

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

William Jeffrey Young, Circuit Court Judge

MICHAEL E. HYATT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000901

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

VOLUME II OF II

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NOV 17 2017

S.C. SUPREME COURT

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1 complex nature.

2 THE COURT: I'm going to deny your motion as to
3 amend -- or to charge -- deny your request to charge assault
4 and battery third. I don't believe the evidence reasonably
5 supports a charge on assault and battery third.

6 (A lunch break was taken.)

7 THE COURT: Anything else concerning the proposed
8 charge? I have already ruled in A and B Third, I have
9 already ruled on the issue with the verdict form. Anything
10 else?

11 MR. GRIER: I think you've got our objection on the A
12 and B Third inclusion, that would be the only issue, Your
13 Honor.

14 THE COURT: From the State?

15 MR. COOK: Nothing from the State, Your Honor.

16 THE COURT: All right. Let's talk about length of
17 closing arguments.

18 MR. FRICK: I anticipate to go about a half hour, Your
19 Honor. I've got some video that I am interspersing, I know
20 that the video is going to run 15 minutes, I hope to not
21 talk too much more than the video goes.

22 MR. GRIER: I think Mr. Frick covers a lot of ground
23 that I would ordinarily cover, I should not be longer than
24 15 minutes.

25 THE COURT: So solicitor?

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1 MR. COOK: Your Honor, maybe half an hour.

2 THE COURT: Okay. Thank you.

3 (The jury returned to the courtroom.)

4 THE COURT: All members of the jury are present.

5 Ladies and gentlemen of the jury, we now move to the portion
6 of the trial that I described to you earlier called closing
7 statements or closing arguments. Mr. Frick?

8 MR. FRICK: I will go first, Your Honor. Thank you,
9 Your Honor, Mr. Cook, ladies and gentlemen of the jury. I
10 know it's been tedious because as you've heard you have the
11 distinct pleasure of having three lawyers tell you the same
12 story at least three different times so I know you've heard
13 everything, but this is the last time you get to hear from
14 all of us. So right after all of this the Judge is going to
15 tell you what the law is, you're going to go back, you get
16 to take all of these fine pictures, all of this other stuff
17 in, the videos if you want to see them and go back and
18 consider the verdict. Ladies and gentlemen, just to remind
19 you, the State is accusing Mr. Aaron Hyatt and Mr. Michael
20 Hyatt of attempted murder. I'm not going to get detailed in
21 the law, but as you're aware that means that they're saying
22 that they did something and intended to kill or cause great
23 bodily injury to Mr. Nassrah who you heard testify. I told
24 you on Tuesday I think is when we came in for opening
25 arguments that it was going to come down to a battle of

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1 credibility and that's exactly what you've got. You have
2 heard four witnesses tell you, four people who were out
3 there that day tell you their version of the facts. Now, no
4 versions of facts are ever going to lineup entirely and I
5 would suggest to you that if they ever did there is an
6 issue, that's when you really get leery if all witnesses say
7 the same thing, so there's minor differences in any case.
8 But what you get to examine is when they sit up here on the
9 stand and they told their story did they have any bias?
10 Perhaps you're employed by the person and you continue to be
11 employed by the person. Do you have any other reason why
12 you want to say somebody did something? You get to
13 determine all of that. I'm not suggesting it, ladies and
14 gentlemen, that is for you to determine as to whether or not
15 the folks who sit up there had any reason to say what they
16 said. And again, you can believe anything they say, part of
17 what they say or you ain't going to believe a thing that
18 they say, and that quite frankly goes for the same thing
19 with these photographs, videos, whatnot. You get to weigh
20 the evidence and no one can take that away from you, and in
21 the end you get to determine whether the State has met their
22 burden. And make no mistake, it's all over here. The
23 Hyatts have to prove nothing. They come into this courtroom
24 presumed innocent until the State has shown you the evidence
25 to take that away, and I suggest to you that they have not.

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1 Now, the Judge is going to tell you some stuff what we call
2 lesser-included offenses. Obviously the trial and what
3 you've heard about has been attempted murder, there are
4 lesser-included offenses. There's assault and battery of a
5 high and aggravated nature, first degree, second degree
6 these are lesser-included offenses, meaning lesser degrees.
7 You get to determine whether or not you think the events fit
8 into one of those. I suggest it doesn't fit in any of those
9 because these two gentlemen did what they had to do to
10 defend each other. First, Aaron gets a phone call from his
11 dad, there's trouble, he goes over there to help his dad,
12 then low and behold he's the one in trouble because he's got
13 a gun pointed at him so his dad has to come and defend him.
14 Self defense is an absolute defense meaning you believe that
15 we have shown you that it's self defense and the State has
16 not disproved, remember that. We don't prove it happened,
17 they have to disprove that it happened once we've alleged
18 it. If you believe that self-defense is in effect then you
19 must acquit these two gentlemen, and I suggest to you that's
20 exactly what happened. They were threatened, they go to aid
21 each other, tables kind of get turned in the middle of the
22 game and it was nothing but self-defense. The stories from
23 the State's side, they just -- it doesn't make sense, it
24 doesn't make sense. The story you get is Mr. Nassrah is
25 standing on the running board of his F-350, that ain't a

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1 short truck, and Mr. Michael Hyatt runs by him and pops him
2 in the head. Now, the testimony was he was popped in the
3 back of his head. Okay. Well, you've got the pictures,
4 here is a picture of the back of his head couple days after
5 the incident. I say again, a couple of days after the
6 incident, either he's an amazing healer or that's not where
7 it occurred. You saw him stand before you, some of you
8 probably had a better view than others, but you saw him
9 stand in front of you and show you his alleged injuries."
10 Folks, this is what he looked like on the scene. Here is
11 the blood soaked Mr. Nassrah. Yeah, he bled. I told you at
12 the beginning of the trial we didn't refute the fact that he
13 got hit in the head. The State doesn't refute the fact that
14 Mr. Nassrah shot Michael Hyatt. The question comes down to
15 when and why did those events occur. Here is the actual
16 injury, it's on the side of his head, ladies and gentlemen,
17 it's on the side of his head. Crime scene is out there and
18 they see little teeny droplets. I'm not going to go through
19 all of these, but you saw what the gravel looks like, you
20 will see the teeny little droplets that they say are blood
21 that SLED said, yep, that's Mr. Nassrah's blood. Where do
22 they find it? All over here on the driveway, down here, not
23 up here on the driver's side where Mr. Nassrah and
24 Mr. Melton say that he was attacked. Mr. Melton says -- and
25 you'll hear more about his statement in a minute -- but

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1 Mr. Melton says Mr. Nassrah is popped in the head and is
2 already bleeding pretty good by the time he's getting around
3 to the front of the truck. Crime scene looked all over the
4 place, they didn't find any droplets in the front of the
5 truck or on that road. All of the blood droplets they found
6 were down the driveway. Folks, all of the evidentiary items
7 are on this driveway. There's not a single thing that is up
8 on the driver's side of Mr. Nassrah's truck. How do you
9 want to balance credibility? You've got to look at the
10 evidence and decide what side that supports. What side does
11 that support? That supports the Hyatts' statement that it
12 occurred down here, it occurred down here in this driveway,
13 that supports their argument of self-defense. You even have
14 a nice pictures of the truck, just in case you don't know
15 what an F50 (sic) looks like here it is. It sure looks to
16 me like that door is closed. Now, I know the State is going
17 to get up here and say I can't say whether the door was open
18 or closed, but crime scene said they photographed stuff as
19 they found it, nobody said the driver's side was open... So
20 did Mr. Nassrah shut the door after he got hit in the head?
21 Again, ladies and gentlemen, that's for you to decide.
22 We've got all kinds of photographs of the scene, you will
23 get to see that. I'm running through these pictures but you
24 get to look at everything, take as much time as you want,
25 I'm just pointing at what I think are important issues that

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1 I want you to consider. This photograph right here, this is
2 the passenger's side of Mr. Nassrah's truck, that's looking
3 back down Merle Lane. There is the light green truck you've
4 heard about. Look where this deputy's car is. It ain't
5 nose to tail with Mr. Aaron Hyatt's truck, you see the front
6 of it. What does that tell you? He's in a curve, this road
7 curves exactly where Aaron Hyatt told you that it did, and
8 in just a minute I'm going to show you that part of the
9 video that shows you that as well. It's the inside of Mr.
10 Nassrah's car -- the truck. That's the glove box with the
11 blood stain right there where he was trying to open that up.
12 What's inside there? Yeah, there's some tissue, there's a
13 .22 in there too. Which was he going for? Because this one
14 must not have been firing anymore. Here is exactly how it's
15 found on the ground, it's cocked and it's ready to go. Now,
16 CSI couldn't tell you whether they had misfired it or was
17 just waiting to get fired, but here it is, one in the
18 chamber. He was ready to shoot again, he didn't but he was
19 ready to shoot again. Again, this is the clustering of the
20 blood droplets that are all in one spot suggesting that the
21 defenses' story is the one that was more credible because
22 that's where the evidence is collected, nothing anywhere
23 else. Now, y'all had a fairly unique experience in this
24 situation besides having to listen to three lawyers explain
25 this case to you, you got to be on the crime scene. Now, no

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1 one is ever there when it happens except the witnesses to
2 the event, you got to see exactly law enforcement's view
3 when Deputy Morgan pulled up. The in-car camera got a whole
4 lot on it, and I know it's real difficult to hear because
5 there's a lot of stuff going on, he's miked up so wherever
6 he goes that's recorded. There is audio in his car, his
7 radio is on, there's about three different things going on
8 at the same time. But guess what? It's in stereo. All of
9 this is in evidence, ladies and gentlemen, everything that
10 you heard on that video or attempted to hear, because it was
11 fairly gurgled when you first heard it, is in evidence so
12 you get to consider everything that's going on. Remember,
13 Mr. Melton told you he was sitting in the back of that car
14 and he admitted he was talking and he admitted he was
15 talking on his cellphone. You get to consider what he was
16 doing back there. So let's see if we can take a look at
17 this for a second. First I want to start you off as we go
18 down Merle Lane. Assuming I can get this thing to work.
19 (Video is playing.) Look how long it takes him to get down
20 this road. (Video stopped.) Look at where his view is. How
21 fast did it take him to get down that road? Was the sun in
22 his eyes? Was there a curve? Is it entirely possible that
23 Aaron Hyatt, who fears for his father's safety, is coming
24 down that road at such a speed that he doesn't see
25 Mr. Nassrah until he almost runs in to him? Is it possible

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1 that Mr. Nassrah is coming down that road and doesn't see
2 Mr. Hyatt until they almost run in to each other? They
3 don't run in to each other. But you can see the road wasn't
4 a straight road, it wasn't a straight view. All right. Now
5 we're on the scene. Now folks, I want you to pay attention
6 to something when you watch this. In the top left corner as
7 you see Deputy Morgan securing the scene you see him
8 talking -- first he's going to talk to one party, after he
9 separates the parties out he is going to talk to one side
10 and then he talks to the other side. In your top left
11 corner is Mr. Nassrah who has been so dazed by this blow
12 according to his testimony that he is about to pass out.
13 Look in that top left corner, there's two folks up there,
14 they look pretty ambulatory. Take a look. Don't take my
15 word for it, take a look. (Playing the video again.) All
16 right. Now, Deputy Morgan starts gathering information,
17 you're going to see him going over to Mr. Nassrah and
18 Mr. Melton, listen at Mr. Melton's statement. Listen to
19 him, he starts to tell his side of the story. (Playing
20 video again.) Did you hear that? The first thing he does
21 is says is, "He's got a gun," saying that Aaron has got a
22 gun. You heard absolutely no testimony that he had a gun or
23 that he pointed a gun at anybody. Here he is already
24 starting. (Playing video again.) "Sit down, Kamil, sit
25 down." Mr. Nassrah wasn't sitting down, Deputy Morgan told

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1 him to sit down. (Playing video again.) All right. Now,
2 we've got a witness, Mr. Melton, said, "Yeah, I saw it." So
3 now he starts to tell his side of the story. This next clip
4 is going to run a little while because he is sitting in --
5 and God bless Deputy Morgan, he shows up in a very difficult
6 situation, he's dealt with these folks before and I think he
7 handles it pretty well diffusing the situation and he
8 separates the parties and he has a cool head about it. He
9 now has to collect information. He has Mr. Melton in his
10 car. (Video was played again.) "He was already bloody
11 pretty good." This is after the first hit when he is hit
12 near the truck according to one version, Mr. Melton stated.
13 (Video was played again.) All right. Now, this is where it
14 starts getting a little fuzzy for y'all when y'all are
15 listening to the in-car camera. At this point he begins to
16 talk to Investigator Crump, Clark Crump. It takes place in
17 the car, Deputy Morgan is outside, so you begin to hear two
18 different conversations going on at the same time. But if
19 you focus in on what's going on in the car you can hear what
20 is happening in the car. (Video is played again.) "My
21 instinct is to protect my damn job." That's his boss.
22 (Video is played again.) Now, couple of statements before I
23 move on to the next part there. First he says, "What kept
24 Aaron off is he picked that gun up." Well, no one said that
25 he dropped it. The other thing, he says, "I'm the one that

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1 called 911." Now, you can go back and look at the very
2 beginning, the call that comes through on Morgan's radio,
3 it's a shots fired call and it says they say they're the
4 victim of the shooting. I don't think that was Mr. Melton
5 that called him. All right. Now, at another point when.
6 Mr. Melton is up on the stand, and I think Mr. Grier is
7 cross examining him on this, he said he didn't write no
8 statement, wasn't familiar with the statement, didn't write
9 a statement. (Video played again.) Sounds like he was
10 writing something to me. All right. Again, now we talked
11 about Mr. Melton was in the back of the car, he was talking
12 on his phone. Well, this is what you initially heard. (The
13 video was played again.) You've got two conversations going
14 on at the same time, that's good, Deputy Morgan is outside
15 talking to another deputy about the situation. Mr. Melton,
16 you can faintly hear, is inside the car talking to somebody
17 on the cellphone. Well, what's he talking about? Listen
18 close, folks, remember it comes down to credibility. (Video
19 was played.) "He's a smart man, he knows what he's doing"
20 Take it like that. Yeah, it was a setup, who set it up? It
21 wasn't the Hyatts, they were the victim in this situation.
22 Who do you believe? Thank you very much for your time,
23 attention and your service.

24 THE COURT: Thank you, Mr. Frick. Mr. Grier?

25 MR. GRIER: Thank you, Your Honor. Please the Court,

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1 Mr. Cook? I'm going to be as brief as possible, I know this
2 has been a long week for y'all as well. You will recall
3 perhaps, and maybe you won't, but in my opening arguments I
4 alluded to the proceedings that got us to court today, what
5 happened prior to getting to court today, and all of the
6 proceedings prior to getting to court today the evidence was
7 considered in the light most favorable to the State, just a
8 mere suspicion is enough to get you over there at those
9 tables over there. When we get into this courtroom it's a
10 different ballgame and y'all's duty is totally different
11 than what law enforcement's duty is and what a Judge's duty
12 is at a preliminary hearing. In a trial the evidence is --
13 I believe the Judge will charge you today, the evidence is
14 to be considered in the light most favorable to the defense.
15 The constitution is set up to protect freedom and to keep
16 people from being wrongly convicted of crimes. And the --
17 instead of they might be guilty is what law enforcement does
18 when they arrive on the scene and they decide to charge,
19 might be guilty, that's turned on its head in essence in
20 this courtroom when y'all consider the evidence and y'all
21 deliberate and y'all determine guilt or innocence. When you
22 consider the evidence you have -- the burden of proof is on
23 the State, and you have to determine whether after hearing
24 all of the evidence and everything the State has presented
25 whether the defendants might be innocent. The Judge, I

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1 believe, will charge you does the evidence in its totality
2 cause you to hesitate to act in this case, hesitate to
3 convict, if you are firmly convinced -- I believe this is
4 almost verbatim -- if you are firmly convinced of the guilt
5 of the defendants then you must convict. However, if there
6 is the real possibility that they might be innocent you must
7 acquit, the real possibility, so in other words, might they
8 really be innocent, in that case you must acquit. Now, how
9 do we end up spending all of this time and energy and effort
10 to resolve something that evolves out of a dispute over
11 whether somebody is being respected and whether a man's
12 castle is being respected over a dusty road? Well, I think
13 if you spent a lot of time in this courtroom you can see
14 that usually those are the kinds things that we end up in
15 courtrooms about when it comes down to the nitty gritty, and
16 there are difficulties between people. But Mr. Michael
17 Hyatt, he lives on a dirt road in a trailer in a humble home
18 that's not very far off of a dirt road, and as you heard he
19 made a lot of efforts to, you know, ask people to respect
20 that and the difficulties that that causes him. And, you
21 know, that doesn't justify using violence at all when
22 somebody is not respecting you if that's what it's really
23 about. But I submit to you, yeah, Mr. Hyatt might have been
24 mad about being disrespected and might have been mad about
25 the dust but I think the evidence demonstrates to you just

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1 as convincingly that Mr. Nassrah is mad about Michael Hyatt
2 being mad about the dusty road and complaining to law
3 enforcement and he believes that the Hyatt's had locked him
4 in his gate, he's angry too. So this little thing, you
5 know, gets us into the courtroom today. Now, I think there
6 are a lot of misperceptions on everybody's part that got us
7 in this courtroom today quite frankly, I don't think there's
8 any other way for it to actually culminate in this and I
9 think that's what the evidence demonstrates to you today.
10 And for that reason, you know, people saw things a lot
11 different out there, and you heard that in this courtroom,
12 and you've got the hard task of sorting that out and judging
13 what did and didn't happen and finding the facts of this
14 case, and you're going to see inconsistent statements. And,
15 you know, I know what the State is going to jump up here,
16 Mr. Cook -- and that's his job, is to jump up and say the
17 Hyatts were inconsistent about when the first shot was
18 fired, because as you know, Michael Hyatt testified that
19 Mr. Nassrah fired a shot as he's coming around the truck at
20 Aaron. Now, Aaron testified that's not the way he remembers
21 it, he remembers the first shot being when his dad was hit.
22 You know, maybe just, you know, those are the -- that's the
23 way they remember it. Do I wish as an attorney we didn't --
24 those were consistent? Yeah. You know, that would be great
25 for the defense if Michael Hyatt and Aaron Hyatt had got up

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1 there and said the same thing. Okay. But that's not the
2 way they saw it and they aren't going to get up there and
3 lie, that's not the way they recall it. And so I believe
4 that this inconsistency they told you -- there's nothing
5 inconsistent about what Michael Hyatt told you about that
6 day -- his story hasn't changed. So the inconsistencies are
7 not between the time that this happened and what they
8 testified to in the courtroom. Now, when you look at the
9 inconsistencies in the State's case, you know, there's --
10 the inconsistencies are between what they said on the 16th
11 of September, 2010, and what they said in the courtroom, and
12 what they said on those two different occasions is pretty
13 drastically different, it certainly goes to their
14 credibility. I think that there's -- it appears to me, and
15 I think you would have to consider that when Michael Hyatt
16 came around that truck we know that Kamil had his gun out
17 and that when he saw Mr. Hyatt we believe and submit that
18 Mr. Nassrah -- Mr. Nassrah testified that he fired a shot to
19 stop Mr. Hyatt coming at him. Now -- Michael Hyatt, Michael
20 Hyatt is coming around the truck. If Mr. Nassrah fired a
21 shot as a warning shot he sees Michael Hyatt coming at him,
22 he's got Aaron Hyatt in front of him out here, he fires a
23 shot, from Michael Hyatt's perception, and I don't know, but
24 from Michael Hyatt's perception that shot is in the
25 direction of his son. That may be -- I believe that's where

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1 the confusion about that may rest, and it appears to me that
2 it does. Now, what it does prove is that guess what?
3 Michael Hyatt and Aaron Hyatt didn't get together before
4 this trial and cook up a story so they could have consistent
5 statements, you have got to respect that. One thing that I
6 think is -- when I first looked at this case and I had a
7 question, how did Michael Hyatt -- Michael Hyatt says that
8 he hit Kamil after he got shot? Now, does that -- well, you
9 heard testimony about the state of that gun. It appears
10 that maybe it misfired or it was jammed, and you heard Aaron
11 Hyatt say that Kamil was -- after shooting Michael Hyatt
12 he's looking at his gun. Michael Hyatt caught Kamil by
13 surprise, because Kamil I don't believe would let Michael
14 Hyatt shoot (sic) him had he been paying close attention to
15 what Michael Hyatt was doing. He thought after he shot
16 Michael Hyatt was through, he shot him, possibly tried to
17 shoot him more again. But yeah, I think it's pretty
18 compelling evidence and certainly the real possibility that
19 Kamil Nassrah got caught by surprise when he got whacked in
20 the head after he shot Michael Hyatt. Now, what else may
21 even support that possibility and that testimony from
22 Michael Hyatt? Whose blood is on this stick? Well, Michael
23 Hyatt's blood is on this stick, and if you believe that
24 after Michael Hyatt was shot that he dropped that stick
25 immediately then the likelihood of his blood being on that

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1 stick doesn't make sense. But what does make a lot of sense
2 is that after Michael Hyatt was shot and he was on the
3 ground he is able to come back and hit -- in defense of
4 himself and his son, that he is able to surprise
5 Mr. Nassrah -- he's shot and he continues to hold the blow.
6 So we know that he continued to have the stick in his
7 possession after he got shot and not before he got shot.
8 Now, what suggests that he didn't have the stick after he
9 got shot? Well, Harlan Melton in his statement, and you'll
10 get to see this, he says that -- he testified that
11 Michael -- that Aaron picked up the stick afterwards and
12 that Aaron Hyatt testified to that as well. Now, that would
13 have -- if Michael Hyatt dropped the stick when he was shot
14 he didn't get blood on it, he didn't hit Mr. Nassrah after
15 he got shot if that is the case, I believe that's what that
16 blood on that stick proves to you. Mr. Frick has been
17 through the inconsistent statements, but a couple of them I
18 want to point out and remind you of what I think really go
19 to the credibility of the testimony as well, is that
20 according to Mr. Melton he's on the tractor when Mr. Michael
21 Hyatt runs by him. Now, if Michael Hyatt has intentions of
22 doing harm to anybody he's got Harlan Melton sitting on the
23 tractor as he runs up behind him and he could have certainly
24 smacked Mr. Melton right there while he is sitting on his
25 tractor. Michael Hyatt says that's the reason he ran up

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1 there, he sees Harlan Melton get off his tractor and he is
2 like at that point, "Oh, I've got to get up there." Harlan
3 Melton's version of that is totally inconsistent, that
4 Michael Hyatt went past him, got up there to the truck and
5 hit Kamil and took him that long and he was able to get
6 around the other side of that truck, go around between the
7 trucks and around the other side, open the door and that's
8 when it happened. It makes no sense and no evidence
9 supports it, and in fact, it's not consistent with his prior
10 statement that Michael Hyatt ran up and dragged Kamil out of
11 the truck and then hit him. I don't think you forget that.
12 It's inconsistent between the time it happened and today,
13 you've heard all of the evidence. I don't think I can say
14 anything else. I think you've heard it all and you're going
15 to have to sort it out now. I think those are all of the
16 compelling points that I want to make, Mr. Frick has already
17 pointed out all of the things I believe I would like to say
18 here today. But, you know, if Michael Hyatt's intention was
19 to go -- when he went to find out what's going on up Merle
20 Lane from his house, if his intentions are to go up there
21 and do harm to anybody, if he and his son have cooked up a
22 scheme to trap Mr. Nassrah and Mr. Melton and to old school
23 them, why does Aaron Hyatt show up barefoot without his gun?
24 It just makes no sense that they cooked this up and that
25 that was the intention of anybody to trap them and to old

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1 school them, it just does not make sense. And, in fact,
2 looking at the evidence in this case, you know, you could --
3 the same facts and what you've heard in this courtroom could
4 have been a trial of Mr. Nassrah, he could be the one in the
5 courtroom today if the law had chosen to take the facts and
6 the statements and the same evidence, there's enough to
7 create a suspicion of guilt that Kamil Nassrah intended to
8 harm the Hyatts, the same evidence supports that finding.
9 But no, you heard on the video a minute ago after it was
10 sorted out what his employee said about Mr. Nassrah. Mr.
11 Nassrah knew what to do and he is a smart man, he knew what
12 to say, they knew what to say, they knew what version to
13 tell, they had the opportunity to do it, to put Michael
14 Hyatt and Aaron Hyatt in this courtroom today with these
15 charges. Thank you for your service. I ask you to find
16 Michael Hyatt -- both the Hyatts not guilty.

