begging and pleading for -- I asked them to take
6 pictures of my son because like Mary Beth said, we
7 didn't have a phone, you know, I didn't have a
8 phone. She had a little government phone. I don't
9 even know if it had a camera on it. We asked them,
10 why they was out taking pictures of all the blood
11 and stuff, if they could take pictures of our head,
12 if they could take pictures of our son. Every
13 request that I asked got denied. I asked for
14 charges to be brought up on him as well, that got
15 denied. Any request I had got denied.

16 **Q** So you gave a statement?

17 **A** Two statements.

18 **Q** Did the investigators take pictures at
19 headquarters as well?

20 **A** Yes, ma'am, they took pictures. They took
21 pictures of my hand. I just had a little cut on it.
22 It wasn't, you know, nothing major. They had asked
23 me if I wanted medical treatment. I told them, no,
24 ma'am. Like, I didn't feel like it was necessary.
25 But when I woke up the next day in jail, my right

1 hand was broken, fractured or something. It was
2 swole {sic} up. I couldn't -- I had no use of it.

3 **Q** Kevin, did the investigators collect any
4 clothing from you that day?

5 **A** Any what?

6 **Q** Any clothing?

7 **A** No, ma'am. I went to jail and I dressed out in
8 an Alvin S. Glenn uniform.

9 **Q** Why did you hit Mr. Cone that day?

10 **A** I hit Mr. Cone as a response to him choking me
11 and hitting me. I was being hit, so that's what
12 I -- I hit back. You know, you can't talk to
13 somebody when they're hitting you.

14 **MS. EIGENBROT:** All right. Thank you,
15 Mr. Gary. Please answer any questions the Solicitor
16 might have for you.

17 **THE WITNESS:** Yes, ma'am. Thank you.

18 **THE COURT:** Cross?

19 **MS. WALKER:** Thank you, Your Honor.

20 **THE COURT:** Yes, ma'am.

21 CROSS-EXAMINATION

22 BY MS. WALKER:

23 **Q** You were really victimized that day?

24 **A** My whole family was.

25 **Q** I mean, y'all were terrorized. I think you've

1 used the word traumatized before; right?

2 **A** Yes, ma'am. I'm still traumatized. I'm
3 traumatized as I sit on this stand right now.

4 **Q** I know.

5 Now, you had to fight for your life; right?

6 **A** And everyone around me, yes, ma'am.

7 **Q** I'm sorry?

8 **A** And everyone around me, yes, ma'am, my kids as
9 well, because he could have also turned and attacked
10 anybody in the home. I don't know. We didn't know
11 nothing about him, so --

12 **Q** Because he's a mad man at this point?

13 **A** I don't know what he is, ma'am --

14 **Q** He's enraged --

15 **A** -- I'm not going to describe him as a person.

16 **Q** Was he enraged?

17 **A** He was angry, I guess.

18 **Q** Was he out of control?

19 **A** What do you mean by out of control? What are
20 you referring to?

21 **Q** Mr. Gary?

22 **A** Yes, ma'am.

23 **Q** Was he so angry that you needed him to leave
24 your house?

25 **A** It wasn't really about anger. It was about him

1 fixing the toilet, ma'am. It wasn't about anger or
2 violence. It was about him fixing the toilet.

3 **Q** At some point, though, you needed him to leave
4 your house?

5 **A** At the point where he decided he wasn't going
6 to fix my toilet, that's when I decided he wasn't
7 going to -- need to be in my home.

8 **Q** And he, at that point, had shoulder bumped you?

9 **A** At what point are you referring to?

10 **Q** When you asked him to leave your house?

11 **A** I asked him to leave my house several times
12 before he shoulder bumped me.

13 **Q** And he shoulder bumped you on the way out?

14 **A** Yes, ma'am, he did.

15 **Q** And, at that point in time, he's turned this
16 thing physical?

17 **A** That's what a shoulder bump is. It's a
18 physical motion. It's not a verbal. It's a
19 physical act.

20 **Q** And you don't like cursing in front of
21 children; right?

22 **A** I don't condone it.

23 **Q** Do you see all those children in the back of
24 the courtroom?

25 **MS. EIGENBROT:** Objection.

1 **THE WITNESS:** No, ma'am. I haven't been
2 looking --

3 **THE COURT:** Hold on a second --

4 **THE WITNESS:** -- in the back of the courtroom.
5 I'm looking at the jurors.

6 **THE COURT:** Hold on a second, please.

7 Yes.

8 **MS. EIGENBROT:** Your Honor, he's testifying to
9 what happened. Ms. Walker bringing up the audience
10 in the courtroom right now is inappropriate.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I apologized several times for my
13 language as I was speaking, I believe I did. And
14 once again, I have not looked anywhere, but at the
15 jurors. I haven't surveyed the courtroom.

16 BY MS. WALKER:

17 **Q** Well, do me a favor: Will you survey it now?

18 **A** Yes, ma'am. I apologize for the cursing and,
19 you know, the disrespect. I don't condone cursing
20 in front of kids.

21 **Q** That's also part of why you needed Mr. Cone to
22 leave your house that day; right?

23 **A** No, ma'am. Asking him to stop cursing was a
24 part of him being professional. You don't go on
25 your job and just be cursing and talking how you

1 want. If you're at work, whether you're at
2 McDonalds or whether you're at a corporate office,
3 you're supposed to conduct yourself in a
4 professional manner whether you're -- in any
5 environment.

6 **Q** In any environment, you should be professional?

7 **A** Yes, ma'am, when you're --

8 **Q** But sometimes you get nervous; right?

9 **A** Are we referring to being at work still?

10 Because I was referring to work.

11 **Q** You said any environment.

12 **A** You need to be professional while you're
13 working, whether you're at McDonalds or at a
14 corporate office. When you're at work, I believe
15 you should conduct yourself in a professional
16 manner.

17 **Q** Including not cursing?

18 **A** I can't keep answering the same question, like,
19 ten different ways, I'm sorry.

20 **Q** You don't want to answer that question?

21 **A** I thought I just answered it twice; I really
22 did.

23 **Q** Okay. We'll move on.

24 **A** Thank you.

25 **Q** And you said he has to get out of your house?

1 **A** I asked him if he wasn't going to fix our
2 toilets and be professional while he was in the
3 home, I asked him if he would leave so we could get
4 somebody that would be professional and fix our
5 toilets, because this was only about toilets. I
6 don't even know Mr. Cone or, you know, any other
7 other maintenance techs. It's not a personal issue.

8 **Q** So, yes, you asked him to leave your house?

9 **A** Once again, I believe I answered that question
10 already.

11 **Q** Well, answer it with a yes or no. Did you ask
12 him --

13 **A** I believe I answered it with a yes or no
14 already.

15 **Q** Did you ask him to leave your house?

16 **A** Can we move to another question, please?

17 **Q** Do you need a moment to calm down?

18 **A** I'm calm -- I'm not going to calm -- I'm
19 nervous. Like, my nerves right now, I've never been
20 through this before. I've never had a big case
21 hanging over my head where --

22 **Q** You never had a big case hanging over --

23 **A** Yes, ma'am, 20 years. This carries 20 years in
24 prison --

25 **MS. WALKER:** Objection, Your Honor. At this

1 point in time, I'd ask that that comment be stricken
2 from the record.

3 **THE COURT:** I don't know what he said. Y'all
4 are talking over one another.

5 Ladies and gentlemen, step in the jury room.
6 Don't discuss the case.

7 (The jury retires to the jury room.)

8 **THE COURT:** What was his last response?

9 **COURT REPORTER:** Question: You never had a big
10 case hanging over --

11 Answer: Yes, 20 years. This carries --

12 **THE COURT:** So your objection is Mr. Gary was
13 going to talk about the penalty for this offense?

14 **MS. WALKER:** Yes, Your Honor. Before that
15 point in which she started to reading, the court
16 reporter started reading, he said, I've never been
17 in this situation before. I've never had a big case
18 hanging over my head. I said, You've never had a
19 big case hanging over your head? He said, Yes, 20
20 years. This carries 20 years.

21 **THE COURT:** Defense wish to be heard on this?

22 **MS. EIGENBROT:** Your Honor, I believe Ms.
23 Walker asked a question, and I believe Mr. Gary was
24 doing his best to respond in an appropriate manner.

25 **THE COURT:** All right. Thank you. The

1 objection's sustained.

2 Bring the jury back in.

3 Y'all try not to talk over one another, please.

4 **THE WITNESS:** May I have some more water,
5 please?

6 (Ms. Walker approaches the witness.)

7 **THE WITNESS:** If you don't mind, I'd like for
8 it to come from over there. Thank you.

9 Thank you, Ms. Cheslyne.

10 Can I speak to my public defenders? Is that
11 possible?

12 **THE COURT:** No.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Ladies and gentlemen, I
15 know I just sent for you to come in, but as you were
16 coming in, something happened and I need to send you
17 back out. Don't discuss the case.

18 (The jury retires to the jury room.)

19 **THE COURT:** Mr. Gary turned to me and asked if
20 he could speak to his public defenders in private
21 and I said no. Do we need to develop this any
22 further? He's on the stand, he can't get assistance
23 from lawyers to get him through the testimony at
24 this point.

25 **MS. EIGENBROT:** No, Your Honor.

1 **THE COURT:** I don't know if he has some other
2 issue or some other problem, but if he wants advice
3 related to testifying or talk to y'all about
4 testifying, he's on the stand, he's subject to
5 cross-examination. I told him yesterday, If you
6 take the stand, you subject yourself to
7 cross-examination.

8 **MS. EIGENBROT:** Yes, sir.

9 **THE COURT:** Do you need to put anything else on
10 the record?

11 **MS. WALKER:** No, sir.

12 **THE COURT:** Bring in the jury.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Ladies and gentlemen, the last
15 question at the end of the response by the witness,
16 the witness made some sort of statement related to
17 the possible punishment for the offense, disregard
18 that in its entirety please as far as any term of
19 years that may have been stated. That's not a
20 function for the jury, that's a function for the
21 Judge.

22 All right. Go ahead.

23 **MS. WALKER:** May it please the Court, Your
24 Honor.

25 **THE COURT:** Yes, ma'am.

1 **MS. WALKER:** Thank you.

2 BY MS. WALKER:

3 **Q** And on direct examination, you said, too, that
4 in addition to your hand, you had knots in the back
5 of your head?

6 **A** I said I had a knot on the back of my head,
7 yes, ma'am.

8 **Q** You said you had two; right?

9 **A** One on the back, one on the right side.

10 **Q** And you complained to anyone who would listen
11 about those injuries?

12 **A** Yes, ma'am.

13 **Q** Did you listen to the phone call that we played
14 earlier this week, yesterday?

15 **A** Yes, ma'am.

16 **Q** Do you remember saying, I have a little swollen
17 hand, that's it; I'm straight; you need to be
18 worried about the other guy?

19 **A** Yes, ma'am.

20 **Q** So you didn't say anything about knots on your
21 head at that point?

22 **A** Not to Mr. Roger Hale; to the police, though.

23 **Q** And did you -- you said it to this -- this
24 investigator; right?

25 **A** I don't remember any officers by face or name.

1 It was a lot of officers talking to me --

2 **COURT REPORTER:** I can't hear --

3 **THE WITNESS:** I'm sorry.

4 I said, I don't remember any officer in
5 particular by name or face. I couldn't -- it was a
6 lot of officers talking to me, investigators, police
7 officers. I have more things going on than try to
8 remember which officer's name was who.

9 BY MS. WALKER:

10 **Q** So you don't remember which investigator you
11 spoke to that day?

12 **A** No, ma'am. There was more than one
13 investigator in the room.

14 **Q** And you said that your hand was fractured or
15 broken?

16 **A** I woke up the next morning and my hand was
17 swollen. It felt like it was either fractured or
18 broke. I couldn't really use --

19 **Q** Which hospital did you go to for that?

20 **A** I was in Alvin S. Glenn. I didn't go to a
21 hospital.

22 **Q** You got --

23 **A** I was in jail.

24 **Q** You got out of Alvin S. Glenn; right?

25 **A** Later on. I was in there for maybe, I think,

1 two weeks or something. They held me in there for
2 my bond court because Mr. Jaranamo Cone couldn't
3 present himself at my bond hearing so they kept
4 holding me until, you know, he got --

5 **Q** For two weeks?

6 **A** Yeah, about a week or two, I don't remember.
7 It was sometime. I don't know.

8 **Q** Did you go to the medical staff at Alvin S.
9 Glenn and tell them that you had a broken hand?

10 **A** I showed the CO and showed the medic.

11 **Q** So you did go to Alvin S. Glenn medical staff?

12 **A** I didn't go to the medical staff. I showed the
13 CO, that's the correctional officer that's inside of
14 the jail room with you. Any reports that you have,
15 you have to go through the correctional officer.
16 You can't just free walk through the jail.

17 **Q** Okay. So there will be reports of that?

18 **A** I have no idea. I don't know if they report
19 them or if they don't report them. I don't know
20 their procedures.

21 **Q** And you said it was the next day, so it would
22 have been March 26 when you woke up?

23 **A** Yes, ma'am. In jail the next morning, I went
24 to get out my bed and I tried to stand up, like,
25 push myself out of the bed and my right hand was --

1 I couldn't put any pressure on it or anything.

2 **Q** Do you remember on March 26, calling Mary Beth?

3 **A** I don't remember particular dates, but I did
4 talk to her while I was in jail, yes, ma'am.

5 **Q** And on March 26, she asked you how your hand
6 was doing. You said, It's hurt, but it's okay.

7 **A** That would indicate that my hand was hurt, but,
8 yes.

9 **Q** But it was okay?

10 **A** It was hurt, but I'm not going to cry about it.
11 I'm not a cry baby. I don't really complain about
12 stuff, but I did indicate to her, yes, ma'am, that
13 it was hurt, as you said. I didn't go into details.
14 I don't never go into details about my health or
15 injuries to anybody.

16 **Q** I can't hear you.

17 **A** I didn't go into details with her about my hand
18 because I don't ever go into, like, details about my
19 health status or my physical issue with anybody.
20 I'm a personal person.

21 **Q** But you went into details about it with the law
22 enforcement officers?

23 **A** I guess, yes, ma'am. I don't know what you're
24 referring to.

25 **Q** Well, you said that you were telling everybody

1 about your injuries and that no one would listen, no
2 one cared.

3 **A** I said that I told them about my injuries and
4 nobody took pictures. I didn't say that nobody
5 cared or didn't listen.

6 **Q** You said on direct examination that the reason
7 you went out of your apartment that day was to go to
8 the front office?

9 **A** I was going outside to report Mr. Jaranamo Cone
10 for the acts that had happened in my home. And I
11 was also going to let Mr. Jaranamo know that he had
12 struck my son with the door on his way out because
13 he didn't turn around and say, sorry, excuse me, my
14 bad, or he didn't really acknowledge that the door
15 hit my child, so.

16 **Q** Do you remember giving a statement in this
17 case?

18 **A** Yes, ma'am.

19 **Q** You don't remember to which investigator?

20 **A** I think it was Investigator Carlyle, if I'm not
21 mistaken.

22 **Q** Investigator who?

23 **A** Carlyle or Carlisle. I'm not sure. I don't
24 remember.

25 **Q** And when they asked you to give a statement,

1 did they threaten you in order to make you give it?

2 **A** No, ma'am. I cooperated on my own accord fully
3 throughout this whole investigation from start to
4 finish, made myself available for any questions, any
5 type of anything. And when I gave a statement to
6 the police, I didn't have a lawyer with me. I
7 waived that right because I didn't want to seem
8 guilty.

9 **Q** So no one threatened you; right?

10 **A** No, ma'am.

11 **Q** No one coerced you?

12 **A** No, ma'am.

13 **Q** You gave a statement freely and voluntarily?

14 **A** Yes, ma'am.

15 **Q** In fact, did they advise you of your rights
16 before you gave a statement?

17 **A** When all this was going on, they had me in the
18 investigator's office, I wasn't, like, cool, calm,
19 collected; I was still traumatized from the
20 experience. So, you know, they were talking to me
21 about things, but at sometimes, I be in my head
22 just, like, replaying what had just happened and,
23 you know, thinking about what was going to happen,
24 like, I was kind of in and out of, you know,
25 everything. But, yeah, they did read me my rights.

1 **Q** I want to show you State's Exhibit Number 39
2 and ask you if you recognize this.

3 **THE COURT:** Hold on a second. I didn't
4 understand what his last statement was about his
5 rights. What did he say? I couldn't hear him.

6 **THE WITNESS:** I said I did give a statement and
7 I didn't have a lawyer present. I was trying to
8 cooperate.

9 **THE COURT:** You said something about your
10 rights.

11 **THE WITNESS:** Yes, sir. They did read me my
12 rights, yes, sir.

13 **THE COURT:** Okay. Go ahead.

14 BY MS. WALKER:

15 **Q** I want to show you what's been marked as
16 State's Exhibit Number 39. Do you recognize that?

17 **A** Yes, ma'am, I do.

18 **Q** They read you your rights?

19 **A** Yes, ma'am.

20 **Q** And then I want to show you what's been marked
21 as State's Exhibit Number 40. And take your time
22 and read that and let me know where you said in it
23 that you were going outside of the apartment to go
24 get the front office manager.

25 **A** You said, where does it say inside of my

1 statement that I said I was going to go notify the
2 supervisor?

3 **Q** Yes.

4 **A** I don't see where it says it in my statement,
5 but I notified Mr. Jaranamo Cone in the house.

6 **Q** But you never -- why in your statement did you
7 tell law enforcement you were leaving the house?

8 **A** First of all, I've never, like, been in this
9 type of situation. Once again, I was very
10 traumatized when I was going through this. My main
11 idea when I was speaking to the police and giving a
12 statement, was just cooperate fully, you know, be
13 truthful as you can and try to remember as many
14 details as you can.

15 Whenever you go through a situation like that
16 and, you know, you go from being assaulted to
17 getting in a very physical fight and then you get
18 arrested, your brain is going through so much, like,
19 just trying to remember to say every word of every
20 line. You know, I did the best I could to give a
21 good story to give them an idea of what happened.

22 **Q** You tried the best you could to give them a
23 good story?

24 **A** Idea of what happened, yes, ma'am.

25 **Q** So the answer to my -- my question was

1 actually, why did you tell them you went outside of
2 the house?

3 **A** I told them that I was going to report him to
4 his supervisor and let Mr. Jaranamo Cone know that
5 he hit my son with the door on his way out.

6 **Q** Law enforcement, why did you tell law
7 enforcement that you left your house?

8 **A** I don't remember exactly what I said or when I
9 said it, but I remember telling them that I was
10 going to report him. I told law enforcement on the
11 scene, I told them several times that I was going to
12 -- I even told Mr. Jaranamo Cone, so. I mean --

13 **Q** But you remember giving this statement?

14 **A** Yes, ma'am, I do.

15 **Q** And in this statement, you said, I followed him
16 outside to notify him that he struck my child and to
17 seek some kind of apology or acknowledgment.

18 **A** They asked me if I wanted to notify him, and I
19 did tell them, Yeah, I would have liked to let him
20 know that you struck my son. I didn't see where
21 there was a problem with that.

22 **Q** So, yes, that's what you say in your statement?

23 **A** Yeah, it is a part of my statement, yes, ma'am.

24 **Q** You said that they held you at Alvin S. Glenn
25 Detention Center for two weeks?

1 **A** I don't remember the exact time. I said maybe
2 a week or two. I was in there, it seemed, a couple
3 days at least. I didn't get out the next day.

4 **Q** So it was two weeks, a week or two or a couple
5 days?

6 **A** I don't know how long I was in jail. I was in
7 jail for a duration of time. I don't remember the
8 exact time.

9 **Q** You were traumatized; right?

10 **A** Yes, ma'am.

11 **Q** You have been victimized and no one's listening
12 and then you get arrested; right?

13 **A** Yes, ma'am.

14 **Q** And you don't remember if you were in Alvin S.
15 Glenn Detention Center for two weeks or two days?

16 **A** I mean, I just know it was a duration of time,
17 maybe a week. I have no idea. I don't remember.

18 **Q** Would it surprise you to know that you got out
19 two days later, that no one was holding you for
20 weeks on end?

21 **A** Okay. No, it wouldn't. It felt like -- when
22 you're in jail, time drags out. You don't have the
23 amenities of life that you have out here. Like, it
24 felt like a year to me, honestly.

25 **Q** You got frustrated in there?

1 **A** Being locked up is the most frustrating,
2 stressful situation anybody can go through. Losing
3 your freedom, being put in a cell amongst people,
4 you know, who are, you know, out there doing
5 whatever they're doing --

6 **Q** Violent?

7 **A** -- and -- it's all types of -- everybody in
8 jail is not violent. You got people in there for
9 child support who have never done anything violent.
10 Jail doesn't mean you're a violent person; it just
11 means you've broken the law in one way, shape or
12 form.

13 **Q** And, at some point in time, you get so
14 frustrated that you told Mary Beth, If I wake up in
15 this mother fuck --

16 **MS. EIGENBROT:** Objection.

17 **THE COURT:** Yes.

18 **MS. EIGENBROT:** Your Honor, may we approach?

19 **THE COURT:** Ladies and gentlemen, step in the
20 jury room don't discuss the case.

21 (The jury retires to the jury room.)

22 **THE COURT:** Yes, ma'am.

23 **MS. EIGENBROT:** Your Honor, objection to the
24 relevance at this point. I believe the question Ms.
25 Walker asked Mr. Gary was, was he frustrated in

1 jail. He answered that question fully.

2 I believe what she's about to do is go into
3 some jail phone calls I do not believe are in any
4 way relevant to this case other than to show his
5 frustration. He admitted he was frustrated and
6 admitted that he was struggling in jail. I don't
7 see any relevance to the statements in those phone
8 calls or those phone calls coming in at this time.

9 **THE COURT:** What is it you wanted to ask him?

10 **MS. WALKER:** Your Honor, at some point, on one
11 of the jail phone calls, he tells his girlfriend, or
12 his girlfriend at the time, If I wake up in this --
13 and excuse my language, Your Honor -- but he says,
14 If I wake up in this mother F'er tomorrow, I'm not
15 coming home. And that, Your Honor, the reason I'm
16 asking about that is because of the influence he was
17 putting on the people, the witnesses in this case to
18 do certain things in order to make sure that he was
19 not in jail or incarcerated for this.

20 **MS. EIGENBROT:** And, Your Honor, that's
21 completely out of context under the circumstances.
22 I don't think you can -- I don't think you can -- if
23 you listen to the conversation as a whole, he is
24 clearly frustrated about being stuck in jail. He is
25 scared. He is telling her this in this phone call.

1 And what that single statement or what the
2 single statements infer is that -- and what Ms.
3 Walker is trying to get across is that he's forcing
4 her to do these things. He's in jail exhibiting a
5 frustration, which he has expressed here on the
6 stand. I don't believe there's been any evidence
7 presented by the State at this point that he forced
8 anyone to say or do anything on his behalf here
9 today or this week.

10 **THE COURT:** Anything else?

11 **MS. WALKER:** No, Your Honor.

12 **THE COURT:** I'm not going to allow you to read
13 from the statement at this point based on what has
14 been presented.

15 **MS. WALKER:** Yes, Your Honor.

16 **THE COURT:** If there's indication that he
17 influenced a witness, I know that you all asked
18 Ms. Hale a similar question, if there's evidence
19 about that, I'm not saying you can't go into that,
20 but I sustain the objection on relevance at this
21 point.

22 **MS. WALKER:** Yes, Your Honor.

23 **THE COURT:** Bring in the jury.

24 (The jury returns to the courtroom.)

25 **THE COURT:** The objection's sustained. Ask

1 your next question, Solicitor.

2 BY MS. WALKER:

3 Q Do you remember on March 26th, telling Mary
4 Beth that that man disrespected you to the utmost,
5 that he brushed you and then he had the nerve to
6 stare you in your face?

7 A I remember speaking to her about the situation.

8 Q Do you remember saying that?

9 A I remember saying certain things. I don't
10 remember exact words.

11 Q Now, you said that you were assigned two
12 parking spaces when you moved into St. Andrews
13 Pointe; right?

14 A When we moved in, they did a walk-through,
15 like, they actually walked with us to the apartment,
16 they walked us around the apartment complex. And
17 they explained to us that due to how the layout of
18 the apartments were, that we were to park in two
19 parking spots per apartments to keep from
20 overflowing the parking lots and preventing people
21 that live there from having a parking spot. That's
22 how they told us.

23 Q My question is, did you have an assigned
24 parking space?

25 A When we did a walk-through of the apartment

1 complex, the supervisor, she actually walked through
2 and she showed us the layout and she instructed us
3 that we weren't to take up more than two parking
4 spots per complex to keep from overflowing the
5 parking lots and keeping residents that live there
6 from having an actual parking spot when they get
7 home.

8 **Q** So is that yes or no, you had an assigned
9 parking space?

10 **A** That's the best way I can answer it. That's
11 how they explained it.

12 **Q** Was there a number on the space?

13 **A** No, ma'am.

14 **Q** So you didn't have any numbered space you
15 needed to be in?

16 **A** No, ma'am. They never had numbers in the
17 parking lot. They just asked us to use two parking
18 spots to keep from taking up neighbors next to you,
19 because apartments are literally right next to each
20 other connected.

21 **Q** And you went upstairs once you realized that
22 you couldn't park in the space that you liked to
23 park in; right?

24 **A** Not that I liked to, just I couldn't park in
25 front of my home, so.

1 **Q** Do you remember giving a statement that was
2 taken down by a court reporter on April 20th of
3 2015?

4 **A** Yes, ma'am.

5 **Q** Do you remember saying then, I explained to him
6 that we like to park our car in front of our house?

7 **A** Yes, ma'am. We do like to park our car in
8 front of our house.

9 **Q** That was my only question --

10 **A** Yeah, we do.

11 **Q** -- that you like to park your car there and you
12 couldn't, you went upstairs to tell Mr. Cone that?

13 **A** Yeah. Yes, ma'am, we definitely do.

14 **Q** Okay. We're on the same page.

15 **A** My whole thing was we had literally just -- it
16 was a brand new Dodge Avenger, like, we just got it.
17 And even if it was an old car, it doesn't matter.
18 We like to park our car like, you know, any other
19 American in front of our home so we can look outside
20 and see it and make sure nothing happens, which is
21 normal.

22 **Q** Okay. And you walked upstairs, you asked him
23 if he could move the car?

24 **A** I greeted him first and then I asked him if he
25 could move his truck whenever he got time. I didn't

1 demand that he stop what he was doing, you know. It
2 wasn't like it was mandatory that he ran out. I
3 just asked him whenever he got a chance, if he could
4 move his truck so we could get our car in front of
5 our house.

6 **Q** And the conversation goes from upstairs to
7 downstairs; right?

8 **A** Yes, ma'am.

9 **Q** And where does it start downstairs?

10 **A** In our living room.

11 **Q** I'm going to show you State's Exhibit Number
12 41. It starts in your living room?

13 **A** Yes, ma'am.

14 **Q** Do you recognize this?

15 **A** Yes, ma'am.

16 **Q** And how do you recognize this?

17 **A** It's a layout of the St. Andrews Apartment,
18 what looks to be.

19 **MS. WALKER:** Your Honor, at this point, the
20 State seeks to move Exhibit Number 41 into evidence.

21 **THE COURT:** Any objection to this?

22 **MS. EIGENBROT:** No objection.

23 **THE COURT:** Mark it in evidence, please.

24 (State's Exhibit Number 41, diagram,
25 admitted into evidence.)

1 BY MS. WALKER:

2 Q So you said that y'all are in your living room?

3 A Yes, ma'am.

4 Q And where does Mr. Cone go?

5 A About right over there. If you can bring it a
6 little closer.

7 Q Sure.

8 A Somewhere in this vicinity {indicating}, in
9 front of the half bath. Because when he walked
10 downstairs, I thought he was going to exit, but he
11 went to our half bath downstairs.

12 Q And where were you?

13 A I had came downstairs and I was about right
14 here {indicating}.

15 Q And I guess this is the door {indicating}?

16 A I assume.

17 Q And where is your son?

18 A He's in the doorway right here {indicating},
19 this area right here. It's a little piece of, like,
20 hardwood floor right there.

21 Q Like, right when you enter?

22 A Yes, ma'am.

23 Q Okay. And, at some point, Mr. Cone does follow
24 your wishes and he leaves your apartment?

25 A After -- after he brushed into me and we had

1 our stare down, I asked him to leave -- well, I told
2 him to get the fuck out, yes, ma'am. Excuse my
3 language.

4 **Q** And you said that it was a big living room and
5 he had plenty of space to get around you and he
6 chose to knock into you?

7 **A** I said my living room was big enough with no
8 furniture in it, so he had the whole living room to
9 walk in, you know, walk around in. All we had was,
10 like, a couch and a TV stand in there.

11 **Q** That same statement you gave back in April 20th
12 of 2015, do you remember saying that it wasn't a big
13 living room?

14 **A** I just didn't -- I just said it wasn't a big
15 living room. I said it was big enough for you to
16 walk through it without touching me because there
17 wasn't any furniture. I didn't say it was a big
18 living room.

19 **Q** There was no furniture in there?

20 **A** We had a couch. We had a -- we didn't have,
21 like, a whole bunch of stuff where you got to
22 maneuver through. It was empty. We'd just moved in
23 there, like, six months ago and we were trying to
24 build it up. We had just got donated a couch and
25 some -- like a TV stand or something, but it was

1 pretty much empty still.

2 **Q** And he slammed the door on his way out; right?

3 **A** Yes, ma'am.

4 **Q** And the door, according to your testimony, it
5 hit your son?

6 **A** Yes, ma'am.

7 **Q** But you knew your son was fine; right?

8 **A** When I looked at him, like, he screamed out or
9 whatever, but he wasn't, like, bleeding or nothing,
10 like, you know, he was just scream -- he was crying
11 like a baby, so.

12 **Q** So you didn't see any injuries?

13 **A** I didn't see any, like, no blood. I'm not
14 going to say I didn't see any injuries. I just --
15 he was crying. Like, he got hit by the door, he
16 started screaming. Like, he was only six months.
17 He was still --

18 **Q** And did the door close all the way behind
19 Mr. Cone?

20 **A** Yes, ma'am. He slammed it shut.

21 **Q** Right. It's closed?

22 **A** He slammed it shut, yes, ma'am.

23 **Q** He's outside of your home; you're inside of
24 your home?

25 **A** Yes, ma'am.

1 Q And, at that point in time, that altercation is
2 over?

3 A That one was, yes, ma'am.

4 Q And then Antonio opened the door?

5 A Yes, ma'am.

6 Q And you said, Hey, man, you know you hit my
7 son?

8 A No, ma'am, I didn't say that. No. Antonio
9 said something like, Hey, bro, what the fuck or what
10 are you doing? He said -- Antonio said something
11 like that.

12 Q That same testimony you gave, do you remember
13 saying, I seen Mr. Jaranamo, hey, man, you know you
14 hit my son?

15 A I don't remember saying that.

16 Q Mr. Adams wouldn't refer to your son as his
17 son; right?

18 A Right. I just said I don't remember saying
19 that. I didn't say I didn't say that. I just don't
20 right now remember saying those words.

21 Q And you said, before you could even really get
22 out everything you wanted to say, he turned around
23 and he just starts attacking you; right?

24 A Well, he was right there in the doorway.
25 Because like I said, when he slung the door, Ant --

1 you see how the layout of our living room is,
2 Antonio was right there by the door. He opened it
3 right back up, and he said whatever comment he said,
4 and I was going to exit the home. Mr. Jaranamo just
5 reached up and grabbed me by my throat right there
6 in my doorway.

7 **Q** And how did he reach up?

8 **A** It was like he was coming across his body with
9 his arm and he reached up with his left -- I presume
10 it was left hand.

11 **Q** It was his left hand?

12 **A** I presume it was, yes, ma'am.

13 **Q** And, at that point in time, you were in your
14 doorway; right?

15 **A** Yes, ma'am.

16 **Q** But, at some point in time, that door closed
17 behind y'all?

18 **A** No, ma'am.

19 **Q** The door never closed?

20 **A** I don't remember the door closing after Antonio
21 opened it up. I don't remember it closing.

22 **Q** You agree that there's blood on the door;
23 right?

24 **A** Yes, ma'am. I see blood on the door.

25 **Q** Were you bleeding?

- 1 **A** Yes, ma'am.
- 2 **Q** Oh, you were bleeding now? Where was the blood
3 coming from?
- 4 **A** It was coming from my hand.
- 5 **Q** All of this blood came from your hand?
- 6 **A** I don't know where that came from. I don't
7 know whose blood is where anywhere in the parking
8 lot, but I had blood coming from my hand as you can
9 see in the picture, so.
- 10 **Q** So you're already -- your hand is already
11 bleeding while he's choking you?
- 12 **A** No, ma'am. My hand wasn't bleeding before he
13 choked me. My hand started bleeding throughout the
14 fight at some point. I don't know, maybe it started
15 after the first blow, maybe it was the last. I
16 didn't check my body for injuries.
- 17 **Q** It was on your knuckles; right?
- 18 **A** It was right here. I still have a scar right
19 here on my hand {indicating}.
- 20 **Q** 28, right? Let me see.
- 21 **A** (Witness indicating.)
- 22 **Q** 28?
- 23 **A** Yes, ma'am, right there.
- 24 **Q** And he's punching you in your face?
- 25 **A** He was punching me, period. I don't remember,

1 like, where we were hitting. We were both swinging.
2 It was -- it was a wild fight for me because I was
3 just fighting out of, like, fear.

4 **Q** You were a security guard at that point?

5 **A** No, ma'am. I was working out at Brickyard. I
6 got a security job later on at a hotel, Value Place
7 Hotel.

8 **Q** So that would have been -- Ms. Hale would have
9 been incorrect about your employment?

10 **A** At the time, yes, ma'am. I was working at
11 Brickyard, but the security job didn't come till
12 later.

13 **Q** And can you show me where the injuries are that
14 you sustained from this fight, the red marks, the
15 bruising, the scratches, a nick, a black eye,
16 anything?

17 **A** As I was explaining, some bruises on different
18 people arise at different times. My skin happens to
19 bruise at different times. It didn't -- I didn't
20 see no visible red marks through this picture, but I
21 guess, like, you know, later on, a day or two later,
22 I had bruises that nobody was there to photograph.

23 And when I complained about the back of my head
24 in the invest -- wherever I was at, I don't remember
25 which officer it was, but -- because it was like 20

1 or 30, it was a lot of police, but I was telling the
2 officers that I felt a knot on the back of my head,
3 you know, they were more concerned about taking
4 pictures of the blood in the parking lot really.

5 **THE WITNESS:** May I have some water, please?

6 (Pause.)

7 **THE WITNESS:** Thank you, Ms. Cheslyne.

8 **Q** You okay now?

9 **A** Ma'am?

10 **Q** Are you ready?

11 **A** Whenever you are.

12 **Q** Okay. Now, back to these injuries that you
13 talked about, I want to go back to the statement you
14 gave on -- back in April 2015. Do you remember
15 being asked a question, But the extent of your
16 injuries were your hands; right?

17 **A** I don't remember every question I was asked
18 that day.

19 **Q** Do you remember responding right at the end of
20 it, Yes, ma'am, my hands, referring to your hands?

21 **A** I don't remember exactly what moment you're
22 talking about. I know I complained about my hand to
23 several people.

24 **Q** But never in any sort of written document?

25 **A** I didn't write any document throughout this

1 whole trial.

2 **Q** You said -- do you remember saying that you
3 thought you went overboard, that what you did was
4 excessive?

5 **A** No, ma'am. I remember -- I remember saying yes
6 to that question, that was after they showed me
7 pictures of Jaranamo Cone after they came back from
8 the hospital. They asked me if I thought my actions
9 were excessive before they went when I initially got
10 down there and I said, no.

11 But when they went to the hospital and took a
12 bunch of pictures of him bleeding in the bed and
13 they showed them to me, yeah, I told them that looks
14 excessive. I didn't say that me defending myself
15 was excessive because I saw Jaranamo fall several
16 times and inflict damage upon himself. So I
17 admitted that that damage done to Mr. Jaranamo Cone
18 did look excessive.

19 **Q** So when asked, Do you feel, like, that your
20 actions tonight were excessive, your response was,
21 Yes, sir, they were excessive, it just wasn't my
22 intention to fight that man?

23 **A** That's what I just said, yes, ma'am. They
24 asked me twice. I don't know if you got the other
25 page where they asked me. They asked me first, I

1 said, no.

2 **Q** Well, show me here the first time where you
3 said, no.

4 **A** I don't see it in your packet.

5 **Q** Is there another packet that you have that I
6 don't have?

7 **A** I actually have a copy of my -- I do have a
8 copy of my statement. And in my statement, it does
9 have where they asked me twice.

10 **Q** Where is that?

11 **A** I didn't bring nothing but my Bible.

12 **Q** So you have a different copy of this statement?

13 **A** I have a copy of my statement where they asked
14 me if I thought my actions were excessive and I
15 said, no. And then later on, they asked me the same
16 question again, but that was after they showed me a
17 picture of Mr. Jaranamo's face.

18 **Q** And where did you get this -- so your testimony
19 is that you gave two written statements to law
20 enforcement?

21 **A** I gave several statements. I don't -- I just
22 told you, ma'am, I gave several statements. I don't
23 remember who, what, when and where. I gave several
24 statements, but I do have in my statements where
25 they asked me if I thought my actions were excessive

1 when I first got down there and I said, no.

2 **Q** If you had an opportunity to get that statement
3 for me, could you get it and show that to me?

4 **A** Like, what, right now? It's at my house.

5 **Q** This one's at your house?

6 **A** Yes, ma'am. I have a copy of my files at my
7 house.

8 **Q** Okay.

9 **A** I definitely don't mind showing you. Yeah,
10 that's not a problem.

11 **Q** Okay.

12 **A** That won't be a problem.

13 **Q** And when talking to law enforcement, you
14 thought your actions were excessive, but when you
15 talked to Mr. Hale, you said you felt like he got
16 what he deserved?

17 **A** When I was in jail, I was -- that was the worst
18 experience. I mean, I was super stressed, super
19 nervous, super -- I was angry that I had gotten
20 attacked and arrested and locked up. I had a lot of
21 emotions going on. You know, everything I said to
22 anybody, I was angry with the world. You know, I
23 wasn't talking nice to anybody. And I felt like the
24 justice system was letting me down by arresting me
25 after being attacked, so I was angry. I had a lot

1 of angry conversations, a lot of depressing, sad,
2 stressful, nervous conversations. And I'm not proud
3 of anything I said or did, but I'm human and I had
4 emotions. Yeah, I did have some rough times in
5 there.

6 **Q** You reacted off of your emotion?

7 **A** I had a daughter on the way, I just had a son
8 and I'm in jail. My baby's going to be here in
9 three months and I'm in jail.

10 **Q** And you said you thought he got what he
11 deserved?

12 **A** I felt like any time you put your hands on
13 somebody, I personally believe that you should do --
14 should be able to defend yourself.

15 **Q** He deserved an exploded eye?

16 **A** And, at the time, I didn't know that he had all
17 of that. When I say he got what he deserved, I
18 meant, you know, he was looking for a fight, you
19 know, that's what -- that's what he ended up
20 getting. It wasn't like I wanted to fight. I felt
21 like he was looking for that, that's what he wanted.

22 And when I said he got what he deserved, I was
23 referring to him getting what he was looking for,
24 not me being glad that I was the one to do it. It
25 was just in reference that if you go around, you

1 know, acting the way you act the way, you know, he
2 acted, that's what he was looking for.

3 **Q** You said you didn't know he was going to lose
4 his eye at that time?

5 **A** I didn't know the full extent. They told me he
6 had facial fractures. And, you know, they explained
7 to me his eye and, you know, they told me, but I
8 just didn't know he was going to lose it, you know,
9 they said it was possible.

10 **Q** You said, He's still in the trauma unit, I
11 think he lost his right eye?

12 **A** Yeah, I said I think he did.

13 **Q** And he would have deserved that?

14 **A** No, no, ma'am. Nobody deserves to lose a body
15 member.

16 **Q** So he did not deserve what you did to him that
17 day?

18 **A** No, I didn't -- first of all, I didn't do all
19 of that to him. Like I said, some of the damage was
20 self-inflicted.

21 **Q** Some of -- it was self-inflicted?

22 **A** Yes, ma'am.

23 **Q** He bashed his own head in?

24 **A** He fell face forward onto the concrete off of
25 the sidewalk.

1 **Q** He broke his own nose?

2 **A** I didn't say he broke -- I don't know what
3 damages were caused by me and what was caused by
4 him. I just know I wasn't responsible for the full
5 extent of all the damages. I do take responsibility
6 for hitting him, as well as being hit back, but I
7 just won't take responsibility for everything that
8 happened to Mr. Cone that day because it wasn't at
9 my hands.

10 **Q** It wasn't at this hand {indicating} that you
11 almost broke bashing his face in?

12 **A** I didn't say I almost broke it bashing his face
13 in:

14 **MS. WALKER:** I don't have any further
15 questions.

16 **THE COURT:** Redirect?

17 **MS. EIGENBROT:** Beg the Court's indulgence.

18 (Pause.)

19 REDIRECT EXAMINATION

20 BY MS. EIGENBROT:

21 **Q** Kevin, how do you feel right now?

22 **A** Kind of disappointed.

23 **Q** Are you nervous?

24 **A** I'm very nervous.

25 **Q** When Ms. Walker was just asking you about your

1 statement about what Mr. Cone deserved, what did you
2 mean when you said that?

3 **A** I was just angry. I wasn't -- I was -- I
4 didn't mean that he deserved to get, you know,
5 whatever those --

6 **Q** Speak up.

7 **A** I was only referring to the fact that he was
8 looking for a fight and he ended up getting a fight.
9 I wasn't referring to any of his injuries or any of
10 that, you know. I was angry when I said that
11 because I was in jail. My newborn was without me, I
12 had a baby on the way. And as far as I'm concerned,
13 he didn't get charged with anything. Nothing was
14 happening to him. I was just angry.

15 **Q** And you were frustrated?

16 **A** That's an understatement. Yes, ma'am, I was
17 very frustrated.

18 **MS. EIGENBROT:** Beg the Court's indulgence.

19 **THE COURT:** Yes, ma'am.

20 (Pause.)

21 **MS. EIGENBROT:** I have no further questions.

22 **THE COURT:** Anything else for the witness?

23 RE-CROSS-EXAMINATION

24 BY MS. WALKER:

25 **Q** It was Mr. Cone, the 60-year-old man, who was

1 looking for a fight with you?

2 **A** I know -- I didn't know age limited somebody
3 from wanting to fight.

4 **Q** How old were you at the time?

5 **A** Twenty-five.

6 **MS. WALKER:** No further questions.

7 **THE COURT:** Thank you, sir. You may step down.

8 **THE WITNESS:** Thank you, Your Honor.

9 **THE COURT:** Any other witnesses from the
10 defense?

11 **MS. EIGENBROT:** No, Your Honor. The defense
12 rests.

13 **THE COURT:** Do you anticipate any reply
14 testimony?

15 **MS. WALKER:** Yes, Your Honor.

16 **THE COURT:** Do you want to do it now or do you
17 need -- well --

18 **MS. WALKER:** We may need to have a hearing.

19 **THE COURT:** We also probably need to have a
20 break. The jury's been out a lot, but we haven't.

21 All right. Folks, I'm going to ask you to step
22 in the jury room. We're going to take a recess.
23 I'll get back to you as quickly as I can. Don't
24 discuss the case yet. Thank you.

25 (The jury retires to the jury room.)

1 **THE COURT:** All right. Folks, if you're going
2 to be in the audience in the courtroom, you need to
3 please sit up straight, don't be laying all over
4 each other or laying on the rails or things like
5 that. It's disrespectful to the Court and I'm not
6 going to tolerate it. I don't know who these folks
7 are, but I'll remove them from the courtroom, if
8 necessary. Thank you. We're at ease for ten
9 minutes.

10 (Brief Recess.)

11 **THE COURT:** I had asked earlier if we needed to
12 have any kind of Denno hearing and was told we did
13 not. Now I'm told that reply testimony relates to
14 something that an officer learned as a result of
15 questioning the defendant while in custody. The
16 defense had indicated to my law clerk that they did
17 not feel a Denno hearing was needed because the
18 voluntariness has been admitted. But if there's any
19 statement that's going to go into evidence that is
20 made while the defendant is in custody and is --
21 particularly if it's custodial questioning of the
22 defendant, then I think you have to have a Denno
23 hearing. So how long will it take?

24 **MS. WALKER:** A few minutes, Your Honor. It
25 won't be very long.

1 **THE COURT:** All right. Call your witness.

2 **MS. WALKER:** Your Honor, the State recalls
3 Investigator Sullivan.

4 **THE COURT:** You're still under oath. Please
5 have a seat up here.

6 **MS. WALKER:** May it please the Court, Your
7 Honor.

8 JOHN SULLIVAN,
9 having been previously duly sworn, resumed the
10 witness stand and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WALKER:

13 **Q** As part of your investigation in this case, did
14 you speak with the defendant?

15 **A** I did.

16 **Q** And before speaking to him, did you -- I guess,
17 where did this conversation take place?

18 **A** It took place at Richland County Sheriff's
19 Department's headquarters.

20 **Q** And did you -- where in headquarters?

21 **A** In the main room for investigators in a
22 cubicle.

23 **Q** And did you advise him of his rights before
24 speaking to him?

25 **A** Yes, he was advised of his rights. Another

1 investigator did it, but I was present.

2 **Q** And I want to show you what's marked as State's
3 Exhibit Number 39 and ask if you recognize this?

4 **A** I do.

5 **Q** And how do you recognize that?

6 **A** My signature's on it.

7 **Q** And can you please tell me what the advice of
8 rights that were given to this defendant were?

9 **A** The first one, Before we ask you any questions,
10 you must understand your rights: You have the right
11 to remain silent. Anything you say can be used
12 against -- in court. You have the right to talk to
13 a lawyer for advice before we ask you any questions
14 and to have a lawyer with you during any
15 questioning. If you cannot afford a lawyer, one
16 will be appointed for you before any questioning if
17 you wish. If you decide to answer questions now
18 without a lawyer present, you still have the right
19 to stop answering at any time. You also have the
20 right to stop answering at any time until you talk
21 to a lawyer.

22 **Q** And did he understand those rights that were
23 given to him?

24 **A** Yes, he said he did.

25 **Q** And how did -- I guess, how did he indicate

1 that he understood them?

2 **A** He signed his name.

3 **Q** And did he, in fact, waive those rights?

4 **A** He did.