17 THE COURT: Thank you, Mr. Grier. Solicitor?

18 MR. COOK: Thank you, Your Honor. One moment to set
19 up?

20 THE COURT: All right.

21 (Break in proceedings.)

22 MR. COOK: I know all of y'all have seen of all of
23 these videos multiple times, but there's one important thing
24 that goes along with this whole case is time. Michael Hyatt
25 says that Kamil and Harlan Melton come up in his driveway,

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1 park their vehicles, get off their vehicle, walk up in their
2 yard, three, four or five minutes, threaten him, get back in
3 their car, drive down the road, stop. Aaron Hyatt says
4 they're up there stopped five minutes chasing him in
5 circles, then this whole incident occurs. So you add that
6 up, we're looking at ten or 11 minutes from the time they
7 locked the gate, go up, allegedly threaten Mr. Hyatt in his
8 yard, go down, chase Aaron around, all of this ensues and
9 they're laying this out in ten or 11 minutes. Well, Deputy
10 Morgan's in-car camera has a clock on it, and before I start
11 playing it I'll show you to what look for because it's at
12 the beginning. Kamil testified at the beginning, he said,
13 "We had a whole crew out there, everybody else had left and
14 we were the last ones to leave that day, we were a few
15 minutes behind, three trucks had already gone. Well, when
16 Officer Morgan leaves his traffic stop, turns around to go
17 to Merle Lane you're going to see three trucks pulling hay
18 come past him as soon as he starts going towards Merle Lane.
19 Notice in the top right corner right now it's at 9:00, 9:01,
20 9:02, keeping watching that. (The video was played.) Look
21 here at the intersection, here comes a tractor pulling hay.
22 There's another one. There's another one. We're at 9:25
23 right now. Deputy Morgan is pulling back on Merle Lane,
24 notice what happened when he pulls up. 12:42, it was about
25 three when he got there. Now, from the time those trucks

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1 left Merle Lane and got where Donnell and Kamil had already
2 come out of the field, locked the gate, gone up there,
3 threatened him a little while, gone up the road, chased
4 Aaron a little while, shot at Michael, called EMS and called
5 the sheriff's department, all of that happened, all of that
6 in three and a half minutes. He was out there with that
7 stick, he said he had this stick and waving it around at
8 them, maybe it just rolled on by. Now, they didn't stop out
9 there, and Aaron, he called him when the trucks were over
10 there and Aaron came flying over there. Michael Hyatt, you
11 could see fishtail marks out of his driveway, where they got
12 them conveniently and they stopped in between the two
13 driveways right out in front of the house. Now, Aaron said
14 he couldn't see Kamil coming. Well, look how much further
15 up he is than Deputy Morgan. Look how -- unless that hay is
16 flying at him you can't see it right now because Aaron's
17 truck is sitting there. Well, he wants us to believe that
18 he didn't see that truck coming. And conveniently when he
19 gets up here today the reason he didn't get out of the way
20 is because his truck breaks down. Seems like every time
21 that Kamil and the Hyatts have something happen his truck is
22 broken down. On the road on the 13th when they allegedly
23 locked the gate Aaron's truck is broke down. Aaron's truck
24 is sitting in the road every time something happens. Now,
25 look how close he is to Kamil's truck. All he had to do was

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1 pull over to the left and let him go through. If his dad
2 did say they were here and they were threatening me, they're
3 gone by then, he knows they're on the way out, he knows
4 that's Kamil's truck, obviously they didn't do anything to
5 his dad. But he needed to pull all of the way up just
6 enough past that driveway to where his truck conveniently
7 stalled or whatever it did, broke down, shifter was broke
8 off or whatever he said happened to it. Apparently it won't
9 move anymore. He said that Kamil -- the first thing he said
10 was, "Move or you're gone to die." Now, why would Kamil
11 just pull a gun on Aaron Hyatt? Mr. Grier said Kamil was
12 mad because the Hyatt's are mad. Was that enough? Kamil is
13 going to pull a gun on him because he's mad that they're mad
14 at him? He didn't get out and pull a gun on him. If he did
15 why would Michael Hyatt get out of his truck? He said, "Man
16 pulled a gun on me the thing I'm going to do is get out of
17 the way." He didn't get out of the way, he got in the way.
18 He's in the truck, lean over, they're not going to shoot
19 you. He steps out the door and is looking right at it, and
20 then he says, "My first instinct is to run." He goes behind
21 the truck and is peaking at Kamil. If Kamil wanted to shoot
22 him he would have walked over there and shot him, they're
23 standing right there. Aaron said, "My instinct was to run."
24 He never ran anywhere. He had a whole road behind him where
25 there's cars lined up back there that weren't there

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1 previously, he could have took off running. If he says that
2 he can take off the other way, dive over a barbed wire fence
3 and ran through the woods he sure is capable enough to run
4 down a road where nothing was there. He said, "I didn't
5 have shoes on and the gravel hurt my feet." What does he
6 expect when he goes through the woods? Does he expect a
7 cleaner path through the woods than a road that's gravel?
8 Just run back down the road. He even said to Captain
9 Bailey, he said, "I don't know about you but somebody pulls
10 a gun on me I'm going to be -- you've got to be Wyatt Earp
11 to shoot me because I'm going to be running, taking off."
12 He didn't run, he was there the whole time. He said that
13 they were running back and forth around the truck and I said
14 earlier it was like a cartoon and he said Harlan Melton and
15 Kamil, they were running this way and they bumped into each
16 and he goes this way, he's got enough time to get away. If
17 there's two of them, if one goes this way and the other one
18 goes this way they're going to catch him on the other side.
19 But apparently Kamil and Mr. Melton weren't smart enough for
20 one to take one side and one to take the other and we're
21 going to meet him over there, they just run around in
22 circles. That doesn't make any sense. If Michael was in
23 danger -- excuse me -- if Aaron was in danger he would have
24 ran, ran somewhere, ran in the woods or ran to Mr.
25 Truesdale's house which is right down here, the gate is

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1 open, he could have got down there. He said he was going to
2 jump over the barbed wire fence. He could walk to the
3 neighbor's house, knock on the door and say they were out
4 there and going to shoot him. He didn't do that because
5 that's not what happened. He pulled up close enough to
6 Kamil's truck where he couldn't go anywhere because he knew
7 his dad was coming anywhere from the other way. Those
8 fishtail marks, Michael Hyatt flew down there, he already
9 had the stick in his hand. Now, another thing they talked
10 about is credibility. They showed video and they split up
11 audio and took the one track where you can hear Harlan
12 Melton say, "I jumped off to protect my job." They want you
13 to believe that Darnell -- I'm interchanging them -- that he
14 is so biased to testify and make up this stuff about the
15 Hyatts because that's his job. Now, no offense to Harlan
16 Melton, but he's a farm hand and if Mr. Nassrah is not going
17 to put him to work somebody will. Now, that's their
18 relationship, they're employee/employer and they still work
19 together, he's been working for Kamil. On the other hand
20 look at this bias, that's a father and son. Kamil has
21 employed Harlan Melton for five or six years. Well, he's
22 been his son for over 30. Now, if I -- something happens,
23 Solicitor Barfield is my boss, I may be inclined to be
24 favorable towards him, but I'll tell you right now I would
25 be a lot more favorable towards my father than my employer,

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1 and that's what we've got here. And these two are up here
2 facing the same charge, of course he's going to be more
3 biased to him than Harlan Melton to Kamil. I mean, if you
4 want to judge credibility take that into consideration, that
5 is the strongest bias you can come up with is family, those
6 ties are thick. Now, speaking of family, Mr. Grier --
7 excuse me, well, one of them asked them, said, "What do you
8 call your dad?" And he said -- because Kamil said he heard,
9 kill him daddy, kill him daddy, and he said, "Aaron, what do
10 you call your father? Pop." Well, I mean, let me just play
11 a part of this video for you. He's going to give a
12 reenactment of what happened, listen to how many times he
13 calls him pop when he's referencing his daddy. (The video
14 was played.) Dad. Dad. Dad. He still hasn't called him
15 pop. Called him dad. I'm not going to play the whole
16 thing, he calls him dad every single time. The only time he
17 calls his pop is when they asked him what do you call your
18 dad after they had introduced the question by saying, "Kamil
19 said kill him daddy, what do you call your dad? Pop." He
20 didn't call him pop, he never called him pop except when he
21 was sitting up there yesterday or this morning. He didn't
22 call him pop, he never once called him pop. So now go back
23 to what Kamil heard, "Kill him daddy, daddy." Dad is a form
24 of daddy which he has called him every single time they've
25 asked him about the situation. And what you just saw again,

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1 his interpretation of the story is they're standing there,
2 Kamil has got the gun, "Dad says, 'Kamil, put the gun down,
3 you're not going to shoot nobody.' Boom, first shot he
4 shoots him." So that's another inconsistency here, he's
5 calling him two different names. Michael Hyatt says he goes
6 down there and Aaron is running around and Kamil is shooting
7 at him, so he goes up and tries to knock the gun out of his
8 hand and falls down, and as he is getting up he gets shot,
9 and after he gets shot he hits Kamil. Aaron says they're
10 all standing there, there's not a struggle going on.
11 Michael Hyatt's version of the story, he's swinging this
12 way, falling down, gets up and is getting up and gets shot.
13 Aaron Hyatt walked them all through it and pretty much put
14 them in position of where it all happened, standing there
15 just kind of talking, "You're not going to shoot anybody,
16 put the stick down." Shoots him. Now, Aaron Hyatt never
17 said he got shot at. He said they're chasing him around
18 with a gun, which that didn't even happen either. The
19 stories are completely different. Mr. Grier said it's
20 credible that their stories are different because that means
21 that they haven't sat down and worked up this plan that this
22 is what we're going to say. You don't get points for coming
23 up here with different stories and get credibility because
24 you don't say the exact same thing. They didn't say the
25 exact same thing because neither one of them knows what

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1 they're talking about and they're both trying to come up
2 with some story and account for the things that happened in
3 the real story. And there's a whole debate -- we talked a
4 whole day about is Kamil in the truck, was he out of the
5 truck, he's on the running board. Aaron Hyatt is even
6 saying, "Kamil is standing on the running board with the gun
7 pointed at me." He puts Kamil on the running board with the
8 door open, so he's got that part. Then when they're cooking
9 up these stories they've got to account for multiple
10 gunshots. Well, did he shoot dad first and then I was
11 running off and I just heard one, I don't know where it
12 went. Harlan Melton and Kamil told you where the shots went
13 and they were found where they said they shot them. There
14 were two .380 casings found on the scene. And this diagram
15 that Ken Taylor prepared, y'all look at it, it's too small
16 for me to go around and show you right now, but it's in this
17 general direction right here where Bill Truesdale's driveway
18 is and where Aaron stopped and Kamil's truck is. The two
19 shell casings are found right here adjacent in the front of
20 the trucks. Kamil said he got hit in the head, Harlan
21 Melton said Kamil got hit in the head and stumbled out
22 between the trucks and ended up back in Bill Truesdale's
23 driveway, he's coming through and he ends up right here.
24 There's a shell casing up here and there's one back this
25 way. What's Kamil's story? He comes to right here, pulls

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1 his gun out, tells him to back up and he shoots in the
2 ground, it's a warning shot. What did Harlan Melton say on
3 his secret statement when they separated the audio? He
4 said, "Do what you've got to do. And what are you going to
5 do. He won't stop, you've got to shoot him." Michael Hyatt
6 didn't stop, Kamil is backing up, Kamil says he's running
7 backwards in his statement, you can read it, it's in there
8 in that stack of papers, he's backing up, Mike keeps coming
9 with that stick, he shoots him right there in the side and
10 he goes down. There's drops of blood going back, back to
11 where he says this is the post where Kamil was found.
12 Kamil, when Deputy Morgan pulls up he's standing over here,
13 and you can see him, yeah, he's standing up. On that video
14 you can see that Kamil does this number right here, he's
15 obviously hurt. But the blood -- there's blood drops coming
16 right here where Kamil ended up. And they made a point
17 about Harlan Melton said Kamil is pretty bloody at this
18 point when he's over there by the trucks. We showed you the
19 hat, the hat has got blood soaked all through it. There's
20 no question this is what Kamil got hit with, you know,
21 that's what is considered to be a blunt object. It's not
22 the actual pick or whatever that hooks on this thing and
23 Mike Hyatt is digging up dirt and whatever he does with this
24 thing and the other half that's got the hook on it, but it's
25 not a razor blade, it's not something sharp. You can cut

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1 yourself shaving and blood flies everywhere, it's not that
2 bad, it's sharp, it's a cut and it bleeds out. When you can
3 get hit with a blunt object it hits solid and blood doesn't
4 go shooting -- there was blood, when he was still there that
5 blood is soaking in that hat. You can see the picture a
6 couple of days later when he came to the sheriff's office,
7 he had a pretty good bit of hair back there. He's got a
8 little bit more than he's got now, that blood is soaking up
9 in there, it's soaking in the hat. It takes a little while
10 for that to come out and start flying all around. There's
11 not any blood up there. The blood -- it's coming and it
12 ends up down here where Kamil is, where he ends up, he's
13 bleeding, it's coming out. It took a little while for that
14 blood to get out, and Deputy Morgan said when he got there
15 it's not a big bloody, blood bath scene, not that much
16 happened. Kamil is on the running board, he gets hit in the
17 head, comes around, sees Mike, shoots in the ground, he
18 won't stop and he shoots him. And they want to talk about
19 the gun, it's apparently jammed and that's how Mike Hyatt
20 had time to hit Kamil because he's down here fooling with
21 the gun and it's ready to fire. Kamil told you it was ready
22 to fire because he told Aaron Hyatt, "You'd better not move
23 or I'll shoot you, too." He had one in the chamber and he
24 was going to use it on Aaron if he didn't leave him alone.
25 He's sitting here waiting -- Donnell called the deputies,

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1 you can hear it on the in-car, they got another call come
2 in, the Hyatt's called and Donnell called him. Kamil, he
3 wasn't putting that gun down until the deputies arrived,
4 that's why it's ready to fire. He stays, "You stay right
5 there or I'll shoot you, too." He didn't know what Aaron
6 was going to do. Once the deputies come up, you see Kamil
7 has got his hand and he points right here, he points to the
8 gun, he told them where it was. As soon as they got there
9 he put it down. There's another gun they want to talk
10 about, it's a .22 in the glove box. Oh, there is a .22 in
11 the glove box, Kamil told you that he always has one in
12 there. He told you he's always got a .380 on the side, he
13 has had it for 37 years, he has got a concealed weapons
14 permit. He farms, he's out in the field, coyotes or
15 somebody can come up on him, you don't know what's going to
16 happen out there. And this other business, he runs a
17 convenient store and a gas station, if you're long enough
18 that's a dangerous business too. He keeps that on there to
19 protect himself. Unfortunately he had to use it to protect
20 himself against Michael and Aaron Hyatt, and that .22 that's
21 in the glove box, it was in the glove box when they went out
22 there and it was in the glove box when the deputies got
23 there. Nobody took that gun out. If Harlan Melton ran up
24 there and his intention was to get that gun out and injure
25 somebody, then why would he have a crescent wrench instead

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1 of getting the gun if it's right there and that's his
2 intention. Harlan said, "I got off my tractor and ran up
3 when Mike came by and I saw it through the passenger's
4 side." Is that the most efficient way to get up there? No,
5 probably not. Could he have probably jumped on Mike Hyatt
6 when he went up to the driver's side? Probably. Well,
7 Donnell said he's got a steel rod in his leg but he's not
8 the fastest one either, nobody out here is moving real
9 quick. But if he came up to the passenger's side and his
10 main goal was to go in the glove box and get a .22 it's
11 still there. If he wanted to hurt somebody he would have
12 gotten it out, he wouldn't be standing around with a big
13 wrench. He had the wrench when they came up and Kamil had
14 the gun when deputies came up because they didn't know what
15 else was going to happen and they had a standoff until
16 everybody got there. Now, the whole dust issue, that's what
17 started the whole thing. Is it important? No, it is not.
18 I don't care how fast Kamil's tractor goes, how fast Mr.
19 Grier's tractor goes, nobody can agree on how fast tractors
20 can go and it has absolutely nothing to do with who hit who
21 first. Was Kamil going over ten? Probably. Does he stir
22 up dust? Probably. You saw how big his truck was and he's
23 got a tractor, it's September, it's dry, it's dirt, I mean,
24 yeah, there's dust flying up. Is Mr. Hyatt mad? Yes, he's
25 mad. He's made it very clear that he's mad and he's tired

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1 of Kamil coming through there. There's been issues all
2 week. On the 13th, three days earlier, when another
3 incident occurred when Aaron Hyatt's truck was broken down
4 out in front of the road again, how did Kamil handle that?
5 Did he pull a gun out then? No. He called law enforcement
6 and said there's a situation out here, I need somebody to
7 come out here because that's how he handles things. He
8 understands -- he handles things civilly. If he wanted to
9 pull a gun he could have pulled a gun when they were out
10 there the first time, but he called law enforcement and
11 that's how he handled it and that's what he was going to do
12 this time. But unfortunately when he gets his phone out as
13 he told you he said, "Aaron is standing out in the road, he
14 won't get out of the way, I get my phone to call the police
15 but I never get to call because I feel like I got shot in
16 the back of my head." Now, we can debate about if that's
17 the back of his head or side of his head, it's right here.
18 And obviously everybody's wounds heal in three and a half
19 years, you can't see it that well and he's not going to have
20 a cut still on his head from three and a half years ago. It
21 has healed up but that doesn't mean it didn't happen. And
22 obviously it's closer to the back than the front which is
23 consistent with Michael Hyatt walking up and hitting him in
24 the back of the head. You know, Kamil is here, looking at
25 him he's fine, he got up here on the stand and he told you

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1 what happened. And now understand, this is an attempted
2 murder case and the reason he -- it's an attempted murder
3 case is because he is here. Now, you don't look at the end
4 result of what happened to determine if they did it or not.
5 You know, if Kamil is out here with half his face gone and
6 missing limbs and he's still alive it's still attempted
7 murder, it's what they did at the outset or what they
8 intended to do is what they're charged with. They don't
9 look at what happens in the end and say, "Well, he's not
10 hurt that bad, we'll just charge him with this." They look
11 at it and say, "Well, what did they do?" Luckily you don't
12 give the Hyatt's credit for having different stories, you
13 don't take points away from Kamil for being healthy today.
14 You look at what they intended to do and what they did, not
15 the injury, it's what they did. And the Judge is going to
16 tell you what the law is, I just want to walk through a
17 couple of things with you. They're both charged with
18 attempted murder. That's the law on attempted murder. A
19 person, in this case persons, who with intent to kill
20 attempts to kill another person with malice aforethought
21 either expressed or implied commits the offense of attempted
22 murder. Now, malice aforethought is going to be a big issue
23 that you're going to have to debate on. Malice is ill will.
24 Obviously there's ill will between these, they've been
25 arguing all week and they said they've been mad about it for