5 **Q** In getting him or advising him and then having
6 him waive those rights, did you threaten him in any
7 way?

8 **A** We did not.

9 **Q** Did you add any coercion or pressure?

10 **A** No.

11 **Q** Did you make any promises to him?

12 **A** We did not.

13 **Q** Did you withhold any creature comforts from him
14 in order to get him to give his statement?

15 **A** No.

16 **Q** And, in fact, did he give a statement to you at
17 that point?

18 **A** He did.

19 **Q** I want to show you what's been marked as
20 State's Exhibit Number 40 and ask you if you
21 recognize this?

22 **A** I do.

23 **Q** And is that the statement that the defendant
24 gave you?

25 **A** Yes. This is the written statement he gave us.

1 **Q** At the top of that written statement is he
2 again advised of his rights?

3 **A** Yes, he is.

4 **Q** Could you read that for me?

5 **A** I, Kevin Lamar Gary, understand that I have the
6 right to remain silent, anything I say can be used
7 against me in court. I have the right to talk to a
8 lawyer for advice before you ask me any questions,
9 and to have a lawyer with me during any questioning.
10 If I cannot afford a lawyer, one will be appointed
11 for me before any questioning if I wish. If I
12 decide to answer questions now without a lawyer
13 present, I still have the right to stop answering at
14 any time. I also have the right to stop answering
15 at any time until I talk to a lawyer.

16 **Q** And did you go on to ask him questions?

17 **A** Yes, both of us.

18 **Q** And did he answer those questions?

19 **A** He did.

20 **Q** And how was that memorialized?

21 **A** I typed it as he was -- the questions -- I
22 typed the questions I asked and I typed the answers
23 he gave me.

24 **Q** And, at any point in time, did he ask to stop?

25 **A** No.

1 **Q** If he had asked to stop talking to you, would
2 you have allowed him to?

3 **A** Yes, we would have stopped.

4 **Q** And, at that point in time, was he under arrest
5 when he gave the statement?

6 **A** He was being charged.

7 **Q** He was being charged?

8 **MS. WALKER:** Thank you, sir. I don't have any
9 further questions.

10 **MS. EIGENBROT:** Beg the Court's indulgence.

11 **THE COURT:** Yes, ma'am.

12 (Pause.)

13 CROSS-EXAMINATION

14 BY MS. EIGENBROT:

15 **Q** Investigator Sullivan, Mr. Gary's statement he
16 gave you that day is typed; correct?

17 **A** Yes.

18 **Q** And you or Investigator Carwell would have
19 typed that statement?

20 **A** I typed it.

21 **Q** So Kevin did not write out his responses?

22 **A** That's correct.

23 **Q** And the statement was given at approximately
24 8:30?

25 **A** Yeah. I have down here 8:26.

1 **Q** Did you and Investigate Carwell show him
2 pictures of Mr. Cone during the interview process?

3 **A** I don't recall showing him any pictures.

4 **Q** Did you discuss with him the injuries that
5 Mr. Cone was suffering from?

6 **A** We would have.

7 **MS. EIGENBROT:** Thank you, Investigator
8 Sullivan.

9 **THE COURT:** Redirect?

10 **MS. WALKER:** None, Your Honor.

11 **THE COURT:** Thank you, sir. You may step down.
12 Do y'all need to put anything on the record at
13 this point?

14 **MS. WALKER:** No, Your Honor.

15 **THE COURT:** Defense?

16 **MS. EIGENBROT:** No, Your Honor.

17 **THE COURT:** And the statement he's going to
18 elicit from that is what?

19 **MS. WALKER:** I'm sorry, Your Honor?

20 **THE COURT:** What portion of the statement is he
21 going to elicit?

22 **MS. WALKER:** I would like to put in the -- it's
23 a three-page statement, Your Honor. I can pass it
24 up. I'd like to put it in in its entirety. It's
25 State's Exhibit Number 40.

1 (Pause.)

2 **THE COURT:** What's the defense's position?

3 **MS. EIGENBROT:** Your Honor, I have no objection
4 to Mr. Gary's statement being put in evidence.

5 **THE COURT:** All right. If there's no
6 objection, then I don't have to rule on that part of
7 it. As far as the Denno hearing, if there's nothing
8 further, do you have any evidence you want to offer
9 in that regard?

10 **MS. EIGENBROT:** No, Your Honor.

11 **THE COURT:** I find beyond a reasonable doubt
12 that the defendant, prior to giving any statement in
13 response to custodial questioning, was properly
14 advised of his rights under the United States
15 Constitution and Miranda versus Arizona.
16 Specifically, he was advised that he had the right
17 to remain silent; that if he waived that right, any
18 statement he made would be used against him in
19 court; that he had the right to talk to an attorney
20 and have an attorney present with him prior to and
21 at any questioning; that he had the right to have an
22 attorney appointed to represent him if he could not
23 afford one; that he could stop at any time; if he
24 waived his rights and gave a statement, he could
25 stop at any time and assert his rights.

1 I find beyond a reasonable doubt that he
2 understood those rights, that he made a free,
3 knowing, voluntary and intelligent decision to waive
4 those rights and give the statement, that there was
5 no improper influence, coercion, inducement,
6 threats, promises, pressure, no withholding of
7 anything from him and that any statement given to
8 him was of his free will and accord. I find that
9 those things have been established by the State by
10 the necessary burden of proof.

11 Are you ready for the jury?

12 **MS. WALKER:** Yes, Your Honor.

13 **THE COURT:** Ready for the jury?

14 **MS. EIGENBROT:** Yes, sir.

15 **THE COURT:** All right. Bring them in, please.

16 (The jury returns to the courtroom.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 the State -- excuse me -- the defense has rested.
19 And the next stage in the process is that the State
20 gets the opportunity to offer reply testimony and
21 reply evidence. Now, that doesn't mean that the
22 State can go back through the whole case. What's
23 allowed is that when the defense puts up evidence,
24 the State can respond to it. And so for that
25 purpose, we're going to go into reply evidence and

1 reply testimony at this point.

2 Call your witness, please, Solicitor.

3 **MS. WALKER:** Your Honor, the State calls
4 Investigator Sullivan.

5 **THE COURT:** You're still under oath. Please
6 have a seat up here.

7 JOHN SULLIVAN,
8 having been previously duly sworn, resumed the
9 witness stand and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. WALKER:

12 **Q** Good afternoon, sir.

13 **A** Good afternoon.

14 **Q** I want to talk to you about the moment in which
15 you met Kevin Gary.

16 **A** Okay.

17 **Q** At that point in time, where were you?

18 **A** We were at Richland County Sheriff's
19 Department's headquarters.

20 **Q** And did you take a statement from Mr. Gary?

21 **A** I did.

22 **Q** And before taking a statement from him, did you
23 advise him of his rights?

24 **A** I did, or we did.

25 **Q** I want to show you what's been marked as

1 State's Exhibit Number 39 and ask you if you
2 recognize that?

3 **A** I do.

4 **Q** And how do you recognize that?

5 **A** My signature's on it.

6 **Q** And can you explain for the jury the process
7 that y'all go through when you advise a person of
8 their rights before taking a statement from them?

9 **A** Yeah. Prior to taking a statement, we advise
10 everyone of their rights. We have a form that we
11 use. We read off from the form and checkmark or
12 make some type of mark beside each line that we have
13 read. Once we have read them all their rights, we
14 ask them if they understand or if they have any
15 questions about them. If they'll tell us no, then
16 we'll have them sign saying that they were read
17 their rights.

18 After that, there's another statement it's
19 called a waiver of rights. We'll read that out to
20 them, place a mark next to it, ask them if they
21 understand that and if they say they do, do you wish
22 to talk to us. If they say yeah, then we have them
23 sign underneath that.

24 **Q** And the rights that were read to Mr. Gary, can
25 you please read those to the jury?

1 **A** Yes. Before we ask you any questions, you must
2 understand your rights. You have the right to
3 remain silent. Anything you say can be used against
4 -- in court. You have the right to talk to a lawyer
5 for advice before we ask you any questions and to
6 have a lawyer with you during any questioning. If
7 you cannot afford a lawyer, one will be appointed
8 for you before any questioning if you wish. If you
9 decide to answer questions now without a lawyer
10 present, you still have the right to stop answering
11 at any time. You also have the right to stop
12 answering at any time until you talk to a lawyer.

13 **Q** And did he sign that acknowledging that he
14 understood his rights?

15 **A** Yes, he did sign that.

16 **Q** Once you advised him of his rights, did he seem
17 to understand what you were saying?

18 **A** Yes.

19 **Q** Did he seem confused about any of the language?

20 **A** No. He didn't seem confused at all.

21 **Q** And did he, in fact, waive those rights?

22 **A** He did.

23 **Q** And can you read that for me?

24 **A** Yes. I have read the statement of my rights
25 and understand what my rights are. I'm willing to

1 talk and answer questions. I understand and know
2 what I am doing. No promises have been made to me
3 and no pressure or coercion of any kind has been
4 used against me.

5 **Q** And did he sign the waiver of rights?

6 **A** He did.

7 **Q** And what time did this conversation take place?

8 **A** The waiver of rights was at 8:03 P.M.

9 **Q** And then you took the statement at what time?

10 **A** I don't have it in front of me. I think it was
11 8:26 P.M.

12 **MS. WALKER:** Your Honor, at this point, the
13 State seeks to admit Exhibit Number 39.

14 **THE COURT:** Any objection?

15 **MS. EIGENBROT:** No objection.

16 **THE COURT:** Mark it in evidence, please, ma'am.

17 (State's Exhibit Number 39, advice of
18 rights, admitted into evidence.)

19 BY MS. WALKER:

20 **Q** I also want to show you what's been marked as
21 State's Exhibit Number 40. Do you recognize that?

22 **A** I do.

23 **Q** And what is that?

24 **A** This is a written statement we took from Kevin
25 Gary.

1 **Q** And can you describe to me how y'all take those
2 written statements?

3 **A** We will use a question and answer format. So I
4 will type the questions that I ask him and then I
5 will type the answer that he gives me word for word.

6 **Q** And if there are any additions or subtractions
7 that a subject wants to make to this written
8 statement, do you allow them to do so?

9 **A** Yes.

10 **Q** And once they are satisfied with the statement,
11 how do they indicate that?

12 **A** They will sign it. We'll give it to them, let
13 them read it over to make sure everything's fine and
14 then have them sign it.

15 **MS. WALKER:** Your Honor, at this point, the
16 State seeks to move Exhibit Number 40 into evidence.

17 **THE COURT:** Any objection?

18 **MS. EIGENBROT:** Without objection.

19 **THE COURT:** Mark it in evidence, please.

20 (State's Exhibit Number 40, statement of
21 defendant, admitted into evidence.)

22 BY MS. WALKER:

23 **Q** Starting with -- and you said this was at 8:26?

24 **A** Yes.

25 **Q** Starting with the first question, what was

1 that?

2 **A** The first question was, What is your highest
3 level of education?

4 **Q** And what did you {sic} answer?

5 **A** He answered the 12th grade, that he graduated
6 from Airport High School.

7 **Q** And continue publishing this, please.

8 **A** I then asked, Can you read and write? He said,
9 Yes.

10 I asked, Do you still understand your rights?
11 He said, Yes.

12 I then asked, What happened today for police to
13 come out? He answered, It was an altercation
14 between me and the maintenance man. The issue was
15 all over the toilet lines in my house. Several
16 times I have tried to contact the office in regards
17 to the problems with the pipelines with us not
18 having access to flush our toilets. The maintenance
19 man arrives today to perform duties. I asked him to
20 move his truck. He told me, You really expect me to
21 stop cleaning your shit to move the truck. That
22 started it.

23 I asked him, Yes, sir, if it is not a problem,
24 we need to park. He laughed at me. He got louder.
25 I guess he didn't take me serious. He responded

1 with, I am already cleaning your shit; I'm not doing
2 this again. That's when I asked him and motioned
3 with my hands to lower his tone because I had my
4 daughter and my niece right there at our feet. I
5 asked him if he could clean up his language and be a
6 little more professional. He didn't respond and had
7 not {sic} respect for the house or the people.

8 He threw the mop in the toilet and said, Fuck
9 it. He walked downstairs. I followed him
10 downstairs into the living room. He went into the
11 half bath downstairs. I thought he was going to
12 continue to do work. He continued with the
13 aggressive language and motions. I asked him to
14 just leave the house. I said, I'll clean up the
15 shit myself. He walks by me, shoulder brushes me in
16 my chest region, stops and stares at me
17 face-to-face. I felt threatened and asked him to
18 leave again.

19 He walks towards the door where my child was
20 sitting. He violently slams the door and he clipped
21 my baby in the butt causing him to slide on the
22 floor. I followed him outside to notify him that he
23 struck my child and to seek some kind of apology or
24 acknowledgement. I had no intentions of physical
25 altercation when I went outside. He reached across

1 his body over his shoulder and grabbed my throat --

2 **Q** Let me stop you right there. Did he
3 demonstrate what he meant by that?

4 **A** He did demonstrate.

5 **Q** And what did he demonstrate?

6 **A** He took his left hand and just reached over his
7 right shoulder.

8 **Q** Like this {indicating}?

9 **A** Yes.

10 **Q** Continue.

11 **A** I smacked his hand down and got free. We
12 exchanged blows. I say he maybe hit me two or three
13 times. I hit him two or three times with my fist on
14 his face. When he fell, I proceeded to try and give
15 aid to him. I directed my girlfriend to go and make
16 contact with the people in the office and to notify
17 the police.

18 I then asked him, Were there any witnesses to
19 this? He answered, Mary Beth Hale, my wife, and
20 possibly Antonio Adams, a friend of mine.

21 I asked him, Do you feel like you went a little
22 too far? He answered, No, sir.

23 I asked him, What made you do this? He
24 answered, The door striking my child, that's what
25 made me go outside. That is not what made me fight

1 him. What made me fight him is him putting his
2 hands on me.

3 I asked him, Do you feel like he intentionally
4 hit your child with the door? He answered, I'm not
5 sure. I can't say if he intentionally did it or
6 not. My son was sitting in the entrance way and I
7 don't know if he saw him or not.

8 I asked him, Is this your son or stepson and
9 how old is he? He answered, This is my son. He is
10 nine months.

11 I asked, Have you had any other dealings with
12 the maintenance man? He answered, A couple weeks
13 ago, he had to come out on the scene at 4:00 in the
14 morning. He wasn't pleased with that.

15 I asked, What would you like to say to the
16 victim? He answered, I apologize for the physical
17 contact, for the extent of any damage caused on my
18 behalf throughout the altercation.

19 I asked, Do you feel like your actions tonight
20 were excessive? He answered, Yes, sir, they were
21 excessive. It just wasn't my intention to fight
22 that man.

23 I asked, Is this statement the truth to your
24 knowledge. He answered, Yes, sir.

25 I asked, Is there anything else you want to

1 add? He said, No, sir.

2 And that was the end of the statement.

3 **Q** And when you were talking to him, did you want
4 to, I guess, document any injuries that would have
5 supported his contention?

6 **A** Yes.

7 **Q** And did you have another investigator do that?

8 **A** Yes. We requested our forensic investigator to
9 document.

10 **Q** And what injuries on that night did this
11 defendant report to you?

12 **A** His hand.

13 **Q** And that's in State's Exhibit Number 28?

14 **A** Yes.

15 **Q** What other injuries did he report to you?

16 **A** He didn't report any other injuries.

17 **Q** Did he ask you to take any pictures of him?

18 **A** No.

19 **Q** Did he talk to you about knots on his head?

20 **A** No, he did not.

21 **Q** Did he ask you to press charges against the
22 victim in this case?

23 **A** He did not.

24 **Q** Did you show this defendant any pictures of the
25 victim in this case?

1 **A** No, neither one of us did.

2 **Q** And, I guess, to be more precise, what time was
3 this statement taken?

4 **A** This statement was taken at 8:26 P.M.

5 **Q** What time did you actually, for the first time
6 yourself, see the pictures of the victim in this
7 case?

8 **A** It was at a later date, but we -- it wasn't
9 until 9:40 P.M. when the pictures -- when he went to
10 the hospital to take the photos.

11 **Q** And who went to the hospital?

12 **A** It was our forensics investigator. I don't
13 remember his name right now.

14 **Q** And what time did he actually leave
15 headquarters to go to the hospital?

16 **A** I'm not sure what time he left, but it would
17 have been after we started -- I think after his
18 statement.

19 **Q** Do you have access to all of the reports in
20 this case?

21 **A** I do.

22 **Q** And would that refresh your memory as to what
23 time you got pictures back?

24 **A** Yes.

25 **Q** Let me show you a copy of the reports in this

1 case.

2 **A** Okay.

3 **Q** What time did you actually get the pictures
4 back?

5 **A** 2240, which is 10:40.

6 **Q** That was some two hours after this statement?

7 **A** Yes.

8 **MS. WALKER:** Thank you, Investigator Sullivan.

9 I don't have any other questions.

10 **THE COURT:** Cross-examination?

11 **MS. EIGENBROT:** Thank you, Your Honor. May it
12 please the Court.

13 CROSS-EXAMINATION

14 BY MS. EIGENBROT:

15 **Q** Investigator Sullivan, you worked at Richland
16 County at the time; correct?

17 **A** I did.

18 **Q** And it's their policy not to record statements?

19 **A** That's correct.

20 **Q** So there's no actual recording minus the typed
21 statement?

22 **A** Yeah, no audio or visual recording.

23 **Q** Now, you've been in here when Kevin was
24 testifying; right?

25 **A** I was.

- 1 Q He talks a lot; correct?
- 2 A Yes.
- 3 Q You heard him give his description today;
- 4 right?
- 5 A I did.
- 6 Q And he told the jury and everyone in the
- 7 courtroom he was nervous; right?
- 8 A He did.
- 9 Q And when you were talking to him, it had just
- 10 happened; correct?
- 11 A Yes.
- 12 Q It was approximately two hours after it
- 13 happened?
- 14 A That sounds right.
- 15 Q He said he was nervous then, too; correct?
- 16 A On the stand?
- 17 Q Uh-huh.
- 18 A Yeah, on the stand.
- 19 Q And when you take these statements, you're
- 20 typing; right?
- 21 A I type that.
- 22 Q He's not typing?
- 23 A That's correct.
- 24 Q And you read the statement; right? You just
- 25 read it to the jury?

1 **A** I did.

2 **Q** You asked approximately 14 questions; is that
3 correct?

4 **A** Yes.

5 **MS. EIGENBROT:** Beg the Court's indulgence.

6 **THE COURT:** Yes, ma'am.

7 (Pause.)

8 BY MS. EIGENBROT:

9 **Q** Investigator, you mentioned you didn't show
10 Kevin any pictures; isn't that right?

11 **A** Yes.

12 **Q** Investigator Roe had gone to the hospital,
13 though; correct?

14 **A** He did.

15 **Q** He was there while you were talking to Kevin;
16 right?

17 **A** Yes, he was.

18 **Q** So you had knowledge of what the injuries were?

19 **A** Yes.

20 **Q** And you discussed those injuries with Kevin?

21 **A** We did.

22 **Q** So he knew -- he knew there were some serious
23 injuries to Mr. Cone?

24 **A** Yes.

25 **Q** When he gave the statement?

1 **A** Yes.

2 **MS. EIGENBROT:** Thank you. I have nothing
3 further.

4 **THE COURT:** Redirect?

5 REDIRECT EXAMINATION

6 BY MS. WALKER:

7 **Q** How many statements did you take from this
8 defendant?

9 **A** Just one written statement.

10 **Q** And what was the last question -- do you have
11 the statement right there with you?

12 **A** I don't anymore.

13 **Q** I'll pass it to you. What was the very -- you
14 said you asked 14 questions?

15 **A** Uh-huh.

16 **Q** What was the very last question you asked?

17 **A** I asked, Is there anything else you want to
18 add?

19 **Q** And what did he say?

20 **A** He said, No, sir.

21 **MS. WALKER:** Thank you, sir.

22 **THE COURT:** Recross?

23 RECROSS-EXAMINATION

24 BY MS. EIGENBROT:

25 **Q** Investigator, you were not on the scene;

1 correct?

2 **A** I was not on scene.

3 **Q** There were several other deputies on the scene?

4 **A** Yes.

5 **Q** And you've heard testimony that Kevin spoke to
6 some of them?

7 **A** I did.

8 **Q** So he spoke to several law enforcement officers
9 that night?

10 **A** I know of one.

11 **MS. EIGENBROT:** Thank you. Nothing further.

12 **THE COURT:** Thank you, sir. You may step down.

13 Any other reply evidence from the State?

14 **MS. WALKER:** No, Your Honor.

15 **THE COURT:** All right. Ladies and gentlemen,
16 you now have all of the evidence you're going to
17 have to decide the cases. There are two stages that
18 remain, the closing arguments and the charge. The
19 charge is the part where I tell you the law.

20 At the end of all the evidence, I have to have
21 one of those meetings with the attorneys again to
22 discuss the law and some legal issues. And like the
23 first one, this takes a little while to go through.
24 I'm going to send you to lunch in just a moment. I
25 anticipate this will be somewhat lengthy. I'm going

1 to ask you to be back at 2:15. You should hear the
2 closing arguments and the law and get the case late
3 this afternoon. So if you need to make any kind of
4 arrangements in case the deliberations go on, as far
5 as childcare and things like that, it will be a good
6 time to do it over lunch. Don't discuss the case.
7 I look to see you at 2:15.

8 (The jury was excused for lunch.)

9 **THE COURT:** Motions.

10 **MS. EIGENBROT:** Your Honor, at this time, the
11 defense would renew all objections and motions
12 throughout this trial.

13 Your Honor, I would also move for a directed
14 verdict for the mayhem charge as to the double
15 jeopardy issue. Your Honor, but further and in the
16 alternative, I don't think the appropriate intent
17 for mayhem has been -- there's been no evidence
18 provided for the specific intent of mayhem charge,
19 Your Honor. The intent is to maim or dismember a
20 particular body part, generally speaking, an eye or
21 some other part of that sort.

22 There's been no testimony here that Kevin's
23 intent was to destroy Mr. Cone's eye. It was -- I
24 think given it's -- in the light most favorable to
25 the State, there was an intent to assault at best.

1 So I'd also move to dismiss the mayhem charge based
2 on that along with the double jeopardy arguments
3 that we put on the record yesterday.

4 **THE COURT:** What's the State's position?

5 **MS. WALKER:** Your Honor, the State's position
6 is that there is -- there are different elements to
7 ABHAN and mayhem.

8 Under the common law as set forth in State v.
9 Bass, the North Carolina case that I did e-mail to
10 both Your Honor and defense counsel, that case says
11 that the common law elements of mayhem are depriving
12 anyone maliciously of a corporeal member useful for
13 fighting. So there's an added malice that is not
14 present in ABHAN as it's discussed in State versus
15 Dennis, which is 402 S.C. 627, in which that case
16 holds, Your Honor, that our Supreme Court has
17 recognized the circumstances that give rise to ABHAN
18 may also give rise to an inference of malice. Thus,
19 a defendant may be convicted of ABHAN regardless of
20 whether malice is present.

21 So if the Supreme Court is holding, Your Honor,
22 that ABHAN can be -- the defendant can be found
23 guilty of ABHAN with or without malice, then the
24 State's argument is that malice is not a required
25 element if you can be found guilty of ABHAN even

1 without malice. So with the additional element of
2 malice, Your Honor, I don't think the double
3 jeopardy argument applies because there are
4 different elements to these two charges.