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1 two or three years about the dust coming up. Aaron Hyatt
2 even characterizes his dad as old school. When they asked,
3 "What do you mean old school? Old school just means you go
4 out and fist fight and that's the end of it." And he said,
5 "Don't do anything until I get there." He's already cast
6 this -- if you take it in the light most favorable to the
7 defendant, Aaron Hyatt is not doing to a good job of keeping
8 that on his dad, he's already saying, "My dad is old
9 school." He said, "My dad is ex-military, he's an old man,
10 he raises hell, he complains. He doesn't deal with this
11 well." Well, how does he deal with it? He hits him in the
12 back of the head with an axe handle that's sitting up here,
13 that's how he deals with it. You know, Kamil doesn't deal
14 with it like that, Kamil calls law enforcement. Not these
15 two, this is how they go about it. And I'm not describing
16 him like that, his own son is the one telling you that's how
17 he handles his issues. Now, you're going to be instructed
18 that you can find one Hyatt or both Hyatts guilty of
19 attempted murder or the lesser-included offenses. And what
20 that means is you start out you've got murder, attempted
21 murder, assault and battery of a high and aggravated nature,
22 assault and battery first degree, second degree, third
23 degree. Now, they're charged with attempted murder because
24 it's the State's position, it's the victim's position that
25 they were out there to kill him. And the reason we believe

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1 that and that the victim believes that is what he heard,
2 "Kill him, daddy. Your days are numbered. You're not going
3 anywhere. Where is your escort now?" You know, the Hyatts
4 testified that everything was fine all week with law
5 enforcement out there, when they're not out there this
6 happens. Aaron Hyatt, "Kill him, daddy." Well, the intent
7 to kill, that's -- there it is, he said, "Kill him," and
8 that's what he heard. He was there, we wasn't there, he
9 heard that. And he didn't say, "Kill him, pop," he said,
10 "Kill him, daddy," because that's what he calls him. It's
11 what he called him the whole time we've been listening to
12 him. I told you about the lesser-included. This is assault
13 and battery of a high and aggravated nature. There's a lot
14 on the screen right now and I want to walk you through it,
15 I'm going to refer to it as ABHAN. "A person commits the
16 offense of assault and battery of a high and aggravated
17 nature if a person unlawfully injures another person and
18 great bodily injury to another person results, or the act is
19 accomplished by a means likely to produce death or great
20 bodily injury." That or, I've got it underlined, I've got
21 it in bold letters. A person unlawfully injures, up at the
22 top, Kamil is injured, he got hit in the head. Y'all saw
23 that, he told you he got airlifted, he got nine staples on
24 his head, there's blood all over his hat. He told you they
25 hit him in the head. Now, great bodily injury, you've got

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1 down at the bottom, it tells you what great bodily is. It
2 means injury which causes a substantial risk of death or
3 causes serious permanent disfigurement or protracted loss or
4 impairment of the functions of a bodily member or organ.
5 Substantial risk, that's what I said earlier. Kamil is not
6 dead but he sure well could be. He got hit in the head.
7 Michael Hyatt didn't hit him in the foot, didn't hit him in
8 the knee, didn't hit him in the leg, didn't him in the arm,
9 didn't hit him the back, he hit him in his head. That's one
10 thing we all know, if you get hit in the head that's where
11 the most damage is going to come from. You can see on Randy
12 Morgan's in-car video when EMS comes up Aaron Hyatt says,
13 "He's been shot." They said, "He's got a head injury."
14 Where did EMS go? They went to the head injury. They
15 treated the head injury before the gunshot, that shows you
16 how serious it is. EMS picked him over Michael Hyatt
17 because he had blood coming out of his head. Luckily he
18 wasn't greatly injured, but it doesn't say you have to be,
19 it says the substantial risk of death. He hit him in the
20 head, luckily where he hit him it didn't kill him. And you
21 go back up and it says the act is accomplished by means
22 likely to produce death. Well, what's the means? The means
23 is this. What's the act? He hit him in the head. There it
24 is. He used a means likely to produce death or great bodily
25 injury, substantial risk. There it is. That's ABHAN.

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1 What's the difference between ABHAN and attempted murder?
2 Intent. I'll submit to you right now that I believe it's
3 attempted murder because he intended to kill him, and he
4 intended to kill him, you can infer that because Aaron
5 stated, "Kill him," and that's as clear an example of intent
6 as you're going to find, somebody actually says, "Let's kill
7 him." But in the event you don't think they tried to kill
8 him and you agreed with what happened as far as we've told
9 you, he hit him in the head, it's nothing less than ABHAN.
10 They're going to instruct you on A and B First, Second and
11 they'll tell you what those are, I'm not going to even tell
12 you what they are because it's not necessary, because what
13 he did doesn't fit those. They're lesser-included's but you
14 don't get to them once you meet the first one. The only
15 difference between that and attempted murder is an intent to
16 kill, and he intended to kill him. I said at the outset,
17 too, that Aaron Hyatt never touched him, and I'm going to
18 tell you again, it doesn't matter, because if he didn't
19 block him in Kamil would never get hit. Aaron is just as
20 guilty as his dad is, he's out there screaming, "Kill him,
21 daddy." He's got him blocked in with nowhere to go, Michael
22 Hyatt pulls up in the back and you've heard the rest 50
23 times. So lastly, proof beyond a reasonable doubt, they
24 harped on that and it is a high burden. It's not an
25 impossible burden, it is beyond a reasonable doubt, it's not

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1 beyond reason to doubt. There is a reason to doubt
2 everything. There is nothing I could get up here and tell
3 you that you would have no reason to doubt, that's
4 impossible. If that's the standard then there's no point in
5 me being here because I could never prove anything to you
6 beyond a reason to doubt, there's a reason to doubt
7 everything. But beyond a reasonable doubt, a doubt for a
8 reasonable person to hesitate to act, that's a high standard
9 but we've met that standard. Kamil met that standard,
10 Harlan Melton met that standard, Investigator Taylor,
11 Investigator Steele, Deputy Morgan, Deputy Lilly, everything
12 they've told you, you put it all together, that's the only
13 story that makes sense. The Hyatts didn't even -- their
14 story makes no sense, they don't even have the same story.
15 Donnell and Kamil told the same story. According to them
16 that's not beneficial when everybody tells the same story,
17 but it's easy to tell the same story when you're telling the
18 truth. If that's what happened, that's what happened, and
19 they told you what happened, and I ask that you find both of
20 them guilty of attempted murder. Thank you.

21 THE COURT: All right. Thank you, Solicitor. Ladies
22 and gentlemen, we've been in here a little over an hour and
23 a half for closing arguments and I want you fresh before I
24 charge you the law because there is a good amount of law to
25 charge to you, so let's take a brief recess to refresh

CLOSING ARGUMENTS

1 ourselves before I charge you. Again, do not begin
2 deliberations, do not talk about the case. Thank you.

3 (The jury left the courtroom.)

4 MR. GRIER: Judge, I want to make an issue as a matter
5 of law on the charge for assault and battery third. Simply
6 put when you heard that -- and I don't know if the Court
7 heard when Harlan Melton said, "He has only got a little
8 skin on his head."

9 THE COURT: I heard that in the closing argument of
10 Mr. Frick, I didn't hear it in the evidence phase of the
11 trial. However it was pointed out in closing argument, it
12 was from the video that was in the evidence.

13 MR. GRIER: Right. So it's in evidence that it was
14 said and I would submit that that creates a situation where
15 the jury could find that it is not a moderate injury.

16 THE COURT: All right. Solicitor, what is your
17 position on that?

18 MR. COOK: Your Honor, it's in evidence and I've argued
19 against it already so if you want to put it on there --

20 THE COURT: Well, give me the argument you just gave to
21 the jury. It's not the actual result of what happened --

22 MR. COOK: Right. The charge is --

23 THE COURT: -- it is the intent.

24 MR. COOK: Right. The charge is based on what they
25 intended to do, not the result.

JURY CHARGE

1 THE COURT: Right. I'm not going to revisit my ruling
2 on that, motion denied.

3 (The jury returned to the courtroom.)

4 THE COURT: Ladies and gentlemen, the reason I'm down
5 here right in front of you, in my years of experience I find
6 it's more effective when the Judge gives you the charge
7 right up in front of you than me sitting way over there with
8 that talking head theory. Okay. There's going to be a lot
9 of reading I have to do to you and I'll try to not be buried
10 in the paper while I address you and it's for that reason
11 that I'm down here. Okay. So listen very carefully to what
12 I say. You're not going to have these charges back there
13 with you but this is going to be the law which governs your
14 deliberations. And Mr. Foreman and members of the jury, you
15 have heard the testimony, the evidence and the arguments of
16 the State and the defendant -- defendants, I will now
17 explain to you the law that applies to this case. Now,
18 under the constitution and laws of South Carolina you are
19 the finders of the facts in this case. I do not have the
20 right to pass upon the facts or even to express any opinion
21 that I might have as to them because this is a matter solely
22 for you, the jury, to determine. Now, as jurors then it is
23 your duty to determine the effect, the value, the weight and
24 truth of the evidence presented during this trial. Now, you
25 are also the judges, the sole judges, of the credibility,

JURY CHARGE

1 also known as the believability of the witnesses who have
2 testified and of the evidence which has been presented
3 during this trial. In passing upon the credibility you may
4 take into consideration many things such as the demeanor or
5 the manner of the witness, the way he or she testifies,
6 whether or not the witness had reason to be biased or
7 prejudiced, or whether or not the witness' testimony was
8 contradicted on the one hand or was supported and
9 collaborated on the other hand. All of these things you
10 will consider bearing in mind that you should give the
11 defendants the benefit of any reasonable doubt. It becomes
12 your duty as jurors then to analyze and to evaluate the
13 evidence and determine that evidence which convinces you of
14 its truth. Now, as the trial judge it's my responsibility
15 as I have done to preside over this trial and to rule upon
16 the admissibility of the evidence offered. You are to
17 consider only the testimony which has been presented from
18 this witness stand together with any of the exhibits which
19 have been made a part of the record. Just as I'm doing now
20 I have the additional duty to charge you the law applicable
21 to this case, and as the presiding judge I am the sole judge
22 of the law in the case. It is your duty as jurors to accept
23 as correct and to apply the law as I now state it to you and
24 then reach your verdict. And finally I charge you in this
25 regard that you should not be concerned with what you think

JURY CHARGE

1 the law ought to be, but rather what I charge you the law
2 is. Now, there are two types of evidence which are
3 generally presented during a trial, direct evidence and
4 circumstantial evidence. Direct evidence is the testimony
5 of a person who claims to have actual knowledge of a fact
6 such as an eye witness. It is evidence which immediately
7 establishes the main fact sought to be proven.
8 Circumstantial evidence is a proof of a chain of facts and
9 circumstances which indicate the existence of the fact. It
10 is evidence which immediately establishes collateral facts
11 from which the main fact may be inferred. Circumstantial
12 evidence is based upon inference and not on personal
13 knowledge or observation. Well, what does that mean? For
14 example, if on a winter night you're at your house and you
15 look outside and you see brown grass on your lawn, you go to
16 sleep, go to bed, wake up in the morning and you see snow
17 and footprints on your lawn. First, it snowed. Secondly,
18 somebody walked on your front lawn. These are things that
19 you can infer even though-you didn't see it snow and even
20 though you didn't see somebody walking on your lawn. The
21 law makes absolutely no distinction between the weight or
22 value to be given to either direct or circumstantial
23 evidence, nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You should
25 weigh all of the evidence in the case, and after weighing

JURY CHARGE

1 all of this evidence if you are not convinced of the guilt
2 of the defendants beyond a reasonable doubt you must find
3 them not guilty. Now, there has been evidence presented
4 that witnesses have made prior statements which are not
5 consistent with their present testimony in this courtroom.
6 You may use this evidence to decide whether to believe the
7 witness. You may also use evidence of the earlier
8 contradictory statement to determine the truth of those
9 statements. It's up to you, ladies and gentlemen, to decide
10 whether or not to believe the earlier statements or the
11 testimony given at trial. Now, if a witness is shown to
12 have knowingly testified untruthfully concerning any
13 material matter you may consider this in determining whether
14 or not to trust their testimony or not, you may reject all
15 of their testimony or give part of their testimony the
16 weight you think it deserves. Now, the fact that the
17 defendants were arrested, charged and indicted is not
18 evidence in this case and cannot be considered by you as
19 evidence of guilt, nor does it create any presumption or
20 inference of guilt. The indictment is simply the formal
21 written instruments which contain the charge or charges made
22 against the defendants. An indictment is the formal written
23 document by which a case is brought in to court. Now, as
24 you know the defendants have pled not guilty to the charge
25 in the indictments, and those pleas place the burden on the

JURY CHARGE

1 State of South Carolina to prove the defendants guilty. A
2 person charged with committing a criminal offense is never
3 required to prove themselves innocent. I charge you that it
4 is an important rule of law that a defendant in a criminal
5 trial no matter what the seriousness of the charge may be
6 will always be presumed to be not guilty of the crime for
7 which the indictment was issued unless guilt has been proven
8 by evidence satisfying you, the jury, beyond a reasonable
9 doubt. Now, this presumption of innocence does not end when
10 you begin your deliberations, but it accompanies the
11 defendants throughout the trial until you have reached a
12 verdict of guilt based on evidence satisfying you of their
13 guilt beyond a reasonable doubt. This presumption of
14 innocence, ladies and gentlemen, is like a robe of
15 righteousness placed about the shoulders on each defendant
16 which remains with them until it has been stripped from them
17 by evidence satisfying you of their guilt beyond a
18 reasonable doubt. Now, this presumption of innocence is not
19 a mere legal theory, it's not just a legal phrase, it is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 their guilt beyond a reasonable. So, what is a reasonable
23 doubt in the law? A reasonable doubt is a doubt which makes
24 an honest, sincere and conscientious juror in search of the
25 truth to hesitate to act. Proof beyond a reasonable doubt

JURY CHARGE

1 must therefore be proof of such a convincing character that
2 a reasonable person would not hesitate to rely and act upon
3 it in the most important of his or her own affairs. Now,
4 proof beyond a reasonable doubt can also be described as
5 proof that leaves you firmly convinced of the defendant's
6 guilt. Now, there are very few things we know in this world
7 with absolute certainty, and in criminal cases the law does
8 not require proof that overcomes every possible doubt. So
9 if based upon your consideration of the evidence you are
10 firmly convinced that either or both of the defendants are
11 guilty then you must find them guilty. And if on the other
12 hand you think there's a real possibility that either or
13 both are not guilty then you must give them the benefit of
14 the doubt and find them not guilty. If a crime is committed
15 by two or more people who are acting together in committing
16 a crime, the act of one is the act of all. A person who
17 joins with another to commit an unlawful act is criminally
18 responsible for everything done by the other person which
19 happens as a probable or natural consequence of the acts
20 done in carrying out the common plan and purpose. For
21 example, two people can be guilty of killing another person
22 when only one of the two had a gun, there was only one
23 bullet and only one of the two fired the shot that caused
24 the death. If two or more people are together, acting
25 together and assisting each other in committing the offense,

JURY CHARGE

1 the act of one is the act of all, or as it is sometimes
2 said, the hand of one is the hand of all. Now, mere
3 presence at the scene is not sufficient to prove someone
4 guilty of a crime. A defendant's presence where a crime is
5 being committed or mere association with a person who
6 commits a crime does not make a defendant an accomplice or
7 an aider or abetter of the person committing the crime. The
8 burden is on the State to prove every element of the crime
9 charged. So if you find after reviewing all of the evidence
10 that the State has proved that one of the defendants was
11 only present at the scene of the crime and that the State
12 has not proved beyond a reasonable doubt any other
13 participation of that defendant in the crime, then you must
14 find that defendant not guilty. The law is that proof of
15 mere presence at the scene of the crime is not sufficient to
16 find someone guilty. Both defendants are charged with
17 attempted murder. In order to prove this crime the State
18 must prove that the defendants attempted to kill another
19 person with malice aforethought either expressed or implied.
20 Malice, ladies and gentlemen, is defined as hatred, ill will
21 or hostility towards another person. It is the intentional
22 doing of a wrongful act without just cause or excuse and
23 with an intent to inflict an injury or under circumstances
24 that the law will infer an evil intent. Malice aforethought
25 does not require that malice exists for any particular time

JURY CHARGE

1 before the act is committed, but malice must exist in the
2 mind of the defendant just before and at the time the act is
3 committed, therefore there must be a combination of the
4 previous evil intent in the act. Malice aforethought may be
5 expressed or inferred. These terms, expressed and inferred,
6 do not mean different kinds of malice, but merely the manner
7 in which malice may be shown to exist and that is either by
8 direct evidence or by inference from the facts and
9 circumstances which are proven. Expressed malice is shown
10 when a person speaks words which express hatred or ill will
11 for another, or when the person prepared beforehand to do
12 the act which was later accomplished. For example, lying in
13 wait for a person or any other acts of preparation going to
14 show that the deed was within the defendant's mind will be
15 expressed malice. Malice may also be inferred from conduct
16 showing a total disregard for human life. If facts are
17 proven beyond a reasonable doubt sufficient to raise an
18 inference of malice to your satisfaction this inference
19 would simply be an evidentiary fact to be considered by you
20 ladies and gentlemen, along with the other evidence in the
21 case and you may give it the weight you decide it should
22 receive. A specific intent to kill is not an element of
23 attempted murder, but there must be a general intent to
24 commit serious bodily injury. Intent means intending the
25 result which actually occurs, not accidentally or

JURY CHARGE

1 involuntarily. Intent may be shown by acts and conduct of
2 the defendants and other circumstances from which you may
3 naturally and reasonably infer intent. Evidence of the
4 character of the act, the character of the instrument used,
5 the manner in which it was used and the purpose it was to
6 have had been accomplished for, the resulting wound or
7 injuries may be considered in determining the intent with
8 which the act was committed. Intent may also be inferred
9 when it is demonstrated that the defendant voluntarily and
10 willfully committed an act, the natural tendency of which is
11 to destroy another's life. Almost done. Assault and
12 battery of a high and aggravated nature, or ABHAN. If you
13 find that the State has failed to prove that either
14 defendant is guilty of attempted murder you must then decide
15 whether the State has proven the lesser-included offense of
16 assault and battery of a high and aggravated nature. A
17 person commits the offense of assault and battery of a high
18 and aggravated nature if the person unlawfully injures
19 another person ~~and~~ great bodily injury to another person
20 results, or the act is accomplished by means likely to
21 produce death or great bodily injury. Great bodily injury
22 means bodily injury which causes a substantial risk of death
23 or which causes serious permanent disfigurement or
24 protracted loss or impairment of a bodily member or organ.
25 Assault and battery first degree. If you find that the

JURY CHARGE

1 State has failed to prove either defendant is guilty of
2 attempted murder or assault and battery of a high and
3 aggravated nature, then you must decide whether the State
4 has proven that either defendant is guilty of assault and
5 battery in the first degree. A person commits the offense
6 of assault and battery in the first degree when the person
7 unlawfully offers or attempts to injure another person with
8 the present ability to do so, and the act is accomplished by
9 means likely to produce death or great bodily injury. Once
10 again, great bodily injury means bodily injury which causes
11 a substantial risk of death or which causes serious
12 permanent disfigurement or protracted loss of impairment or
13 the function of a bodily member or organ. Assault and
14 battery second. If you find that the State has failed to
15 prove that either defendant is guilty of attempted murder,
16 ABHAN or assault and battery in the first degree, you must
17 then decide whether the State has proven that either
18 defendant is guilty of assault and battery in the second
19 degree. A person commits this offense of assault and
20 battery in the second degree if the person unlawfully
21 injures another person or offers or attempts to injure
22 another person with the present ability to do so, and
23 moderate bodily injury to another person results, or
24 moderate bodily injury to another person could result. Now,
25 moderate bodily injury means physical injury requiring

JURY CHARGE

1 treatment to an organ system of the body other than the
2 skin, muscles and connective tissues of the body except when
3 there's penetration of the skin, muscles and connective
4 tissues that require surgical repair of a complex nature, or
5 when the treatment of the injuries requires use of regional
6 or general anesthesia. Almost done. Self-defense. Now,
7 each defendant has raised the defense of self-defense.
8 Self-defense is a complete defense and if it is established
9 you must find the defendants not guilty. The State has the
10 burden of disproving self-defense by proof beyond a
11 reasonable doubt. If you have a reasonable doubt of the
12 defendant's guilt after considering all of the evidence,
13 including the evidence of self-defense, then you must find
14 the defendant not guilty. On the other hand if you have no
15 reasonable doubt of the defendants guilt after considering
16 all of the evidence, including the evidence of self-defense,
17 then you must find the defendant guilty. The following
18 elements are required to establish self-defense. Number
19 one, without fault. First the defendant must be without ..
20 fault in bringing on the difficulty. If the defendant's
21 conduct was the type which was reasonably calculated to and
22 did provoke a deadly assault, the defendant would be at
23 fault in bringing on the difficulty and would not be
24 entitled to an acquittal based on self-defense. Imminent
25 danger. The second element of self-defense is that the

JURY CHARGE

1 defendant was actually in imminent danger or death -- excuse
2 me, was actually in imminent danger of death or serious
3 bodily injury, or that the defendant actually believed he
4 was in imminent danger of death or serious bodily injury.
5 Evidence of prior difficulties between the defendant and the
6 victim may be considered in deciding whether a threat
7 existed and whether the defendant had a reason to believe a
8 threat existed and how serious that threat was. The final
9 element of self-defense is that the defendant had no other
10 probable way to avoid the danger of death or serious bodily
11 injury than to act as the defendant did in this particular
12 instance. The defendant has no duty to retreat if by doing
13 so the danger of being killed or suffering serious bodily
14 injury would increase. A person cannot be required to make
15 an exact calculation as to the degree or amount of force
16 which may be needed to avoid death or serious bodily harm.
17 Therefore in self-defense the defendant has a right to use
18 the force needed to avoid death or serious bodily harm. The
19 force used in self-defense does not have to be limited to
20 the degree or amount of force used by the victim. The
21 defendant has a right to use so much force as appeared to be
22 necessary for complete self protection in which a person of
23 ordinary reason and firmness would have believed to be
24 needed to prevent death or serious bodily harm. Defense of
25 others. Under the law of self-defense, ladies and

JURY CHARGE

1 gentlemen, the defendant may use force in the defense of
2 others. The right to intervene to protect another person is
3 subject to those same rights and limitations as to the right
4 of self-defense. A defendant may use force against a person
5 who assaults a friend, relative or bystander if that friend,
6 relative or bystander would have had the right of
7 self-defense. To show that the person being defended had a
8 right of self-defense it first must be shown that the person
9 being defended and that the defendant were both without
10 fault in bringing on the difficulty. If the conduct of the
11 person defended or the defendant was the type which was
12 reasonably calculated to and did provoke a deadly assault
13 the person would be at fault in bringing on the difficulty
14 and would not have the right of self-defense, therefore the
15 defendant would not have the right to use deadly force in
16 defending that person. The defense of another person is
17 excusable if the defendant had reasonable grounds to
18 believe, and in good faith did believe, that the person
19 being defended was in imminent danger of death or serious
20 bodily harm from the victim. And in deciding whether the
21 person defended actually was or that the defendant actually
22 believed that the person was in imminent danger of death or
23 serious bodily injury you should consider all of the facts
24 and circumstances. Now, Mr. Foreman and members of the
25 jury, I am required to charge you the law as I have done

JURY CHARGE

1 through these instructions which have been given to help
2 guide you to a just and lawful verdict. Now, whether some
3 of these instructions apply will depend upon what you find
4 to be the facts in your deliberations. The fact that I have
5 instructed you on various subjects in this case must not be
6 taken as indicating an opinion of the Court as to what you
7 should find to be the facts or what your verdict should be.
8 In conclusion you have been selected by both the State and
9 the defense to be fair and impartial jurors. It is your
10 duty then in your deliberations to determine the truth in
11 this case giving the defense the benefit of every reasonable
12 doubt. Now, from the facts which you determine them to be
13 true you take and apply the law which I have just given you
14 and thus arrive at a verdict which speaks the truth in the
15 case. I have told you the standards to apply to the charges
16 of attempted murder, ABHAN, assault and battery first degree
17 and assault and battery second degree, you've heard the
18 evidence and you should consider the evidence separately as
19 to each defendant and now you have heard the law. Whatever
20 your verdict as to the indictments, guilty or not guilty,
21 Mr. Foreman, you will indicate it by marking the jury's
22 decision in the blank on the verdict forms I'm fixin' to go
23 over with you, and then you will then sign and date the
24 verdict form. Remember that although the foreman is the
25 only juror who writes the verdicts it is not his verdict

JURY CHARGE

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1 alone, the verdict has to be a unanimous verdict. Mr.
2 Foreman, you are not authorized to write the verdict until
3 all of you have agreed as to what the verdict should be. On
4 the verdict form there's a separate verdict form for each
5 defendant, there are five blanks on the verdict form. I
6 will read the verdict form. As to indictment number
7 2010-GS-29-1589 for the offense of attempted murder, we, the
8 jury, unanimously find the defendant, the first blank is not
9 guilty, second blank is guilty or guilty as to the lesser
10 charge of assault and battery of a high and aggravated
11 nature, or guilty as to the lesser charge of assault and
12 battery in the first degree, or guilty as to the lesser
13 charge of assault and battery in the second degree. You
14 mark one of the blanks and then sign it and date it at the
15 bottom. Now, ladies and gentlemen, I'm going to send you to
16 your jury room but do not begin to discuss this case until
17 you have received the indictments, all of the exhibits, I
18 believe there's 52 exhibits, and the verdict forms. Once
— 19 you've received all of these things—that will be your signal
20 to begin deliberations. Now, once you begin your
21 deliberations, Mr. Foreman and ladies and gentlemen, you
22 will deliberate until you have reached a verdict at which
23 time you will knock on the door, advise the bailiff and we
24 will bring you out to receive your verdict. Thank you very
25 much, you may retire to your jury room.

JURY CHARGE

1 (The jury left the courtroom.)

2 THE COURT: Any exceptions or objections to the charge
3 from the State or from the defense?

4 MR. COOK: Nothing from the State, Your Honor.

5 THE COURT: Other than what's previously been
6 discussed?

7 MR. GRIER: Other than that.

8 MR. FRICK: No, sir.

9 THE COURT: All right. Thank you.

10 (The alternate jurors were dismissed and the
11 jury began deliberations.)

12 THE COURT: We've got a question from the jury. The
13 first question is -- I'll read it verbatim -- the first
14 question is question mark, break to make phone calls, Diet
15 Coke or Coke, sweet tea, smoke breaks, and the plus sign
16 which I guess means they want to break to take a smoke break
17 and a Diet Coke or a Coke. So I plan on telling them no
18 breaks. The solicitor will allow them to use the phone
19 call -- excuse me, the clerk will allow them to use the --
20 Mr. Clerk, tell them what you allow them to do?

21 THE CLERK: My cellphone.

22 THE COURT: Does anybody have an objection to a juror,
23 or perhaps jurors, using the clerk's cellphone to make a
24 phone call.

25 MR. COOK: No objection.

1 MR. GRIER: None.

2 MR. FRICK: No, sir.

3 THE COURT: And obviously y'all can give them whatever
4 refreshments, we'll take care of that. Tell them no to the
5 smoke break, that's what the Nicorette is for. Here is the
6 question: "On the CSI sketch by Ken Taylor there's a marked
7 out area that leads to an arrow on the front left hood of
8 the Nassrah truck. What was written there and who marked
9 this out without any explanation of an error or their
10 initials?" That's a question mark. My planned response to
11 that is you must only consider the evidence received in this
12 courtroom as it was given to you and do not speculate on
13 stuff that you don't know about. Are you okay with that?
14 Or do y'all want to fashion a charge or are y'all okay with
15 the way I --

16 MR. GRIER: I think that's everything we need to have
17 them told about exactly and precisely.

18 MR. COOK: No objection.

19 MR. FRICK: I agree.

20 (The jury returned to the courtroom.)

21 THE COURT: Let the record reflect all jurors are
22 present. Ladies and gentlemen, I received a question piece
23 of paper from you, I answer it as follows: You may use the
24 clerk's phone to make an emergency phone call. I instructed
25 the clerk to make sure you have Diet Cokes and Cokes, I

1 don't know if we have the availability to give you sweet tea
2 but certainly we can refresh you as much as we can. No to
3 the smoke break, this is a non-smoking building, sorry about
4 that. As to your question on the CSI sketch which is in
5 evidence, my charge to you is as follows: Ladies and
6 gentlemen of the jury, you are only to consider the evidence
7 presented in this courtroom and you shall not speculate on
8 matters not testified to. Disregard the marked out area.
9 Thank you, you can resume your deliberations.

10 (The jury left the courtroom and resumed
11 deliberations.)

12 THE COURT: Got a note from the jury. "We need to hear
13 you explain the charges again." I can recharge the entire
14 thing or I can ask them what specifically do you want me to
15 charge you?

16 MR. COOK: They just want to hear the attempted murder
17 through A and B second?

18 THE COURT: I don't know.

19 MR. FRICK: I think we can inquire if there is a
20 specific charge. I'm not saying that you can give whatever
21 they're asking, but --

22 THE COURT: Do you want me to send a note back saying
23 is there a specific charge you would like to hear again, and
24 if so what is it, or do you want me to bring them out and
25 ask? I will respond on this piece of paper which is Court's

1 Exhibit 2, I will make it that once I write on it. Here is
2 what I wrote: "Do you want the entire charge or just a
3 portion? If portion, what charge? Judge Gibbons."

4 (Break in proceedings.)

5 THE COURT: All right. Got a response from the jury on
6 Court's Exhibit 2. First of all on Court's Exhibit 2 at the
7 top somebody wrote in, "Would you re-read the law?" And
8 then scratched that out, and then wrote the word murder,
9 scratched that and out, and then wrote in all caps ABHAN,
10 that's on Court's Exhibit 2. And then the third note that I
11 got back from them, which I think explains what they want to
12 hear which we'll make Court's Exhibit 3 says, "We need the
13 definition of attempted murder, assault and battery of a
14 high aggravated nature, assault and battery first degree,
15 assault and battery second degree." So it seems like all
16 they want is for me to charge them the law of the offenses.
17 All right. I could handle it one or two ways, gentleman. I
18 could bring them back out and recharge them that way or I
19 can just print off my charge for those particular items and
20 hand it to them, or I can printout my entire charge and hand
21 it to the jury. Why don't y'all talk and I will do
22 whichever one of the three y'all choose.

23 (Break in proceedings.)

24 MR. GRIER: If you're going to give them a document --

25 THE COURT: I'm not going to give them a document.

1 MR. GRIER: Okay.

2 THE COURT: I want to make -- here is what I'm going to
3 do. In response to the Court's Exhibit 3 I'm recharging the
4 things that they requested which is attempted murder, ABHAN,
5 A and B first, A and B second, that's all I'm going to
6 charge, I'm going to do it verbally. They will not get my
7 written charge. Okay. All right. Y'all's positions are in
8 the record. Bring the jury.

9 (The jury returned to the courtroom.)

10 THE COURT: All members of the jury are present.
11 Ladies and gentlemen, I thank you for your thorough work so
12 far, I know you are in there working. In response to the
13 last communication that y'all gave me I am going to at this
14 time charge you the offenses which are listed on the verdict
15 form. Attempted murder: The defendants are charged with
16 attempted murder. In order to prove this crime the State
17 must prove the defendants attempted to kill another person
18 with malice aforethought, either 'expressed or implied.
19 Malice is hatred, ill will or hostility towards another
20 person. It is the intentional doing of a wrongful act
21 without just cause or excuse and with an intent to inflict
22 an injury or under circumstances that the law will infer an
23 evil intent. Malice aforethought does not require that
24 malice exists for any particular time before the act is
25 committed, but malice must exist in the mind of the

1 defendant just before and at the time the act is committed,
2 therefore there must be a combination of the previous evil
3 intent and the act. Malice aforethought may be expressed or
4 inferred. These terms expressed and inferred do not mean
5 different kinds of malice but merely the manner in which
6 malice may be shown to exist, that is either by direct
7 evidence or by inference from the facts and circumstances
8 which are proved. Express malice is shown when a person
9 speaks words which express hatred or ill will for another,
10 or when the person prepared beforehand to do the act which
11 was later accomplished. For example, lying in wait for a
12 person or any other acts of preparation going to show that
13 the deed was within the defendant's mind would be expressed
14 malice. Malice may be inferred from conduct showing the
15 total disregard for human life. If facts are proven beyond
16 a reasonable doubt sufficient to raise an inference of
17 malice to your satisfaction, this inference would be simply
18 an evidentiary fact to be considered by you, the jury, along
19 with the other evidence in the case and you may give it the
20 weight you decide it should receive. A specific intent to
21 kill is not an element of attempted murder, but there must
22 be a general intent to commit serious bodily injury. Intent
23 means intending the result which actually occurs, not
24 accidentally or involuntary. Intent may be shown by acts and
25 conduct of the defendant and other circumstances from which

1 you may naturally and reasonably infer intent. Evidence of
2 the character of the act, the character of the instrument
3 used, the manner in which it was used, the purpose to be
4 accomplished and the resulting wound or injury may be
5 considered in determining the intent with which the act was
6 committed. Intent may also be inferred when it is
7 demonstrated that the defendant voluntarily and willfully
8 commits an act, the natural tendency of which is to destroy
9 another's life. That is attempted murder. ABHAN. If you
10 find that the State has failed to prove that either
11 defendant is guilty of attempted murder you must then decide
12 whether the State has proven that either defendant is guilty
13 of assault and battery of a high and aggravated nature. A
14 person commits the offense of assault and battery of a high
15 and aggravated nature if the person unlawfully injures
16 another person and great bodily injury to another person
17 results or the act is accomplished by means likely to
18 produce death or great bodily injury. Great bodily injury
19 means bodily injury which causes a substantial risk of death
20 or which causes serious -- or which causes serious permanent
21 disfigurement or protracted loss or impairment of the
22 function of a bodily member or organ. That's ABHAN.
23 Assault and battery first degree. If you find that the
24 State has failed to prove that either defendant is guilty of
25 attempted murder or ABHAN then you must decide whether the

1 State has proven that either defendant is guilty of assault
2 and battery in the first degree. A person commits the
3 offense of assault and battery in the first degree if the
4 person unlawfully offers or attempts to injure another
5 person with the present ability to do so and the act is
6 accomplished by means likely to produce death or great
7 bodily injury. Once again, great bodily injury means bodily
8 injury which causes a substantial risk of death or which
9 causes serious permanent disfigurement or protracted loss or
10 impairment of the function of a bodily member or organ.
11 That is assault and battery first degree. Assault and
12 battery second degree. If you find that the State has
13 failed to prove that either defendant is guilty of attempted
14 murder, ABHAN or assault and battery first degree, you must
15 then decide whether the State has proven that either
16 defendant is guilty of assault and battery in the second
17 degree. A person commits the offense of assault and battery
18 second degree if the person unlawfully injures another
19 person ~~or~~ offers or attempts to injure another person with
20 the present ability to do so and/or moderate bodily injury
21 to another person could have resulted. Moderate bodily
22 injury means physical injury requiring treatment to an
23 organ, stem of the body other than the skin muscles and
24 connective tissue of the body except when there is
25 penetration of the skin, muscles and connective tissues that

1 require surgical repair of a complex nature or when
2 treatment of the injuries requires the use of reasonable or
3 general anesthesia. That concludes my charge, y'all please
4 resume deliberating. Thank you.

5 (The jury left the courtroom.)

6 THE COURT: Any exceptions to the charge?

7 MR. COOK: None from the State, Your Honor.

8 THE COURT: Mr. Grier?

9 MR. GRIER: Your Honor, my intention was that the jury
10 hear all of the charges including the charge of self-defense
11 and all of the charges that they had previously heard in
12 their entirety and completely. I ask that they be charged
13 in every respect with what they heard, the unset of the
14 charge.

15 THE COURT: All right.

16 MR. FRICK: I concur in that and I renew my objection
17 to the original charge based on the exclusion of assault and
18 battery third degree.

19 THE COURT: All right. Both of y'all's positions are
20 protected. I deny your motion to recharge the thing. They
21 asked for those four elements and that's what I gave them.

22 (The jury resumed deliberations.)

23 THE COURT: All right. What we are going to do,
24 gentlemen, I am inclined to recess for the evening and bring
25 them back tomorrow morning to continue their deliberations

1 where they can be maybe a little bit more fresh, but I will
2 only do that if all of y'all consent to doing that. Is
3 there any objection to doing that? Under Rule 23, obviously
4 I have the discretion to do it but I always like to get
5 everything on the record. So without objection then what we
6 are going to do is we are going to go ahead and recess for
7 the night, I will bring them in and give them the
8 instructions about not talking with each other or
9 deliberating over the phone or anything like that and bring
10 them back tomorrow morning at 9:30 to continue.

11 (The jury returned to the courtroom.)

12 THE COURT: All right. All members of the jury are
13 present. Ladies and gentlemen, I know y'all have been
14 working hard for a little over three hours now, it's getting
15 kind of late in the evening, some of you may be hungry and
16 ready to go home. So what we're going to do is I will break
17 court for the day, we will be in recess until tomorrow
18 morning at 9:30. Now, it's very important since you have
19 ~~already~~ begun your deliberations to not deliberate any
20 further whatsoever with anybody except your fellow jurors in
21 the jury room tomorrow morning. Okay. Don't talk about the
22 case with anybody else, with your spouse, significant other,
23 don't do any independent research or anything like that. We
24 will see you tomorrow morning at 9:30 where everybody can be
25 refreshed, have an open mind and continue your

JURY VERDICT

1 deliberations. Y'all have a good evening.

2 (The jury left the courtroom and court recessed
3 for the evening and resumed at 9:30 a.m., on
4 Friday, January 10, 2014.)

5 THE COURT: I'm informed all jurors are present and I
6 sent them a message to resume deliberations.

7 (The jury resumed deliberations.)

8 THE COURT: Bring the jury in.

9 (The jury returned to the courtroom with a
10 verdict.)

11 THE COURT: All right. All members of jury are
12 present. Mr. Foreman, it is my understanding that the jury
13 has been able to reach a unanimous verdict; is that correct?

14 THE JUROR: Yes.

15 THE COURT: And have you written that unanimous verdict
16 down on the verdict forms?

17 THE JUROR: Yes, sir.

18 THE COURT: All right. At this time if you would
19 please hand those to my clerk. All right. Mr. Clerk, you
20 may publish the verdict, if the defendants would please
21 stand.

22 THE CLERK: As to indictment number 2010-GS-29-1590,
23 for the offense of attempted murder we, the jury,
24 unanimously find the defendant, Michael E. Hyatt guilty as
25 to the lesser charge of assault and battery of a high and

JURY VERDICT

1 aggravated nature. Signed Kenneth Furr, foreperson, dated
2 January 10th, 2014. As to indictment number
3 2010-GS-29-1589, for the offense of attempted murder we, the
4 jury, unanimously find the defendant, Aaron D. Hyatt, guilty
5 as to the lesser charge of assault and battery of a high and
6 aggravated nature. Signed Kenneth Furr, foreperson, dated
7 January 10th, 2014. Ladies and gentlemen of the jury, if
8 this be your verdict so say you all by the raising of your
9 right hands. Let the record reflect that all jurors raised
10 their right hands.

11 THE COURT: All right. Thank you, Mr. Clerk. Thank
12 you, ladies and gentlemen of the jury, for your very
13 valuable jury service. Your term has and service as jurors
14 this week is now concluded, you are free to leave.

15 MR. FRICK: Your Honor, the defense request polling.

16 THE COURT: Oh, polling?

17 MR. FRICK: Yes, sir.

18 THE COURT: All right. Well, let's poll the jury,
19 Mr. Clerk.

20 MR. FRICK: Your Honor, may we be seated while they
21 poll the jury?

22 THE COURT: Absolutely.

23 MR. FRICK: Thank you.

24 THE CLERK: As for both cases, Mr. Foreman, Kenneth
25 Furr, is this your verdict and is this still your verdict?

JURY VERDICT

1 THE JUROR: Yes.

2 THE CLERK: James Simmons, is this your verdict and is
3 this still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Donna Immel, is this your verdict and is
6 this still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Jarred Horn, is this your verdict and is
9 this still your verdict?

10 THE JUROR: Yes, sir.

11 THE CLERK: Jeremy Heller, is this your verdict and is
12 this still your verdict?

13 THE JUROR: Yes, sir.

14 THE CLERK: Shaun Murphy, is this your verdict and is
15 this still your verdict?

16 THE JUROR: Yes, sir.

17 THE CLERK: Norma Estridge, is this your verdict and is
18 this still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Ronald Springs, is this your verdict and is
21 this still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Travis Montgomery, is this your verdict and
24 is this still your verdict?

25 THE JUROR: Yes, sir.

JURY VERDICT

1 THE CLERK: Charles Menzel, is this your verdict and is
2 this still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Sydnie Stroble, is this your verdict and is
5 this still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Milton Stalls, is this your verdict and is
8 this still your verdict?

9 THE JUROR: Yes, sir.

10 THE CLERK: Thank you.

11 THE COURT: All right. The jury has been polled.

12 (The jury was dismissed.)

13 THE COURT: All right. If the defendants would please
14 come forward for sentencing.

15 MR. FRICK: Your Honor, I have a few post-trial motions
16 I would like to make at this time.

17 THE COURT: Okay.

18 MR. FRICK: Your Honor, at this time I would ask for
19 the Court to set aside the verdict and decide as a matter of
20 law the 13th juror doctrine, I haven't gotten a definition
21 of whether that truly applies in criminal court, I do
22 believe it does. But recently I saw a case, and I think it
23 was my case, I think it was the Curry case that came out a
24 couple of weeks ago, still didn't give me an indication of
25 whether I could do this or not, but I continue to request it

1 and I ask you to do so based on the evidence that was
2 presented.

3 THE COURT: Mr. Grier, I assume --

4 MR. GRIER: I join that motion.

5 THE COURT: Solicitor, you oppose the motion, I assume?

6 MR. COOK: I do, Your Honor.

7 THE COURT: All right. Motion denied.

8 MR. FRICK: Your Honor, the second motion would be, the
9 defense would request a new trial based on our objection to
10 the 404 evidence that the Court allowed in. I understand
11 some of it was allowed by us as well, but there was an
12 original objection to the prior incident that occurred on
13 the 13th, the Court let part of it in, didn't let part of it
14 in. I think that's a factor in this case and I think we
15 should be granted a new trial based on that. Also denial of
16 our preemptory strike motion at the beginning of the case
17 and our denial of the stand your ground, the immunity under
18 the protections of person property act. Anything else,
19 Mark?

20 THE COURT: And Mr. Grier, you join those motions for
21 the record?

22 MR. GRIER: I join those motions.

23 THE COURT: Those motions are denied.

24 MR. FRICK: Thank you, Your Honor.

25 THE COURT: Let me hear from the State first as to

SENTENCING HEARING

1 sentencing and then I'll hear from the defense in
2 mitigation.

3 MR. COOK: Your Honor, the indicted charge was
4 attempted murder, the jury came back with ABHAN, it's a
5 range of zero to 20, I ask for a substantial sentence. Mr.
6 Nassrah is lucky, he's okay but as I said in closing that
7 the end result is not what it should be based on versus what
8 they actually did. Mr. Nassrah is here and he would like to
9 address the Court if you would --

10 THE COURT: Absolutely. I will be glad to hear from
11 you, Mr. Nassrah, at this time.

12 THE WITNESS: Thank you, Your Honor. I would like to
13 thank you, thank the jury. I'm sorry for being emotional.
14 When the defense attorney asked me if I had a scar on my
15 head, it's almost gone after three and a half years. I do
16 have some other problems. But there is one scar that I
17 cannot get rid of, that is the fear of having someone after
18 you to kill you, hate you enough to kill you or to hurt you
19 bad. There is no cure for that fear, Your Honor. I love my
20 community, I love the state when I live in and if they are
21 free I cannot stay here. I thank you all for your services.
22 Thank you.