5 **THE COURT:** Do you wish to say anything?

6 **MS. EIGENBROT:** Yes, Your Honor.

7 **THE COURT:** Are you through? I'm sorry.

8 **MS. WALKER:** Well, I wanted to address the
9 directed verdict issue, too, but if you want me to
10 do that later or if you want me to sit down, I'll do
11 that, too.

12 **THE COURT:** It doesn't matter to me, whichever
13 you wish.

14 **MS. WALKER:** Okay. In terms of the evidence
15 presented not going towards all of the elements of
16 malice or of mayhem, Your Honor, the testimony of
17 Ms. Riley is that once the victim in this case is
18 down, is no longer fighting, this defendant goes
19 over and smashes his head into the ground several
20 more times, which would be leading to more -- the
21 more severe injuries and the disfigurement that
22 caused him unable to see and then unable to defend
23 himself.

24 His testimony, Your Honor, was that he could
25 see before this out of both his eyes and then now he

1 has a prosthetic eye and he can't see. He could
2 drive before this. So he could see well enough to
3 drive before this incident happened and now he
4 can't. That was the victim's testimony.

5 So with his loss of vision on his left side, I
6 think that mayhem is an appropriate charge and we'd
7 ask that it go forward to the jury.

8 **THE COURT:** Yes, ma'am.

9 **MS. EIGENBROT:** Your Honor, my reading of State
10 v. Bass is a little bit different than Ms. Walker's.
11 And my understanding of this case is the development
12 of the mayhem charge or part -- some of the history
13 in its development.

14 Your Honor, as to the double jeopardy issue
15 that we discussed yesterday, and your concern, Your
16 Honor, was that the fourth element, the fighting
17 part of the element of the common law, has been
18 going into extinction, and this is more of an
19 assault situation, I would agree with Your Honor's
20 reading of the article that you presented to the
21 court yesterday. I believe this case kind of
22 follows that up as well. It goes through, like I
23 said, the history of what mayhem used to be. And it
24 used to be at common law, a fourth element of a
25 corporeal member useful for fighting.

1 This case then continues to talk about how it
2 has changed and how it is limited to dismembering a
3 very particular body part and drops the fourth
4 element in order to keep the -- for the purpose of
5 keeping them from being able to fight back or defend
6 themselves is -- drops off.

7 So, Your Honor, we still do contend that the
8 potential elements for a mayhem charge are very
9 similar to that of what an ABHAN would be and we
10 would move to dismiss based on the double jeopardy
11 issue.

12 However, Your Honor, as in the alternative, I
13 still think the intent to mutilate, I don't believe
14 that has been presented to the Court. I think for
15 mutilation purposes were to show an intent to
16 mutilate, there must be something else besides just
17 a severe injury to a particular area of a body. He
18 could -- the testimony here has not only been damage
19 to his eye, but damage to his head, damage to --
20 lacerations to his face.

21 Your Honor, in my reading of State v. Dennis,
22 the real -- what this case boiled down to, in my
23 understanding, is that they were distinguishing
24 between ABWIK and ABHAN and they found that there
25 was a distinguishing element. And the

1 distinguishing element is not the malice, but the
2 intent to kill.

3 **THE COURT:** That's right.

4 **MS. EIGENBROT:** That's my reading of State v.
5 Dennis. I think the argument Ms. Walker is making
6 is a little bit different considering the facts and
7 circumstances. And, again, I -- at this time, I
8 don't believe they've shown an intent for him to
9 particularly mutilate the very specific body part of
10 Mr. Cone's eyeball.

11 And further, Your Honor, I left this out
12 earlier, I would contend and make a directed verdict
13 to dismiss the ABHAN charge as well as I do believe
14 -- I do not believe the State has presented enough
15 evidence in the light most favorable to them that
16 self-defense did not exist in this situation.

17 Now that the Court has heard from Mr. Gary
18 himself, also heard from two other witnesses that
19 were present at the scene, Mr. Gary and Mary Beth
20 were both -- both say that Mr. Cone grabbed Mr. Gary
21 by the neck and choked him at the door. I believe
22 it is still part of Mr. Gary's home. I still
23 believe that he has a right to defend himself right
24 there at the door. I think he acted reasonably
25 under the circumstances.

1 There's been some testimony about Mr. Cone's
2 possible movements and possible self-infliction of
3 some of the injury to himself. Mr. Gary explained
4 how he kept getting up and falling. I believe Mary
5 Beth also presented testimony to that nature along
6 with Antonio Adams. We also heard from State's
7 witnesses and 9-1-1 phone calls showing there was
8 also movement on the part of Mr. Cone that he was
9 still combative when EMS and other individuals
10 arrived.

11 So in the light most favorable to the State,
12 Your Honor, I still don't believe they've proven
13 that self-defense does not exist in this case, and
14 we also move to dismiss the ABHAN charge.

15 **THE COURT:** All right. Does the State have
16 anything else?

17 **MS. WALKER:** Your Honor, just responding to the
18 ABHAN motion to -- motion for that to be dismissed,
19 the testimony from the independent witness,
20 Ms. Riley, Your Honor, is that she saw the victim
21 walking to his house or walking to his car, the
22 defendant chased behind him and just started beating
23 him and beating him and beating him and he wouldn't
24 stop. He steps on him while he's down, and then he
25 goes in and beats his head some more into the

1 ground, which I think Your Honor would refute the
2 self-defense claim, any version through any
3 statement that this defendant gave.

4 And furthermore, I think that's a
5 mischaracterization of Mr. Adams' testimony.
6 Mr. Adams' testimony is that he saw, after the door
7 was closed and after the altercation was over, he
8 saw this defendant go back outside and, at that
9 point, Mr. Gary reached for him. He didn't say
10 anything about choking him. I think the only people
11 who have said that are the defendant and Ms. Hale.

12 At this point, Your Honor, I think it's a
13 matter of credibility of those witnesses and it's an
14 issue for the jury.

15 **THE COURT:** Anything else from the defense?

16 **MS. EIGENBROT:** Just briefly, Your Honor, I
17 just wanted to clarify, I said Mr. Adams. I
18 actually didn't mention Mr. Adams when it came to
19 the choking part; I said Mr. Gary and Mary Beth
20 Hale.

21 **THE COURT:** With regard to the motion for a
22 directed verdict on assault and battery of a high
23 and aggravated nature, the motion is denied. There
24 are jury issues presented.

25 You brought up causation of the injuries that

1 would constitute great bodily injury under the
2 statute. And I've put in the draft I have right
3 now, the charge, I put in a provision that I've got
4 similar to felony DUI, which has a proximate cause
5 component to it.

6 And I would probably need for you all to have
7 any suggestions or argument about that when we have
8 our charge conference, that being the concept of
9 whether the jury has to do an evaluation about
10 proximate cause. If someone -- in the light most
11 favorable to the State, if someone is charged with a
12 crime in which that person is alleged to have beaten
13 someone and because of the beating, the person is
14 knocked silly and is acting in a manner which may
15 not be consistent with his own best interest, but
16 it's not because he's in his right mind, it's
17 because he's been knocked silly, then the
18 consequences that flow from that, I don't think the
19 defendant can escape.

20 Now, if you had a third party intervening,
21 that'd be like hitting somebody, knocking them where
22 they didn't have their mental faculties and a car
23 running over them or something. I mean, I don't
24 think you can avoid the consequences where somebody
25 continues to try to move and perhaps suffered

1 further injury.

2 Now, of course, the jury could decide that
3 that's not what happened at all, that it wasn't from
4 falling on the concrete that this man suffered all
5 these injuries, it was from being slammed into the
6 concrete and being repeatedly beaten, but that's --
7 again, those are jury issues. But that's one thing
8 that I had a question mark about.

9 With regard to the issue about mayhem, it's a
10 very interesting issue and it's -- it's helped by
11 the State versus Bass case that you all have cited.
12 I have read it before. I've reviewed it again
13 briefly this morning.

14 That case has an excellent history that an
15 appellate court has the luxury of engaging in. They
16 go through the process of how the common law was
17 transferred into the state of North Carolina. And
18 they talk about in the 1600s and prior thereto that
19 there was this crime related to maiming people,
20 which we're calling mayhem, and that there was a
21 major change statutorily in, I think, 1647, if I
22 remember correctly, where there was a Coventry Act,
23 I believe it was, that was enacted by parliament.
24 And -- so while North Carolina and the Carolinas
25 were being formed as colonies and the law was being

1 adopted here by our courts and by our Legislature,
2 if we had -- whatever form they took back then, the
3 Bass case goes through explaining how that was done
4 in North Carolina. And they've done all this
5 historical research and they know.

6 Part of my problem that I was attempting to
7 explain yesterday is that I don't know exactly
8 whether South Carolina, like North Carolina, took
9 any step to adopt the Coventry Act or things similar
10 to it through some sort of statutory enactment. So
11 I'm really just guessing as to whether the South
12 Carolina Common Law provides the same thing that it
13 did prior to 1647 in England and, I think, Wales.

14 But anyway, I don't think that's necessary for
15 my decision. But I will tell you that it bothers me
16 from a concept of fundamental fairness, that we
17 indict somebody on a charge when we're having these
18 kinds of discussions. I know the concept that
19 ignorance of the law is no excuse, but if the law is
20 so unsettled that we, me, I'll claim it's my own
21 ignorance of -- or having such trouble understanding
22 it, I have a problem with fundamental fairness in
23 charging somebody. Moreover, the indictment doesn't
24 make reference to the common law. The indictment
25 charges that it was in violation of a code section,

1 17-25-20, which does not codify mayhem.

2 Now, the State provided this morning in the
3 e-mail that was sent to me, I didn't have the luxury
4 of having much time to look at it, they referenced
5 to a statute in which South Carolina refers to
6 mayhem. And it's in the statute where crimes of
7 violence are specified concerning gun rights and
8 mayhem is mentioned, but other offenses are also
9 mentioned like housebreaking which no longer exists.
10 And I think the purpose of that is that you do have
11 mayhem statutes throughout the United States. And,
12 again, this may not be necessary to my decision, but
13 it does bother me that we have the situation that's
14 before us.

15 But be that as it may, more to the point, I've
16 been trying to analyze this. And I told you my
17 initial concern was not with all this thing that I
18 didn't know the historical background, I didn't know
19 exactly -- I don't have any information that anybody
20 has researched this to be able to say whether South
21 Carolina ever enacted some statute that might have
22 modified the common law, and if so, in what way. So
23 I would have to assume that it was the common law
24 prior to 1647 and what the elements were there. My
25 initial concern was not all of that.

1 My initial concern was that this smacks of
2 double jeopardy. And I mentioned yesterday about
3 the aspect of double jeopardy doesn't deal with
4 reprosecution of someone, but multiple punishment
5 for the same offense, and that was what was of
6 concern to me.

7 So under the Blockburger test, we've got that
8 each offense requires proof of an element that the
9 other does not require. And I mentioned the general
10 concept that if an offense is wholly consumed by
11 another offense, such as being a lesser-included
12 offense, then the two offenses are deemed to be the
13 same and punishment is only allowed for one.

14 It seems to me the greater offense analysis
15 would probably be mayhem is the greater offense and
16 ABHAN is the lesser even though ABHAN carries ten
17 years more under the statute. And I cannot think of
18 a single circumstance where somebody could be
19 convicted of mayhem and not also be guilty of
20 assault and battery of a high and aggravated nature
21 under our definitions.

22 I'm not looking at the facts of this case, I'm
23 looking at the elements. I can't think of one. I
24 can't think of a situation where somebody is
25 convicted of mayhem under the traditional elements

1 or even under the -- some of the more modified
2 elements and it not be assault and battery of a high
3 and aggravated nature under our statute. Therefore,
4 the motion to dismiss at directed verdict on the
5 mayhem charge is granted. I note the State's
6 exception.

7 Now, with regard to the proposed charge, what I
8 would like to do is to ask you all to be back here
9 -- I'd like for y'all to be back here at 2:00. I'm
10 going to try by then to have a printout of the
11 charge. If I get it earlier, I'll e-mail it to you
12 as soon as I finish it. I want y'all to look it
13 over. If you have proposed charges, hand them up to
14 me now. If you want to comment about this proximate
15 cause concept, you can comment briefly now. But I'd
16 rather comment about it --

17 What I've got in the proposed charges is I've
18 got self-defense, I've got ABHAN, I've got about the
19 voluntariness of the statement, I've got just
20 general concepts, but it's about 16 pages long. So
21 y'all be back here, please, at 2:00. And if I
22 finish it before then, I'll e-mail it to you, so
23 check your e-mail.

24 Do you have something?

25 **MS. WALKER:** The proximate cause that you put

1 in there, is it the one from the judge's handbook?

2 **THE COURT:** No. If you've got it, hand it up
3 to me. It may have been, but it was from felony
4 DUI.

5 **MS. WALKER:** Your Honor, this is the proximate
6 cause from the handbook. I think we just changed
7 death to injury.

8 **THE COURT:** Yeah, that sounds like what I was
9 looking at.

10 Mr. Gary, you're in custody now.

11 All right. Two o'clock.

12 (Whereupon, there was a luncheon recess.)

13 **THE COURT:** I distributed a draft of the
14 proposed charge. Have y'all had a chance to review
15 it?

16 **MS. WALKER:** Yes, Your Honor.

17 **MS. EIGENBROT:** Yes, Your Honor.

18 **THE COURT:** Does the State have any input?

19 **MS. WALKER:** Your Honor, the State is fine with
20 the charge as you sent it to us.

21 **THE COURT:** Does the defense have any input?

22 **MS. EIGENBROT:** Yes, Your Honor. We would
23 request the lesser included of ABHAN be included in
24 the charge which includes assault and battery first,
25 assault and battery second and assault and battery

1 third. I think at issue for a jury would be the
2 level of injury to Mr. Cone. They could find any
3 type of variation of his injuries, and as such,
4 those lesser includeds should be included in the
5 jury charge.

6 **THE COURT:** Bear with me a second. I'm sorry.

7 (Pause.)

8 **THE COURT:** All right. The only evidence in
9 this case is that Mr. Cone suffered great bodily
10 injury. The only possible way I could see giving a
11 lesser included would be on the proximate cause
12 issue that -- the question of whether the defendant
13 is responsible for the extent of the injuries
14 suffered.

15 Do you want to be heard, Solicitor?

16 **MS. WALKER:** No, Your Honor. I agree with you
17 that the only testimony, the uncontroverted
18 testimony in this case, is that the injuries were
19 severe and life threatening.

20 **THE COURT:** Did you have anything else?

21 **MS. EIGENBROT:** Your Honor, again, I think that
22 is a fact for the jury to determine. I think it is
23 something they very well could find, a
24 lesser-included offense, and I'll make the same
25 argument and request it for the jury instructions.

1 **THE COURT:** All right. Y'all have a seat. Let
2 me look at some things.

3 (Pause.)

4 **THE COURT:** All right. I don't see assault and
5 battery in the first degree as being an option at
6 all. Assault and battery in the second degree
7 involves moderate bodily injury. Great bodily
8 injury is bodily injury which causes a substantial
9 risk of death or which causes serious permanent
10 disfigurement or protracted loss or impairment of a
11 function of a bodily member or organ.

12 Moderate bodily injury means physical injury
13 that involves prolonged loss of consciousness or
14 that causes temporary or moderate disfigurement or
15 temporary loss of the function of a bodily member or
16 organ or injury that requires medical treatment when
17 the treatment requires the use of regional or
18 general anesthesia or injury that results in a
19 fracture or a dislocation. Moderate bodily injury
20 does not include one-time treatment and subsequent
21 observation of scratches, cuts, abrasions, bruises,
22 burns, splinters or any other minor injuries that do
23 not ordinarily require extensive medical care.

24 Of course, there's evidence of injuries less
25 than great bodily injury in the record, but the only

1 evidence in the record is that he lost his eye as a
2 result of the incident.

3 The doctor testified about the risk of death.
4 I'm not going to charge lesser-included offenses. I
5 just don't see those being applicable here.

6 **MS. WALKER:** Yes, Your Honor.

7 **THE COURT:** I note your exception. Any other
8 comments about the proposed charge?

9 **MS. EIGENBROT:** No, Your Honor. I do have one
10 other matter I'd like to bring to the Court's
11 attention, though.

12 **THE COURT:** Sure.

13 **MS. EIGENBROT:** Your Honor, at this time, the
14 defense would move for the State to be required to
15 open closings in full. And by in full, I mean not
16 only open on the law, but open on the facts -- or
17 close on the facts as well, allow us to respond and
18 then respond solely in rebuttal.

19 Your Honor, I am aware of what the current
20 procedures are. I am aware that we've been doing
21 this -- or the State is allowed to open on the law
22 for some time. However, Your Honor, I do -- it's
23 come to my attention that there has been some
24 changes, one of which includes a new rule that has
25 been submitted to the Criminal Rules of Civil

1 Procedure, Rule 21, entitled Closing Arguments. The
2 rule proposes that closing arguments in noncapital
3 cases shall proceed in the following order: (a) the
4 prosecution shall open the argument in full; (b) the
5 defense shall be permitted to reply; and (c) the
6 prosecution shall then be permitted to reply in
7 rebuttal.

8 I believe our current procedure is based on
9 common law rule. If this rule does become
10 permitted, it would replace the common law and would
11 be the reigning rule for closing argument purposes.
12 This rule is very similar to what the federal courts
13 use.

14 And, initially, when this -- the closing
15 procedures started them the way they are now, it was
16 due to some of the rules of civil procedure applying
17 to general sessions court when there was no -- when
18 there was no rule existing. I think we're moving
19 past some of those rules and that those rules have
20 themselves changed.

21 And, Your Honor, I think it goes to the -- I
22 think failure to do it in this manner violates my
23 client's due process rights and the right to present
24 his defense and needlessly prejudices him in these
25 proceedings. He has a right to present a full

1 defense. I believe he has a right to know what the
2 State is arguing against him in order to respond
3 appropriately. And I believe without doing so, it
4 denies him a meaningful opportunity to present a
5 complete defense.

6 And because of all of these reasons, I would
7 request the order and procedure of these closing
8 arguments be that the State has to open in full on
9 the law and on the facts, allow the defense closing
10 and the State rebuttal.

11 **THE COURT:** All right. Thank you.

12 Does the State want to be heard?

13 **MS. WALKER:** Your Honor, Rule 21 hasn't gone
14 into effect. We would ask -- the defense in this
15 case has put forth testimony, they've put forth
16 evidence. The State, at this point in time, under
17 the current rules, has the right to go last. We'll
18 be waiving opening on the law and just opening in
19 full after they...

20 **THE COURT:** Well, the folks that have been put
21 on that committee to make suggestions about the
22 criminal law, I know -- that's been going on for
23 years and years and years. I'm not privy to all of
24 that. I don't know why the proposed rule changes or
25 at least some of them have not been adopted. I know

1 the committee worked very hard on those things.
2 Whether the powers that be agree with what the
3 committee recommended or not is a different issue,
4 but they certainly haven't adopted them and they've
5 certainly had plenty of time to do it. The
6 procedure is that if the defense puts up evidence,
7 the State goes last.

8 Now, this thing about opening on the law causes
9 me more concern, but she said she'll waive that. So
10 the procedure is the defense goes first and the
11 State goes last. The objection is noted and
12 overruled.

13 **MS. EIGENBROT:** Thank you, Your Honor.

14 **THE COURT:** Are y'all ready for the jury?

15 **MS. WALKER:** The State's ready, Your Honor.

16 **MS. EIGENBROT:** Yes, Your Honor.

17 **THE COURT:** Bring them in, please.

18 (The jury returns to the courtroom.)

19 **THE COURT:** Members of the jury, before the
20 break, I told you that I had to discuss some legal
21 issues with the attorneys, and as a result of that
22 conference, I instruct you that the charge of mayhem
23 is no longer before you. Don't try to speculate as
24 to why that is, don't try to figure it out, put it
25 out of your mind. It doesn't make the remaining

1 indictment any stronger, nor does it make the
2 remaining indictment any weaker.

3 As I told you earlier, each charge had to be
4 evaluated on its own merit or lack of merit. And so
5 the assault and battery of a high and aggravated
6 nature is a separate and distinct charge and that is
7 the one that will be submitted to you.

8 Now, we have reached the stage where you have
9 all the evidence you're going to have to decide the
10 case, and the next step is that the attorneys make
11 their closing arguments to you. If you recall when
12 I gave you the opening instructions, I told you that
13 attorneys were not permitted to engage in argument
14 in their opening statements. Well, we've reached
15 the point where they may.

16 And what we refer to as argument basically
17 involves using the art of advocacy to attempt to get
18 you to see things as they would like you to see them
19 on behalf of their respective positions. That
20 doesn't change the burden of proof. The burden of
21 proof remains with the State throughout the trial.
22 And the State has to prove every essential element
23 of the offense charged beyond a reasonable doubt.
24 But the attorneys are given an opportunity to talk
25 to you about the evidence and the law in their

1 closing arguments.

2 Now, the way this works is because the State
3 has the burden of proof, the State gets to go last.
4 So you're going to first hear from the defense
5 attorney and then you'll hear from the State's
6 attorney. When they finish, I always take a brief
7 break between those and the time I bring you out and
8 tell you the law. Based on the draft I have right
9 now, it'll take me about 32 minutes to explain the
10 law to you. So sometimes I take a break between the
11 arguments and sometimes I just let the arguments go
12 and then take another break between the arguments
13 and the charge, but I always take a break before the
14 charges; it's usually very brief.

15 I invite your close attention, ladies and
16 gentlemen. And defense counsel is recognized.

17 **MS. EIGENBROT:** Thank you, Your Honor. May it
18 please the Court.

19 **THE COURT:** Yes, ma'am.

20 CLOSING ARGUMENT

21 **MS. EIGENBROT:** This {indicating} is the hand
22 that came across Kevin Gary's throat squeezing,
23 tightening if only for a matter of seconds. That is
24 how this altercation began. On March 25th, 2014,
25 Kevin Gary was pushed against a wall with this hand

1 around his throat and he made the only decision he
2 could and that was to defend himself.

3 Sometimes cases are a little more complicated.
4 You don't know -- there's trying to prove who did
5 it, who was present. More evidence is necessary to
6 show these things. It's not one of these cases. We
7 know he was there. Kevin's told you he was there.
8 We're not disputing Mr. Cone suffered some severe
9 injuries. You've all seen the pictures. You've
10 heard the testimony from the doctor. That's not the
11 issue that's here.

12 The issue in this case is whether or not Kevin
13 had the right to defend himself when Mr. Cone
14 grabbed him by the throat outside of his front door.
15 That is the only issue before you today.

16 Now, when we got started, the Judge mentioned
17 to you that Kevin is presumed innocent. We're all
18 presumed innocent. We all have a cloak of innocence
19 wrapped around us and that presumption requires the
20 State to prove anyone, including Kevin, guilty
21 beyond a reasonable doubt before that cloak can be
22 ripped from him, from you, from me.

23 The State also has the burden of proof in this
24 case. That means the State has to prove to you
25 beyond a reasonable doubt that Kevin did not commit

1 this offense in self-defense, that he was not
2 defending himself. That is the burden they carry.
3 This burden means that Kevin can sit at that table
4 with me and my co-counsels and do nothing through
5 this entire trial if that is what we chose to do.
6 That burden means if you have questions about what
7 happened that day, you cannot look to Kevin for
8 those answers. Those answers have to come from the
9 State. That's what that burden is.