23 THE COURT: Thank you, sir. Who would like to go
24 first?

25 MR. FRICK: Your Honor, I'll speak on behalf of

SENTENCING HEARING

1 Mr. Aaron Hyatt first. I believe he is 32 or 33 years of
2 age --

3 AARON HYATT: Thirty-five now.

4 MR. FRICK: Excuse me, he was 32 or 33 when this whole
5 thing started three years ago. Your Honor, he has no
6 criminal history to my knowledge, is that correct,
7 Solicitor?

8 MR. COOK: He has one disorderly conduct in 2009.

9 MR. FRICK: He has a disorderly conduct in 2009, Your
10 Honor, that is the extent of his record. Obviously Your
11 Honor is aware that we're here on assault and battery high
12 and aggravated nature, that is a serious felony, in fact, I
13 believe it may be a most serious offense if it's not -- I
14 know it's at least a serious offense so he's going to walk
15 out of here with a strike at the very least. Whatever
16 sentence you're talking about you're looking at 85 percent
17 community supervision when he is released. Your Honor,
18 you're talking about someone who has not done any time in
19 jail, got charged on this, bond was denied, sat in our
20 detention center for 30 days and was able to make bond so he
21 does have some time served on it. No record. Judge, I
22 still believe my argument about a self-defense situation. I
23 think he got a phone call and went to go defend his dad.
24 I'm not trying to argue to the jury now, I'm just trying to
25 give you my mitigation. I do believe there is self-defense

SENTENCING HEARING

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1 issues, obviously the jury did not agree with self-defense,
2 but I do not believe that there was any vast conspiracy to
3 trap Mr. Nassrah in this situation. Quite honestly I think
4 there was some conspiracy on his behalf based on the phone
5 call that his worker makes from the back of the car where he
6 talks about how Mr. Nassrah was not that badly injured and
7 that he was a smart man and he knows what to say, that
8 causes me great trouble in what happened that day. Mr.
9 Aaron Hyatt shows up to this fight with no weapon, had
10 access to weapons, didn't take any over there, didn't even
11 take any shoes over there, was very forthcoming with law
12 enforcement about his side of the situation and cooperated
13 fully and extensively with them. Your Honor, I'm going to
14 ask you for a probationary sentence, I don't know what
15 you're going to do. I understand we went to trial on the
16 matter, we were never really given a plea offer in this
17 situation, nothing that we could seriously talk to our
18 clients over, I'm not fussing at the solicitor on that, they
19 get to make that call, but this is not a situation where you
20 had somebody who was offered probation and they turned down
21 probation, it was nothing that was ever even discussed in
22 this case. And I think that Mr. Aaron Hyatt who works, has
23 been working, he's a construction supervisor and has been
24 working his whole life, is a productive member of society
25 and I think he will continue to be one and I ask you to

SENTENCING HEARING

1 allow him to do that and give him an opportunity.

2 THE COURT: Thank you. Mr. Aaron Hyatt, anything you
3 would like to tell the Court?

4 AARON HYATT: Other than, I mean, I'm sorry it had to
5 come to this kind of situation. I ain't got no hard
6 feelings toward Mr. Nassrah, I hate that this stuff
7 happened. I don't like being involved in anything that has
8 anything to do with this kind of stuff. I work everyday, I
9 go home, that's pretty much my life. I would like to have
10 the opportunity to keep working and be a productive citizen
11 because in jail I cost the county and stuff money, if I'm
12 out I can pay my probation, pay whatever fines I have to and
13 be productive.

14 THE COURT: Thank you, sir. Mr. Grier?

15 MR. GRIER: Your Honor, Michael Hyatt, I believe, is
16 64, he may be 63 years old. Judge, this case had languished
17 for three and a half years and both of our clients, I think,
18 had been anxiousness for a resolution of this case, and this
19 case ultimately came to trial as a result of our motion to
20 make it happen because of the matter hanging over them and
21 the uncertainty of that and the difficulties it was causing
22 for jobs. Mr. Michael Hyatt, of course, is disabled as you
23 know as far as his hearing, draws disability. Your Honor,
24 he's been a productive and a beneficial member of the
25 community. He lives a quiet life down -- up to this point

SENTENCING HEARING

1 lived on Merle Lane, really, you know, didn't bother
2 anybody. I join, I'm not going to repeat what Mr. Frick's
3 account, and I know the jury has spoken, but these gentlemen
4 believe that they would be vindicated by the trial and
5 obviously the jury didn't agree. Your Honor, I think
6 justice would be served certainly by placing Mr. Michael
7 Hyatt on probation as well, there's no substantial record,
8 he's not a young man. I'm asking you to grant him a
9 probationary sentence because I think -- you've had an
10 opportunity to examine him and speak to the earnestness
11 of -- observed the earnestness of Mr. Hyatt and, you know,
12 the -- I think something that we argued and apparently the
13 jury didn't agree with. I think the character of standing
14 by your convictions of what you believe you saw out there
15 that day was demonstrated on the stand by both of these men
16 in giving their accounts notwithstanding their advice of
17 their lawyers that that was perhaps a -- difficult for them.
18 They did not collude and come up with a story to match and
19 obviously they both told what their experience was out there
20 and I think that demonstrates the character of both of the
21 men that stand by your statements of what happened, not
22 notwithstanding it's difficult for Your Honor. You, I guess,
23 understand that anytime that someone is involved in
24 something of this nature it has some traumatic affect on
25 them and most certainly it had that affect on both of these

SENTENCING HEARING

1 gentlemen as well. Mr. Nassrah was home by that night of
2 this incident, my client was in jail several days and
3 received a gunshot. Your Honor, if we go by -- I think that
4 the punishment of being shot for his transgression should be
5 taken into account and -- you're not going to have anymore
6 trouble out of these gentlemen, Your Honor, if you would
7 consider some probationary sentence, that we would just keep
8 an eye on them and protect Mr. Nassrah.

9 THE COURT: Thank you, Mr. Grier.

10 MR. FRICK: I'm sorry, one thing I forgot to tell
11 you -- I know I already had my turn -- I certainly
12 understand as far as the charge is concerned, not concerned
13 with the severity of the injuries, but the legislature gave
14 you a range of zero to 20, I think that's so you can take in
15 consideration the severity of the injuries.

16 THE COURT: Absolutely, I agree with you on that. Mr.
17 Michael Hyatt, anything you wish to tell me?

18 MICHAEL HYATT: Yes, sir. I'm sorry this whole thing
19 happened. ~~It was no intention of mine to hurt Mr. Nassrah.~~
20 I was frightened, I didn't know what to do and when I got
21 there I thought what I was doing, you know, I thought that
22 my son was going to get hurt and that's why the things come
23 about like they did. I don't have any hard feelings toward
24 Mr. Nassrah, none at all, I haven't spoke to him in the
25 whole time since this has happened. I stayed mostly around

SENTENCING HEARING

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1 my house, I very seldom leave there anymore. I live down
2 there with my son now.

3 THE COURT: Thank you, sir. Solicitor, any prior
4 record on the elder Mr. Hyatt?

5 MR. COOK: Assault and battery in 1991. And that is
6 really the extent of his record as far as convictions, Your
7 Honor.

8 THE COURT: Anything further from the State?

9 MR. COOK: Obviously, Your Honor, I'm opposed to
10 probationary sentences. And they alluded to the fact that
11 there was no real offer, the offer stood as ABHAN to start
12 with and that's because the State felt we had a good case
13 against them, and if I wasn't confident in the facts as
14 given to me by the victim then I may have made a better
15 offer. But we were confident in the case and that's why we
16 didn't offer them anything less than ABHAN because as the
17 jury decided when they heard it all that's what they thought
18 they were guilty of.

19 THE COURT: Was there any cap offered?

20 MR. COOK: It wasn't, it was straight-up ABHAN and the
21 jury agreed with the State, that was their offer and after
22 they spoke that's what they were found guilty of and I think
23 it's a serious offense, Your Honor, and I don't think
24 probation is suitable.

25 THE COURT: All right.

SENTENCING HEARING

1 MR. FRICK: Your Honor, I would point out, if the State
2 was so confident in the case -- I know Mr. Cook picked it
3 up, but it took four years for it to get to trial and there
4 was no additional trouble.

5 THE COURT: I understand. All right. On indictment
6 number 10-GS-29-1590, State of South Carolina versus Michael
7 Hyatt, the sentence of the Court is nine years. Indictment
8 10-GS-29-1589, State of South Carolina versus Aaron Hyatt,
9 sentence of the Court is four years. Good luck to both of
10 you. Take them into custody.

11 (End of trial proceedings.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 6-10 days of
8 January, 2014.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11

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March 18, 2014

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Michael C. Watkins
Court Reporter

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FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of LANCASTER)*2015-CP-29-01103*Micheal E. Hyatt #358395)

Full name and prison number (if any) of Applicant)

v.)

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2015 AUG -6 AM 10:33
CLERK OF COURT
LANCASTER, SCINSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Correctional Institution
4848 Goldmine Highway, Kershaw, SC 29067
2. Name and location of Court which imposed sentence ~~XXXXXXXXXXXXXXXXXX~~
General Sessions, Lancaster County
3. Name(s) of co-defendant(s) (if any) Aaron Hyatt
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-1589 Attempted Murder (Not Guilty)
~~2010-GS-1589 Lesser Included Offense of ABHIN Sentence~~
Nine (9) years.

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) January, 10th 2014, Nine (9) years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty Yes
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. The Court of Appeals, S.C. 2014-000083
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. AFFirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. July 1, 2015
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion 2013-up326
 ii. _____
 iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) _____

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The Applicant's sentence and conviction were
(b) procured in violation of the sixth and Fourteenth
(c) Amendments of the united States Constitution and
Article §3 of the South Carolina Constitution.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel's performance fell below the standard of
reasonableness as required in Stickland v. Washington.
(b) xxxxxx and xxxxxxxx The xxxxxxxx Court xxxxxxxx
(c) (See Attached)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
(d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
i. _____
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. _____
ii. _____
iii. _____

10(a) The Applicant was denied his right to the Sixth and fourteenth Amendment under the United States Constitution and the Article § 3 of the South Carolina Constitution for the following particulars:

11(a) Trial Counsel's performance fell below the standard of reasonableness as required in Stickland v. Washington.

(1) Counsel failed to object to the Trial Court's charge of Assault and Battery. The trial Court " Did Not " read the Statutory section as a whole, instead only instructed the jury under part of section (1) of Assault and Battery First Degree. See Transcript pages 548 and 561. in the Court's instruction for Assault and Battery in the First Degree, he expresses that " A person commits (emphasis added) the offense of assault and battery in the first degree when the person unlawfully offers or attempts to injure another person with the present ability to do so. Such an instruction in conjunction to the Trial Court's instruction of Second Degree Assault and Battery would lead a juror to believe that assault and battery in the first does not require battery to be accomplished, where second degree does. The Trial Court instructed second degree in its entirety and clarified that second occurs when " the person unlawfully injures (emphasis added) another person " or offers or attempts to injure another person ". the Trial Court never informed the jury that assault and battery first required an unlawfully injury to have occurred.

This issue became so confusing that the jury requested recharges on all charges and the Trial Court again restated the same language.

(2) Counsel failed to object to the solicitor's closing argument that played to the prejudice of the jury. During the closing argument the Solicitor referred the elements and facts that constitute ABHAN. ABHAN requires great bodily injury to another person, or an act that could have resulted in death or great bodily harm. During the Solicitor's statement he referenced that (1) it means injury which causes substantial risk of death (Transcript page 535 lines 1-2). That substantial risk was what " he said earlier " line 5. Then he references the evidence that on Officer Randy Morgan's in-car camera, when EMS comes up Aaron Hyatt says " he's been shot " (Applicant), they said, " He's got a head injury " Where did EMS go ? They went to the head injury. They treated the head injury before the gunshot, that shows you how serious it is. " EMS picked him (victim) over Micheal Hyatt because he had blood coming out of his head .

Counsel never objected to this closing remark by the Solicitor, but he knew that (1) Discovery revealed that Lt. Christy Rogers arrived on the scene and that she ordered the victim to remain after Applicant had been air lifted to conduct a GSR (Gun Residue) kit. (2) That Investigator Taylor testified

during trial that Applicant was treated first due to the severity of his injuries, Page 331 Lines 1-8., and (3) that EMS reports stated that Applicant was treated first due to the severity of his injuries and those reports alleged the wound to victim as unintentional.

Counsel failed to object to this portion of the closing argument by the Solicitor, which lead the jury to believe that Substantial Risk was determined from the facts he " Stated Earlier " which were incorrect and misleading. There was no visual evidence from the in-car camera that substantiated this allegation that the victims injuries were so severe that he was treated first and sent to the hospital as alleged on the contrary the evidence and facts asserted show that Applicant was the one with the most severe injury and was treated first and transported by Air Lift to the Hospital for surgery. The Solicitor in his closing argument lead the jury to believe that his version of such treatment substantiated his definition of " Substantial Risk or injury that could cause death ", thus prejudicing the Applicant.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Applicant is required by State Law to raise all claims
 - (b) of Sixth Amendment violations under the Uniform Post
 - (c) conviction Act. (Applicant reserves the right to raise
any ground not known at the time of filing in a future
Application for relief).
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Mark Grier Public Defender of Lancaster County
Susan B. Hackett Appellate Defender (Office of
Indigent Defense)
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Mark Grier (a) (b) (c)
Susan B. Hackett (Direct Appeal from Conviction)
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

~~That the Applicant's sentence and conviction be vacated and remanded to the lower court for a new trial.~~

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of hAWCOSTER)

VERIFICATION

I, Michael Hyatt, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Hyatt x

SWORN to and subscribed before me this 22nd
day of July, 2015.

Cathie R. Amos (L.S.)
Notary Public

My Commission Expires: December 22, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Michael Hyatt, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael Hyatt
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of July, 2015.

Catharine A. Anderson
Notary Public

My Commission Expires: December 22, 2018

July 23-2015

Clerk of Court Lancaster County
I would like for you to send
me a ~~copy~~ Clerk copy of
my P.C.R.

Thank you

Michael Hyatt

FILED
OFFICE OF CLERK
OF COURT
2015 AUG -6 AM 10:33
SECTION OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Michael E. Hyatt, #358395,

2015-CP-29-1103

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 6, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the December 2010 term of the Lancaster County Grand Jury for attempted murder (2010-GS-29-1590). Applicant was represented by Mark Grier, Esquire. On January 6, 2014, Applicant proceeded to trial where he was convicted by a jury of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Brian M. Gibbons sentenced Applicant to nine (9) years imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected by Susan B. Hackett, Esquire, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on March 1, 2015. State v. Hyatt, Op. No. 2015-UP-326 (S.C. Ct. App. filed July 1, 2015). The Remittitur was returned on July 22, 2015.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Applicant's sentence and conviction were procured in violation of the sixth and Fourteenth Amendments"
 - a. Ineffective assistance of counsel, in that:
 - i. Trial counsel failed to object to Trial Court's charge of assault and battery
 - ii. Trial counsel failed to object to the solicitor's closing argument

Attached herewith and incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript, and the appellate court records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115,

386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. As such, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore, either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

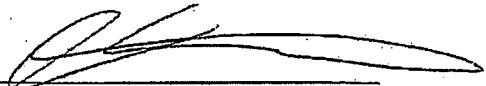
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN

Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

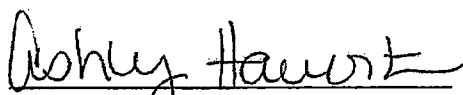
March 1st, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2015-CP-29-1103
MICHAEL E. HYATT, #358395,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Nathan James Sheldon, Esquire
Shaw Law Firm
PO Box 36250
Rock Hill, SC 29732

DATED this 1st day of March, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LANCASTER
4 2015-CP-29-01103

5 Michael E. Hyatt

6 vs.

7 State of South Carolina

8

9 Lancaster, South Carolina

10 January 9, 2017

11 Before the Honorable William Jeffrey Young

12

13 APPEARANCES

14 For the State: Patrick Schmeckpeper

15 For the Defendant: Ashley McMahan

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

23

24

25

1	Michael Hyatt:	3
2	Steven Garris:	19
3	Mark Grier:	26
4	Certificate:	56

5

6

7 EXHIBITS

8	Applicant's 1	- Letter	- 23
9	Applicant's 2	- Plea Offer	- 42
10	State's 1-2	- Subpoenas	- 34

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1 MR. SCHMECKPEPER: My name is Patrick Schmeckpeper.
2 Our first case is Michael Hyatt versus State of South
3 Carolina, case number 2015-CP-29-1103. The applicant was
4 indicted in Lancaster in 2010 for attempted murder, he was
5 represented by Mark Grier. He proceeded to trial and was
6 found guilty of a lesser-included offense of assault and
7 battery of a high and aggravated nature. Judge Gibbons
8 sentenced him to nine years imprisonment. He filed an
9 appeal which was unsuccessful, remittitur was returned on
10 July 22nd of 2015, this application was filed August 26th
11 of 2015, so it was timely. Your Honor, at this point I
12 will turn matters over to opposing counsel so she can call
13 witnesses.

14 MS. MCMAHAN: Your Honor, if it pleases the Court, the
15 applicant calls Mr. Hyatt to the stand.

16 THE COURT: All right.

17 The witness, MICHAEL HYATT, was first duly sworn and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MCMAHAN:

21 Q And you're Mr. Hyatt; is that correct?

22 A Yes.

23 Q Mr. Hyatt, did you file a post conviction relief
24 application?

25 A Yes.

MICHAEL HYATT - DIRECT

- 1 Q Can you hear me? Do you need me to get closer?
- 2 A Yes, please.
- 3 Q Can you hear me now?
- 4 A Yes.
- 5 Q Do you remember filing a post conviction relief
- 6 application?
- 7 A Yes, I do.
- 8 Q Well, let's talk about what your allegations were in
- 9 that. Who represented you in that application? Who
- 10 represented you at the trial?
- 11 A Mr. Mark Grier.
- 12 Q Do you remember how long he represented you?
- 13 A How long?
- 14 Q Yeah. How long was he your attorney?
- 15 A Over three years, about three and a half years, not
- 16 quite three and a half years.
- 17 Q And you ended up going to trial. Do you remember him
- 18 ever telling you if the State had any plea offers for you?
- 19 A No.
- 20 Q So he never told you that the State had a plea offer?
- 21 A Never told me.
- 22 Q Would you have pled guilty to anything if the offer
- 23 was sufficient?
- 24 A Probably if it was -- it would depend on the offer.
- 25 Q But you don't remember any offers.

MICHAEL HYATT - DIRECT

1 A No offer.

2 Q He never talked to you about any offers from the
3 State.

4 A None.

5 Q So you said he was ineffective. Your one issue you
6 have in your application is about the jury charges, that
7 was brought up on appeal, but what was your main issue with
8 the jury charges that Mr. Grier did not do?

9 A He didn't question the victims on the statement --
10 they gave two statements, one when this first happened and
11 one in court, the statements were totally different.

12 Q So he did not adequately what you would say --

13 A Cross examine him about that.

14 Q -- impeach them with their prior statement?

15 A True.

16 Q Did their statements conflict?

17 A Yes.

18 Q Okay. Also what is your issue about the in-car camera
19 with Mr. Grier?

20 A Well, the video was incomplete and so it started, it
21 stopped, and started and stopped, and I feel like the
22 parts that was missing was the parts that would be
23 relevant to my case, you know what I mean? And so I don't
24 think they should have been admitted for which I don't
25 really know, you know what I mean? But it was just kind

MICHAEL HYATT - DIRECT

1 of peculiar that it stopped and it started, then it

2 stopped and it started over and over again. And --

3 Q So the whole -- did you ever see the whole video

4 without the stops and starts?

5 A No.

6 Q So the entire video was just stopping and starting all

7 the time.

8 A Yes.

9 Q And so that was the video that was also entered at
10 trial?

11 A Yes.

12 Q And it was -- so what parts did you believe that were
13 purposefully cut off?

14 A Well, the part of me laying in the back of the truck
15 when the EMS was there after I was shot, they say that I
16 went into shock, you know, and they was concerned because
17 they couldn't find a bullet, where it was at. I think
18 that part there of the video would be relevant to the
19 video to reenactment they made -- my son made because I
20 think in his state of mind that that should not have been
21 offered into evidence. Because when you're under extreme
22 trauma what you do you might be totally competent -- it
23 short changed your perspective if your father has been
24 shot and flown away in the helicopter and you don't know
25 whether he is going to live or die.

MICHAEL HYATT - DIRECT

1 Q So was any of that brought out in trial?

2 A No.

3 Q So there was never -- Mr. Grier never put up any
4 testimony about that version, about the being in shock on
5 the back of a truck?

6 A No.

7 Q Was there ever any testimony ever given about the
8 missing bits of the video at trial?

9 A No, my recollection there wasn't.

10 Q Okay. Did Mr. Grier call any witnesses for you?

11 A No.

12 Q Who did you want him to have there?

13 A Steve Garrison (sic) give me a statement and I had
14 previously give it to Mr. Grier and he was supposed to be
15 called as a witness in the case and was never called, and
16 when I asked Mr. Grier about why Steve wasn't called he
17 said I guess they didn't subpoena him.

18 Q Did you and Mr. Grier ever talk about Mr. Garris and
19 what kind of strategy that would have been for trial?

20 A He never did talk to me about no strategy about it.

21 Q So he never told you what his trial strategy was?

22 A No.

23 Q Did he ever talk to you about self-defense?

24 A Yeah, the self-defense thing. I think that
25 self-defense was brought up before we went to trial, you

MICHAEL HYATT - DIRECT

1 know, so he did talk about that.

2 Q And do you remember at trial talking about you were
3 defending yourself as well?

4 A Yes.

5 Q But he never -- Mr. Grier never specifically met with
6 you to talk about Mr. Garris' possible testimony and what
7 he heard?

8 A No.

9 Q Did he ever talk to you about the possibility of
10 finding Terry Bowers and have him testifying?

11 A No.

12 Q So no conversations about that in three years.

13 A No.

14 Q So earlier in the day of the incident did you call the
15 police?

16 A Yes.

17 Q What did you tell the police?

18 A Well, first there was a deputy there on the scene
19 named Officer Lily, and I told him that they were coming
20 by threatening me, and his statement was the judge sent
21 him down there and there was nothing he could do, I would
22 have to talk to the judge.

23 MR. SCHMECKPEPER: Your Honor, I would just object to
24 hearsay at this point.

25 THE COURT: Sustained. You can't say what somebody

MICHAEL HYATT - DIRECT

1 else said.

2 A Then I called the sheriff's office and talked to the
3 dispatcher and they had a supervisor call me and he told
4 me that he would call --

5 MR. SCHMECKPEPER: Your Honor, same objection.

6 THE COURT: Sustained. You can say what you did, you
7 can't say what they said.

8 Q So that morning, the same morning of the shooting, you
9 talked to Officer Lily that morning?

10 A Yes.

11 Q And then Officer Lily -- you learned that Officer
12 Lilly really couldn't do anything for you.

13 A No, he didn't do anything.

14 Q So then that same morning you called dispatch again --

15 A Yes.

16 Q -- prior to this the shooting.

17 A Yes.

18 Q And dispatch basically told you they couldn't do
19 anything.

20 A No. Dispatch hooked me up with a supervisor at the
21 sheriff's office.

22 Q And from the supervisor you learned that they were not
23 going to come out there.

24 A They told me he would call me and he called me on the
25 phone and told me that he would call me back.

MICHAEL HYATT - DIRECT

1 Q So you learned from the supervisor's phone call that
2 he was going to call you back. Did he ever call you back?

3 A The shooting went down by the time he called back.

4 Q Okay. So in the time that you talked with Officer
5 Lily that morning and then called dispatch, prior to the
6 shooting no police officer showed up.

7 A No.

8 Q And you called them because Mr. Nassrah was harassing
9 you.

10 A Not him personally but the men that were with him.

11 Q Mr. Nassrah's workers, his staff that worked for
12 him --

13 A Yes.

14 Q -- were harassing you.

15 A Yes.

16 Q Now, how close is that property that Mr. Nassrah was
17 farming from your house?

18 A I would say 50-foot from the road.

19 Q Is there anything else that you want to tell the Court
20 today about your case, about PCR, anything you think Mr.
21 Grier should have done that he didn't do?

22 A Well, I think that a medical report should have been
23 taken, because the way that the wound was and where the
24 bullet was at would draw the light on the fact that when I
25 told him that I was shot that I was on my knees, that the

MICHAEL HYATT - DIRECT

1 bullet went straint down into my leg and it's still there.

2 Q And did Mr. Grier ever show you your medical report?

3 A No.

4 Q Did you ever get a copy of it?

5 A No.

6 Q Did you ever ask for a copy of it from the hospital?

7 A No.

8 Q And Mr. Grier did not introduce your medical report at
9 trial.

10 A No.

11 Q And so you felt that if he had that would have helped
12 your self-defense claim?

13 A Yes.

14 Q Was there anything else? How far from your home did
15 the shooting happen?

16 A It happened right in front of my home. It happened
17 up the road I would say approximately 100 yards from my
18 house.

19 Q So about a football length away from your house.

20 A Yeah, I would say.

21 Q When did they start harassing you?

22 A Kamil and his help, Melton, Donnell Melton, when they
23 was leaving stopped me in my yard and that's when they was
24 threatening to kill me, and my son was talking to me on
25 the phone and he -- and I told him that and so he come

MICHAEL HYATT - DIRECT

1 over from his house, that's when he met them in the road.

2 Q Your son lives a little further down from you.

3 A Yeah. He lived on another road not a mile or so from
4 me.

5 Q So you're in your yard -- were you working in your
6 yard?

7 A I was working on a shed.

8 Q And then Mr. Nassrah's help came by and started
9 threatening to kill you?

10 A Yeah. I was sitting in a swing when they was coming
11 by in a tree there maybe 50 foot from the road and they
12 was threatening me.

13 Q And then so you were talking to your son and you told
14 him what was happening and your son came up too.

15 A Well, I was talking to him on the phone. Some of the
16 trucks had left, you know what I mean? I had seen them
17 leave and I thought they was all gone and I was walking
18 across there with a pick axe handle doing some prying on a
19 building I was working on, that's when Mr. Nassrah and his
20 helper came by there and they stopped. Well, I was
21 talking to my son about what the supervisor at the
22 sheriff's office told me, I told him I would call him and
23 he said he was going to call me back and that's when they
24 stopped and I told him they was in the yard threatening
25 me, so he came over there, you know what I mean? And they

MICHAEL HYATT - DIRECT

1 left and so he met them in the road. And so I saw Kamil's
2 help jump off with a big wrench, that's when I -- because
3 they had just been threatening me I didn't know what they
4 were going to do up there.

5 Q So you felt threatened by them?

6 A Oh yeah.

7 Q You remember testifying at the trial about all of
8 this, right?

9 A Yes.

10 Q Is there any facts that did not come out during your
11 testimony that you felt Mr. Grier should have asked you
12 about?

13 A Right off hand I can't think of any.

14 Q Anything else you want to say?

15 A No.

16 MS. MCMAHAN: I'll turn it over to the State, Your
17 Honor.

18 THE COURT: Thank you. Cross examination?

19 MR. SCHMECKPEPER: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. SCHMECKPEPER:

22 Q Good morning, Mr. Hyatt. I'm going to stand right
23 here, please let me know if you can't hear what I'm saying.

24 A I have severe hearing loss.

25 Q Just let me know, I'm going to try and speak as loud

MICHAEL HYATT - CROSS

1 and clearly as I can, okay?

2 A Okay.

3 Q Now, you testified that you were represented by Mark
4 Grier for about three and a half years?

5 A Yes.

6 Q And all that time he never told you about any plea
7 offer.

8 A No.

9 Q So he never told you that the State had offered you
10 assault and battery of a high and aggravated nature?

11 A No.

12 Q So you never had the opportunity to plead to assault
13 and battery of a high and aggravated nature.

14 A When he called that -- could you repeat that please,
15 what the last statement was?

16 Q I'm just clarifying, your attorney --

17 A He never said nothing to me about any kind of a --
18 any kind of a deal or anything.

19 Q You requested a speedy trial in this case; is that
20 correct?

21 A True.

22 Q Why is that?

23 A Because I was innocent, I felt like I was innocent.

24 Q So you wanted to go to trial on this case?

25 A Sir?

MICHAEL HYATT - CROSS

1 Q So you wanted to go to trial on this case.

2 A Yes, sir.

3 Q And you thought you would win.

4 A Yes.

5 Q So even though you were innocent and you thought you
6 would win you still would have taken a guilty plea?

7 A When I took a guilty plea?

8 Q Would you have pled guilty to attempted murder if he
9 offered it?

10 A Would I have pled guilty to attempted murder? No.

11 Q Would you have pled guilty to assault and battery of a
12 high and aggravated -- what would you have pled guilty to
13 if given a chance?

14 A Well, hypothetical I would have to be offered to
15 plead guilty. What, would I plead guilty to assault and
16 battery? Yes. It would depend. Hypothetically I would
17 have to know what the deal was, I couldn't say yes to
18 something I wouldn't know what it was.

19 Q Well, hypothetically if the offer were plead guilty to
20 assault and battery of a high and aggravated nature
21 straight up, what would you have said?

22 A What are the terms?

23 Q What you're currently convicted of straight up, no
24 recommendations.

25 A I didn't understand -- I didn't understand what you

MICHAEL HYATT - CROSS

1 said.

2 Q If your attorney came up to you and said, "I have this
3 offer for assault and battery of a high and aggravated
4 nature with no recommendations," what would your response
5 have been?

6 A I would look for a better deal.

7 MR. SCHMECKPEPER: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Break in proceedings.)

10 Q You talked about an incomplete video. Your testimony
11 is you don't have any of the missing portions of the
12 incomplete video; is that correct?

13 A No.

14 Q There's been some talk of witnesses. I think you
15 testified your attorney was ineffective in failing to ask
16 certain questions from Officer Lily.

17 A Yes.

18 Q Is Officer Lily here today?

19 A Did officer Lily do what?

20 Q Is Officer Lily here to testify?

21 A No.

22 MR. SCHMECKPEPER: Your Honor, I have no further
23 questions.

24 THE COURT: All right, thank you. Any redirect?

25 MS. MCMAHAN: Court's indulgence one second.

MICHAEL HYATT - REDIRECT

1 (Break in proceedings.)

2 REDIRECT EXAMINATION

3 BY MS. MCMAHAN:

4 Q Mr. Hyatt, did you tell Mr. Grier that you had spoken
5 to Mr. Lily earlier that day?

6 A Yes.

7 Q You did. Okay. Did he ever tell you that he was
8 going to get Mr. Lily there?

9 A He never discussed any of his proposals, what he was
10 going to do at the trial.

11 Q With Officer Lily?

12 A With Officer Lily.

13 Q Did Mr. Grier ever give you any reports from dispatch
14 or anything from when you called the police?

15 A No.

16 Q Do you remember what discovery you went over with him,
17 with Mr. Grier?

18 A Do I remember?

19 Q What evidence did you go through with Mr. Grier?

20 A The onliest thing that I thought it would be
21 important that we ever talked about was where they was at
22 when this went on, where Kamil was at, that's the only
23 thing we ever talked about.

24 Q That Kamil went back to his truck or --

25 A Where he was at when he shot me.

MICHAEL HYATT - REDIRECT

1 Q Oh, okay. And that was because he was standing in
2 front of you while you were on your knees?

3 A Yes.

4 Q Did you ever tell Mr. Grier that you wanted him to ask
5 Officer Lily about what you said to him earlier that day?

6 A I'm positive that that statement is in the motion of
7 discovery that I had told them that I told Officer Lily
8 about him down there threatening me, I'm sure that's in
9 there, you know what mean? And so --

10 Q But Mr. Grier never asked Officer Lily about that in
11 the trial.

12 A That was like the videotape, over and over again I
13 asked him for that tape, for that dash-cam tape and he
14 told me that the solicitor didn't have any time for when
15 he had to turn that tape over to us, and I got that tape
16 Friday afternoon at 4:30 and went to court Monday morning
17 at 9:00 the next Monday. I had no chance to examine the
18 tape or have anybody examine it.

19 Q So you didn't actually find out or have a chance to
20 view the tape until the Friday before your trial started on
21 Monday.

22 A I got it Friday afternoon and my trial started Monday
23 morning.

24 Q And you were arrested in 2010; is that correct?

25 A 2010, yes.

STEVEN GARRIS - DIRECT

1 Q And your trial was in 2014; is that correct?

2 A True.

3 MS. MCMAHAN: Nothing further, Your Honor.

4 THE COURT: Any recross?

5 MR. SCHMECKPEPER: No, Your Honor.

6 THE COURT: All right, thank you. You may step down.

7 Anything further from the applicant?

8 MS. MCMAHAN: Yes, Your Honor. The applicant calls

9 Mr. Steve Garris to the stand.

10 The witness, STEVE GARRIS, was first duly sworn and

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MCMAHAN:

14 Q Mr. Garris, can you hear me from here?

15 A Yes, ma'am.

16 Q Will you state your name for the record, specifically
17 will you tell the court reporter how to spell your last
18 name?

19 A Steven Lee Garris, G-a-r-r-i-s.

20 Q Are you Steven with a V or a p-h.

21 A V.

22 Q Thank you. And do you remember the incident that
23 occurred with Mr. Hyatt?

24 A Yes, ma'am, I do.

25 Q And what kind of information did you have for Mr.

STEVEN GARRIS - DIRECT

1 Hyatt about what happened?

2 A Well, a year and a half after the actual accident I
3 was over at my girlfriend's brother-in-law's house and it
4 was on a summer day and he asked me to let's walk up here
5 to a buddy of his house, Elmo, so we walked over across
6 903 up to Elmo's house. And there was a big blonde-headed
7 guy standing there and they were doing something and all,
8 I didn't know that was Elmo's brother at the time and I
9 didn't realize the guy that was talking was with Kamil
10 that day at the accident. Well, anyway he was showing us
11 some pictures of the phone of some bass he had caught. I
12 said, "Man, them are some nice fish you caught there,
13 where did you catch them at?" He said, "I caught them
14 over there of Doc Harris Road." And I said, "Do you know
15 James Staire (phonetically)?" And he said, "Yeah, that's
16 where I caught them at, down there on that pond," which
17 Jay Staire is my -- he married my cousin, Angela Rouse,
18 he's a highway patrolman. And he said, "I worked for
19 Milton Hunter." And I said, "Man, you wasn't in on that
20 stuff happened down there at the Hanging Rock, were you?"

21 MR. SCHMECKPEPER: Your Honor, at this point I would
22 just object to hearsay.

23 THE COURT: Yeah, he can't say what somebody else
24 said.

25 Q After you talked to -- who did you end up there

STEVEN GARRIS - DIRECT

1 talking to down there that ultimately gave you information?

2 A I talked to Tink.

3 Q And from your conversation with Tink, what did you
4 learn?

5 A Well, Tink worked for Milton Hunter --

6 THE COURT: Sustained, that's the same thing. You
7 can't ask him what he learned because that would be
8 hearsay.

9 Q Do you recognize this?

10 A Yes, ma'am.

11 Q And what -- is that your letter?

12 A Yes, ma'am. Well, my girlfriend actually wrote the
13 letter but these are my words. I just don't have a good
14 handwriting and I've got a ninth grade education, she had
15 prettier handwriting and spells better than I do, so --

16 Q So this is the letter that you had her write for you.

17 A Yes.

18 Q Did you sign this letter?

19 A Yes.

20 Q Did you give this letter to Mr. Grier?

21 A No, ma'am. I gave it to Mr. Hyatt, Michael, I hadn't
22 seen Mr. Grier.

23 Q You never spoke to Mr. Grier?

24 A No, ma'am.

25 Q Who was this letter intended for?

STEVEN GARRIS - DIRECT

- 1 A That was intended for Mr. Grier, but --
- 2 Q Did you ever speak to Mr. Grier the whole time?
- 3 A No, ma'am.
- 4 Q Did he ever call you?
- 5 A No, ma'am.
- 6 Q So when you were down and you met Tink --
- 7 A Yeah.
- 8 Q His real name is Terry Bowers; is that correct?
- 9 A Yes.
- 10 Q Did Mr. Bowers -- or Bowers, B-o-w-e-r-s, did Mr.
- 11 Bowers work for Kamil Nassrah?
- 12 A He worked for Milton Hunter.
- 13 Q And Milton Hunter worked for Kamil?
- 14 A Well, Kamil worked for Milton. They was working down
- 15 there brining hay out of that dirt road that Mickey lived
- 16 on.
- 17 Q So did Mr. Bowers have some information that would
- 18 have been helpful for Mr. Hyatt?
- 19 A He said he went down there to kill that son of a
- 20 bitch.
- 21 MR. SCHMECKPEPER: Objection, Your Honor.
- 22 THE COURT: Sustained.
- 23 Q But this is your letter that you sent to Mr. Grier.
- 24 A Yes, ma'am.
- 25 MS. MCMAHAN: At this time the applicant --

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1 THE COURT: Any objection at least for the purpose of
2 saying that he had notice?

3 MR. SCHMECKPEPER: Notice of the actual letter maybe
4 of the actual allegations, Your Honor, but I don't think
5 there's been anything non-hearsay as to what is coming in
6 to the record --

7 THE COURT: I agree, but I will allow the letter only
8 for the purpose that Mr. Grier may have had knowledge of
9 what somebody else had said.

10 MR. SCHMECKPEPER: Thank you, Your Honor.

11 (The letter was received as Applicant's 1.)

12 Q And Mr. Grier never called you about that incident.

13 A No, ma'am.

14 Q Did he ever ask you how to get in touch with Mr.
15 Bowers?

16 A Who?

17 Q Mr. Grier?

18 A No, ma'am, I never talked with Mr. Grier.

19 Q Did you ever get a subpoena to be in court that day?

20 A No, ma'am.

21 Q Did any other people that were there that day, were
22 they subpoenaed that should have been there?

23 A Not that I know of. But at Michael's trial none of
24 his family knowed he was being sentenced. We would have
25 loved to have been here. My cousin got nine years, her

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1 brother got nine years, we would have loved to have been
2 there. Nobody got a chance to say nothing in his defense.

3 Q So nobody from the family was present for the trial?

4 A Nobody. Nobody but his son that was tried with him
5 and sentenced.

6 Q And nobody ever told you that they were going to be
7 tried that day?

8 A No.

9 Q Nothing?

10 A No. Called none of the family or nothing.

11 Q Okay.

12 MS. MCMAHAN: Nothing further at this time, I will
13 turn it over to the State.

14 THE COURT: Any cross-examination?

15 MR. SCHMECKPEPER: Just briefly, Your Honor.

16 CROSS EXAMINATION

17 BY MR. SCHMECKPEPER:

18 Q Good morning, Mr. Garris. I have a couple of
19 questions for you.

20 A Okay, sir.

21 Q You weren't a witness to that event; is that correct?

22 A No, sir.

23 Q And you didn't actually talk to the victim or anybody
24 who witnessed the event.

25 A Talk to the victim?

STEVEN GARRIS - CROSS

1 Q You didn't talk to Kamil. You didn't --

2 A I didn't talk to Kamil, no, I didn't. But I was
3 there on the scene when they was both airlifted out of
4 there.

5 Q And you said you never talked to Mr. Grier.

6 A No, sir.

7 Q You only talked to Mr. Hyatt.

8 A Sir?

9 Q You only talked to Mr. Hyatt?

10 A I talk -- yeah, that's my cousin, I talked to him,
11 yeah.

12 Q And did your cousin ever give you Mr. Grier's contact
13 information?

14 A No. Mr. Grier is his lawyer, looked like he ought to
15 got a hold of me. I live in Lancaster, been here for 49
16 years.

17 Q I'm just confirming, your only contact was with Mr.
18 Hyatt and Mr. Hyatt never gave you Mr. Grier's contact
19 information or tried to put you in touch with him.

20 A No, he's the lawyer, Mickey ain't. He told me, he
21 said, you know, "I need you to write a letter to my
22 lawyer, just what you heard, the facts." And that is the
23 facts. I mean, the facts is in Lancaster County, I mean,
24 if you stop -- a county cop stopped somebody on the road
25 for a traffic stop there are three cops --

STEVEN GARRIS - REDIRECT

1 MR. SCHMECKPEPER: That's non-responsive.

2 THE COURT: Sustained. Your personal opinion
3 concerning the Lancaster Police is irrelevant.

4 THE WITNESS: Okay, sir.

5 MS. MCMAHAN: Your Honor, I have no more questions.

6 THE COURT: Any redirect?

7 MS. MCMAHAN: Just one.

8 REDIRECT EXAMINATION

9 BY MS. MCMAHAN:

10 Q Mr. Garris, you did speak to somebody who knew who was
11 present at the scene and that is the person you wrote the
12 letter about; is that correct?

13 A Yes, ma'am.

14 MS. MCMAHAN: Nothing further, Your Honor.

15 THE COURT: Anything?

16 MR. SCHMECKPEPER: Nothing, Your Honor.

17 THE COURT: Thank you, you may step down.

18 MS. MCMAHAN: Nothing further from the applicant.

19 MR. SCHMECKPEPER: State calls Mr. Mark Grier,
20 applicant's trial counsel.

21 The witness, MARK GRIER, was first duly sworn and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SCHMECKPEPER:

25 Q Good morning, Mr. Grier.

MARK GRIER - DIRECT

1 A Good morning.

2 Q Now, if you could just for the record, would you tell
3 the Judge and court reporter briefly your background in the
4 field of criminal law?

5 A I became a lawyer in 1990, and I went to work with
6 George Speedy who does a lot of criminal work, did that
7 for four years working with George. I had my own practice
8 in '94 and did a considerable amount of criminal work,
9 family law and general practice in Lancaster, and then I
10 got the contract as the public defender in 2006 before the
11 creation of the statewide system. And then in 2009 I was
12 offered a position with the Sixth Circuit Public
13 Defender's office, which I took and left private practice
14 and have practiced exclusively criminal law since then.
15 But I practiced criminal law since 1990.

16 Q It sounds fair to say by the time this trial occurred
17 in 2014 you had been practicing law for 20 something years?

18 A Something like that.

19 Q And this wasn't your first felony trial.

20 A No.

21 Q And I think it was also testified to that you started
22 representing Mr. Hyatt well before trial, three and a half
23 years?

24 A I think this happened in 2010 if I recall correctly,
25 the incident was a 2010 incident, yes. And I was

MARK GRIER - DIRECT

1 immediately assigned to him, yes.

2 Q And as soon as you got assigned this case what was the
3 first thing you did?

4 A I met with Mr. Hyatt. We had bond hearings and I
5 think -- I really can't recall whether he was denied bond
6 at first, he may have been, we had bond hearings, he got
7 out on bond, and we met intermittently. The first thing I
8 did was got him out on bond, I didn't think -- I talked
9 with him at the jail and then met with him when he was out
10 on bond early on once he got out.

11 Q Did you file for discovery?

12 A Yes.

13 Q Did you receive discovery in this case?

14 A We did. But he's correct in saying that we had
15 difficulty in getting the videos, they did not come in
16 until towards the end.

17 Q But you did ultimately have access to the videos.

18 A We did, we did. I'm not really sure exactly when we
19 got them but we did get them. We filed a motion for a
20 speedy trial in October and it was ordered that it be
21 tried by that week of January 6th.

22 Q So you continued to receive discovery up until trial.

23 A We did.

24 Q Is that typical?

25 A Well, it's not unusual. I can't -- I don't recall

MARK GRIER - DIRECT

1 exactly what their difficulties were, what I was told as
2 to why we didn't get it until close to the end.