10 Now, you've also heard reasonable doubt. I'm
11 sure all of you heard reasonable doubt. It's a very
12 difficult concept for a lot of people to understand.
13 And I had a really seasoned attorney give me a great
14 example of how to explain this. Let's say a month
15 from now or a year from now, I run into one of you
16 in the grocery store and I say, hey, you're not
17 going to believe what we found. There was a camera,
18 someone caught this altercation on video. If you
19 hear that and think to yourself, man, I wish I could
20 see that video, I wish I had seen that video during
21 trial, that is reasonable doubt. You wanting to see
22 more, see more evidence is reasonable doubt.

23 Now, the State will tell you they don't have to
24 come above every single doubt, but, again, if
25 there's that question, if there's that desire to see

1 more, there's reasonable doubt.

2 Now, the Judge is going to instruct you on the
3 law. He's going to inform you the law does not
4 require anyone to stand by and subject themselves to
5 physical harm when someone is attacking them.
6 They're allowed to use reasonable force to protect
7 themselves. And in doing so, they don't have to
8 wait to be on the ground, they don't have to be wait
9 -- wait to be overcome by the attack in order to
10 start the defense. They have to have a reasonable
11 belief that they are in danger, their life is in
12 danger or that they are in danger of receiving
13 serious or great bodily harm.

14 Remember this hand on Kevin's throat
15 {indicating}.

16 I want to talk a little bit about what's been
17 presented to you the last few days. One big thing
18 is these pictures. These are pictures the State's
19 investigators took on the scene the day of. And the
20 reason these pictures are taken is to allow the jury
21 to understand what the scene looked like or to grasp
22 the types of evidence that can be presented.

23 I know I've shown you this photo a couple of
24 times during the course of this trial. This is
25 Kevin's front door and on it is blood spatter.

1 This picture is in the parking lot. And you've
2 heard testimony that it's about 15 to 20 feet away
3 from Kevin's front door.

4 And this one is some blood right underneath the
5 back side of the truck.

6 The reason I bring these photos to your
7 attention, because there's been some issue about
8 whether Mr. Cone was on the ground, stayed on the
9 ground or that he was moving around, whether he
10 caused some of the injuries himself. These pictures
11 show that this did not just happen in one spot in
12 the front yard of this apartment. They were near
13 the door, they were in the parking lot and, at some
14 point, somebody went behind the back of this truck
15 bleeding. The State's own evidence shows that
16 Mr. Cone was not sitting still, that there's a
17 possibility of him moving around and falling, as
18 you've heard testimony here today, this week.

19 What you don't see in the pictures are pictures
20 of Kevin with any blood on him. The State has not
21 shown you a single picture of Kevin, a full body
22 shot of Kevin where he had blood anywhere on his
23 person. You've seen a cut to his hand, that's it.
24 That tiny cut does not cause this spatter, did not
25 cause this {indicating} and did not cause this.

1 The reason I bring up the fact that Kevin has
2 no blood on him is because the State wants you to
3 believe that he sat over Mr. Cone and bashed his
4 head into the ground. We know he was bleeding. We
5 know he was injured. If he were bashing his head
6 into the ground as many times as they say he did or
7 at all while he was bleeding, there would be
8 evidence on Kevin that that happened at least on his
9 shoes or the bottom of his pants or on his hands.
10 They're saying that he used his hands to slam this
11 man's head into the ground.

12 This {indicating} is the only shot they took of
13 him at the scene. But, again, you heard from Kevin,
14 they didn't collect his clothes. They had every
15 opportunity to do so. He was in their custody
16 immediately. He spoke to them. He told them what
17 happened. He told the investigators what happened.
18 He was with the investigators. They're the ones
19 that booked him at the jail and took him to jail.
20 There's no evidence he bashed his head into the
21 ground.

22 And that brings me to Ms. Riley, Ms. Vanetia
23 Riley. Ms. Riley reminds me of one of those really
24 nosey neighbors that you see occasionally, you don't
25 really talk to, but you know they're there because

1 there had been some confrontation at some point and
2 they seem to always be watching and listening, but
3 they never hear the full story and they start making
4 assumptions. That's what happened here.

5 Ms. Riley told you all that she has had an
6 issue with Kevin, not a serious issue, but she has
7 confronted him about smelling marijuana in her
8 residence. She thought it was him, thought it was
9 his roommate. She confronted him about it. She
10 went to the front office, complained to them. They
11 told her, just be a neighbor, talk to him again.

12 She also admitted to you that if she's standing
13 at her bedroom window, she cannot see Mr. Gary's
14 front door. That is where Kevin said this assault
15 initially started taking place where Mr. Cone
16 attacked him first. She cannot see that area.

17 I'd also bring you to her 9-1-1 call. You all
18 heard it. If that call is not the definition of
19 cool, calm and collected, I don't know what is. You
20 heard her very calmly tell the operator, Our
21 maintenance man is on the ground; he's bleeding; we
22 need police. The operator continued then to ask,
23 Did you see what happened; do you know who did it?
24 Her responses were both no and no. She had every
25 opportunity to tell the operator what she saw, what

1 she was telling you all that she saw, but she did
2 not do that.

3 She also testified that she was screaming and
4 in a panic. That phone call was not screaming in
5 panic, especially after you hear that second 9-1-1
6 call from the landlord.

7 Now, Ms. Riley also testified that when she
8 first looks out the window, she sees Kevin
9 approaching Jaranamo and starting to punch him and
10 beat on him, but yet her initial statement she told
11 police, that she looked out the window and he was on
12 the ground. I submit to you that she did not see
13 the beginning of this fight. She's putting in
14 pieces and making assumptions about what she thought
15 she saw.

16 If you start with the 9-1-1 phone call, her
17 first opportunity to tell the police and everybody
18 what's happening, she doesn't do it then. She then
19 goes to the police and says, oh, no, I did see more.
20 I saw Jaranamo on the ground. I saw Kevin bashing
21 his head into the ground. I saw them leave, one of
22 them leave. And now she's sitting here in this
23 courtroom telling everybody that she's seen him beat
24 him over and over and over again, again saying he
25 didn't move from a single spot, once he was down, he

1 was down.

2 Again, he was close to this door when this
3 fight started like Kevin said. They moved from one
4 area to another. Mr. Cone was not on the ground and
5 staying on the ground.

6 She also told you all that when Mr. Cone was on
7 the ground, at some point, she does see Kevin
8 standing over him, but his back was to her. I
9 submit to you that she mistakenly took what Kevin
10 was trying to do, which was keep Mr. Cone on the
11 ground to keep him from continuing to injure
12 himself, and mistook it for him bashing his head
13 into the ground. If I am down with my back standing
14 over somebody, you're not necessarily going to see
15 exactly what's happening. Again, Ms. Riley is one
16 of those nosey neighbors that sees parts of things,
17 hears parts of things and then jumps to conclusions
18 and makes assumptions.

19 Now, once police are called, EMS arrives and
20 the police arrive. You heard from the EMS worker,
21 Tammy Cook. She says when she arrived, Mr. Cone was
22 laying in a pool of blood, pool of blood.

23 Now, admittedly, there is a good bit of blood
24 on this crime scene. There's no denying. Again, he
25 was injured; he was seriously injured. There is

1 blood evidence to support that finding. However,
2 that's not a pool of blood. He was not laying still
3 bleeding out.

4 She also testified that he was combative; she
5 put it in her report. Again, I submit to you
6 combativeness, no matter what the reason for him
7 being combative was, he was still moving around not
8 listening.

9 And you also heard from Investigator Sullivan
10 and Deputy Gause. Deputy Gause was one of the
11 responding officers. He testified there were
12 several officers on the scene. He spoke to Kevin
13 after Kevin was taken into custody, and he arrived
14 approximately eight minutes after being dispatched.
15 So within that eight minutes of police arriving,
16 Kevin has already told his side of the story. He
17 has already pulled the officers aside and said, this
18 is what happened to me and this is why Mr. Cone is
19 on the ground, this is why Mr. Cone is injured.

20 He did not have time to sit down and think
21 about how he was going to change his story around
22 and blame Mr. Cone for everything. He did not have
23 time to sit there, attack an individual and then go,
24 oh, no, I'm going to make this self-defense. This
25 is when -- he is speaking to police within minutes

1 of them arriving and being notified of the incident.
2 He doesn't go anywhere. He doesn't run. He wants
3 to cooperate. He wants to tell the police what
4 happened because he knows he was defending himself.

5 Now, this picture, again, was taken at the
6 scene when police arrived. The State's made a big
7 deal about Mr. -- Kevin not having any injuries.
8 Their own investigator told you that sometimes
9 bruises show up later. So just because you don't
10 see it in this picture doesn't mean it didn't come
11 show up the next day or two. The police weren't
12 talking to him after that, they've already gotten
13 their statement.

14 Investigator Sullivan also testified. He's the
15 lead investigator on this case. He was never
16 actually on the scene. He relied on what deputies
17 told him. And we only had one deputy come testify
18 despite testimony that there were several on scene.
19 Kevin talked to a lot of them. A lot of them heard
20 what happened. Only one came to court today, and
21 that's the one Investigator Sullivan talked to.

22 Well, Kevin talked to those deputies on the
23 scene and he told his story. He continued to tell
24 his story, has continued to tell his story.

25 One of the things Investigator Sullivan was

1 able to testify about was this jail phone call. You
2 heard the recording. And that's a common, natural
3 procedure that the jail does. All the phone calls
4 are recorded. Everything you say to somebody, no
5 matter what kind of feelings you're in, what kind of
6 emotions you're having, no matter who you're talking
7 to, those phone calls are recorded.

8 And I know the State's going to get up here and
9 focus on one statement in that phone call, and that
10 statement is, I had to do what I had to do. Kevin
11 did do what he had to do. The man put his hand
12 around his throat and he defended himself. He did
13 have to do what he had to.

14 You also heard in that phone call him say
15 several things like, That man put his hands on me
16 twice, I had to defend myself. Kevin has maintained
17 this was self-defense from the very beginning,
18 continued to maintain it was self-defense.

19 Now, we put on some evidence. We called two
20 eyewitnesses. These eyewitnesses are people that
21 know Kevin. Antonio was a lifelong friend. They've
22 known each other for a really long time and they
23 were living together at the time of this incident.
24 And Antonio was telling everybody what happened
25 inside.

1 You know, he's saying he hears the argument, he
2 saw some of the stare down and he's the one that
3 opens the door after Jaranamo slams it shut and hits
4 Kevin's child. He's there on scene. He very openly
5 admits that he was using marijuana, left the scene
6 to take it away. He's not trying to hide anything
7 from you. He came in here and gave you the best
8 recollection he could.

9 Now, the State is going to get up here and harp
10 on the fact that they're friends, they talked before
11 this hearing. What Antonio also said was they
12 haven't seen each other in a long time because he
13 had moved to North Carolina, recently moved back.
14 He reached out because he hadn't talked to his
15 friend, he wanted to see how he was doing, and then
16 he received the subpoena paperwork from the State.

17 Mary Beth, she's the mother of Kevin's
18 children. She definitely has an interest in this
19 case. She does care about Kevin. He's the father
20 of two of her kids. He helps raise the third one.
21 There's no denying that she's got an interest in
22 this case.

23 She got up here on the stand and told you she
24 saw Mr. Cone with his hand around Kevin's throat.
25 She admitted she didn't see the entire fight. She

1 admitted that she ran to the office. She was not
2 there the whole time. Again, you know, she sat up
3 here and started crying. This is an emotional
4 situation. She was trying to be here to tell you
5 her truth, what she remembers. It doesn't get more
6 honest than that.

7 And you heard from my client today. Kevin was
8 extremely nervous. I think he told you all that he
9 was nervous probably five, six, seven times, if not
10 more. But he wanted to tell you his story. He
11 wanted to tell you what happened to him and why we
12 are here today.

13 What I want you all to understand is the
14 physical evidence, again, it corroborates his story.
15 He's saying he is choked here near the door, where
16 the choking started. He immediately reacts and
17 starts swinging. He doesn't remember how many times
18 he punched him or how many times he got him, but
19 it's clear that Mr. Cone was dazed; at some point,
20 he falls. I think it's safe to say he got him one
21 time near the door. He also says he falls into the
22 parking lot at some point. Well, we know Mr. Cone
23 was in the parking lot and we know he had injury in
24 the parking lot.

25 And, again, the State harps on this tiny injury

1 on his hand. He wouldn't have a whole lot more
2 injury to his hands if he was continuing to beat an
3 individual over and over and over again. One solid
4 punch can cause that laceration. And, again, there
5 was no blood on Kevin minus this cut.

6 Now, Kevin got a little defensive, I think
7 understandably so; it's a stressful situation. You
8 saw him testifying, but he did his best. And he
9 wanted to explain to you all his side of the story.
10 He talked a lot. He tried to give you as much
11 detail as possible because this has been something
12 that's been weighing on him for the past two years.
13 He has been dying for somebody to hear his story
14 about the fact that he had to defend himself from a
15 man that not only was in his house yelling and
16 cursing, brushed into him, however you want to
17 describe it, who stared him down, hit his child with
18 the door.

19 And what I want everyone to take away from this
20 is Kevin walking out of that door is not illegal.
21 No matter what was going through his head, he told
22 you was a couple of things, reporting Jaranamo,
23 going to say something about his kid, no matter
24 what, he's allowed to step out of his door. He's
25 making a step out, he's still on his property, his

1 premises, the little stoop in front of his front
2 door, when Mr. Cone gets him by the throat. That is
3 when his claim of self-defense arises, when that man
4 put his hand around his throat.

5 And I want you all to keep in mind this is not
6 about a difference in injuries. Again, we're not
7 disputing that Mr. Cone was seriously injured in
8 this case, but just because Kevin wasn't also beat
9 down and beat up does not mean the right of
10 self-defense does not exist. It takes a reasonable
11 belief that you are in danger of receiving yourself
12 serious bodily injury or death. When someone gets
13 you by the throat cutting off your air supply, that
14 is serious bodily injury with threat of death.

15 And it wasn't that he believed it was going to
16 happen, it did happen and no one can dispute that.
17 Even Ms. Riley, their star witness, the unbiased
18 neighbor, can't even tell you that -- can't even
19 tell you that she saw what happened at the door, if
20 anything, because she told you she can't see the
21 front door. Kevin defended himself against a threat
22 to his life, his family is inside.

23 One of the other things the State harped on was
24 getting Mr. Cone help. When Kevin realized Mr. Cone
25 was seriously injured, he yelled at Mary Beth, Go

1 get help, go get somebody. She goes and runs to get
2 the landlord. The front office is not that far.
3 You heard them say you can see it from their
4 apartment, you can see it from their front yard. So
5 she ran, seven months pregnant, down the front
6 office, brings back the landlady.

7 The landlady also calls 9-1-1. Her call is
8 panic. You also hear her say things like, Jaranamo,
9 stop moving, stop getting up, don't let him hit his
10 head again. That goes against what their star
11 witness, Ms. Riley, would say. He was clearly
12 moving around. You will also have these 9-1-1 calls
13 back with you and you can listen to them again.

14 Once you receive these jury charges, I want you
15 to consider all the facts, everything that you've
16 heard. Not everything our witnesses said was
17 consistent with each other, I'm not going to deny
18 that. I'm not going to deny that three separate
19 people wouldn't perceive an intense situation like
20 this a little bit differently.

21 Because you heard from Kevin himself, the
22 individual that went through this that was attacked,
23 and if he had said -- there was one thing about his
24 statement that has never, ever, ever changed was
25 that he was choked and that is the only reason him

1 and Mr. Cone were physical that day. And based on
2 all of these facts that you've heard, based on the
3 testimony, based on these photographs, you can find
4 Kevin Gary innocent of these charges.

5 Self-defense is a complete defense. Again,
6 imagine this hand at your throat squeezing and
7 tightening knowing your family is behind you. Kevin
8 made the only choice he could in that position, his
9 back was against the door, he defended himself.
10 Thank you.

11 **THE COURT:** Thank you, ma'am.

12 All right. Ladies and gentlemen, we're going
13 to take a short break, about five minutes, and then
14 I'll bring you back out here to hear the State's
15 closing argument. Don't discuss the cases yet.

16 (The jury retires to the jury room.)

17 **THE COURT:** We're at ease for five minutes.

18 (Brief Recess.)

19 **THE COURT:** State ready?

20 **MS. WALKER:** Yes, Your Honor.

21 **THE COURT:** Defense ready?

22 **MS. EIGENBROT:** Yes, Your Honor.

23 **THE COURT:** All right. Folks, please keep your
24 conversations outside. If you need to talk, I need
25 you to step outside absent some emergency or some

1 security issue.

2 Bring the jury in, please.

3 (The jury returns to the courtroom.)

4 **THE COURT:** Once again, I invite your close
5 attention.

6 Solicitor, you're recognized for your closing
7 argument.

8 **MS. WALKER:** May it please the Court, Your
9 Honor.

10 **THE COURT:** Yes, ma'am.

11 **MS. WALKER:** Good afternoon. This is my first
12 time getting to address all of you. My name's
13 Meghan Walker. As Mr. Shellenberg said on Monday,
14 I'm one of the assistant solicitors here in Richland
15 County.

16 Before I start talking to you about this case,
17 the first thing that I want to do, echo what the
18 Judge said at the beginning of this case and thank
19 all of you for your time and attention here over the
20 past few days. I know that we've kind of shuffled
21 you back and forth in and out of the courtroom or
22 things have been intense at times, maybe some of my
23 questions have been inartful or said in a clumsy
24 manner. For that, I apologize. But I do want to
25 thank you on behalf of Mr. Cone and the people of

1 Richland County for your service here this week.

2 As you were coming here to the courthouse on
3 Monday morning, I'm sure many of you were trying to
4 anticipate what this week would be like. Would you
5 get picked for a jury, and if you did get picked for
6 a jury, what would it be? Would it be maybe a car
7 wreck? Maybe it would be a shoplifting.

8 There was no way for you to know at that time
9 that you would be hearing the facts of this case.
10 There was no way for you to know that you would be
11 hearing about exploding eyeballs and subdural
12 hematomas and fractured facial bones, bleeding on
13 the brain. And those things can be difficult to
14 hear, and the pictures that we presented to you can
15 be difficult to see. But I thank you for your
16 attention, and I apologize if any of those things
17 offended you or caused any harm in any way.

18 But while you guys were on your way to the
19 courthouse anticipating what type of trial you would
20 be on, Mr. Shellenberg and I were preparing for this
21 case and we were trying to anticipate what the
22 defense would be in this case. What is the defense
23 when you take a 60-year-old man and you beat him
24 until he is unrecognizable? Those are his
25 {indicating} words. What's the defense in that?

1 And I readily admit that I was somewhat
2 surprised when I realized that the defense was kind
3 of multilayered: One, the victim's a jerk, so who
4 cares? He was loud. He was in my home. He was
5 cursing. He was disrespectful. He slammed the
6 door.

7 And that's not something that we tried to hide
8 from you. There was an argument inside of that
9 home. Vanetia Riley, our witness, testified that
10 the door slammed so hard, she thought her mirror was
11 going to fall down. I'm not here to defend the
12 slamming of that door, that's not my job.

13 And should there have been consequences for the
14 way Mr. Cone spoke to Mr. Gary while he was at work?
15 Probably. Should he have been reprimanded? Maybe.
16 Should he have been suspended without pay?
17 Possibly. Maybe he should have been fired. But
18 what he shouldn't have been is beaten beyond
19 recognition. Being rude and disruptive shouldn't
20 cause anyone to lose their eyeball.

21 And Ms. Eigenbrot told you, one of the last
22 things that she said to you was, This case is not
23 about injuries. And she kind of has to say that to
24 you because she knows if this case is about
25 injuries, she's got a problem. And simply put, she

1 has a problem because her client doesn't have any
2 injuries. He is sitting in here as unarmed today as
3 he was on the day that he beat Mr. Cone.

4 And the reason -- I think Ms. Eigenbrot calls
5 it harping, but the reason we mention that, because
6 if there is a fight, if two people are in mutual
7 combat with one another where everybody is throwing
8 blows, one person doesn't come out looking like this
9 {indicating} while the other person looks like this
10 {indicating}. That goes against everything that
11 common sense stands for.

12 And he said repeatedly, I tried to get anyone
13 to listen; I told them about the bruises on the back
14 of my head; I told them that he choked me. But even
15 in that jail phone call that we played says, How are
16 you, and he says, I'm fine, man, nothing but a
17 little swollen hand. He has all of these other
18 injuries, wouldn't he have mentioned it then? If
19 he's been choked, shouldn't he have at least a mark?
20 Because remember Mary Beth says, he had marks on his
21 neck then, contrary to the evidence in this case.

22 And I want to talk to you about the facts of
23 this case and the information that I was presenting
24 before all of you. Before I do that, I want to talk
25 to you a little bit about the law as it applies to

1 this case.

2 The first thing I want to talk to you is about
3 reasonable doubt. I don't want to give you some
4 definition from some seasoned attorney. I want to
5 give you the definition from the State of South
6 Carolina.

7 Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the defendant's
9 guilt. There are very few things in this world that
10 we know with absolute certainty, and in criminal
11 cases, the law does not require proof that overcomes
12 every possible doubt.

13 If, based on your consideration of the
14 evidence, you are firmly convinced that the
15 defendant is guilty of the crime charged, you must
16 find him guilty. If, on the other hand, you think
17 there's a real possibility that he is not guilty,
18 you must give him the benefit of the doubt and find
19 him not guilty.

20 Ms. Eigenbrot has created a standard of
21 reasonable doubt that I've never heard and I don't
22 think has been given to any jury in any courtroom in
23 the United States of America. If there was video,
24 would you want to see it? I think if there was
25 video, anyone would want to see it. By her

1 definition, before the invention of the video
2 camera, no one could have ever been convicted of
3 anything.

4 In the absence of video cameras, we bring to
5 you witnesses, witnesses who see different -- who
6 see different aspects of the crime and they come
7 forward and they tell you what they saw. And it's
8 up to you to determine whether those witnesses are
9 credible or not, and I'll get to that in a second.

10 The defendant in this case is charged with
11 ABHAN, that is assault and battery of a high and
12 aggravated nature, that's what that stands for. A
13 person is guilty of assault and battery of a high
14 and aggravated nature if the person unlawfully
15 injures another person and great bodily injury to
16 another person results and the act is accomplished
17 by means likely to produce death or great bodily
18 injury.

19 That's why we brought in the doctor to talk to
20 you about the injuries that Mr. Cone sustained, Dr.
21 Jones. He talked to you about if he would not have
22 gotten any help, he would have died. Great bodily
23 injury, losing an eyeball. You don't really get
24 much more great bodily injury than that.

25 Great bodily injury means bodily injury which

1 causes a substantial risk of death or which causes
2 serious permanent disfigurement or protracted loss
3 or impairment of the function of a bodily member or
4 organ, like an eyeball.

5 And the defense in this case is one of
6 self-defense. Before I get to self-defense, I want
7 to talk to you about something that Ms. Eigenbrot
8 neglected to even mention, and she didn't mention it
9 because it's not helpful to her case. It's called
10 proximate cause. Because part of the defense was
11 that the victim in this case caused his own
12 injuries. He smashed his own head into the ground;
13 he broke his own nose; he gave himself a subdural
14 hematoma. Even if you believe that he was beaten
15 down and tried to get up and fell again, the
16 defendant is still guilty because he's the proximate
17 cause of the injuries suffered when the victim fell.

18 Proximate cause is the direct cause. It is the
19 immediate cause. It is the efficient cause. It is
20 the cause without which the injury of the victim
21 would not have resulted. But for him being beaten
22 silly, he wouldn't have fallen on the ground.

23 Proximate cause does not necessarily mean that
24 it occurred immediately prior to the injury;
25 although, in this case, it did. Imagine someone

1 standing on Main Street and punching someone in the
2 face and that causing a person to fall into the
3 street and a car hits them. You don't blame the
4 driver of the car, you blame the person who threw
5 the punch. In this case, you don't blame the cement
6 for causing the injury, you blame the person who
7 threw the punches.

8 There may be more than one proximate cause.
9 The acts of two or more persons may combine together
10 to be a proximate cause of the injury of a person.
11 The defendant's act may be regarded as proximate
12 cause if it is a contributing cause of the injury to
13 the victim. Did Mr. Gary's actions contribute to
14 the injuries that Mr. Cone suffered?

15 The fact that there are other causes that also
16 contribute to the injury of the victim does not
17 relieve the defendant from responsibility. The
18 defendant's acts need not be the sole cause of the
19 injury, but must be a proximate cause contributing
20 to the injury of the victim. I think that is clear
21 in this case that but for the beating suffered at
22 the hands of Mr. Gary, there would have been no
23 falling down on the part of Mr. Cone.

24 As I said, the defense in this case is
25 self-defense. Self-defense is a four-prong test,

1 and the Judge will tell you about that. In order to
2 be able to be found not guilty based upon
3 self-defense, you have to meet each and every single
4 prong of self-defense. If you fail on one of them,
5 you fail on them all.

6 First, the defendant must be without fault in
7 bringing on the difficulty. If the defendant's
8 conduct was the type which was reasonably calculated
9 to provoke a deadly assault, he would be at fault in
10 bringing on the difficulty and would not be entitled
11 to an acquittal of self-defense. And that's the
12 reason that I kept on asking every witness that they
13 called to the stand, Was that confrontation over
14 when that door slammed behind Mr. Cone? It was over
15 according to each and every single one of them.

16 And then -- and his story has kind of evolved
17 over time, Mr. Gary's, about why he went outside.
18 Because now that he knows what this means
19 {indicating}, he knows he can't have gone outside to
20 confront the victim again to engage in another
21 confrontation. So instead of, as he originally
22 said, I went outside to tell him what he did, I went
23 outside to get some sort of acknowledgment, I went
24 outside to get an apology, he now says, no, I went
25 outside to talk to the front office, which is

1 important about these discrepancies in his story
2 because they're evolving, because he knows he needs
3 to make up something that could possibly go to
4 self-defense.

5 The second element is that the defendant was
6 actually in imminent danger of death or serious
7 bodily injury or that the defendant actually
8 believed he was in imminent danger of death or
9 serious bodily injury, which is, again, why these
10 pictures are so important. He doesn't have a
11 scratch on him. There's no evidence that
12 corroborates what he says happened that night,
13 except for his girlfriend and his childhood best
14 friend and even their stories don't corroborate what
15 he says happened that night.

16 He had to reasonably believe he was about to
17 die, which is why his -- we called the investigator
18 to the stand to put in his statement because even in
19 his statement, he said, I smacked his hand down and
20 got free, not he was choking the life out of me, not
21 I was blacking out, I was about to succumb to this
22 hand that's around his neck. And this is the
23 exhibit.

24 And there was some discrepancy as to whether or
25 not it was his left hand or his right hand, so I

1 want to show you pictures of both hands of the
2 victim in this case.

3 Ms. Eigenbrot said, One of these hands is the
4 hand that went around Kevin Gary's throat that
5 night. When I was looking at these pictures, I kept
6 thinking, if he's choking him, what would that
7 instinct be if you're being choked for seconds? At
8 some point, wouldn't he have tried to pull his hand
9 off? There's not a scratch on his hand. These
10 hands are uninjured in any way.

11 The third element of self-defense: The
12 defendant was actually in imminent danger. Must be
13 shown by circumstances that would have warranted a
14 person of ordinary firmness and courage to strike
15 the fatal blow to prevent death or serious bodily
16 injury. Not the bravest man in the world, but the
17 most reasonable man in the world. If he believed he
18 was in imminent danger of death or serious bodily
19 injury, it must be shown that a reasonably prudent
20 person of ordinary firmness and courage would have
21 had that same belief.

22 This is also what makes Ms. Riley's testimony
23 so important is because she says that after the
24 fight's over, after everything is said and done,
25 after Mr. Cone is on the ground and yelling, help or

1 hurt, remember he can't really get it out that well
2 because he's almost cut his tongue off, this
3 defendant goes back over to him and bashes his head
4 into the ground again, because you weren't going to
5 come into Kevin Gary's home and disrespect him.
6 This isn't about self-defense. This is about male
7 pride. This is about ego. This is about a temper
8 that got out of control, flashes of which we saw on
9 that witness stand today.

10 And here's the final element of self-defense:
11 The defendant had no probable way to avoid the death
12 or danger of serious bodily injury than to act as
13 the defendant did in this particular instance. It's
14 usually called a duty to retreat. And you'll hear
15 from the Judge that if you are in your own home, you
16 are in your house, you do not have a duty to
17 retreat, and that's true. This happened inside
18 Kevin Gary's house, that would apply. But remember,
19 by his own testimony, the cement, the walkway, the
20 cars, the parking lot there is 20 feet away from his
21 front door.

22 All he had to do was stop. All he had to do
23 was walk away. All he had to do was calm himself
24 down. Remember on this witness stand today, he
25 said, I'm not calming down, I'm nervous and

1 frustrated.

2 Ladies and gentlemen, I submit to you that he
3 doesn't meet a single element of self-defense, much
4 less all four.

5 But in order to determine that, in order to
6 determine what happened that day, we brought forth
7 witnesses to you. And in order to evaluate witness
8 testimony, you're going to have to look at the
9 credibility of witnesses and this is the charge
10 that's used: What was the demeanor of the witness
11 on the stand, was the witness forthright or
12 hesitant, was the testimony of the witness
13 consistent, was the testimony of the witness
14 corroborated?

15 And there was some credible testimony and there
16 was also some testimony that was inconsistent from
17 sentence to sentence, things that had never been
18 said before were said in this courtroom. Before I
19 get to the defense witnesses, I want to talk to you
20 a little bit about the credible witnesses that came
21 forward in this case.

22 Mr. Jaranamo Cone. Mr. Cone testified that he
23 went over there to fix the toilets. And the thing
24 that was consistent about the testimony in this case
25 between Mr. Cone and even Mr. Gary, Mr. -- not

1 Mr. Gary -- Mr. Adams and Ms. Hale, was that before
2 the defendant got home, everything was calm in that
3 apartment. No one was yelling, no one was cursing,
4 no one was arguing, Mr. Cone was there to do his
5 job.

6 He says that he asked him to move his car and
7 said he was shocked by that because he was in the
8 middle of, literally, cleaning up their feces and
9 trying to get that done and he wants him to stop to
10 move a car, because, once again, Mr. Cone {sic} has
11 been disrespected, someone's parked in his parking
12 space and he's not going to have that. He said he
13 left and that he doesn't really remember anything
14 after that.

15 And that's actually part of their defense.
16 Part of their defense is he doesn't remember what
17 happened, so you have to believe Kevin Gary because
18 he actually did a good job of literally erasing that
19 man's memory.

20 We brought before you Trevor Holt. He was the
21 investigator that went to the hospital and took the
22 pictures.

23 Then there was Deputy Shawn Gause. He's the
24 deputy that flew down here from Brooklyn. He works
25 with Secret Service now. And he said that Gary knew

1 that the child was okay and unharmed, that he made
2 contact with Kevin Gary at the house and that he
3 said that the door brushed up against the child's
4 diaper, that he cannot let someone come in his house
5 and disrespect him in that manner -- it's not about
6 self-defense, it's about disrespect -- and that he
7 left the residence after Cone in a fast pace and
8 that Cone then choked him. And then he said he
9 didn't see any injuries, called the EMS.

10 And I guess there was -- and this is Exhibit
11 Number 5 that I'm showing -- said there was no pool
12 of blood. Perhaps that's just what one person
13 called a pool of blood, another person wouldn't.
14 And here's the pool of blood that Tammy Cook with
15 EMS was talking about. And that he was unconscious
16 or had varying levels of consciousness, that he was
17 trying to fight them off, but that that was
18 consistent with someone who'd been beaten.

19 And then you had Dr. Mark Jones. He's the
20 trauma surgeon. And he said, came in to testify,
21 that he's dealt with a lot of injuries over the
22 course of his career, and that these injuries were
23 not consistent with someone standing up and falling
24 down. These injuries were consistent with someone
25 being beaten. Remember that testimony? The reason

1 we brought him in is because, one, to show the
2 injuries and, two, to refute the defendant's version
3 of events.

4 So look at the credibility of Dr. Jones. What
5 does he have to gain from this? Why would he come
6 in and testify to that if it wasn't medically and
7 factually accurate?

8 Then there's Vanetia Riley. I think
9 Ms. Eigenbrot referred to her as the State's star
10 witness. She also called her a nosey neighbor. I
11 guess, really, no good deed goes unpunished. I hope
12 everybody in Richland County has a nosey neighbor
13 who will call the police when they are getting
14 beaten into the ground. I hope every person in
15 Richland County has a neighbor who will go to law
16 enforcement and tell them what they saw. I hope
17 every person has a neighbor who will then come in
18 and testify. What does she have to gain by making
19 this up?

20 And not only that, I guess she talked to Dr.
21 Jones to tell him what the testimony would be so
22 that he could corroborate what she said. Why would
23 Vanetia Riley make this up? And Vanetia Riley
24 acknowledged, I didn't see what happened at the
25 door, but I saw him on the ground. I saw him step

1 on him. I saw him go in and beat his head in some
2 more.

3 And he said, This man came at me about a little
4 bit of weed, which was corroborated by Antonio Adams
5 who had to get out of there and get the weed and the
6 weed -- the weed recreational products out of the
7 house, too. We can't ask Mr. Cone if he ever
8 mentioned any issues with marijuana to the defendant
9 in this case because he has no memory left.

10 Talked a lot about her 9-1-1 call. And on the
11 9-1-1 call, she said, I don't want to get involved.
12 She's in a home with her children and she's just
13 seen her neighbor beat a man almost to death and
14 they criticize her for not wanting to get involved.
15 Now, once he was taken away and once he was no
16 longer a threat to her or anybody else in the
17 neighborhood, she went back and told law enforcement
18 exactly what happened.

19 Those were the State's witnesses. I beg you to
20 judge their credibility, beg what they have to gain
21 or lose by coming in this courtroom and making
22 anything up. And then we got to the defense
23 witnesses and things got interesting.

24 Mary Beth Hale, she's still seated here behind
25 the defendant. She is the mother of two of his

1 children. They still have a relationship. And she
2 came in here to tell her truth, that was kind of an
3 interesting phrase, but she came in here to tell her
4 truth. The problem with that is that the truth that
5 she told yesterday was different than the truth that
6 she told on any other occasion. Remember yesterday
7 she -- he shoulder to chest, he thrust into him,
8 it was very hard. But in her written statement, she
9 said the same thing that Mr. Gary said, that he
10 brushed by him.

11 For the first time ever she said, Not only did
12 Kevin Gary tell him to leave, but I told him to
13 leave, too. And that she tried to call 9-1-1, but
14 there were no minutes on her phone, which was
15 interesting because we went through a number of
16 phone calls with the defendant that he made to her.
17 So there were minutes on the phone to call from the
18 jail, but there were no minutes on the phone to call
19 9-1-1? And maybe Ms. Hale doesn't know this, but
20 you don't need minutes to call 9-1-1, that call's
21 going to have to go through.

22 And then for the first time ever she said that
23 the baby was injured, that he had scratches and that
24 she was concerned about the injuries to her baby.
25 First time she'd ever said that.

1 And there was Antonio Adams, and he came in
2 here and for the first time ever, he said that the
3 victim was on the ground and that the defendant was
4 trying to help him. And he acknowledged that he'd
5 never told anyone that before. Talked to the
6 defendant last week, this week he comes in here and
7 now he's trying to help him, very convenient.

8 And he says -- I mean, as much prodding as
9 Ms. Brighthop did of him, he never said, I saw him
10 choke him. He said, I saw him reach for him; Kevin
11 brushed by me at a fast pace and I saw him reach for
12 him. He never said anything about choking.

13 But you have to remember during those eight
14 minutes when Kevin Gary and Mary Beth Hale are
15 together before the police arrive, Mr. Adams is
16 getting rid of weed and weed products because his
17 main concern in this case is his freedom, which is
18 why we don't call these witnesses to the stand. We
19 don't call witnesses whose main concern in a case is
20 their freedom. We don't call witnesses to the stand
21 who have a bias that makes them want to tell not the
22 truth, but their truth. We call credible,
23 independent witnesses to the stand, which is what we
24 did in this case.

25 And then today Mr. Gary testified. And Ms.

1 Eigenbrot was right, he talks a lot. It was kind of
2 like almost a filibuster at times. At other times,
3 it was clear that he had talking points that he was
4 going to stick to and no matter the question asked,
5 he was going to say certain things.

6 And he was nervous and scared here today. And
7 take his testimony for what it was. Trying to
8 explain to y'all why he did something that is
9 completely indefensible, why he beat a 60-year-old
10 man almost to death, that's hard to explain, but he
11 tried.

12 And there were inconsistencies in his statement
13 that you remember. It's hard to nail him down on
14 why he went outside. And then he said that he
15 turned around and started choking him. Remember?
16 Then I asked Investigator Sullivan, How did he
17 describe that to you? And then Investigator
18 Sullivan said, He went like this {indicating}.

19 And then for the first time that I've ever been
20 aware of, he starts talking about a second written
21 statement that he's given to law enforcement that
22 Investigator Sullivan doesn't know about, that I've
23 never heard of that is at home, at his house and
24 that maybe he could bring it to me if he got a
25 chance. We've never seen a second statement, ladies

1 and gentlemen, and I submit to you that there was no
2 second statement.

3 There were other things where he was just
4 caught in outright untruths, little things, but if
5 he won't tell the truth about the little things,
6 then he won't tell the truth about the big things.
7 Did you say you went too far? Yeah, I said too far,
8 but only after I saw the pictures of him.
9 Investigator Sullivan didn't even have the pictures
10 of the victim at that time.

11 Ladies and gentlemen, this is a case someone
12 losing their temper and going too far. He's not a
13 man who is to be disrespected, he is not a man who
14 is to be challenged, he is not a man who is to be
15 stared in his face not in his home. He wasn't going
16 to stand for that. And once -- according to the
17 defendant in his own words, once Mr. Cone slammed
18 that door, that was all she wrote. It was all over.
19 He had to do what he had to do.

20 I beg you to go back there and listen to this
21 jail phone call. He doesn't talk about any
22 injuries, he laughs, maybe he has a little injured
23 hand, but that's okay, and that the victim got what
24 he deserved. You don't disrespect Kevin Gary. You
25 don't challenge him. You don't stare him down,

1 because if you do, you'll lose your eye, you'll have
2 facial fractures, no longer be able to drive or
3 work. The victim got what he deserved.

4 Ladies and gentlemen, if you believe that this
5 {indicating} is self-defense, then find Kevin Gary
6 not guilty. If you think that the picture of Kevin
7 Gary and the picture of Jaranamo Cone is
8 self-defense, then find him guilty {sic}.

9 But, on the other hand, if you believe that
10 this was an unlawful battery that resulted in great
11 bodily injury, then we ask you that you hold
12 Mr. Gary accountable for what he did, the beating of
13 Mr. Cone back in March of 2014. We ask you to find
14 him guilty of assault and battery of a high and
15 aggravated nature. Thank you for your attention.

16 **THE COURT:** Thank you, Solicitor.

17 Ladies and gentlemen, I'm going to ask you to
18 step in the jury room again for about five minutes,
19 no longer, and I'll bring you back out and tell you
20 the law. Don't discuss the case.

21 (The jury retires to the jury room.)

22 **THE COURT:** We're at ease for five minutes.

23 (Brief Recess.)

24 **THE COURT:** Anybody who wants to be in, needs
25 to be in. Anybody who wants to leave, needs to

1 leave.

2 Did you have something?

3 **MS. EIGENBROT:** Yes, Your Honor. I just wanted
4 to renew my request for the lesser included of the
5 assault and batteries and just place on the record
6 they are statutorily recognized.

7 **THE COURT:** But does the law change if there's
8 no evidence to support them, that you charge them?

9 **MS. EIGENBROT:** And, again, Your Honor, I would
10 again, just -- the point I'm, again, trying to make
11 is that while there's been evidence presented about
12 the injuries, again, it is still a factual
13 determination for the jury and they could conclude
14 it's a lesser offenses to ABHAN.

15 **THE COURT:** The only possible scenario I see
16 where the jury could view this evidence and
17 determine that the injuries did not constitute great
18 bodily injury would be, as I mentioned earlier, on
19 that proximate cause issue. But the only evidence
20 in this case is that the reason that the man kept
21 falling down was because he was struck. And he
22 wasn't inebriated, he wasn't suffering from --
23 there's no evidence that he was inebriated, there's
24 no evidence he was suffering from any kind of other
25 physical condition except what was caused to him by

1 the blow.

2 And, you know, I was -- if I was going to
3 charge any lesser included, it would be second
4 degree. First degree doesn't apply at all, it
5 doesn't seem, and third degree is just way too low.

6 So I note your position, but -- and if I'm
7 wrong, I apologize to you, but the way I understand
8 the law and applying it to the facts that have been
9 presented, I'm supposed to decide whether there's
10 any evidence to support the jury's verdict. And if
11 there's no evidence that will allow the jury to
12 evaluate that and determine it's burglary -- excuse
13 me -- assault and battery second degree, I'm not to
14 charge it. So we just have a disagreement.

15 **MS. EIGENBROT:** Yes, Your Honor. I just wanted
16 it noted for the record.

17 **THE COURT:** Yes, ma'am.

18 **MS. EIGENBROT:** Thank you.

19 **THE COURT:** Bring in the jury.

20 (The jury returns to the courtroom.)

21 CHARGE OF THE COURT

22 **THE COURT:** Members of the jury, all of the
23 evidence has been presented, you've heard the
24 arguments of counsel, it's now time for me to
25 instruct you on the law that applies to the case.

1 Please continue to pay close attention during this
2 next stage.

3 Now, first, you need to understand some basic
4 ground rules. You, the jury members, are the sole
5 judges of the facts. You decide all the issues of
6 fact. You alone determine the truth of the
7 evidence, its effect, its value and its weight. You
8 alone judge the credibility of witnesses, in other
9 words, whether or not a witness' testimony is
10 believable.

11 Now, in evaluating the testimony of witnesses,
12 you may believe all that a witness said, or none of
13 it; you may believe part of what a witness said and
14 not believe the balance; you may believe one witness
15 against many or many against one; you may consider
16 any interest, bias or prejudice that you feel that a
17 witness has in the case; you may consider the
18 demeanor and the appearance of the witness and the
19 opportunity for knowledge that the witness had; you
20 may consider whether a witness has been consistent
21 or inconsistent.

22 But you're not to exercise these considerations
23 arbitrarily. What I want you to do is to use your
24 common sense, use your sense of logic and reason and
25 your good judgment.

1 It's not proper for me to give you a charge on
2 the facts of the case. I can't discuss the facts
3 with you or even convey to you an impression as to
4 what, if any, personal opinions I may develop about
5 the facts of this case. So if, during any stage of
6 this trial, you have developed an impression that I
7 have a personal opinion about the facts, you must
8 remove that totally from your mind. You're the sole
9 judges of the facts.

10 Now, I am the judge of the law that applies to
11 the case. And under your oath, you must accept and
12 apply the law as I give it to you. If you have
13 conflicting ideas about what the law is or what it
14 should be, you must abandon those. I give you the
15 law, you apply it to the facts as you determine them
16 to be and in that way, you reach your verdict.

17 It's also my job to decide what evidence is
18 admissible. If I rule something inadmissible or
19 told you to disregard something, you're not to
20 consider those things in arriving at your verdict.
21 Base your verdict on the competent evidence before
22 you, consider the testimony from the witnesses and
23 the exhibits admitted in the trial.

24 I need to explain to you that the rules of
25 evidence allow for opinion testimony to be given

1 under certain circumstances. One area where that's
2 allowed is where someone by virtue of education,
3 training and experience is permitted to testify as
4 an expert witness. The mere fact that a person is
5 allowed to give opinion testimony under our rules
6 does not mean that you have to accept the opinions
7 given if you choose not to do so. You may accept or
8 reject the opinions of an expert witness just as you
9 may any other witness in whole or in part.

10 Now, I also need to explain to you that there
11 are two types of evidence generally presented during
12 a trial, there's direct evidence and there's
13 circumstantial evidence. Direct evidence directly
14 proves the existence of a fact and does not require
15 deduction. Circumstantial evidence is proof of a
16 chain. It's proof of a chain of facts and
17 circumstances indicating the existence of a fact.
18 Crimes may be proven by circumstantial evidence.

19 The law makes no distinction between the weight
20 or the value to be given to either direct or
21 circumstantial evidence. However, to the extent
22 that the State relies on circumstantial evidence,
23 all the circumstances must be consistent with each
24 other and when taken together, they must point
25 conclusively to the guilt of the accused beyond a

1 reasonable doubt. If the circumstances merely
2 portray the defendant's behavior as suspicious, then
3 the proof has failed.

4 The burden of proving the defendant guilty
5 beyond a reasonable doubt rests on the State. And
6 the State has that burden regardless of whether the
7 State relies on direct evidence, circumstantial
8 evidence or some combination of the two.

9 Now, the defendant in this case, Mr. Gary, is
10 presumed to be innocent. This is no mere legal
11 theory. It is a fundamental and substantial right
12 to which everyone is entitled.

13 It's been described as being like a robe of
14 righteousness that's placed around an accused and it
15 remains with him through every stage of the trial.
16 It continues to exist after you retire to your jury
17 room to deliberate. And it continues so that he is
18 presumed to be innocent unless you -- excuse me --
19 unless and until you, the jury, determine that the
20 State has proven his guilt beyond a reasonable
21 doubt.

22 In making your decision on whether the
23 defendant has been proven guilty, you may consider
24 the lack of evidence presented by the State.

25 A defendant is not required to prove his

1 innocence. He is not required to prove anything at
2 all. The burden is on the State to prove the guilt
3 of the defendant, and the State must prove every
4 essential element of the offense charged beyond a
5 reasonable doubt. Now, that does not mean that the
6 State has to prove the guilt of the defendant beyond
7 all doubt or beyond every doubt, the appropriate
8 standard is proof beyond a reasonable doubt.

9 Some of you may have served as jurors in civil
10 court and if you have, you know the burden of proof
11 there is a lower burden. It requires establishing
12 that something is probable, that it's more likely
13 than not, and that's called the greater weight or
14 preponderance of the evidence.

15 But in criminal court, such as we're in now,
16 the standard is much higher and the proof must be
17 much stronger than what is required in civil court.
18 The burden of proof in this case, in this criminal
19 case, is proof beyond a reasonable doubt.

20 So what do I mean by that term? Proof beyond a
21 reasonable doubt is proof that leaves you firmly
22 convinced of the defendant's guilt.

23 There are few things in the world that we know
24 with absolute certainty and in criminal cases, the
25 law does not require proof that overcomes every

1 possible doubt. If, based on your consideration of
2 the evidence, you are firmly convinced that the
3 defendant is guilty of a crime charged, you are to
4 find him guilty of that crime. If, on the other
5 hand, you think there is a real possibility that he
6 is not guilty, you must give him the benefit of the
7 doubt and find him not guilty.

8 There is no obligation on the defendant to
9 raise any doubt or any other possibility, he is
10 presumed to be innocent. And the State has the
11 entire burden of proof and has to prove to you that
12 the defendant is guilty to the exclusion of any
13 other real possibility.

14 Now, I have to go over with you the law related
15 to statements allegedly made by the defendant to law
16 enforcement. In evaluating alleged statements, you
17 first need to determine if the State has proven that
18 the defendant, in fact, made the statement. If not,
19 then you cannot consider that alleged statement in
20 any way against the defendant. If you find that the
21 defendant made the statement, the next thing that
22 you're going to have to determine is whether the
23 defendant's statement was given in response to
24 police questioning.

25 In order for you to know what the law requires

1 concerning statements, I have to explain a few
2 things to you as background. You've probably heard
3 about Miranda warnings. And the Miranda warnings
4 are that you have the right to remain silent; that
5 any statement made can and will be used in court
6 against the defendant; that you have a right to an
7 attorney; and if you do not have the resources to
8 hire a lawyer, the court will appoint one at no
9 expense; that you have the right to consult a lawyer
10 before answering any questions or making any
11 statement; that you have the right to have the
12 attorney present at all times during all interviews
13 and all interrogations; and that you may stop
14 answering questions at any time. Now, those exact
15 words do not have to be used, but the substantial
16 equivalent has to be communicated to the accused in
17 order to constitute valid Miranda warnings.

18 Now, Miranda warnings are required before the
19 police may interrogate a person whom they have in
20 custody. Police interrogation means that the police
21 are questioning the person or engaging in the
22 substantial equivalent of questioning. In other
23 words, where a police officer makes some statement
24 or engages in some conduct that is designed to
25 elicit a response, that is the functional equivalent

1 of interrogation.

2 But Miranda warnings only apply to
3 interrogation by the police. If a person makes a
4 spontaneous statement of his own free will not
5 prompted by police interrogation, then the statement
6 can be considered by the jury even if Miranda
7 warnings have not been given.

8 So if you were to find that the statement in
9 question was given by the defendant while he was in
10 custody and in response to police interrogation or
11 the functional equivalent of interrogation, you
12 cannot consider that statement against the defendant
13 unless the State has proven beyond a reasonable
14 doubt that the defendant first was properly advised
15 of his Miranda warnings or Miranda rights prior to
16 giving his statement.

17 Now, the next thing the State would have to
18 prove, if you reach this point, is that any alleged
19 statement was made knowingly and intelligently after
20 the defendant waived his constitutional rights. In
21 other words, before you can consider any alleged
22 statement against the defendant, the defendant must
23 have been proven to have knowingly and intelligently
24 waived his constitutional rights and made a
25 statement to the police.

1 And the final requirement is that the statement
2 in question has to have been given voluntarily. The
3 State has to prove to you that the statement was the
4 expression of the defendant's own free will and it
5 was not improperly induced by compulsion, duress,
6 force or fear or by the promise of some reward or
7 hope of reward. Unless the State proves to you that
8 the statement was given freely and voluntarily, you
9 may not consider it against the defendant in any
10 way.

11 Okay. Let's turn now to the specific charge
12 made in this case and that is the indictment which
13 alleges that the defendant committed assault and
14 battery of a high and aggravated nature.

15 The indictment alleges that Kevin Lamar Gary
16 did, in Richland County, on or about March 25, 2014,
17 commit an assault and battery of a high and
18 aggravated nature upon Jaranamo Cone constituting an
19 unlawful act of violent injury to the person of
20 Mr. Cone that resulted in great bodily injury and/or
21 that the act was caused by means likely to produce
22 death or great bodily injury. Specifically, it's
23 alleged in the indictment that Mr. Cone experienced
24 facial fractures and damage to his eye or eyes as a
25 result of the alleged offense.

1 I caution you once again that an indictment is
2 not evidence. It has no evidentiary value. It's
3 merely the formal means by which someone is brought
4 to trial.

5 Now, at this point, I'm going to give you the
6 law on assault and battery of a high and aggravated
7 nature. A battery is an unlawful touching of
8 another person. A battery is any touching of
9 another person in a rude, insolent or angry manner.

10 Now, the touching does not have to be flesh to
11 flesh; it may be accomplished by some object that
12 the perpetrator puts into play.

13 A person is guilty of assault and battery of a
14 high and aggravated nature if the person unlawfully
15 injures another person and great bodily injury to
16 another person results or the act was accomplished
17 by means likely to produce death or great bodily
18 injury.

19 Now, great bodily injury is a defined term. It
20 means bodily injury that causes a substantial risk
21 of death or that causes serious permanent
22 disfigurement or protracted loss or impairment of
23 the function of a bodily member or organ -- a bodily
24 organ.

25 Now, to hold the defendant responsible for the

1 great bodily injury allegedly suffered by the
2 purported victim, the State has to prove to you that
3 the battery by the defendant was at least a
4 contributing proximate cause of the great bodily
5 injury. Proximate cause is a direct cause, an
6 immediate cause, an efficient cause, a cause without
7 which the injury to the victim would not have
8 resulted.

9 Now, there may be more than one proximate cause
10 of an injury. A defendant acts -- excuse me -- the
11 defendant's act does not have to be the sole
12 proximate cause of the injury. If the wrongful act
13 of a perpetrator combines with the actions of others
14 and results in injury to the purported victim, the
15 perpetrator's act is considered to be a contributing
16 proximate cause and the defendant may be held
17 criminally responsible. And this is true even if
18 other acts or causes also contributed to the injury.

19 In short, the defendant's act does not have to
20 be the sole proximate cause in order to constitute
21 great bodily injury -- excuse me -- the defendant's
22 act need not be the sole proximate cause of great
23 bodily injury, it has to be a proximate cause of
24 great bodily injury.

25 So to recap for you, ladies and gentlemen, the

1 defendant, in order to be found guilty of assault
2 and battery of a high and aggravated nature, must be
3 proven by the State beyond a reasonable doubt to
4 have committed this assault and battery on the date
5 and time and place alleged in the indictment. It
6 must be proven that the defendant unlawfully injured
7 Mr. Cone and that great bodily injury resulted to
8 Mr. Cone or that the unlawful act of assault and
9 battery was accomplished by means likely to produce
10 death or great bodily injury. In order to establish
11 criminal liability, criminal intent is required.
12 The State has to prove to you beyond a reasonable
13 doubt that the defendant had the mental state to
14 commit an unlawful assault and battery upon
15 Mr. Cone. Intent, like other elements of a crime,
16 may be proven by direct evidence or circumstantial
17 evidence or a combination of both.

18 All right. Now, I have to cover with you the
19 law of self-defense. One of the issues that you
20 need to consider is whether the defendant was acting
21 in self-defense. Self-defense is a complete
22 defense. If a defendant was acting in self-defense,
23 then his conduct is lawful and you must find him not
24 guilty.

25 A defendant does not have any burden of proof,

1 so a defendant does not have to prove self-defense.
2 Rather, the State has the burden of proving beyond a
3 reasonable doubt that the defendant did not act in
4 self-defense.

5 If you have a reasonable doubt of the
6 defendant's guilt after considering all of the
7 evidence, including the evidence of self-defense,
8 then you must find him not guilty. On the other
9 hand, if you have no reasonable doubt of the
10 defendant's guilt after considering all of the
11 evidence, including the evidence of self-defense,
12 then you are to find him guilty.

13 Now, the following elements are required to
14 establish self-defense: First, the defendant must
15 have been without fault in bringing on the
16 difficulty. If the defendant's conduct was the type
17 which was reasonably calculated to and did provoke a
18 deadly assault or an assault involving serious
19 bodily injury or the threat of serious bodily
20 injury, then the defendant would be at fault in
21 bringing on the difficulty and would not be entitled
22 to an acquittal based on self-defense. So the first
23 element is the defendant must have been without
24 fault in bringing on the difficulty.

25 The second element of self-defense is that the

1 defendant was actually in imminent danger of death
2 or serious bodily injury to himself or that he
3 actually believed that he was in imminent danger of
4 death or serious bodily injury.

5 If the defendant was actually in imminent
6 danger, it must be shown that the circumstances
7 would have warranted a person of ordinary firmness
8 and courage to strike out as the defendant did to
9 prevent his own death or serious bodily injury. If
10 the defendant believed he was in imminent danger of
11 death or serious bodily injury, it must be shown
12 that a reasonably prudent person of ordinary
13 firmness and courage would have had the same belief.

14 In deciding whether the defendant actually was
15 or believed he was in imminent danger of death or
16 serious bodily injury, you consider all of the facts
17 and circumstances surrounding the incident and the
18 relationship between the parties. So in assessing
19 the defendant's beliefs, you may consider whether
20 there was any history of prior difficulties between
21 the individuals involved and what those were.

22 Now, a defendant has the right to act upon
23 appearances even if his assessment was incorrect.
24 It is not necessary that a defendant was actually in
25 imminent danger. It is enough if the defendant

1 believed he was in imminent danger and a reasonably
2 prudent person of ordinary firmness and courage in
3 his position and with his knowledge would have had
4 the same belief. It is for you to decide whether
5 the defendant had a reasonable fear of imminent
6 danger of death or serious bodily injury and that it
7 would have been felt by a person of ordinary
8 firmness and courage in the same situation.

9 Words accompanied by hostile acts may,
10 depending on the circumstances, create an appearance
11 that the defendant could act in self-defense.

12 The final element of self-defense is that the
13 defendant had no other probable way to avoid the
14 danger of death or serious bodily injury than to act
15 as he did in this particular instance. However, the
16 defendant does not have to wait until an assailant
17 has the drop on him before acting in self-defense.

18 A defendant has no duty to retreat if, by doing
19 so, the danger of being killed or suffering serious
20 bodily injury would increase. If the defendant was
21 on his own premises, then he had no duty to retreat
22 before acting in self-defense.

23 A person who is confronted with a situation of
24 self-defense is not required to make an exact
25 calculation of the amount of force needed to avoid

1 his death or serious bodily harm, but he is
2 permitted to use the degree of force and
3 self-defense that a person of ordinary reason and
4 firmness would have believed to have been needed to
5 prevent his own death or serious bodily injury.

6 The force that's used in self-defense does not
7 have to be limited to the degree or amount of force
8 used by the opposing party. A defendant has the
9 right to use so much force as appeared to be
10 necessary for complete self-protection in which a
11 person of ordinary reason and firmness would have
12 believed to be needed to prevent death or serious
13 bodily harm.

14 Now, there's a concept related to self-defense,
15 somewhat, known as mutual combat. If the defendant
16 voluntarily participated in mutual combat other than
17 for protection, if the defendant voluntarily
18 participated in mutual combat for purposes other
19 than his own protection, the striking of the
20 purported victim would not be self-defense. And
21 this is true even if during the combat, after the
22 combat started, the defendant developed a fear of
23 death or serious bodily injury.

24 However, if the defendant withdrew from the
25 fray and tried in good faith to avoid further

1 conflict and either by word or act made that fact
2 known to the victim, then the defendant would be
3 without fault in bringing on the difficulty as to
4 any further striking of the purported victim.

5 Now, for mutual conduct -- excuse me -- for
6 mutual combat, there must be a mutual intent and
7 willingness to fight and this intent may be shown by
8 the acts and the conduct of the parties and the
9 circumstances surrounding the combat.

10 The final thing I have to tell you on the law,
11 ladies and gentlemen, is that the defendant is
12 entitled to every reasonable doubt arising in the
13 entire case or any defenses. If on any issue of
14 fact essential to a conviction, you have a
15 reasonable doubt as to how that should be resolved,
16 you must resolve the doubt in the defendant's favor.
17 If upon reviewing the entire case, you have a
18 reasonable doubt as to the guilt of the defendant,
19 he is entitled to that doubt and a verdict of not
20 guilty.

21 On the other hand, if upon reviewing the entire
22 case, you find that the State has proven every
23 essential element of the charge against this
24 defendant beyond a reasonable doubt, it is equally
25 your duty to find the defendant guilty of the

1 offense charged.

2 And that's the law.

3 Ladies and gentlemen, when you go back to the
4 jury room to decide the case, you're going to have
5 with you all of the exhibits admitted in the trial.
6 Hopefully, they'll have something for you to play
7 the audio on. You're also going to have this
8 verdict form. On this form, you're going to tell us
9 your decision.

10 Now, you have two possible options in this
11 case. I'm not suggesting one over the other by the
12 order in which I state them, I have to state one
13 thing first and one thing second. The verdict form
14 reads: As to the charge of assault and battery of a
15 high and aggravated nature, we, the jury,
16 unanimously find the defendant -- and you have two
17 options: You may find him not guilty or you may
18 find him guilty of assault and battery of a high and
19 aggravated nature.

20 Madame Foreman, part of your job is to record
21 the verdict. I think you'll find the form to be
22 self-explanatory. Just check the option chosen by
23 the jury and sign your name on the signature line,
24 please.

25 How you go about your deliberations, how you go

1 about taking your votes, all of that is in your
2 discretion subject to this requirement: The verdict
3 must be unanimous. All 12 of you must agree before
4 the Foreperson can record your verdict. When you
5 have reached your verdict, knock on the door, the
6 bailiff will respond to your knock.

7 Now, over the course of the last three days,
8 I've told you probably several dozen times not to
9 discuss the case and it's not time yet. The law
10 says that I have to go over with the attorneys what
11 I just told you, and that's just common sense. We
12 don't want you back there deciding the case using
13 the wrong law.

14 So I printed this out for them, we've already
15 been over it, but I never read these things verbatim
16 and sometimes I say things I don't even realize I've
17 said. So the attorneys have to be given the chance
18 to point out to me anything that needs to be
19 corrected.

20 Here's the signal you need to look for: If I'm
21 satisfied with what I've told you, I will send into
22 the jury room the verdict form and the exhibits, the
23 alternate will be brought out. When it's just the
24 12 of you in, the jury room and you have those things
25 and the alternate is out, you don't have to wait one

1 more second, you can start talking about the case,
2 but don't talk about it until then. I thank you
3 very much for your attention. You may retire to
4 your jury room.

5 (The jury retires to the jury room.)

6 **THE COURT:** State for the record exceptions,
7 additions or objections to the charge from the
8 State?

9 **MS. WALKER:** No, Your Honor.

10 **THE COURT:** Defense?

11 **MS. EIGENBROT:** No, Your Honor.

12 **THE COURT:** Do you want to preserve everything
13 you've raised?

14 **MS. EIGENBROT:** Yes, Your Honor. I would just
15 renew every objection and motion we've made this far
16 throughout the trial.

17 **THE COURT:** Subject to previous objection, the
18 request to modify the charge is denied.

19 Regardless of the outcome, folks, I want to
20 thank you very much for the way you've conducted
21 yourselves. You've shown respect for the Court. I
22 appreciate that. You obviously worked very hard on
23 both sides in this case and it showed, so thank you.

24 The jury has the most difficult job in the
25 courthouse, we'll put it in their hands, let them

1 decide. Check the verdict form, check the exhibits.
2 And I hope y'all have some means they can play that
3 audio because I'm not going to bring them -- I don't
4 like bringing them out here.

5 **MS. WALKER:** Your Honor, what we usually do
6 here is there's a clean computer that the
7 Solicitor's Office has, we just send that in there
8 with them and they can play the disk through that.

9 **THE COURT:** That's fantastic.

10 (Pause.)

11 **THE COURT:** Bring the alternate out, please.
12 I assume everything's clear with the verdict
13 form and the exhibits?

14 **MS. EIGENBROT:** Yes, Your Honor.

15 **MS. WALKER:** Yes, Your Honor. The State is
16 comfortable with the verdict form and the evidence
17 that's going back.

18 **THE COURT:** All right. Thank you.

19 (The alternate enters the courtroom.)

20 **THE COURT:** Mr. Loftis, you don't have to serve
21 anymore on this jury, but let me find out what they
22 did with the rest of the jurors.

23 Did y'all cut the jury loose yet?

24 **THE CLERK:** They're calling back after 6:00

25 P.M.

1 **THE COURT:** Do you have the number to call on
2 your badge?

3 **JUROR:** Okay.

4 **THE COURT:** They want you to call tonight after
5 6:00 and find out if you need to come back up here.
6 I won't go through everything since you're an
7 attorney, you know all this, but thank you for your
8 service.

9 **JUROR:** All right. Thank you, sir.

10 (The alternate was excused.)

11 **THE COURT:** We're at ease pending a verdict.

12 (The jury commences its deliberations at
13 4:18 P.M.)

14 (A recess transpired.)

15 (The following occurred during jury
16 deliberations at 4:56 P.M.)

17 (Court's Exhibit Number 8, jury note, marked
18 for identification.)

19 **THE COURT:** All right. Let's come to order,
20 please. We're back on the record on State versus
21 Gary. I received a note from the jury. It's been
22 marked as Court's Exhibit Number 8. It reads,
23 Listen to jail tape, signed by the Foreperson.

24 I didn't know what that meant, but apparently
25 the attorneys had advised me that the computer to

1 play the tape on -- audio on, excuse me, was not
2 sent back originally. So, apparently, that's what
3 they want. And both sides are in agreement to send
4 that on back. And I don't think I need to bring
5 them in if that's what the issue is. Do y'all need
6 to put anything on the record?

7 **MS. EIGENBROT:** No, Your Honor.

8 **MS. WALKER:** No, Your Honor.

9 **THE COURT:** All right. Thank you.

10 (A recess transpired.)

11 (Court's Exhibit Number 9, jury note, marked
12 for identification.)

13 (The following occurred during jury
14 deliberations at 5:38 P.M.)

15 **THE COURT:** We're back on the record on State
16 versus Kevin Lamar Gary. The jury has sent another
17 note, which is marked as Court's Exhibit Number 9.
18 It reads, Are we able to see the definition of the
19 high nature assault, what the Judge told us about at
20 the end -- what the Judge told us about the law at
21 the end? It is signed by the Foreperson. It's also
22 signed by Juror Number 152, Andrea Karaffa,
23 K-a-r-a-f-f-a.

24 I had offered to send the charge back in its
25 entirety, but my law clerk indicates there's an

1 objection to that. I don't know that I need
2 anybody's consent, but I'll bring the jury out and I
3 will read that section of the charge again at this
4 point. Do y'all need to put anything on the record?

5 **MS. WALKER:** The State does not, Your Honor.

6 **MS. EIGENBROT:** No, Your Honor.

7 **THE COURT:** Bring in the jury.

8 (The jury returns to the courtroom at 5:42
9 P.M.)

10 **THE COURT:** Madame Foreman, I received a note
11 from the jury that reads, Are we able to see the
12 definition of the high nature assault, what the
13 Judge told us about the law at the end? Is that the
14 jury's question?

15 **FORELADY:** Yes, sir.

16 **THE COURT:** All right. Ladies and gentlemen,
17 I'll read to you again what I read to you earlier.
18 If you need me to go over it more than once, let me
19 know.

20 At this point, I'm going to give you the law on
21 assault and battery of a high and aggravated nature.
22 A battery is an unlawful touching of another person.
23 A battery is any touching of another person in a
24 rude, insolent or angry manner. The touching does
25 not have to be flesh to flesh. It may be

1 accomplished by some object that the perpetrator
2 puts into play.

3 A person is guilty of assault and battery of a
4 high and aggravated nature if the person unlawfully
5 injures another person and great bodily injury to
6 another person results or the act is accomplished by
7 means likely to produce death or great bodily
8 injury.

9 Great bodily injury is a defined term. It
10 means bodily injury which causes a substantial risk
11 of death or which causes serious permanent
12 disfigurement or protracted loss or impairment of
13 the function of a bodily member or organ.

14 To hold the defendant responsible for great
15 bodily injury suffered by the purported victim, the
16 State must prove that the battery by the defendant
17 was at least a contributing proximate cause of the
18 great bodily injury. Proximate cause is a direct
19 cause, it is an immediate cause, an efficient cause,
20 a cause without which the injury to the victim would
21 not have resulted.

22 There may be more than one proximate cause of
23 an injury. The defendant's act does not have to be
24 the sole proximate cause of the injury. If the
25 wrongful act of a perpetrator combines with actions

1 by others and results in injury to the purported
2 victim, the perpetrator's act is considered to be a
3 contributing proximate cause and the defendant may
4 be held criminally responsible. This is true even
5 if other acts or causes also contributed to the
6 injury. In short, the defendant's act need not be
7 the sole proximate cause of great bodily injury, but
8 must be a proximate cause of great bodily injury.

9 So to recap, to prove the defendant guilty of
10 assault and battery of a high and aggravated nature,
11 the State must prove beyond a reasonable doubt that
12 on the date and at the time and place alleged in the
13 indictment, the defendant unlawfully injured
14 Mr. Cone and that great bodily injury resulted to
15 Mr. Cone or that the unlawful act of assault and
16 battery was accomplished by a means likely to
17 produce death or great bodily injury.

18 That was the section where I covered assault
19 and battery of a high and aggravated nature. If you
20 need anything else, send me a note. Thank you.

21 (The jury retires to the jury room to
22 continue its deliberations at 5:47 P.M.)

23 **THE COURT:** Please state for the record
24 exceptions, additions or objections to the
25 instruction.

1 **MS. WALKER:** Your Honor, there are none from
2 the State.

3 **MS. EIGENBROT:** None from the defense.

4 **THE COURT:** Thank you. We're at ease pending a
5 verdict.

6 (A recess transpired.)

7 **THE COURT:** I've been informed the jury has a
8 verdict. Obviously, I have no way of knowing what
9 they decided. I say this in every case. Please
10 don't show any sign of approval or disapproval with
11 the verdict. Don't shake your head in agreement or
12 disagreement. Don't make any sounds. Stay still,
13 stay quiet.

14 Bring in the jury, please.

15 (The jury returns to open court to report
16 its verdict at 6:26 P.M.)

17 **THE COURT:** Madame Clerk.

18 **THE CLERK:** Yes, Your Honor.

19 Madame Foreperson, have you reached a verdict?

20 **FORELADY:** Yes.

21 (The clerk hands the verdict to the Judge.)

22 **THE COURT:** All right. Publish the verdict,
23 please.

24 VERDICT OF THE JURY

25 **THE CLERK:** Indictment number 2014-GS-40-6211,

1 the State versus Kevin Lamar Gary, as to the charge
2 of assault and battery of a high and aggravated
3 nature, we, the jury, unanimously find the defendant
4 guilty of assault and battery of a high and
5 aggravated nature. This is signed, Foreperson,
6 Juror Number 181.

7 Madame Foreperson, is this your verdict and the
8 verdict of the entire jury?

9 **FORELADY:** Yes.

10 **THE COURT:** Thank you.

11 Are there any matters to take up prior to the
12 jury being discharged?

13 **MS. EIGENBROT:** Your Honor, the defense would
14 request the jury be polled.

15 **THE COURT:** All right. Ladies and gentlemen,
16 what's going to happen is that the clerk's going to
17 call the roll. As she calls your name, please raise
18 your hand so she knows where to look, you can put
19 your hand down then. And she's going to ask you
20 either two separate questions or one multiple-part
21 question, basically along the lines, was this your
22 verdict and is it still your verdict? Just answer
23 her truthfully.

24 Madame Clerk.

25 **THE CLERK:** Yes, sir.

1 Juror Number 181, was this your verdict?

2 JUROR: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR: Yes.

5 THE CLERK: Juror Number 309, was this your
6 verdict?

7 JUROR: Yeah.

8 THE CLERK: Is this still your verdict?

9 JUROR: Yes.

10 THE CLERK: Juror Number 70, was this your
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR: Yes.

15 THE CLERK: Juror Number 254, was this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes.

20 THE CLERK: Juror Number 152, was this your
21 verdict?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: Yes.

25 THE CLERK: Juror Number 77, was this your

1 verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Is this still your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Juror Number 1, was this your
6 verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Is this still your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Juror Number 45, was this your
11 verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Is this still your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Juror Number 33, was this your
16 verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Is this still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Juror Number 16, was this your
21 verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Is this still your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Juror Number 299, was this your

1 verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Is this still your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Juror Number 47, was this your
6 verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Is this still your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** The jury's been polled, Your Honor.

11 **THE COURT:** Thank you.

12 Anything further before the jury is discharged?

13 **MS. EIGENBROT:** No, Your Honor.

14 **THE COURT:** All right. All 12 jurors responded
15 in the affirmative to both questions.

16 Ladies and gentlemen of the jury, that's going
17 to conclude your jury service. They have decided
18 not to bring the jury back in this week, it's my
19 understanding, so you're through with jury duty.

20 If I say anything wrong, Madame Clerk, correct
21 me.

22 **THE CLERK:** Yes, Your Honor.

23 **THE COURT:** They will mail to you a little
24 check, it won't be much. They will put a slip in
25 the envelope so that you'll have an excuse for work

1 if you need that to show your boss. I really
2 appreciate your service.

3 Madame Foreman, I need you to stick around back
4 there with me because I need you to sign one more
5 thing, so don't leave until I get you to sign it,
6 please.

7 **FORELADY:** Yes, sir.

8 **THE COURT:** But the rest of you are free to go.
9 Thank you so much.

10 (The jury was excused.)

11 **THE COURT:** Motions.

12 **MS. EIGENBROT:** Your Honor, the defense would
13 renew all objections and motions. Further, Your
14 Honor, we would move for a new trial at this time.
15 Short deliberation of the jury made me believe they
16 did not fully evaluate the facts that were presented
17 to them; therefore, we move for a new trial.

18 **THE COURT:** Motion's respectfully denied.

19 Does the State have anything on sentencing?

20 **MS. WALKER:** Yes, Your Honor. I just spoke
21 with the victim and his wife, Mr. and Mrs. Cone.
22 They don't have a number of years or anything that
23 they think would make them feel better about what
24 happened to Mr. Cone in this case.

25 Your Honor, the State respectfully asks for a

1 sentence that's indicative of the brutal nature of
2 this beating and the permanent disfigurement of the
3 victim in this case.

4 **THE COURT:** What did you say Mr. Gary's prior
5 record is?

6 **MS. WALKER:** Your Honor, from 2010, there's a
7 driving under suspension and a simple possession of
8 marijuana.

9 **THE COURT:** All right. Anything from the
10 defense on sentencing?

11 **MS. EIGENBROT:** Yes, Your Honor.

12 **MS. WILLIAMS:** Your Honor, I'd like to start
13 and give you a little information about Kevin. He's
14 27 years old. He graduated in 2007 from Airport
15 High School. He was in the top 30 percent of his
16 class. While he was in high school, he was on the
17 football team, track team. He even made it to
18 regionals in track. Hobbies were anything athletic
19 from basketball to frisbee. He didn't care; he just
20 liked being out with people.

21 He was raised by his father, Gregory Jerome
22 Gary. He's a truck driver. His mother was never in
23 the picture, so a single dad raised him. He has a
24 number of siblings that are scattered around South
25 Carolina. One brother is here today in support.

1 As you've learned from this trial, he has had a
2 long-standing relationship with Mary Beth Hale, has
3 treated her seven-year-old daughter as his own since
4 she was an infant, and has a three-year-old son,
5 Kevin Lamar, Jr., and a two-year-old daughter,
6 Kaley. His life really does revolve around them.
7 I've gotten that from all the conversations I've had
8 with him. And all you have to do is ask him about
9 the kids and he's going tell you about them. He
10 knows their passions and their interests.

11 Kaley is talking all the time now, thinks she's
12 the boss, except for her brother. She follows him
13 around even though he's a year older like he's --
14 like they're twins. So since her brother likes
15 Batman and superheroes and Thomas the Tank Engine so
16 does Kaley.

17 Leah's no different. He may not have been the
18 biological father of her, but he treats her as his
19 own and always has and she sees him as his father --
20 as her father. She enjoys -- they have a lot of fun
21 listening to her make up stories and come up with
22 games. She loves to play house and right now she's
23 really enjoying dolls.

24 He enjoys a lot of activities with them, going
25 to the parks, swimming, bouncy house. He has a

1 picture of Kaley's second birthday when they took
2 them to Chuck E. Cheese.. And they spent a lot of
3 time hearing about the fun they had shooting hoops
4 there and the fun of that experience with the kids.
5 So when I say he -- his life revolves around these
6 children, I don't say that lightly.

7 Since this incident -- prior to that, the kids
8 lived with him. Mary Beth would stay there whenever
9 she was not taking care of her grandmother. And
10 since that, there wasn't room for him at the
11 grandmother's house. There's barely room for Mary
12 Beth and the three children. So he has stayed
13 everywhere from property of his dad's that didn't
14 have electricity or hot water to Transitions for
15 about a month, and he has a friend that's kindly
16 having him stay there, because he has done his best
17 to maintain a job throughout this time.

18 When this incident happened, he was working at
19 the Brickyard as a fork lift operator. He was
20 dismissed because of this charge. He did several
21 other jobs despite being homeless, and currently
22 works two full-time jobs, one at Quality Cuts
23 Landscaping and one at Ruth Chris Steak House.

24 All of his money goes to his children and
25 caring for them because, unfortunately, Ms. Hale

1 doesn't get an income. She is the primary caretaker
2 for her grandmother with severe dementia and health
3 problems who needs a lot of help for everyday tasks
4 that you and I don't think too much about like using
5 the restroom or getting dressed. So when she's
6 there and needs help, he's also the one that's
7 taking care of the kids when he's not at these jobs
8 trying to earn money to make sure that they can
9 survive.

10 He attends Devine Restoration Church. And he
11 was trying to enroll in school for HVAC, not sure
12 now with this charge whether he'll ultimately be
13 able to do that, but he was always constantly trying
14 to improve himself for his family.

15 He had dreams to start a tow truck company.
16 And it was great to see his eyes light up with the
17 idea of having good solid work of owning a business,
18 something he could be proud of and also having
19 something that then his kids could one day learn how
20 to work in and have something from him. That was --
21 that's his dream.

22 And speaking with him even -- I understand the
23 jury's verdict and that is their verdict, but he's
24 always been very cognizant, even as he's maintained
25 his innocence, that he never wanted to fight with

1 this man and he certainly never wished or wishes ill
2 on Mr. Cone and he's sorry that the injuries he's
3 caused.

4 He has spoken to me and recognizes that well
5 beyond the impact that this has had on his life and
6 his family's life. He's talked to me about he knows
7 that this incident has had an impact on Mr. Cone and
8 his life as well, not only that, but the amount of
9 time that the Court is here today, that the jurors
10 were here away from work and their lives. These are
11 things that he has mentioned to me throughout this
12 process. He has always been very aware of the full
13 cost of this incident.

14 There is -- I do believe Ms. Mary Beth Hale
15 would like to say something on his behalf. I'm not
16 sure -- I believe maybe some of the other friends
17 and family may want to speak on his behalf.

18 **THE COURT:** All right. Yes, ma'am.

19 **MS. HALE:** I know Kevin for six years. I met
20 him when I came out of a horrible relationship.
21 Without even thinking twice, he took care of my
22 daughter. I have two kids with this man and he
23 works so hard to take care of our family. We may
24 not be physically together, but we are still a
25 family. Without him, I won't be able to take care

1 of my children.

2 I have seen this man, even though he doesn't
3 have much, to give what he can to a homeless person.
4 He may be homeless himself, but that other person
5 could be worse off. I've seen him give food that he
6 wanted for himself to another person.

7 Thanksgiving 2014, he had Thanksgiving dinner
8 with my family. I was taking him back to where he
9 was staying. He seen a homeless man on the side of
10 the road and told me to stop and gave him his food.
11 He is not some vicious man. He is a care to
12 society.

13 I know what it's like to have a father not in
14 your life, to have a hole in your heart, to ask your
15 parents or your grandparents, when is dad coming
16 home? He has morals and values that I cannot teach
17 my children. I cannot be a father or a mother. I
18 can't be two people. I can only be a mother. They
19 need their father. He is a staple in their life.

20 My son is primary autistic. I can only deal
21 with so much. He needs to learn from his father,
22 too. He knows how to take care of him just as well
23 as I do when I need a break, nobody else does.

24 My youngest daughter Kaley, she loves her
25 father dearly. How do I go home and tell my

1 children, daddy may not be coming back, that I'm
2 your only family right now? How do I look my
3 children in the eye and say that when this good man
4 of society -- everybody makes mistakes, everybody
5 may have to go through life, but you will not know
6 what it's like until you go in that situation.

7 And this all started March 25th, 2014, when
8 Mr. Cones came and put his hands around his throat.
9 Mr. Gary has been homeless downhill for the fact.
10 His life has changed. I know Mr. Cone's life has
11 changed and his family. Everybody's life has
12 changed in this incident. And my -- the empathy and
13 sympathy goes out to his family. But please have
14 mercy, Your Honor. I am begging the Court. Thank
15 you.

16 **THE COURT:** Yes, ma'am.

17 Who else? What's your name, sir?

18 **MR. PORCH:** Wesley Porch.

19 **THE COURT:** P-o-r-c-h?

20 **MR. PORCH:** Yes, P-o-r-c-h.

21 **THE COURT:** First name is Wesley?

22 **MR. PORCH:** Yeah, Wesley.

23 **THE COURT:** What do you want to say?

24 **MR. PORCH:** I'm a good friend of Kevin Gary.
25 I've known him since 2003, since high school, our

1 ninth grade year in high school. So it's been 13
2 years and strong in friendship and brotherhood. And
3 when he first told me about the situation, how he
4 was homeless and stuff, I'm the friend that let him
5 come -- well, I'm the brother that let him come stay
6 in my house. I helped him get his job at Ruth
7 Chris, took him for his interview.

8 And ever since then, I've been keeping him with
9 a level head. He's been going to my mother's church
10 every Sunday, just trying to get his life back on
11 the right track. I've been encouraging him and
12 everything. And this -- I was surprised when first
13 he told me about this situation of him getting into
14 an altercation with the gentleman over there.

15 And, like, we been talking, like, I work at my
16 job. I work at Southeast -- I mean, RNDC, Republic
17 National Distributing Company. And I was telling
18 him about it or whatever. And I was like, man, this
19 is just one little mistake you made. Life don't
20 stop. You keep going. You live and learn from your
21 mistakes. And he was very sorry and regretful for
22 the fight that he got in with the gentleman.

23 And, Your Honor, I just ask that you just
24 please have mercy on him so he can be a father to
25 both his daughters and his son. I have a daughter

1 and I know how it is. Like, I grew up without my
2 father and I made an oath to myself to be there for
3 my daughter. And when I was talking to Mr. Gary,
4 Kevin, I was telling him stuff like, this can't
5 happen again, you've got to, you know, change your
6 surroundings. Just letting him know, you know, this
7 was wrong, what happened. I just been a good friend
8 to him, Your Honor.

9 And I never known Kevin to be violent. I've
10 known this man since we was -- since we was 14 years
11 old, Your Honor, and we always laugh and talk. It
12 was all laughs. And I'm not a person that goes out
13 and get in trouble. I don't condone and no
14 negativity. I'm all about positive stuff, Your
15 Honor. So, therefore, I just ask that you just
16 please have mercy upon him so he can be there for
17 his family. That's all I have to say, Your Honor.

18 **THE COURT:** Thank you, sir.

19 Anybody else?

20 If he wants to sit, y'all can sit.

21 What's your name, sir?

22 **MR. PORCH:** My name is Troy Porch.

23 **THE COURT:** Yes, sir, what do you want to say?

24 **MR. PORCH:** I've known Kevin Gary since high
25 school also. I'm the brother of Wesley Porch. He

1 came to live in our household.

2 Since I've known Kevin Gary, I always known him
3 to be a protector. He loved so hard that -- he
4 never bullied anybody. He refused to -- he refused
5 to bully anybody and he wouldn't allow you to be
6 bullied. I looked up to Kevin a lot of times when I
7 was in high school for direction and advice and he
8 would always be there for me.

9 When he came into our household maybe two
10 months ago, I didn't know the situation that
11 happened or transpired and I really don't -- I
12 really don't care. I wish it didn't happen to him.
13 But all I know is two months ago when he came there,
14 I had really encouraged him to be a better man.

15 I'm a youth pastor at my parent's church. I
16 may not look like it, but I'm the youth pastor. I
17 really encouraged him and spend time reading the
18 Word with my brother and just trying to give him a
19 different perspective on life and trying to
20 encourage him to be around different people, that
21 way he can change his surroundings and change his
22 mentality, and just encourage him to make better
23 decisions in life and be around the right people and
24 just, you know, instill in him the values of a
25 higher power and go the right direction in life.

1 And everything may not go the way he want it to
2 go today, but I still believe there's a purpose and
3 a plan for his life and I believe that he's going to
4 go the right direction. And with my help, if so be,
5 with my help, I know I can help him go the right
6 direction, if so be. But I thank you, sir.

7 And I wish you the best of luck.

8 **THE COURT:** Thank you.

9 Anybody else?

10 **MS. EIGENBROT:** Your Honor, I will finish it
11 up.

12 I originally represented Mr. Gary having came
13 to me as a transfer case. What I would like to say
14 about Kevin is since the day I met him, it had
15 always been, yes, ma'am, no, ma'am, can I get the
16 door, can I pull out your chair, let me help you
17 with that. I have known him to be a very
18 well-mannered young man, somebody that's strives to
19 be a good father for his children.

20 I've actually met his children, Your Honor.
21 I've seen him interact with his kids. It's like
22 he's a kid himself trying to teach them the right
23 way. They love their father. They hang on him like
24 he's a monkey bar in gymnastics. He just -- they
25 love him.

1 Your Honor, I've seen this man cry in my
2 office. I've seen him smile. I've seen him laugh.

3 Kevin has been on bond since March 26th, 2016
4 {sic}. He has not been in anymore trouble. He has
5 not had any contact with law enforcement. He did
6 everything that he was supposed to do. He made
7 every court date. Despite some of the difficulties
8 he had after getting this charge, he always
9 maintained contact with our office. There's never
10 been a time when I haven't been able to contact him
11 and find him and get him in here if I needed him.

12 And, Your Honor, with that being all said,
13 respectfully, I will ask this Court, and I don't ask
14 this lightly, to consider a probationary sentence
15 for Mr. Gary. I believe he would be a good
16 candidate for probation.

17 As you just heard, he is trying to put his life
18 back together. He is trying to make the right
19 choices. He works. He takes care of his kids. He
20 is not a troublemaker. I think his record and the
21 fact that he's been on bond for almost two years and
22 some change without any issue is evidence of that.
23 I don't believe that this charge reflects who he is
24 as an individual. For those reasons, Your Honor, I
25 respectfully ask you to consider a probationary

1 sentence.

2 **THE COURT:** Thank you, ma'am.

3 Do you want to say anything, Mr. Gary?

4 **DEFENDANT:** Yes, Your Honor. I just want to
5 apologize to Mr. Cone and his family, to the Court,
6 to my family, to anybody involved in this case for
7 having to alter their lives and be a part of this
8 situation. It's affected everybody in different
9 ways for my actions inside of it. I apologize for
10 what I did.

11 And once again, I just want to let Mr. Cone
12 know I'm sympathetic and I never wanted to get into
13 a physical altercation with him. I just felt I
14 didn't have an -- I didn't have no chance but to
15 defend myself. And I'm just remorseful for the
16 whole situation and for anybody and everybody
17 involved on all sides.

18 **THE COURT:** Thank you, sir.

19 **DEFENDANT:** Thank you.

20 **THE COURT:** All right. Mr. Gary, you
21 understand that if you wish to appeal anything from
22 this proceeding, it has to be done in writing?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** It's a very short timeframe. So
25 you tell your lawyers to go ahead and file the

1 notice if you have any desire whatsoever to consider
2 an appeal. You can always drop an appeal, but you
3 can't -- after the time has run, you can't file for
4 an appeal.

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** You understand all that?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** All right. If there's nothing
9 further, the Court makes the specific finding on the
10 record that this is a crime which is classified as a
11 violent crime and it's also a felony; therefore, the
12 defendant is prohibited from owning, possessing,
13 shipping, transporting or receiving any firearm.

14 Mr. Gary, I learned a long time ago while I
15 have typically a desire to say a lot of things, that
16 I really don't help anybody much when I do that, not
17 the defendant, not the folks on your side of the
18 table are supporting you nor does it help the victim
19 in any way, so I try to keep my comments now to a
20 minimum.

21 I think you do have a lot of redeeming
22 qualities, I really do. Your attorneys are
23 obviously a hundred percent in your corner. They've
24 done a great job representing you and humanizing
25 you. There is something about violence, though,

1 that changes the dynamic in sentencing somebody.
2 And while you may feel that that was self-defense,
3 that's really hard to believe. It's much more easy
4 to believe that you got really upset and you lost
5 control and you beat that man almost to death.

6 I had a bigger number in mind. You're probably
7 not going to like the number I give you and they
8 probably aren't going to like the number I give, but
9 here's your sentence:

10 The sentence is you be committed to the South
11 Carolina Department of Corrections for 12 years,
12 provided upon the service of 10 years plus costs and
13 assessments, the balance is suspended. You're
14 placed on probation for two years. You're given
15 credit for jail time under 24-13-40 to be calculated
16 and applied by the department of corrections.
17 Restitution is deferred.

18 You have to be referred to Voc Rehab and Job
19 Corps, pass random drug and alcohol screens, pay
20 your public defender fee and your court costs at the
21 rate of \$25 a month beginning six months after
22 beginning community supervision. You're to have no
23 contact with the victim. You're required to do
24 anger management counseling. Probation begins after
25 community supervision is completed, if that's

1 allowed.

2 You understand your sentence?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** Good luck.

5

6 END OF PROCEEDINGS

7

8

9

10

11

12

13

14

15

16

17

18

19

20

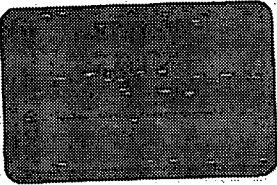
21

22

23

24

25



Statement of

Kevin Lamar Gary
St Andrews Rd Apt
Columbia, SC 29210

Made at

Columbia, South Carolina, this 3/25/14, at 8:26PM, in the presence of Inv J Sullivan and Inv J Carwell of the Richland County Sheriff's Department.

I, Kevin Lamar Gary, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Questions: Inv Sullivan and Inv Carwell

Answers: Kevin L Gary

Q: What is your highest level of education?

A: 12th grade I graduated from Airport High school

Q: Can you read and write?

A: Yes

Q: Do you still understand your rights?

A: Yes

Q: What happened today for police to come out?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of March 2014

Sworn to and subscribed before me
This 25 day of March 2014

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 9-23-19

A: It was an altercation between me and the maintenance man. The issue was all over the toilet lines in my house. Several times I have tried to contact the office in regards to the problems with the pipe lines, with us not having access to flush our toilets. The maintenance man arrives today to perform the duties. I asked him to move his truck. He told me you really expect me to stop cleaning your shit to move the truck. That started it I asked him, yes sir if it is not a problem we need to park. He laughed at me. He got louder. I guess he didn't take me serious. He responded with, I am already cleaning your shit. I am not doing this again. That's when I asked him and motioned with my hands to lower his tone because I have my daughter and my niece right there at our feet. I asked him if he could clean up his language and be a little more professional. He didn't respond and had not respect for the house or the people. He threw the mop in the toilet, and said fuck it He walked downstairs. I followed him downstairs into the living room. He went into the half bath downstairs. I thought he was going to continue to do work. He continued with the aggressive language and motions. I asked him to just leave the house. I said Ill clean up the shit myself. He walks by me, shoulder brushes me in my chest region, stops and stare at me face to face. I felt threatened and asked him to leave again. He walks towards the door where my child was sitting. He violently slams the door and it clipped my baby in the butt causing him to slide on the floor. I followed him outside to notify him that he struck my child and to seek some kind of apology or acknowledgement. I had no intentions of physical altercation when I went outside. He reached across his body over his shoulder and grabbed my throat. I smacked his hand down and got free. We exchanged blows. Id say he maybe hit me two or three times. I hit him two or three times with my fist on his face. When he fell I proceeded to try and give aid to him. I directed my girlfriend to go and make contact with the people in the office and to notify the police.

Q: Were there any witness's to this?

A: Mary Beth Hale my wife and possibly Antonio Adams a friend of mine.

Q: Do you feel like you went a little to far?

A: No sir

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of March 2014.

Sworn to and subscribed before me
This 25 day of March 2014

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 9-23-19

Q: What made you do this?

A: The door striking my child. That's what made me go outside. That is not what made me fight him. What made me fight him is him putting his hands on me.

Q: Do you feel like he intentionally hit your child with the door?

A: I am not sure. I can't say if he intentionally did it or not. My son was sitting in the entrance way and I don't know if he saw him or not.

Q: Is this your son or step son and how old is he?

A: This is my son, he is 9 months.

Q: Have you had any other dealings with the maintenance man?

A: A couple weeks ago he had to come out on the scene at 4 in the morning. He wasn't pleased with that.

Q: What would you like to say to the victim?

A: I apologize for the physical contact. For the extent of any damage caused on my behalf throughout the altercation.

Q: Do you feel like that your actions tonight were excessive?

A: Yes sir. They were excessive it just wasn't my intention to fight that man.

Q: Is this statement the truth to you knowledge?

A: Yes sir

Q: Is there anything else you want to add?

A: No sir

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 25 day of March 2017.

Sworn to and subscribed before me
This 25 day of March 2017

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 9-23-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 8, 2014, the
Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That Kevin Lamar Gary did in Richland County on or about March
25, 2014, commit an assault and battery of a high and aggravated nature
upon the victim, Jaronamo Cone, constituting an unlawful act of violent
injury to the person of the said victim that resulted in a great bodily injury
and/or the act was caused by means likely to produce death or great bodily
injury, to wit: the victim did experience facial fractures, damage to his
eye(s), . All in violation of the Common Law of South Carolina

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) J Sullivan
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010200993

TRUE BILL

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: **OCT 09 2014**

VERDICT

GUILTY

Foreperson of Petit Jury
Date: **July 27, 2016**

DOCKET NO. 2014GS4006211

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

101

THE STATE
vs.

Kevin Lamar Gary

Indictment for
ASSAULT & BATTERY OF A HIGH &
AGGRAVATED NATURE

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

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

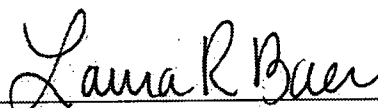
Witness:

C.C.C. PLS. AND G.S.

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 8th day of August, 2018.

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 8th day of August, 2018.

RECEIVED

AUG 08 2018

SC Court of Appeals