3 Q You just mentioned that he filed a motion for a speedy
4 trial. This case languished for awhile.

5 A It did, yes.

6 Q What was the result of filing the motion for a speedy
7 trial?

8 A It was ordered that it be tried by that week of
9 whatever, January the 6th of 2014.

10 Q Did Mr. Hyatt ever express any interest in pleading
11 guilty to these charges?

12 A I don't specifically remember going over -- he got an
13 offer in 2010 immediately, and the offer was to plead
14 straight-up to assault and battery of a high and
15 aggravated nature. Mr. Hyatt and his son, we -- frankly
16 there really weren't any conflicts that Mr. Frick and I
17 could discern, we kind of worked on this case together, I
18 think it's fair to say we met with our clients together
19 and were getting close to trial. But, you know, Mr. Hyatt
20 took the position that he was a victim in the case, which,
21 I mean, quite frankly I was inclined to agree with. And
22 certainly I can't say that I did go over that offer to
23 plead straight-up to ABHAN with him, I would have normally
24 in the course of events done that as routine. We get the
25 offers, we mention them, my recollection is is that Mr.

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1 Hyatt was just categorically opposed to pleading to
2 anything, that he was a victim and he was not interested
3 in pleas, although we never had a plea offer that didn't
4 involve doing -- didn't involve a straight-up plea, which
5 if we didn't discuss it most certainly I would have
6 assumed would have involved jail time if he would have
7 pled straight up even to ABHAN under the circumstances.

8 Q And I guess the context is there's a speedy trial
9 motion, and the applicant, and I think you agree, has a
10 pretty strong argument to go to trial. What were the
11 negotiations -- did you negotiate with the solicitor's
12 office to try and get a deal?

13 A We were not -- we never got anything other than the
14 ABHAN offer, I never received another offer. I don't have
15 anything in the file, which I reviewed, to reflect that we
16 ever received any other offer, and I don't recall that.

17 Q There was a reduction from the indictment, correct?

18 A Yes.

19 Q He was indicted for attempted murder?

20 A Yes.

21 Q And you went over -- I think what your standard
22 practice is -- and I just want to kind of hit on that
23 again -- what is your standard practice -- I understand
24 that this -- the plea offer came in 2010, six years ago, so
25 while you may not have any independent recollection of what

MARK GRIER - DIRECT

1 happened, what is, just for the record, your standard
2 practice when you get a plea offer conveyed by the
3 solicitor's office?

4 A Well, it's not unusual for us to have a plea offer
5 before we meet with a client. That plea offer, as I
6 recall, is dated shortly after I got that case. I
7 notice -- I'm pretty sure it was dated in 2010 is my
8 recollection. You know, my practice would be to say,
9 "This is what your offer is," and actually show it to them
10 or give them a copy of it if they wanted that, or give it
11 to them with their discovery sometimes. Sometimes I don't
12 give it to them with discovery because I think that --
13 well, it's just not productive. The context -- there
14 needs to be a conversation about the offer rather than
15 somebody getting it and not understanding it and being
16 able to interpret it, so there are times when I would want
17 to have a conversation about that. I don't remember the
18 conversation if we had one, and we may not have. But my
19 standard practice, which is pretty ingrained from doing it
20 for a long time, is I would say, "This is what is on the
21 table and if you got any -- if you want to talk about
22 that, do you have any interest in pleading to that?" And
23 explain. In this case the administrative plea to
24 something that carried up to 20 years -- I believe the
25 ABHAN changed and I'm not sure before coming in today, I

MARK GRIER - DIRECT

1 think -- well, he was convicted under the new statute
2 obviously because it's a non-parolable. The old statute
3 for assault and battery of a high and aggravated nature
4 was not a no-parole offense and it was not a felony, and
5 so he was convicted under the new one and I don't recall
6 the offer being anything but under the new as -- we say
7 new, what is it, six or seven years old now, the new
8 assault and battery high and aggravated statute.

9 Q And do you have any reason to suspect you might have
10 deviated from your standard practice in this case?

11 A No, I don't. The only way I would have deviated is
12 if there was just a plain communication that there was no
13 interest in a plea, and I've had clients say, "I don't
14 even -- I'm not entertaining an offer," and refused -- not
15 want to discuss it and refused to discuss it. I'll take
16 the position when they do that, I have to tell them what
17 their offer is. It would be very very contrary to my
18 practice not to at least tell them what it was.

19 Q Let's talk about some of these witnesses who are -- I
20 guess Mr. Garris -- you heard Mr. Garris testify.

21 A I have, yes.

22 Q Did you ever talk to Mr. Garris before trial?

23 A No.

24 Q Is there a reason you didn't talk to him?

25 A We didn't know how to get in touch with him. I had

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1 asked Mr. Hyatt -- he'd given me the letter, we had
2 discussed that for impeachment purposes we would have to
3 get -- the letter, in fact, said -- gave the wrong name,
4 it gave the name as being Terry Thomas, I believe. And in
5 fact, apparently they were uncertain as to the guy's name
6 and so -- because the letter says, "I believe Terry
7 Thomas, Tink."

8 Q You might be confusing that with Terry Bowers?

9 A Terry Bowers. Ultimately -- at any rate I received
10 the communication on December 30th of 2014 that had
11 from -- and I'm not sure, but I had received a message
12 from my secretary that had the name is --

13 MR. SCHMECKPEPER: Your Honor, may I approach?

14 Q I have that document. And just for the record I
15 believe it reflects it was 2013.

16 A Excuse me, it would have been December 30th of 2014
17 from my secretary. The guy's name is Terry Thomas, not
18 Terry Bowers. It had Steve Garris' address. And, you
19 know, I wanted to talk to Steve Garris. I was depending
20 on the Hyatts to get me the information and I never got a
21 phone number or any information and he never contacted me.
22 But certainly had -- I did attempt to subpoena him. I
23 filed the subpoenas, I don't have the return, but --
24 Q That was my next question. So you did, in fact,
25 attempt to subpoena Mr. Garris.

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1 A We did, and I filed that. Of course, we got this
2 information that we didn't even have that I was not being
3 supplied the right name for Mr. Thomas, I was being told
4 it was Mr. Thomas but it was Mr. Bowers and also the
5 address for Steve Garris on the 30th. Of course --

6 MR. SCHMECKPEPER: May I approach?

7 A -- the clerk's office was closed for a couple of days
8 there.

9 Q Does that look like the subpoena that you had sent?

10 A Yeah, it is. And also Mr. Garris' letter was of no
11 use except for impeachment purposes if we weren't able to
12 get Mr. Bowers as well. Nothing that Mr. Garris had to
13 say would have gotten into evidence, and we did have that
14 conversation with Mr. Hyatt.

15 Q And you also attempted to subpoena Mr. Bowers; is that
16 correct?

17 A I did.

18 Q I'm going to show that to you real quick. Is this the
19 subpoena you had sent for Mr. Bowers?

20 A It is.

21 MR. SCHMECKPEPER: Your Honor, I would like to admit
22 both of these into evidence.

23 THE COURT: Any objection.

24 MS. MCMAHAN: None, Your Honor.

25 (The subpoenas were received as State's 1 and 2.)

MARK GRIER - DIRECT

1 Q Going down the list of allegations here. One of the
2 allegations is that you did not cross examine Officer Lily
3 concerning, I think, some previous interactions.

4 A Right.

5 Q I just have a quick question for you. In terms of the
6 context and posture of this case, did law enforcement and
7 the solicitor's office have a person that they thought was
8 the victim and that they thought was not the victim?

9 A I'm sorry, would you repeat that?

10 Q Probably a poorly worded question. They had a clear
11 favorite in terms of Mr. Hyatt and the victim; is that
12 correct?

13 A I think it's fair to say that the momentum of who was
14 the "bad guy" was clearly -- they had made their call, it
15 was Mr. Hyatt, the tilt in the case was against Mr. Hyatt
16 even though he'd been shot.

17 Q And from your recollection, why was Officer Lily there
18 at that point? There was a previous incident, I think
19 that's what he was complaining about.

20 A Well -- why was he at the scene?

21 Q Because there was an incident leading up to this,
22 correct?

23 A Yes.

24 Q Could you kind of explain the context of that?

25 A Mr. Kamil Nassrah, I think is how you pronounce his

MARK GRIER - DIRECT

1 name, they allege Mr. Hyatt had locked them in their
2 pasture is my recollection earlier that day, or maybe that
3 week, I think they'd been there all week. But they made
4 those allegations to law enforcement that -- there was no
5 evidence of it, but they had made that allegation that Mr.
6 Hyatt had locked them -- Mr. Hyatt or his son had locked
7 them in their pasture -- had gone down basically and taken
8 their lock and locked them in there while they were in
9 there getting hay. And my recollection is that they came
10 out to investigate that, and as far as I know that was
11 what their allegations were earlier that day. There had
12 been conflict about them stirring up dust for some period
13 of time.

14 Q Did law enforcement appear more sympathetic towards
15 the victim than your client even though he'd been shot?

16 A I can't say that they -- did they appear at trial
17 or --

18 Q Yeah.

19 A -- or in the general context of the discovery and
20 everything? I don't know, that's hard to say. You know,
21 just generally I got that impression from talking with
22 them and from the context of the discovery from the trial
23 that Mr. Hyatt's -- Mr. Nassrah was a man of considerable
24 influence in this community. And yeah, I would have to
25 say in all honesty that I felt like that things were

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1 investigated with that tilt, yeah.

2 Q And in terms of cross examination and getting
3 testimony from law enforcement in general, did you think
4 they were going to give your client any help on the stand?

5 A Did I feel like law enforcement would help him?

6 Well, no, I didn't think -- no. There was nothing overt
7 where they were like obviously trying to put their thumb
8 on the scale or anything, but no, I didn't expect any
9 testimony that would be beneficial. The case had been
10 made. You can't expect -- law enforcement has to -- they
11 have to decide who is telling the truth and who is not
12 telling the truth every day and that's a tough job, and --
13 but once that decision is made they kind of have to go
14 with it and I understand that, and I think that's what was
15 going on here, yeah.

16 Q And did you take that into account in determining how
17 you cross examined the law enforcement officers?

18 A Well, yeah, I certainly always do. I mean, there
19 are -- my experience is, you know, that if you're
20 encountering hostility in a witness you don't ask
21 questions that you don't have the answer to or that you
22 don't have impeachable evidence that can nail it, I don't
23 know if that makes sense. But the bottom line is I've
24 been burned by asking questions I shouldn't have I guess
25 is what it boils down to.

MARK GRIER - DIRECT

1 Q Now, the last allegation on the amended application --
2 I don't believe I see anything else -- the applicant has
3 alleged that you were ineffective for not sufficiently
4 cross examining the victim with regard to his prior
5 statements. Is it fair to say, though, that you actually
6 did cross examine the victim on his prior statements?

7 A I certainly thought -- yeah. I've read the
8 transcript and I don't know specifically what I failed to
9 do, but we -- that quite frankly we, Mr. Frick and I,
10 worked in concert to layout how we were going to cross
11 examine and who was going to do what. I thought we were
12 thorough on that, but I don't know the specifics of what
13 we didn't do, no, I don't know what that would have been.

14 Q Just looking specifically at page 213 through 216 --
15 and I'm not going to ask you to reread the transcript, but
16 is it fair to say, or do you remember kind of going like
17 you would ask him about his prior statement to law
18 enforcement and how it was consistent with his testimony,
19 and he would pretty much explain, "Well, I had just been
20 hit in the head and had a concussion, was almost
21 unconscious." So he did have some explanation for some of
22 the inconsistencies.

23 A Well, that was what he said. I thought some of his
24 responses were plausible and I thought we were successful
25 in cross examining him, and I believe everybody did based

MARK GRIER - DIRECT

1 on the conversations we had in anticipation of the result,
2 the result wasn't what we expected.

3 Q This was a triable case I think you said.

4 A It was a very triable case, yes. It wasn't a case
5 where I could really say, "Mr. Hyatt, you don't have a
6 chance." I believed he had a very -- I thought -- you
7 don't know. I have won cases I thought we had lost and
8 I've lost cases I thought we had won, and I always say
9 that to every client that's going to trial, it's part of
10 the explanation of the uncertainties of it.

11 MR. SCHMECKPEPER: Your Honor, I have no further
12 questions. Thank you, Mr. Grier.

13 THE COURT: All right. Ms. McMahan?

14 CROSS EXAMINATION

15 BY MS. MCMAHAN:

16 Q Mr. Grier, do you recall how many times you met with
17 Mr. Hyatt prior to the trial?

18 A Not specifically I don't, it would be speculation to
19 say. But it was as much as -- if he would have made
20 contact with me and as much as was necessary to prepare
21 when we ultimately got down to the deciding whether we
22 were going to go forward with the speedy trial motion, met
23 with the -- before we met at least one time, being the son
24 and Mr. Frick and me, all of us in trial preparation.

25 Q You said that you became the full-time PD in 2009 when

MARK GRIER - CROSS

1 they added the public defender system to the state.

2 A Yes.

3 Q What was your case load given to you in 2009, do you
4 recall?

5 A What was my case load?

6 Q Yeah. Like how many pending cases do you think you
7 averaged?

8 A Well, Lancaster has one of the largest case backlogs,
9 and of course, I'm -- my case load at that time in terms
10 of active case load would have been probably several
11 hundred cases at least, I say active, things that were
12 relatively new and I'm receiving inquiries when I came
13 on -- in 2009 or --

14 Q Well, around 2009 or 2010, I realize it's six years
15 ago.

16 A Well, you know, at the time I came on board my total
17 number of cases was like 600 or something, but out of that
18 what was active and what was being addressed on a day to
19 day basis -- of course you had new cases coming in and the
20 solicitor was picking cases that were significant to them
21 and contacting you, and so it was managing at least a
22 couple of hundred cases.

23 Q So when you got this case in 2010 you would have
24 already had at least let's say a 300 case backlog in
25 addition to this?

MARK GRIER - CROSS

1 A I'm certain -- that would have been -- I would have
2 had that many cases as far as being assigned that many
3 cases, yes.

4 Q And then between you and Mr. Frick, who else was in
5 the public defender's office?

6 A In 2009 -- excuse me, in 2010 when this was assigned
7 or when it went to trial?

8 Q In 2010 when it was assigned.

9 A I'm not certain but I believe just he and I.

10 Q Do you recall how many solicitors there were?

11 A I think five.

12 Q So more than twice the amount of public defenders.

13 A Yes.

14 Q In the life span of this case, how many different
15 prosecutors were assigned to it?

16 A I think it was probably just two. I don't really
17 know, I don't know. I know Bill Nowiki was initially
18 assigned and then ultimately Andy Cook was the trial
19 lawyer, I can't recall there being anybody in the interim.

20 Q I'm going to show you what is marked Applicant's 2.
21 Can you tell me what that is?

22 A Yeah, that's a plea offer.

23 Q What was it dated?

24 A That was October 12, 2010.

25 Q So that would have been about a month after he was

MARK GRIER - CROSS

1 arrested?

2 A Uh-huh. Yes.

3 Q Who is the prosecutor's name in the top corner?

4 A Bill Nowiki.

5 Q This is the plea offer to ABHAN?

6 A It is.

7 Q Is this a copy of what was in your file?

8 A Yes.

9 Q A true and exact copy of what was in your file?

10 A Yes.

11 MS. MCMAHAN: Your Honor, at this time I move that in
12 as Applicant's 2.

13 THE COURT: Any objection?

14 MR. SCHMECKPEPER: No Your Honor.

15 THE COURT: Without objection Applicant's Number 2 is
16 admitted.

17 (The plea offer was received as Applicant's 2.)

18 Q And you said earlier that typically your procedure
19 would have been to sit down and discuss the plea offer at
20 some point with your client.

21 A Yes.

22 Q And you don't recall exactly when -- if you did that
23 with Mr. Hyatt?

24 A I don't, no, I can't say that.

25 Q Did you ever determine whether or not the Castle

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1 Doctrine might have applied in this case?

2 MR. SCHMECKPEPER: Your Honor, I just object, I don't
3 think that's been pled.

4 THE COURT: Sustained.

5 Q What defenses did you think you would have raised in
6 this case?

7 A Self defense most certainly. I really --
8 self-defense would have -- and defense of others would
9 have been the defense that comes to mind.

10 Q Were there any other defenses -- was that your main
11 trial strategy?

12 A Well, we have -- I do have notes about immunity in my
13 file, so --

14 Q But that was never brought up, that one?

15 A We didn't have an immunity hearing, and I don't
16 recall specifically, you know.

17 Q And I'm going to show you what's marked as Applicant's
18 1. Do you recall receiving this letter?

19 A I did, yes.

20 Q Do you recall receiving it in October of 2012 if it's
21 so dated, somewhere thereabouts?

22 A I think I received it fairly early on, yes.

23 Q And so -- and that was the letter from Mr. Garris?

24 A It was.

25 Q Did you ever at that time in 2012 ask Mr. Hyatt how to

MARK GRIER - CROSS

1 get in touch with his cousin?

2 A Yes, I did.

3 Q And did you attempt to try to call Mr. Garris in 2012
4 or 2013?

5 A I had no contact information.

6 Q Do you know how many times you asked Mr. Hyatt for
7 that contact information?

8 A I don't, no. I emphasized the importance of it and
9 getting in touch with him and having most certainly
10 contact information to subpoena him, but nothing else.

11 Q And you didn't get a subpoena for them until January
12 4th of 2014; is that correct?

13 A Correct.

14 Q Do you know why it wasn't served on them?

15 A I don't know. I don't know if that was his actual
16 address but that was the address that I received on the
17 Monday a week before trial.

18 Q Do you guys have an investigator that works for your
19 office?

20 A No, we don't.

21 Q So typically how would you get your subpoenas served?

22 A Through the sheriff's department. I would clock it
23 and give it to -- Tawana Barnes was over subpoenas at that
24 time and we would give it to law enforcement and they
25 would serve it.

MARK GRIER - CROSS

1 Q So if it was something that you wanted to be served,
2 you or a staff member from your office would have contacted
3 Officer Barnes and had it served?

4 A Yes.

5 Q Did she just work 9:00 to 5:00? Did she just serve
6 subpoenas whenever she wanted to or --

7 A Well, she's retired now, good for her. But we could
8 leave them with the desk here with security here too and
9 she would pick them up. I had her cellphone and I would
10 call her, tell her I have a subpoena and she would say
11 leave it with --

12 Q So if you would have gotten a subpoena signed the
13 Friday before, you could have called her and asked her to
14 go ahead and serve them that weekend for you before the
15 trial on Monday?

16 A Yes.

17 Q And then given your contact information along with the
18 subpoenas so that the witnesses could have contacted you?

19 A Well, it had my contact information on the subpoena,
20 yes.

21 Q So you did not get the dash-cam video until the Friday
22 before.

23 A I don't know if that's true exactly when, if I got it
24 before and looked at it and then he just -- we didn't get
25 it to him until the Friday before, I would be speculating.

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1 But don't believe we got it before then. I would have
2 looked at it before -- I looked at it -- I know Frick and
3 I looked at it before we gave it to them.

4 Q So you would have at least seen it a couple of weeks
5 or a month before you would have met with them about it.

6 A It came in within the last few weeks before trial,
7 yes.

8 Q So the case had been pending for three and a half
9 years and they finally provided it to you a month before
10 the trial.

11 A Yes.

12 Q Did you think that maybe you could file a Rule 5
13 motion to keep it out since it had been more than well
14 after your discovery motion had been filed that you were
15 provided it?

16 A Frankly I think everybody on the defense team was of
17 the opinion that that the videos were more helpful than
18 hurtful, certainly that was the opinions of my clients,
19 and dash-cam of the responding vehicle was something that
20 we felt benefited us. It had kind of things that were
21 contradicted by the evidence or at trial and it showed --
22 I think and just demonstrably in terms of your showing
23 your client who had been shot and emphasizing that. It
24 didn't show what happened but it showed Mr. Hyatt being
25 shot and him -- not being shot, but shot and being treated

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1 and all of that. But the two videos -- also they made a
2 reenactment video of Michael Hyatt's son, Aaron, where
3 he -- and I mean, I think the defense -- our -- we
4 concluded that they were beneficial.

5 Q What were the missing parts that Mr. Hyatt is
6 complaining about?

7 A I'm not sure, I don't know, he would have to say. I
8 really don't know what he's referring to there, and if
9 he's talking about -- I think he's talking about his son's
10 video, I'm not sure. I'm not sure. I don't recall other
11 than -- vaguely I do recall him mentioning that he felt
12 like something was missing or that something else was
13 said, but --

14 Q But that was in the recreation video and not the
15 actual dash-cam itself?

16 A Right, that's my recollection.

17 Q When did the State give you the video that they
18 recreated?

19 A The video that they recreated?

20 Q Yeah.

21 A I think we got it all at the same time.

22 Q Did you ever address with the Court either maybe in a
23 bench conference or in the back about the fact that you
24 didn't get these videos until a month or a couple of weeks
25 before the trial?

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1 A Well, no, I didn't. I mean, we worked hard on it and
2 we did everything we could do with it prior to trial. And
3 Mr. Frick in particular, he created and edited another
4 video and broke down the sound on the video, somehow he
5 was able to breakdown the sound on the video to split the
6 channel so that you could hear things in terms of Mr.
7 Melton's testimony that you couldn't hear that would have
8 gone unknown had Mr. Frick not figured out how to split
9 those channels and hear things that were, we thought,
10 helpful to the defense, and in fact were helpful. I think
11 you could argue they weren't helpful to the defense, not
12 helpful enough.

13 Q I'm jumping around a little bit here, I apologize.
14 Going back to the prior plea offer, you had testified that
15 he was pretty adamant he didn't want to plead guilty, that
16 he was innocent the whole time.

17 A Yes.

18 Q Was there a possibility that you could have argued for
19 probation given that Mr. Hyatt didn't have any prior
20 criminal convictions?

21 A I believe he did have some criminal convictions but
22 I'm not sure, but certainly, you know -- I don't recall
23 those conversations. I don't think I've ever tried a case
24 where I haven't asked for a probationary sentence just as
25 a practice, that's something you do when you try cases.

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1 And then even if you don't think your client is going to
2 take it you feel like, "Well, at least I have a duty to do
3 that," and it would be the best practice to do it and I
4 don't think -- I can't say particularly that I did it, but
5 I would be astounded if I didn't try to negotiate a
6 sentence that --

7 Q So given the amount of time that this case was pending
8 and given the back log in Lancaster County, had you ever
9 had success in getting what we call a fire sale deal out of
10 the solicitors on some of some of these older cases?

11 A Yes, uh-huh.

12 Q Do you think you would have had success in this one?

13 A I think there was more going on in this, yeah. I
14 don't think so. I just don't think that they felt that
15 they -- I just never got the impression that they were
16 willing to bend beyond the initial offer or felt like they
17 could do it because of whatever the perception would be of
18 the audience that knows about these things, the newspapers
19 or whatever.

20 Q Did you ever go back and ask for a cap of anything on
21 that ABHAN?

22 A I don't recall that.

23 Q Do you feel -- was this case somewhat political
24 because Mr. Nassrah had some standing in the --

25 A I don't know that. But just anecdotally you think

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1 about, hey, this is -- things are what the paper says and
2 then things are what you know them to be, or you suspect
3 they might be. Mr. Nassrah had owned a convenience store.

4 MR. SCHMECKPEPER: I think we are getting into
5 speculation here.

6 THE COURT: I will give her a little more.

7 A Well, he had been a businessman, had a convenience
8 store. I can say I've seen the sheriff's deputies at the
9 convenient store regularly. To be responsive to the
10 reality of what's going on in my mind in terms of trial
11 strategy, I felt like there would have been just some more
12 sympathy towards him, he was more well known and just --
13 that's human nature. Not that anybody is doing anything
14 wrong, he was more well known and that human nature might
15 play against us in terms of trial strategy. And even when
16 we had these conversations with Mr. Hyatt he was raising
17 that issue regularly that he felt like he was being
18 treated differently because of who Mr. Nassrah was and he
19 may have been, I don't know that he was.

20 Q Did you ever have any discussions with Mr. Hyatt about
21 him calling the police on Mr. Nassrah and all of them in
22 prior events in that morning?

23 A Yeah. We did talk about it and I -- yeah, I think I
24 have.

25 Q Did you ever get any police reports or any dispatch

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1 reports about when Mr. Hyatt might have called them?

2 A I think -- I didn't get the police reports or any
3 documentation of that, no.

4 Q Would that type of information have been helpful as
5 far as like the self-defense -- the self-defense defense
6 you brought up?

7 A I don't think it was ever denied that he did it, that
8 there was communication and that he was complaining about
9 it. In fact, that was in the transcript that he was
10 communicating with law enforcement about the problems he
11 was having with Mr. Nassrah's crew.

12 Q Okay. And did you -- when did you notify Mr. Hyatt
13 that he was going to trial on the 10th or whatever day it
14 was, on the 6th?

15 A I think -- I don't know. I assume he was present for
16 the motion -- I think he was present for his motion for a
17 speedy trial, I don't know that he was. But certainly we
18 found out in October that it had to be tried by then and
19 we started working on it, we did.

20 Q And at that time that's when the Judge ordered that it
21 be tried January 6th?

22 A Well, he ordered that it be tried by January 6th or
23 dismissed, I believe. Mr. Hyatt was out on bond and had
24 been out on bond for whatever, several years.

25 Q Did you ever have any difficulty getting in touch with

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1 him?

2 A I don't think so, no. Mr. Hyatt -- I never had any
3 problems with Mr. Hyatt in terms of getting him.

4 Q Did you ever talk to any of his family members or
5 anything about the incident?

6 A No, I did not. Yeah, I talked to his son about it,
7 Aaron, of course. But in terms of the other folks I
8 certainly would have thought that Mr. Hyatt would have
9 been communicating with his family about when the trial
10 was going to happen, but I didn't call any of his family
11 about that, the only ones that were witnesses.

12 Q And typically when something is going to trial, do you
13 just notify the defendant or do you notify the entire
14 family, or what is your general cardinal rule on that?

15 A There is no general thing, that's a case by case
16 basis. If they're in jail certainly we would notify the
17 family typically -- and, you know, often times families
18 are -- different wings of the family, there are broken
19 families and we're sympathetic to that and my office does
20 a good job for that, and I do it too from time to time.
21 If the client is out of jail well, you know, that's their
22 choice of who they want at trial unless there are
23 witnesses in the family, and then certainly we would see
24 to it that that's done, yes.

25 MS. MCMAHAN: Nothing further, Your Honor.

MARK GRIER - REDIRECT

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. SCHMECKPEPER:

4 Q I just have one question for you. Did you feel like
5 you were prepared for trial?

6 A I did.

7 MR. SCHMECKPEPER: I have no further questions.

8 THE COURT: Thank you.

9 MR. SCHMECKPEPER: No further questions, and nothing
10 further from the State, Your Honor. I would be happy to
11 make argument at the appropriate time.

12 THE COURT: Any objection to him being excused?

13 MS. MCMAHAN: No, Your Honor.

14 THE COURT: Yes, ma'am, you're the applicant's
15 attorney, I will let you go first.

16 MS. MCMAHAN: Your Honor, we have no redirect or
17 anything. Our arguments were basically set forth mainly in
18 our amended application, but also, you know, just that
19 several things would have culminated ineffective. The
20 first one is that the plea offer was never conveyed to Mr.
21 Hyatt, that's a violation of the Davey case and the --

22 THE COURT: Well, I don't think that was proven, I
23 think -- and it may not have made any difference. Go
24 ahead.

25 MS. MCMAHAN: And also that Mr. Grier never looked

1 into Mr. Garris' letter and never contacted Mr. Garris
2 about it for that whole issue. And then the other
3 ancillary issues that we've already brought up in our
4 application.

5 THE COURT: Thank you. Yes, sir?

6 MR. SCHMECKPEPER: Thank you, Your Honor, just
7 briefly. Concerning the failure to call witnesses, I think
8 the evidence and testimony from counsel suggests that he
9 did call the witnesses as soon as he could. I think we've
10 heard from one witness today who pretty much only could
11 have testified to hearsay and the substance of that letter
12 is just hearsay. So whether or not counsel was on notice
13 of other witnesses, if they were here I would be happy to
14 address what they would have said or whether or not counsel
15 was on notice, but they're not here today. Concerning
16 failure to convey the plea offer, I think counsel's
17 testimony was his normal practice was to convey it, he
18 couldn't think of any reason that he had -- any reason he
19 might have evaded that in this case. Applicant's testimony
20 suggested that he would have been on the fence anyway. In
21 order to prove prejudice in this forum he has got to
22 definitively say yes, he would have taken the plea offer
23 and we don't have that testimony. Concerning I think cross
24 examination of Officer Lily and whether or not counsel did
25 an adequate job with respect to threats that were made

1 earlier in the day, we don't have any of those witnesses
2 here. I think counsel testified credibly as to his
3 strategy and cross examination. Similarly with the
4 victim --

5 THE COURT: Let me interrupt. Ms. McMahan, I want to
6 ask you, there's no question he was -- if there was a plea
7 offer he was convicted of that crime, correct?

8 MS. MCMAHAN: No, there's no question. He was offered
9 the --

10 THE COURT: If he was offered assault and battery of a
11 high and aggravated, he then went to trial and he was
12 convicted of that as well.

13 MS. MCMAHAN: Yes, the new one, the statutory one.

14 MR. SCHMECKPEPER: I don't have anything further, Your
15 Honor. I would just rest on the record and I would be
16 happy to answer any questions.

17 THE COURT: I find that the applicant has the burden
18 of proof in determining whether or not to prove that the
19 trial counsel's actions fell below the standard, I find
20 that he has failed to meet that burden of proof and hereby
21 dismiss his post conviction relief. If you would prepare
22 me an order, Mr. Schmeckpeper.

23 MR. SCHMECKPEPER: Yes, sir, Your Honor.

24 THE COURT: Thank you. And certainly you are entitled
25 to appeal that subject to the terms within the statutory

1 time. Thank you.

2 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for Lancaster County, South Carolina, on the 9th day
9 of January, 2017.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

June 15, 2017

14

15


Michael C. Watkins

16

17

Court Reporter

18

19

20

21

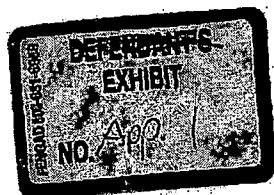
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RECEIVED
JUN 19 2017
APPELLATE DEFENSE



Oct 19, 2012

I Steve Harris went to
 Kill some time at my girlfriends
 Brother-in-Laws house Jimmy
 Terry. He lives on McShaw St.
 But he was across 903 at a neighbors
 house, Buck Hall. He was a big
 guy there they were talking about
 fishing well I asked him where
 was he catching the fish at and
 he said down in Rich Hill and
 off Mac Harris Road and I told
 him my cousin lives down that
 way Angela & Jay Storer he said
 he knewed them then I asked him
 who does he work for and he said
 Melton Hunter. Then I asked him
 was he involved in that stuff that
 happened down off Hanging Rock
 Rd. and he said yes and he also
 said they went down there to
 kill that Motherucker and
 then he asked why you're not
 killing them are you. And after
 I told him I was he didn't
 say anything else.

Then me and Jimmy Terry
left. And then I asked Jimmy
what was his name and he
said Tink (Terry Thomas) I
believe that's his name.

Stamie Harris

Witness Nancy Vaughan

W-116 NOW 2653
#101 5612-200

Date sent 10-12-10

LANCASTER COUNTY GENERAL SESSIONS PLEA OFFER

State vs. Michael E. Hyatt

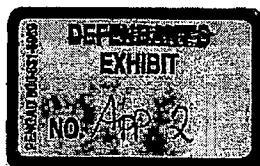
Defense Attorney: M. Grier / PO

Indictment/warrant #	Charge	State's Offer
M-165468	Attempted Murder	Plead to ABH4N

Comments by Solicitor Plead straight up - to ABH4N.

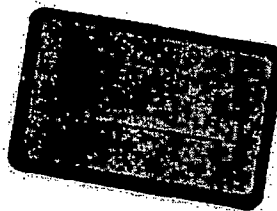
Response of Defense Attorney

THIS OFFER MAY BE WITHDRAWN AT ANY TIME PRIOR TO ITS ACCEPTANCE AND IS
AUTOMATICALLY WITHDRAWN IF NOT ACCEPTED BY THE DATE OF THE DEFENDANT'S
SECOND APPEARANCE.



SUBPOENA IN A CRIMINAL CASE

STATE OF SOUTH CAROLINA CITY OF LANCASTER		IN THE GENERAL SESSIONS COURT	
STATE OF SOUTH CAROLINA		WARRANT NO.: M165468	
VS.		SUBPOENA FOR	
MICHAEL HYATT		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)	
TO: Terry Bowers Working for Milton Hunter at 1506 East Doc Garris Road Lancaster, SC 29720			
☒ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.			
PLACE Lancaster County General Sessions Court 104 N. Main Street Lancaster, South Carolina 29720		COURTROOM MAIN	
		DATE AND TIME Monday, January 6, 2014 at 2:00 PM	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).			
LIST DOCUMENT(S) OR OBJECT(S)			
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT		DATE	
(BY) DEPUTY CLERK <i>Paul Williams</i>		<i>1-3-14</i>	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:		ATTORNEY'S NAME AND ADDRESS	
☐ SOLICITOR ☐ DEFENDANT		MARK GRIER, PUBLIC DEFENDER 104 N. Main Street Lancaster, South Carolina 29720 (803) 285-5585	



PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

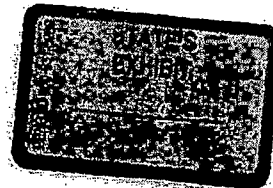
Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

SUBPOENA IN A CRIMINAL CASE

STATE OF SOUTH CAROLINA CITY OF LANCASTER		IN THE GENERAL SESSIONS COURT	
STATE OF SOUTH CAROLINA		WARRANT NO.: M165468	
VS.		SUBPOENA FOR	
MICHAEL HYATT		☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)	
TO: Steve Garris 3189 Sentery Road Lancaster, SC 29720			
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CLERK OF COURT		DATE	
(BY) DEPUTY CLERK <i>Carol Williams</i>		1-3-14	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE:		ATTORNEY'S NAME AND ADDRESS	
☐ SOLICITOR ☐ DEFENDANT		MARK GRIER, PUBLIC DEFENDER 104 N. Main Street Lancaster, South Carolina 29720 (803) 285-5585	



PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
	)	
Michael E. Hyatt,	)	C.A. No. 2015-CP-29-1103
S.C.D.C. No. 358395	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	(with prejudice)
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 6, 2015. Respondent filed its Return on or about March 1, 2016. An evidentiary hearing into the matter was convened on January 9, 2017, at the Lancaster County Courthouse. The Applicant was present and testified in his defense. Steve Garris also testified, as did the Applicant's plea counsel, Mark H. Grier, Jr. The Applicant was represented by Ashley A. McMahan, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the December 2010 term of the Lancaster County Grand Jury for attempted murder (2010-GS-29-1590). Applicant was represented by Mark Grier, Esquire. On January 6, 2014, Applicant proceeded to trial where he was convicted by a jury of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Brian M. Gibbons sentenced Applicant to nine (9) years imprisonment.

FILED
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 OF COURT
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 CLERK OF COURT
 LANCASTER, SC

Applicant filed a timely notice of appeal. An appeal was perfected by Susan B. Hackett, Esquire, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction on March 1, 2015. State v. Hyatt, Op. No. 2015-UP-326 (S.C. Ct. App. filed July 1, 2015). The Remittitur was returned on July 22, 2015.

Allegations

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

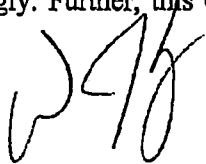
1. "Applicant's sentence and conviction were procured in violation of the sixth and Fourteenth Amendments"
 - a. Ineffective assistance of counsel, in that:
 - i. Trial counsel failed to object to Trial Court's charge of assault and battery.
 - ii. Trial counsel failed to object to the solicitor's closing argument

On or about December 29, 2016, the Applicant filed an amended application raising the following issues:

1. Ineffective assistance of counsel
 - a. Mr. Grier failed to call witnesses on behalf of Mr. Hyatt who would have testified that the victim's intent was to in fact injure Mr. Hyatt.
 - b. Mr. Grier did not convey any plea offers from the Solicitor to Mr. Hyatt in violation of Davie v. State, 381 S.C. 601 (2009) & Missouri v. Frye, 132 S.Ct. 1399 (2011).
 - c. Mr. Grier did not cross-examine Officer Lilly on the fact that MR. Hyatt had called the sheriff earlier that day regarding Kamil Nassrah and his threats to Mr. Hyatt.
 - d. Mr. Grier did not sufficiently cross-examine Mr. Nassrah on the differences in his statement to the police and the testimony he gave in court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject



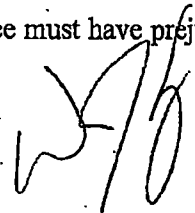
conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court has made the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,



but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Failure to Convey Plea Offer

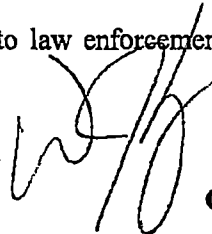
The Applicant testified that he was never informed of any plea offers. He testified that if he had been told of any plea offers, he probably would have pled guilty. The Applicant specifically testified that he was never offered the opportunity to plead to assault and battery of a high and aggravated nature, but that he was not sure he would have taken such an offer.

Counsel testified that the only offer ever made by the solicitor's office in this case was to assault and battery of a high and aggravated nature. Counsel was unable to specifically remember conveying the plea offer to the Applicant. However, he testified credibly that his standard practice is to convey plea offers to his clients. This Court also takes into account that counsel had been practicing for roughly twenty-five years at the time of the Applicant's trial. There is nothing in the record that realistically suggests counsel failed to convey the plea offer to the Applicant.

The Applicant's contrary self-serving testimony is not credible. Particularly compelling to this determination is counsel's credible testimony that the Applicant considered himself the victim throughout the course of the proceedings. In any event, even taking everything he says as true, the Applicant was unable to definitively say that he would have accepted the offer had it been conveyed by counsel. See Hill v. Lockhart, supra. Because he has failed to meet his burden to show deficiency or prejudice, this allegation is denied and dismissed.

Failure to Adequately Impeach the Victim on Cross-Examination

Applicant testified that counsel failed to question or adequately impeach the victim on his statement to law enforcement. He said the victim's prior statement to law enforcement was



different than his testimony at trial. Having reviewed the record, this Court notes that counsel did, in fact, cross-examine the victim on his prior statement to law enforcement. Tr. p. 210-16.¹ Inasmuch as the Applicant disagrees with the extent or method, this Court finds he has failed to meet his burden to show counsel's performance was objectively unreasonable. The Applicant has also failed to meet his burden to show that but for counsel's purported deficiency, the outcome of the proceeding would have been different. This allegation is therefore denied and dismissed.

Failure to Introduce Missing Portions of Video

The Applicant testified that the video introduced at trial of the immediate aftermath of the incident was incomplete, and that certain parts were missing. However, the Applicant did not produce the video or any of the alleged missing portions at the evidentiary hearing. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (allegation of ineffective assistance may not be supported by mere speculation as to the result). Lacking either, this Court cannot find the Applicant has met his burden. This allegation is therefore denied and dismissed.

Failure to Call Witnesses

Steve Garris

The Applicant further alleged counsel was ineffective for failing to call witnesses Steve Garris and Terry Bowers. Steve Garris testified at the evidentiary hearing, apparently to present statements he heard from Terry Bowers that were attributed to the victim. Any such statements from Ms. Garris would have clearly been inadmissible at trial. See, Rule 801, SCRE. Moreover, this Court finds counsel was not deficient in failing to call Mr. Garris as a witness because the Applicant failed to provide him with the appropriate contact information in sufficient time to be

¹ The victim explained that he had trouble remembering his statement to law enforcement because he was barely conscious from being struck in the head by the Applicant. Tr. p. 211-12.

ready for trial. Counsel's credible testimony further indicates that the Applicant requested a speedy trial, further compounding problems with his failure to turn over witness contact information. Given the reasonableness of counsel's failure to call Mr. Garris, as well as the lack of admissible evidence Mr. Garris's testimony would have produced, this Court finds the Applicant has failed to show deficiency or prejudice with respect to this allegation. It is therefore denied and dismissed.

Terry Bowers

Concerning counsel's failure to call Terry Bowers as a witness, the Applicant failed to produce Mr. Bowers at the evidentiary hearing or any admissible evidence as to what he would have said at trial. He has therefore failed to show any prejudice resulting from this purported deficiency. Moorehead, supra. The Applicant's failure to provide contact information in a timely manner, as with Mr. Garris, also precludes a finding of deficiency. Having failed to meet his burden to prove ineffective assistance, this allegation is denied and dismissed.

Failure to Adequately Cross-Examine Law Enforcement

The Applicant further alleges counsel was ineffective for failing to adequately cross-examine law enforcement officers about a prior call concerning the victim. Again, the Applicant has failed to present testimony of the law enforcement officers, or any records of previous calls to police, to support his allegation. The Applicant has not presented any prior statements – inconsistent or otherwise – which would have corroborated his testimony or weakened the state's case. Compare Rutland v. State, 415 S.C. 570, 785 S.E.2d 350 (2016). This Court will not fill in the gaps of the Applicant's burden to prove prejudice with rampant speculation. In any event, counsel testified that he was aware that, in part, because of the victim's stature in the community, law enforcement was not going to be particularly helpful to his client on the witness stand, and

approached them accordingly on cross-examination. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). As the Applicant has failed to show deficiency or prejudice, this allegation is denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

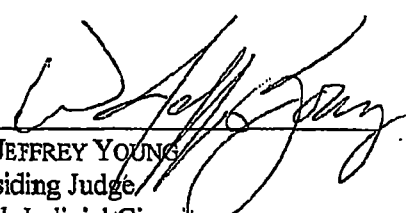
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 28 day of March, 2017.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

Lancaster County

Jeff Hammond
Clerk of Court

Clerk of Court of Lancaster County
Post Office Box 1809
Lancaster, S.C. 29721

Phone (803) 285-1581
Fax (803) 416-9388

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

6TH JUDICIAL CIRCUIT

Michael E Hyatt

Applicant

VS

State of South Carolina

Respondent

CERTIFICATE OF SERVICE

CASE# 2015-CP-29-01103

I certify that, on April 5, 2017, I served a copy of the Order of Dismissal by mailing to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Michael E Hyatt #358395
HB-181-T Ker CI
4848 Goldmine Hwy
Kershaw, SC 29067

Ashley McMahan
PO Box 5501
West Columbia, SC 29169

Judy Carey/Legal Assistant
Post- Conviction Relief
6th and 13th Judicial Circuit
Post Office Box 11549
Columbia, SC 29211-1549

4-5-2017

Date

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OF COURT
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CLERK OF COURT
LANCASTER, SC

Jeff Hammond
Signature

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WITNESSES

Miller - LCSO #10-29118

DOCKET NO. 2010-GS-29- 1590

The State of South Carolina

County of Lancaster

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OF COURT

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LANCASTER, SC

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

ARREST WARRANT NUMBER/DOA

M165468 (DOA-9-21-10)

THE STATE

vs.

Michael E. Hyatt

Aaron Hyatt 1589

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: DEC 2 2010

VERDICT

TRUE BILL

ATTEMPTED MURDER

SC Code: §16-3-29

CDR Code: 3410

Class: Felony A

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on December 2, 2010, the Grand Jurors of Lancaster County present upon their oath:

ATTEMPTED MURDER

That Michael E. Hyatt did in Lancaster County on or about September 16, 2010, with intent to kill, attempt to kill Kamil Nassrah with malice aforethought, either expressed or implied, by striking the victim on the left rear side of his head with a wooden tool handle, in violation of Section 16-3-29 of the *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR