

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TONY MCKINLEY DILLARD,

APPELLANT

APPELLATE CASE NO. 2017-001895

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF YORK
4 2017-GS-46-1549

5 State of South Carolina

6 vs.

7 Tony M. Dillard

8

9 York, South Carolina

10 September 6-7, 2017

11 Before the Honorable Brian M. Gibbons

12

13 APPEARANCES

14 For the State: Erin Joyner

15 For the Defendant: Geoff Dunn

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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1 THE COURT: All right. This is in the matter of State of
2 South Carolina versus Tony McKinley Dillard, this is docket
3 17-GS-46-1549. This is a second trial involving Mr. Dillard
4 this week on the same charge of indecent exposure, he was found
5 not guilty yesterday, and the issue has been brought up by his
6 attorney this morning about the jury panel that's being brought
7 up here -- quickly because they are on the way up here, what's
8 the issue, Mr. Dunn?

9 MR. DUNN: My only concern, Your Honor, because we had a
10 trial yesterday on indictment 1549 (sic) I want to make sure
11 there's no jury members that were in that jury panel that was
12 selected yesterday in today's trial, which is indictment 2664
13 (sic), because if there is I believe there would be prejudice
14 to my client, having a jury panel sit looking at him two days
15 in a row with two separate matters on the exact same charge.

16 THE COURT: Don't you agree with that, Ms. Joyner?

17 MS. JOYNER: I agree with that, Your Honor, the panel
18 should be completely segregated.

19 THE COURT: And the Court has been assured that that is
20 the case, so I'll make sure that if I notice anybody who was
21 here yesterday we'll stop it and do something.

22 MR. DUNN: Yes, sir.

23 (The jury panel entered the courtroom.)

24 THE COURT: All members of the jury panel are present.
25 Madam Solicitor, you may call the case.

VOIR DIRE

1 MS. JOYNER: Thank you, Your Honor. The State of South
2 Carolina calls the case of the State of South Carolina versus
3 Tony McKinley Dillard, indictment 2017-GS-46-1549. The State
4 is ready to proceed to trial.

5 THE COURT: Thank you. Ladies and gentlemen of the jury
6 panel, we're about to begin the trial of the case called the
7 State of South Carolina, who is represented by an assistant
8 solicitor. We call them solicitors in South Carolina, they
9 call them district attorneys elsewhere or state's attorney, but
10 the prosecutor in the case is Ms. Erin Joyner and I will have
11 her introduce herself to you in a moment, she represents the
12 State of South Carolina versus Tony McKinley Dillard. Mr.
13 Dillard is seated to my left right in front of you and he's
14 represented by Mr. Geoff Dunn of the York County Bar, they'll
15 introduce themselves to you momentarily. So as you know this
16 is a criminal case and we're going to be selecting a jury from
17 this very panel. Before we select a jury there are several
18 questions which I need to ask you, before I ask you the
19 questions I'm going to need to swear you in, if you would
20 please stand.

21 (At this time the jury panel was sworn.)

22 THE COURT: Madam solicitor, if you will introduce
23 yourself to the panel?

24 MS. JOYNER: Good morning. My name is Erin Joyner and I
25 work for Solicitor Kevin Brackett here in the 16th Circuit.

VOIR DIRE

1 THE COURT: And Mr. Dunn?

2 MR. DUNN: My name is Geoff Dunn, I'm an attorney in Rock
3 Hill, and this is my client, Tony Dillard.

4 THE COURT: All right. So the first question, similar to
5 what we did yesterday, if a question applies to you just stand
6 where you are and we will go from there. So the question I
7 have for the panel, has any member of the jury panel ever been
8 represented by or have a close personal or social relationship
9 with or related to any of the attorneys involved in this case?
10 If so, please stand. No response. Is any member of the jury
11 panel related to or has a close personal or social relationship
12 to Tony McKinley Dillard? If so, please stand. No response.
13 Has any member of the jury panel heard about this case from any
14 source? If so, please stand. No response. Has any member of
15 the jury panel or a member of your immediate family ever been
16 accused of, investigated for or charged with the offense of
17 indecent exposure or something similar? If so, please stand.
18 No response. Is there any member of the jury panel, your
19 immediate family or a close friend work in law enforcement of
20 any type; city police, county law enforcement like a sheriff's
21 department, military police, anything like that, or a detention
22 center or a state penitentiary? If so, please stand. All
23 right. Yes, sir, what is your juror number?

24 THE JUROR: 238.

25 THE COURT: All right. How does this apply to you?

VOIR DIRE

1 THE JUROR: I work with the sheriff's office, I'm a
2 contractor for the county.

3 THE COURT: All right. Would that affect your ability to
4 be fair and impartial?

5 THE JUROR: Probably.

6 THE COURT: All right. Thank you, sir, you can be seated.
7 That's 238, is that what you said? All right. Yes, ma'am?

8 THE JUROR: I'm juror 225. I have a lot of family that
9 are police officers, I couldn't quite hear, so --

10 THE COURT: Are they currently city police officers?

11 THE JUROR: No, actually he was -- they're not.

12 THE COURT: Were they employed here in York County?

13 THE JUROR: No, sir.

14 THE COURT: What is your juror number again?

15 THE JUROR: 225.

16 THE COURT: And would that affect your ability to be fair
17 and impartial?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am. Yes, sir?

20 THE JUROR: Juror 187. I have a friend that's a state
21 trooper.

22 THE COURT: All right. Would that affect your ability to
23 be fair and impartial?

24 THE JUROR: No, I don't think so.

25 THE COURT: Thank you. Yes, ma'am?

VOIR DIRE

1 THE JUROR: I'm juror 84. My husband's daughter's husband
2 works for the York County Sheriff's Department.

3 THE COURT: Would that affect your ability to be fair and
4 impartial?

5 THE JUROR: Not at this time.

6 THE COURT: Next question. Have you or a member of your
7 immediate family ever been the victim of or a witness to the
8 offense of indecent exposure? If so, please stand. All right,
9 no response. Has any member of the jury panel or your
10 immediate family ever been prosecuted by the York County
11 Solicitor's Office? If so, please stand. All right. Yes,
12 ma'am, juror number?

13 THE JUROR: 244.

14 THE COURT: How does this apply to you?

15 THE JUROR: They were drug related incidents, it's my
16 cousin.

17 THE COURT: Would that affect your ability to be fair and
18 impartial?

19 THE JUROR: No, sir.

20 THE COURT: Yes, sir?

21 THE JUROR: My wife, DUI.

22 THE COURT: All right, and your juror? 187?

23 THE JUROR: That's correct.

24 THE COURT: Would that affect your ability to be fair and
25 impartial?

VOIR DIRE

1 THE JUROR: No.

2 THE COURT: Does any member of the jury panel have a close
3 business or social relationship with any criminal defense
4 lawyers? If so, please stand. No response. Does any member
5 of the jury panel have any philosophical, religious or moral
6 reason why he or she cannot be a fair and impartial juror? If
7 so, please stand. Any further voir dire from the State?

8 MS. JOYNER: None from the State, Your Honor.

9 THE COURT: Any further from the defense?

10 MR. DUNN: No, sir.

11 THE COURT: All right. Ladies and gentlemen, we're going
12 to commence with selecting a jury. Let me tell you how this
13 works, each side gets what's called five preemptive strikes,
14 that means they can decide who they want on their jury by
15 excusing from your names as they're called out by the clerk's
16 office. And I say this with all seriousness and I don't mean
17 it in a funny way, but I don't want you to be offended, please
18 don't be offended if you're not selected to be on the jury,
19 okay? You would be surprised, a lot of people, they'll say,
20 "Please excuse the juror," and they sit down like "Gah," don't
21 be offended, okay? Lawyers have many reasons all over the
22 country in every courtroom and every state as to why they may
23 not want you on a particular jury. So again, this is a
24 process, it is time tested, it's been going on for a long time
25 and it's the best justice system in the world, okay? So we're

VOIR DIRE

1 going to commence with that, each side gets five and that's
2 what's going to happen. There's going to be 12 selected with
3 one alternate so you can figure out what your odds are, okay?
4 Madam Clerk?

5 THE CLERK: Juror 117, James Klein? What say you for the
6 State?

7 MS. JOYNER: Please present Mr. Client.

8 THE CLERK: Defense?

9 MR. DUNN: Please strike the juror.

10 THE CLERK: Number 216, Sturgill. What say you for the
11 State?

12 MS. JOYNER: Please present Mr. Sturgill.

13 THE CLERK: Defense?

14 MR. DUNN: Please swear the juror.

15 THE CLERK: Number 244, Liz Wix. What say you for the
16 State?

17 MS. JOYNER: Please present Ms. Wix.

18 THE CLERK: Defense?

19 MR. DUNN: Please excuse the juror.

20 THE CLERK: Number 119, Cynthia Kolody. What say you for
21 the State?

22 MS. JOYNER: Please present Ms. Kolody.

23 THE CLERK: Defense?

24 MR. DUNN: Please seat the juror.

25 THE COURT: Let me interrupt here. Y'all didn't remind me

VOIR DIRE

1 to talk about the witnesses. Ma'am, you can come on up. This
2 applies to the people who have just been selected to sit on the
3 jury as well, and here are some names of some witnesses: Gary
4 Davies, Jasmine Davis and Shannon Estep of the York County
5 Sheriff's Office, and James Garvin. So my question to the jury
6 panel, including you two here seated, does anybody recognize
7 those names as being friends or closely associated with or
8 being related to by blood or marriage? Yes, sir, you are 238.

9 THE JUROR: Yes, sir.

10 THE COURT: And thank you, you can be seated. All right
11 anybody else? All right, thank you. Keep on going, sorry.

12 THE CLERK: Twenty-nine, Matthew Bumgardner. What say you
13 for the State?

14 MS. JOYNER: Please present Mr. Bumgardner.

15 THE CLERK: Defense?

16 MR. DUNN: Please seat the juror.

17 THE CLERK: Number 114, Darrell Kidd. What say you for
18 the State?

19 MS. JOYNER: Please present Mr. Kidd.

20 THE CLERK: Defense?

21 MR. DUNN: Please excuse the juror.

22 THE CLERK: Number 100, David Isbell. What say you for
23 the State?

24 MS. JOYNER: Please present Mr. Isbell.

25 THE CLERK: Defense?

VOIR DIRE

1 MR. DUNN: Please seat the juror.

2 THE CLERK: Number 190, Peter Rose. What say you for the
3 State?

4 MS. JOYNER: Please present Mr. Rose.

5 THE CLERK: Defense?

6 MR. DUNN: Please seat the juror.

7 THE CLERK: Number 55, Amanda Knott. What say you for the
8 State?

9 MS. JOYNER: Please present Ms. Knott.

10 THE CLERK: Defense?

11 MR. DUNN: Please seat the juror.

12 THE CLERK: Number 130, Patrick Lyons. What say you for
13 the State?

14 MS. JOYNER: Please present Mr. Lions.

15 THE CLERK: Defense?

16 MR. DUNN: Please seat the juror.

17 THE CLERK: Number 56, Ladarrius Dixon. What say you for
18 the State?

19 MS. JOYNER: Please present Mr. Dixon.

20 THE CLERK: Defense?

21 MR. DUNN: Please seat Mr. Dixon.

22 THE CLERK: Number 238, Kevin Wilhide. What say you for
23 the State?

24 MR. DUNN: Your Honor, I would ask for cause on this one.

25 THE COURT: Thank you, Mr. Wilhide, you may be seated.

VOIR DIRE

1 THE CLERK: Number 106, Renee Jenkins. What say you for
2 the State?

3 MS. JOYNER: Please present Ms. Jenkins.

4 THE CLERK: Defense?

5 MR. DUNN: Please seat him.

6 THE CLERK: Number 26, Stacy Brogden. What say you for
7 the State?

8 MS. JOYNER: Please present Ms. Brogden.

9 THE CLERK: Defense?

10 MR. DUNN: Please seat her.

11 THE CLERK: Number 226, Emily Tucker. What say you for
12 the State?

13 MS. JOYNER: Please present Ms. Tucker.

14 THE CLERK: Defense?

15 MR. DUNN: Please excuse her.

16 THE CLERK: Number 13, Jonathan Baggott. What say you for
17 the State?

18 MS. JOYNER: Please excuse Mr. Baggott from service in
19 this case.

20 THE CLERK: Number 161, Doris Neal. What say you for the
21 State?

22 MS. JOYNER: Please present Ms. Neal.

23 THE CLERK: Defense?

24 MR. DUNN: Please excuse her.

25 THE CLERK: Number 245, Denise Wojcik. What say you for

VOIR DIRE

1 the State?

2 MS. JOYNER: Please present Ms. Wojcik.

3 THE CLERK: Defense?

4 THE COURT: Any challenge?

5 MR. DUNN: No, sir.

6 THE COURT: One and two on alternates.

7 THE CLERK: That's 11.

8 THE COURT: You're right.

9 THE CLERK: Number 139, Wynn McGowan. What say you for
10 the State?

11 MS. JOYNER: Please present Ms. McGowan.

12 MR. DUNN: I have no challenge.

13 THE CLERK: Number 11, Melanie Snyder. What say you for
14 the State?

15 THE COURT: We're doing one alternate.

16 MS. JOYNER: What was the number?

17 THE CLERK: 211.

18 MS. JOYNER: Please present Ms. Snyder.

19 THE CLERK: Defense?

20 MR. DUNN: Please seat her.

21 THE COURT: All right. Any matter of law regarding jury
22 selection from the State?

23 MS. JOYNER: No, sir, Your Honor.

24 THE COURT: From the defense?

25 MR. DUNN: No, sir.

PRETRIAL MATTERS

1 (The remaining panel was excused.)

2 THE COURT: Madam Clerk, if you will swear the trial jury
3 for me.

4 (The jury was sworn.)

5 THE COURT: Thank you. At this time, ladies and
6 gentlemen, I do have some matters I need to take up outside of
7 your presence and before I tell you kind of what to expect
8 during the trial, so y'all can certainly get to know each other
9 back in the jury room at this point in time, but you know
10 nothing about this case other than the name of it so you cannot
11 talk about this case at all until I tell you you can. So go on
12 back there and, of course, get to know each other, that type of
13 thing, and the bailiffs will show you where your jury room is
14 and we'll get you back out here momentarily.

15 (The jury left the courtroom.)

16 THE COURT: All right. Mr. Dunn?

17 MR. DUNN: May it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 MR. DUNN: Sequesters, same as the first -- second verse,
20 same as the first as yesterday. These motions are just for the
21 record, the arguments are going to be almost identical to
22 yesterday's arguments in 2069. Your Honor, I've got a motion
23 to quash the indictment. I would argue that the nature of this
24 charge is not the one to be charged with the offense of
25 indecent exposure, that indecent exposure requires a couple of

PRETRIAL MATTERS

1 things; one is it has to be a person who willfully, maliciously
2 or indecently exposes his person and that has to be done in a
3 public place, which I would argue that -- or the property of
4 others or in view of a street or highway. The nature of this
5 incident is an indecent exposure by my client while he was
6 incarcerated at the York County Detention Center. The entire
7 time that he was there it was never a public place as public
8 place is defined and the public does not have access to his
9 jail cell. In fact, most people don't have access to his jail
10 cell today because unlike yesterday when he was in C-block,
11 today he's in I-block which has even more restricted access,
12 that nothing happened within the street or -- view of the
13 street or highway, which we don't have any windows in this
14 place. And then lastly, Your Honor, and this is really the
15 crux of it, that the property of others is just not covered --
16 it does not cover jails or other detention centers that --

17 THE COURT: Any case law to that effect?

18 MR. DUNN: No, sir. I can't find case law on anything as
19 far as definition of property of others. I would argue that
20 when one reads 16-15-130 that it gives the idea of places that
21 people are lawfully allowed to be, you know, that you're either
22 in a public place or you are on somebody else's property, but
23 the folks who are on either one of those is there lawfully and
24 on their own accord, and Mr. Dillard was a resident of the jail
25 against his will for this week, he did not have the ability to

PRETRIAL MATTERS

1 come and go. And, in fact, unlike yesterday's case where the
2 door was open and there was some argument maybe he could come
3 and go out of his own jail cell, in today's case he's stuck
4 inside his cell the entire time and the door was never opened.
5 I would just argue that this statute does not apply, that the
6 State again wanted to proceed against him on the conduct that
7 he was doing inside his jail cell, that 16-15-130, that the
8 more appropriate charge is a lewd and lascivious act charge. I
9 just believe --

10 THE COURT: Well, that's interesting. All right. Ms.
11 Joyner, talk to me about that. What are the alleged facts in
12 this case?

13 MS. JOYNER: The alleged facts are, Your Honor, the
14 defendant was being housed in the I-block unit, which is for
15 the special needs and other classification of inmates. He is
16 housed in a cell on the bottom floor. These cells are
17 configured in the same way as described as yesterday's cell
18 with a bed, with a toilet and sink closest to the door. These
19 rooms -- in contrast to the windows that you saw yesterday that
20 are sort of long and rectangular, these windows are very large
21 windows. What our allegations are -- and Your Honor, to
22 understand the layout of this particular unit, in order for an
23 officer to come into the unit there's a series of doors they
24 are going to go through that are very loud, so that every
25 inmate knows that the officer is coming because the door

PRETRIAL MATTERS

1 slammed, the door slammed, the door opens. Mr. Dillard was
2 aware that officer Jasmine Davis was working that day, which is
3 a female officer. An alarm is sounding due to an issue in the
4 other quadrant and he would have heard not only the alarm going
5 off but also the doors opening. He can be seen somewhat
6 through the window on the camera and he appears to be lying in
7 bed until he hears the doors open, at which point he
8 immediately comes up to the window and you see him changing his
9 position and posture. What Officer Davis, I anticipate, will
10 testify to is as she is walking up the stairs to tend -- what
11 she -- she says she always looks around to see what everybody
12 is doing to make sure there is nobody in distress because they
13 are confined in their rooms. At first she sees a lot of
14 activity over in his room and glances over, and as she's
15 looking down and -- or as she's up on the second floor tending
16 to the other inmate to go back in his cell, she looks down and
17 Mr. Dillard has situated himself on his sink and toilet up high
18 enough and he's looking at her and he is masturbating and sees
19 her clearly seeing him as if it was his intention to be seen
20 and he continues that conduct as she walks back down the
21 stairs. And not until she says to him, "I'm going to write you
22 up," as she lands back on level ground that I think at that
23 point he stops, or she no longer has a view of what he's doing,
24 and he then buzzes her several times trying to persuade her to
25 not write him up. So yes, the facts are distinct in that he is

PRETRIAL MATTERS

1 not in an open area of the jail, but nonetheless the statute
2 provides the property of others, and this is always a
3 complicating factor when they are inside the jail and he's
4 inside the cell, but in this particular kind of case he is
5 moving resituating himself to get in front of a large window to
6 be up higher to purposely be seen by this officer.

7 THE COURT: Okay, I've got you.

8 MS. JOYNER: And for the same reason as yesterday we would
9 ask that the motion be denied.

10 THE COURT: Right. The motion to quash being that it's
11 not a quash motion, it's a dismissal motion, right? I
12 understand the procedural aspect of it. All right. Motion to
13 quash is denied. Let's go through the other motions in limine.
14 We're not using any -- you've given him all the Brady stuff,
15 right?

16 MS. JOYNER: Yes, sir, Your Honor.

17 THE COURT: Any statements?

18 MS. JOYNER: Just with the -- not a response to
19 interrogation, just the buzzing and asking if he is going to be
20 written up.

21 THE COURT: Any issue with that, Mr. Dunn?

22 MR. DUNN: I have no legal grounds to argue that.

23 THE COURT: Prior convictions, the same as yesterday.

24 MS. JOYNER: Yes, sir, Your Honor.

25 THE COURT: Of course, in the event he testifies we will

PRETRIAL MATTERS

1 deal with that at that particular time. Any Lyle or prior bad
2 act evidence you're going to try to use against him if he
3 testified?

4 MS. JOYNER: No, sir, Your Honor. Again, we would like
5 for today to be like yesterday, just very streamline to the
6 facts of this case. We wouldn't offer any Lyle or prior bad
7 act evidence in our case in chief.

8 THE COURT: Any of your witnesses have a criminal record?

9 MS. JOYNER: No, sir, Your Honor.

10 THE COURT: Any other statements that are different from
11 the written statements?

12 MS. JOYNER: There are no written statements but there's
13 been no inconsistent statements made.

14 THE COURT: My Biggers issues?

15 MS. JOYNER: No, sir, Your Honor.

16 THE COURT: Okay. Anything else?

17 MR. DUNN: No, sir.

18 THE COURT: Okay. Do y'all want to take a quick recess
19 and then we'll start the trial at 11:00 a.m.

20 (A recess was taken.)

21 THE COURT: Bring in the jury.

22 (The jury returned to the courtroom.)

23 THE COURT: All members of the jury are present. Ladies
24 and gentlemen, if you'll give me your attention for a couple of
25 minutes while I kind of talk to you and give you an idea -- a

OPENING STATEMENTS

1 little bit about what to expect. Let me tell you how a trial
2 proceeds. First the State is going to make an opening
3 statement to you. An opening statement is not evidence, it's
4 simply an outline that the State's lawyer will give to you to
5 help you understand what they believe the evidence -- or what
6 she believes the evidence will show. Now, the defense can make
7 an opening statement if they want to but they don't have to for
8 reasons which I'll give you later on. After you hear from
9 opening statements to tell you a little bit about the case and
10 what you might expect to hear, that's when you're going to hear
11 testimony and receive evidence in the case. This will consist
12 of testimony from various witnesses as well as any physical
13 exhibits which may come into evidence. Following the
14 completion of the testimony and evidence phase of the trial
15 that's when we will have closing arguments where each lawyer
16 will get to directly address you by way of an argument and try
17 to convince you of how they view the facts to be and what your
18 verdict should be, okay? And after all that, that's when I
19 will speak directly to you and charge you the law or give you
20 what's called jury instructions on what the law is as it
21 relates to the legal issues involved in case. You're the judge
22 of the facts, you determine what happened, I'm the judge of the
23 law, okay? So I don't have a right to comment on the facts and
24 please don't think for anything that I may say or do during the
25 trial as influencing you or making you think what my opinion is

OPENING STATEMENTS

1 of the facts because it doesn't matter what my opinion is of
2 the facts because that's solely your job to determine. I'll
3 give you the law that you must go by and with your weighing the
4 evidence and considering the facts for you to come up with your
5 verdict, okay? Now, this is a criminal case as you know which
6 has been brought by the State of South Carolina. The State has
7 charged the defendant with the crime of indecent exposure, and
8 the charge against the defendant is contained in this
9 indictment. Now, ladies and gentlemen, this indictment is not
10 evidence of anything, it's simply the written description of
11 the charge that the State has made against the defendant. It
12 is the written document by which a case comes to court, okay?
13 Now, the defendant has pled not guilty to this charge and is
14 presumed innocent unless and until proven guilty beyond a
15 reasonable doubt. I will describe to you in more detail what a
16 reasonable doubt is, but for the purpose of my introductory
17 remarks I will tell you, a reasonable doubt is the kind of
18 doubt that will make a reasonable person hesitate to act. The
19 defendant has the right not to testify and never has to prove
20 innocence or present any evidence, the burden of proof is
21 always upon the State of South Carolina. It's going to be your
22 duty, ladies and gentlemen, to decide from the evidence what
23 the facts are. As I told you earlier, you and you alone are
24 the judges of the facts. Just like rules which govern sports
25 and other activities, we have certain rules of court or rules

OPENING STATEMENTS

1 of evidence which controls what can come into evidence, and the
2 reason we have those rules, ladies and gentlemen, is because we
3 want to make sure that you, the lawyers -- the law wants to
4 make sure that you have the best evidence possible in a trial
5 so we have certain rules. And so when a lawyer thinks that a
6 question may violate the rules of evidence that lawyer will
7 say, "Objection," y'all have seen that on TV or in movies or
8 whatever, and I course I will rule on the objection. If I
9 overrule an objection that means the question can be answered
10 or the thing can come into evidence, if I sustain an objection
11 that means the question cannot be answered or the thing cannot
12 come into evidence. Ladies and gentlemen, don't speculate
13 about what the answer would have been or what the thing would
14 have shown if it would have come into evidence, see, then you
15 would be violating your oath to go by the evidence presented,
16 okay? Your verdict must be based solely upon the evidence
17 presented in this courtroom, nowhere else. So that means when
18 you go away for lunch here around 12:00 or 12:30 and I give you
19 a lunch break, you can't go and do independent research on the
20 case. You can't type information in on your phone and try to
21 find out what happened, you can't Google names and go on social
22 media, you can't do any of that because you're confined by the
23 evidence received in this courtroom, that's what you have to
24 use to arrive at your verdict, okay? Now, in deciding the
25 facts of this case you may have to decide which witnesses to

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1 believe and which witnesses not to believe, that's called
2 credibility of witnesses. You have the power, ladies and
3 gentlemen, to believe everything a witness says, some of what a
4 witness says or none of what a witness says, okay? Now, you're
5 not going to be allowed to take notes during a trial, okay? So
6 make sure you pay close attention to everybody who testifies
7 and to what goes on, and ladies and gentlemen, it's very costly
8 and timely consuming to have my court reporter here who is
9 taking down a record of everything play back lengthy testimony.
10 You're not going to have a written transcript available to you
11 to read through when you're in the jury room deliberating, so
12 please pay attention to what goes on during the trial. Again,
13 I've already told you what happens after you're away from the
14 courthouse. You can't talk to anybody about what you're doing,
15 you can't even talk to your fellow jurors about the case until
16 I tell you you can, okay? And if anyone attempts to talk to
17 you in violation of these instructions, please let the bailiff
18 know or please let me know and I assure you I'll take care of
19 it, okay? Having said that, ladies and gentlemen, it's very
20 important you keep an open mind and not decide anything in this
21 case until you've heard all of the evidence, until you've heard
22 the closing arguments and until you've heard me give you the
23 law. Once you do all that, that's when you will begin to be
24 able to deliberate your verdict. It is your solum
25 responsibility to determine the guilt or innocence of the

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1 defendant, and your verdict, ladies and gentlemen, must be
2 based solely on the evidence presented to you in this trial and
3 on the law as I instruct you at the close of the case. Thank
4 you again for accepting this important responsibility, we will
5 now proceed with opening statements.

6 (Break in proceedings.)

7 THE COURT: All right. You may proceed with opening
8 statements.

9 MS. JOYNER: Thank you, Your Honor. I'm sure that when
10 you received the notice that you were coming for jury duty, and
11 more specifically when you got the notice that you were going
12 to be back here on Tuesday morning for jury selection you
13 probably wondered what kind of case is this going to be, like
14 what kind of criminal case am I going to possibly be picked to
15 serve on as a juror. Mr. Dillard is charged with indecent
16 exposure, and when you heard that I'm sure there were some of
17 you, perhaps maybe all of you who thought, "Well, I recognize
18 that, I've heard of that law." When most people hear the term
19 indecent exposure there's a certain image that pops into their
20 head, there's a certain stereotype of what that crime is and
21 what that crime looks like, and some of you might think about
22 the guy that stands in the street corner with a coat and
23 flashes and wears nothing underneath, or something similar like
24 that, and if a person stood on a street corner in South
25 Carolina with nothing under his overcoat and did that and

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1 exposed his private parts to the world or to people walking by,
2 that would most certainly be indecent exposure. But here in
3 South Carolina indecent exposure encompasses that criminal
4 conduct, but it also encompasses a broader range, or more
5 specifically the places in which indecent exposure can occur.
6 The law doesn't just prohibit a person from standing on a
7 street corner to the view of a person on a street or highway or
8 a person in a public place from exposing their person, and it
9 doesn't just protect the people who were walking along the
10 street or in a public place from that type of conduct, the law
11 also encompasses the property of others. South Carolina law
12 section 16-15-130 provides that it is unlawful for a person to
13 willfully, maliciously and indecently expose his person in a
14 public place, on the property of others or to the view of the
15 people or a person on a street or highway. And the first
16 two -- the street or highway is not going to be applicable in
17 this case, and likewise a public place is not going to be
18 applicable in this case, this case is about an indecent
19 exposure that happened on the property of others. Property of
20 others, it doesn't have some fancy legal definition, it is the
21 plain common everyday understanding and meaning. It is
22 property that does not belong to the person that is committing
23 the unlawful act. That can include many places that are not
24 public places, it can even include and does even include a
25 detention center, it includes the detention center that's on.

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1 the other side of this building here at the Moss Justice
2 Center. So what you have today, what case will be before you
3 is a case that involves a violation of a familiar law, but
4 perhaps to you or to many people would be an unfamiliar
5 circumstances. You're going to hear from a person today, her
6 name is Officer Jasmine Davis, she's an officer at the York
7 County Detention Center, and she's going to talk to you about
8 what happened on December 19th of 2016. On that day she was
9 working in one of the many housing units over at the detention
10 center. It's hard to tell from the outside but there's a lot
11 of housing units over there and she's working in the housing
12 unit I. And this has got kind of an interesting layout..
13 It's -- in the center is a control room and there are four
14 quadrants that were shaped like triangles that go off of each
15 side of the control room, and there's a series of doors that
16 the guards go to -- through to get into each one of these
17 quadrants, and on that day Mr. Tony Dillard, the defendant in
18 this case, was an inmate in I-block. It was during Officer
19 Davis' shift that she had to go back into this particular
20 quadrant to put another inmate in his cell because in a
21 different quadrant there had been a smoke alarm, and the loud
22 doors, and the loud doors and the loud doors are opening as she
23 enters into I-block, this particular quadrant. And she looks
24 side to side because there's cells on the bottom and there's
25 cells on the top, and she walks past and looks and just briefly

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1 sees a little bit of activity in Mr. Dillard's room. And she
2 walks up to the second level to tend to the person that she's
3 there to put back in his cell so she can help investigate where
4 the smoke alarm is coming from, or the code, whatever they call
5 it, and she looks back and she sees Mr. Dillard who has now
6 positioned himself in the big window of his cell and is looking
7 at her exposing his penis to her and masturbating as he watches
8 her, and she has to go back down the stairs and as she goes
9 back down the stairs and she's walking past he continues to do
10 so. As I said, you'll hear from Officer Davis today and she'll
11 tell you about what she saw that day, and at the end of the
12 trial the judge is going to give you a lengthy instruction on
13 the law. He's already told you that the State is required to
14 prove Mr. Dillard's guilt to you beyond a reasonable doubt.
15 And just so that you have the context as you're watching and
16 listening to the State's case, I'm going to give you a brief
17 description of what this criminal statute is that he's charged
18 with, what the State is required to prove to you beyond a
19 reasonable doubt, okay? We're first required to prove to you
20 beyond a reasonable doubt that this defendant, Tony Dillard,
21 exposed his person, and by exposing his person we are
22 required -- that means we're required to show that he exposed
23 his private parts, okay? We are required to prove that he did
24 this on the property of others. The other parts of the
25 statute -- those public place type -- or in the street, those

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1 don't apply, we have to prove he committed this act on the
2 property of others, this is in the York County Detention
3 Center, and we must prove that he did this willfully,
4 maliciously and indecently. And those are words that you may
5 use in your everyday language and your conversations and they
6 mean very similar I'm sure what to they mean in your everyday
7 conversations. Willfully, think of it as being purposefully,
8 okay, and the judge will give you these definitions that are
9 much longer, but just so the context as you are listening.
10 Indecently, vulgar, unseemly, shouldn't be seen. Maliciously,
11 it's like a wicked or bad intent. So as you're listening to
12 the State's evidence remain mindful that we must prove to you
13 beyond a reasonable doubt that he exposed his penis, that he
14 did it on the property of others and that he did it with that
15 intent, that it was willful, malicious and indecent. I ask
16 that you listen intently, and I know that you will, so that
17 when the time comes for you to reach a verdict you are able to
18 do so. Thank you.

19 THE COURT: Thank you, Madam Solicitor. Mr. Dunn?

20 MR. DUNN: May it please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 MR. DUNN: Good morning, my name is Geoff Dunn, I'm an
23 attorney here in York County and I represent Mr. Dillard. In
24 today's environment when you're watching Facebook and looking
25 at Facebook and watching the news and just the social

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1 environment that we live in there's a lot of discord going on
2 right now especially as it relates between different factions
3 of our parties and our society and the police and the state and
4 all of those things, but one of the common themes that we
5 continually hear about in all of that discord is what did we
6 actually see? Is there a video? Is there some kind of
7 technology that is out there that will help us not just listen
8 to what people say but will actually view for ourselves the
9 events that happened, or allegedly happened, and thankfully in
10 this case we have a video. And I ask that as this day goes on
11 you listen to the witnesses and you're listening and watching
12 the evidence that you pay close attention to the video. This
13 is one of those videos that I don't think it's unclear and I
14 don't think it is obscure and I don't think that you have to
15 worry about there being things interfering with what you see on
16 the video. The video points directly at Mr. Dillard's cell the
17 entire time. The video captures the actions of what Mr.
18 Dillard is doing in his cell, it captures the actions of the
19 officers that are doing their job, it captures the actions as
20 some of -- you'll see other inmates in there and you'll see the
21 person that the solicitor is referring to being escorted out of
22 his cell, you'll see all of that, it's all on the video. And I
23 submit to you at the end of the day when you get done looking
24 at what's on the video that you're going to have a hard time
25 believing or coming to a conclusion that the State has proven

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1 beyond a reasonable doubt that Mr. Dillard is guilty of the
2 things that they accuse him of. One of the great things about
3 our system in the United States is that when the state, the
4 government or the leviathan accuses us, the citizens, of
5 something we have the ability to be heard and we have the
6 ability to present a case and that's what this court system is
7 about. And in our court system, unlike a lot of the world, the
8 defendant does not have to prove that he's not guilty. Sadly
9 that's not the case in many countries. In many cases if you're
10 accused of it then you're fighting the whole time trying to
11 prove that that is not really the case, that you didn't do
12 anything wrong. In our system the State, when they make the
13 accusations they bear the burden proof and they have to prove
14 beyond a reasonable doubt that somebody is guilty of what it is
15 they're accusing them of, in this case indecent exposure. And
16 those are not just words we hear on TV, those aren't just words
17 we hear on Law and Order and CSI and Matlock all of those other
18 shows that we've watched and we've heard those words over the
19 years, those words have meaning. That is why we're here today,
20 so that at the end of this when we get done seeing the evidence
21 and the judge at the appropriate time will read you the law and
22 he'll explain to you what the law is and he'll explain what a
23 reasonable doubt is and beyond a reasonable doubt and innocent
24 until proven guilty, all of those things, that those aren't
25 just words, those are principles that we live by, very

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1 important principles that we have here in America. I thank you
2 for taking the time out, I know that these are not the kind of
3 cases that you want to go back and tell you family that you had
4 to sit on, but at the same time it is a very important matter.

5 THE COURT: Thank you, Mr. Dunn. State can call your
6 first witness.

7 MS. JOYNER: Thank you, Your Honor. The State calls
8 Captain Gary Davies.

9 The witness, GARY DAVIES, was first duly sworn and
10 Testified as follows:

11 DIRECT EXAMINATION

12 BY MS. JOYNER:

13 Q Can you please state your full name for the record?

14 A Gary L. Davies.

15 Q How are you employed, sir?

16 A Ma'am?

17 Q How are you employed?

18 A At the York County Detention Center.

19 Q How long have you been with the York County Detention
20 Center?

21 A 21 years.

22 Q Prior to that how were you employed?

23 A I was in the military.

24 Q What is your current job at the detention center?

25 A I'm a security captain.

GARY DAVIES - DIRECT

1 Q And what are your duties as security captain?

2 A I supervise the four different shifts that work security
3 within the facility, the classification units, the 287-G and
4 the transportation unit.

5 Q How long have you been in that position?

6 A Since May of 2010.

7 Q And again, how long with the detention center?

8 A Twenty-one years.

9 Q And what type of other positions have you held at the
10 detention center?

11 A Everything from detention officer to sergeant, lieutenant.

12 Q Can you explain for the jury -- let me ask you some
13 questions about the general layout of the York County
14 Detention Center. How many housing units are there?

15 A There are 12.

16 Q Approximately how many inmates can your facility hold?

17 A The average housing unit holds 72 inmates per unit.

18 Q And within that detention center, the detention center,
19 is there surveillance systems?

20 A Yes, ma'am, there is.

21 Q And is there -- how many -- approximately how many
22 cameras are located throughout the detention center?

23 A 250 cameras.

24 Q 250?

25 A Yes, ma'am.

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- 1 Q And are those located only in the areas used by
2 inmates?
- 3 A All of the common areas within the facility.
- 4 Q Are the camera feeds monitored live?
- 5 A Yes, ma'am.
- 6 Q And is everything also recorded?
- 7 A Yes, ma'am.
- 8 Q What type of surveillance system is used?
- 9 A It's closed circuit TV.
- 10 Q Can you explain to the jury a little bit how that
11 works?
- 12 A It's on a network service manager, it's recorded live, it
13 maintains for a period of 30 days on the average.
- 14 Q If there are problems with the system who makes repairs
15 or provides service?
- 16 A It's a private security company that we contract with.
- 17 Q And the recordings, where are the recordings saved?
- 18 A It's on the network service manager within our building.
- 19 Q And how long are they typically saved?
- 20 A Thirty days.
- 21 Q And is it possible for them to be retained longer?
- 22 A If we're aware of an incident then we pull the recording
23 up and place it in a file, yes, ma'am.
- 24 Q So when you are accessing a recording, are you able to
25 search by date, time and location?

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1 A Yes, ma'am.

2 Q And does the system allow you to edit or change
3 anything within the recording?

4 A No, ma'am, it does not.

5 Q As part of your job as the security captain, are you
6 authorized and trained to retrieve surveillance videos?

7 A Yes, ma'am, I am.

8 Q Who else within the facility is authorized to --

9 A Our chief administrator and administrative captain and our
10 operations captain which is our IT person also.

11 Q Are any of those people able to make any changes to the
12 recordings?

13 A No, ma'am.

14 Q Okay. We'll talk more specifically about the layout of
15 the particular housing unit. I'm asking you as a security
16 captain, are you aware of how records are maintained at the
17 York County Detention Center?

18 A Yes, ma'am.

19 Q When an inmate is in the detention center, is a record
20 made immediately about where he or she is housed?

21 A Yes, ma'am, it is.

22 Q And are you aware of whether Mr. Tony Dillard was an
23 inmate at the York County Detention Center on December 19th
24 of 2016?

25 A Yes, ma'am. I have him located at housing unit I, cell

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- 1 42.
- 2 Q Cell 42.
- 3 A Yes, ma'am.
- 4 Q Now, I would like to, if you could, explain a little
- 5 bit to the jury about what housing unit I looks like.
- 6 A It's basically a rectangular type building. Inside has
- 7 what we call a mass control unit which the officers maintain
- 8 the touch screen and other abilities to work within there.
- 9 It's broken down into four different quadrants, each quadrant
- 10 holding 16 cells.
- 11 Q So for these quadrants, are they -- am I correct that
- 12 they're sort of shaped like a triangle?
- 13 A A triangle.
- 14 Q Coming off of each side of the control room?
- 15 A Yes, ma'am.
- 16 Q Within -- is there a glass or enclosed hallway between
- 17 the control room --
- 18 A It's what we call like a sally port area like a hallway
- 19 that surrounds the control room before you go into the actual
- 20 quadrant where the individuals are housed.
- 21 Q So each quadrant then has a sally port area?
- 22 A Yes, sir.
- 23 Q And there's a closed or locked door.
- 24 A Yes, ma'am.
- 25 Q So in order for an officer to come say from the control

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1 room to get to a particular quadrant, is it correct they
2 would go through several doors?

3 A Yes, ma'am, they would.

4 Q The doors to enter -- are those doors, do they make a
5 lot of noise or are they quiet doors?

6 A Yes, ma'am. They're called what we call sliders so
7 they're on rollers and they mechanically move and they're kind
8 of loud, especially when they stop and close.

9 Q Okay. So how many rooms or cells did you say are in
10 each quadrant of the I-block?

11 A Sixteen.

12 Q Now, the particular quadrant of I-block that Mr.
13 Dillard was housed in on June 19th, can you explain to the
14 jury the layout of that particular quadrant?

15 A Once you enter the sliding door to enter the housing unit
16 itself you walk in, the stairs are directly in front of you and
17 the two rows of cells are on your left and right at an angle,
18 the same on the upper level. The showers are directly in front
19 of where you enter.

20 Q Is there privacy in the showers?

21 A Yes, ma'am.

22 Q Is it behind a door or a curtain?

23 A There is a door that we secure when we place them in there
24 and there's also a curtain that they can pull to.

25 Q Regarding the top level, is there -- I'm not sure quite

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1 what to call it, like a metal barrier?

2 A Yes, ma'am, it is.

3 Q How would you describe?

4 A It's a fabricated metal mesh that goes all the way from
5 the floor level to the ceiling.

6 Q But mesh meaning you can see through it?

7 A Yes, ma'am.

8 Q The cell that you mentioned, I'm sorry, tell me again
9 which cell Mr. Dillard --

10 A 42.

11 Q Was that on the top or the bottom floor?

12 A Lower level.

13 Q Lower level. So as a person walks into that quadrant
14 and they're facing the stairs, would his room be on the left
15 or the right?

16 A It would be on your left side.

17 Q Do you know how many doors in it would be?

18 A If I recall correctly it's like the third door.

19 Q Okay. Now, I forgot to ask you this, can you give me
20 the physical address of the detention center where you work?

21 A It was 1675-3A York Highway.

22 Q Is that located here in York County?

23 A Yes, ma'am.

24 Q And is that part of the Moss Justice complex?

25 A Yes, ma'am, it is.

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1 Q And who is in charge of the detention center?

2 A The sole supervisor is the sheriff himself, Sheriff
3 Tolson, and the chief administrator.

4 Q And so that would be a government facility.

5 A Yes, ma'am. It does belong to the York County Government,
6 yes, ma'am.

7 Q Let me ask you going back to I-block, how many cameras
8 are in each quadrant in I-block?

9 A There are three.

10 Q Three?

11 A Yes, ma'am.

12 Q And are there cameras situated in the individual cells?

13 A No, ma'am.

14 Q Are there cameras situated in the showers?

15 A No, ma'am.

16 Q Can you describe what the cells look like? When people
17 hear cells they think of like bars, are the cells enclosed
18 with bars?

19 A No, ma'am. They're slider doors that we have, metal
20 sliding doors.

21 Q And is there a window in these doors?

22 A Yes, ma'am, each cell door has a window.

23 Q What does the cell look like inside?

24 A They have their own bed area and bunk area, they have a
25 writing surface and we have what we call a unit, a commode

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1 there with a sink that's attached together.

2 Q And specifically in the quadrant where Mr. Dillard was,
3 specifically Mr. Dillard's cells, do all the cells in his
4 quadrant, would they all have been configured in the same
5 way?

6 A Yes, ma'am.

7 Q Where is the bed located within those cells?

8 A When you walk in the cell door it would be on your left.

9 Q Is it closer to the door or closer to the back wall?

10 A Toward the back. You have a little walk area, the
11 commodes first and then the bed area.

12 Q Okay. So the commode first. And you say it's a toilet
13 and sink?

14 A Yes, ma'am.

15 Q And that's closest to the door.

16 A Correct.

17 Q Captain Davies, I'll show you what has been marked for
18 exhibit purposes as State's Exhibit 1. Do you recognize
19 that disc?

20 A Yes, ma'am, I do.

21 Q Have you viewed that prior to trial?

22 A Yes, ma'am, I have.

23 Q And from what you viewed, can you tell the jury what is
24 contained on that disc?

25 A It's the copy of the video in regards to the incident.

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1 Q Okay. Was it requested for you to pull that video?

2 A Yes, ma'am, it was.

3 Q And how many cameras again are in housing unit one?

4 A Well, the living area itself has three cameras.

5 Q And when you were requested to pull the incident,
6 you're referring to a report made by Officer Jasmine Davis
7 regarding December 19th?

8 A Yes, ma'am.

9 Q Did you actually make the copy, do you recall, or did
10 you just view it?

11 A I burned a copy of the video, yes, ma'am.

12 Q And is this from one of the cameras or from all of the
13 cameras?

14 A It's from one of the cameras, yes, ma'am.

15 Q Captain Davies, again, do you or anybody on your staff
16 have the ability to alter or change the recordings?

17 A No, ma'am, we don't.

18 Q And is this State's Exhibit 1, is this a truthful and
19 accurate representation of the surveillance video that was
20 in I-block on December 19th of 2016 from about 7:40 through
21 7:49 -- or 7:45 and 59 seconds?

22 A Yes, ma'am.

23 MS. JOYNER: Your Honor, at this time I would move State's
24 Exhibit 1 into evidence and ask to publish it.

25 MR. DUNN: No objection.

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1 THE COURT: Without objection, admitted into evidence and
2 you have -- you can publish the video.

3 (The video was received as State's 1 and played.)

4 Q Captain Davis, I will stop it right here. If I could
5 ask you to step down, if you could point out to the jury
6 which cell belonged to Mr. Tony Dillard.

7 A It would be the second one.

8 Q So not the first one all of the way up against the wall
9 but the second one.

10 A Correct.

11 THE COURT: Could you point it out again, sir? Just go up
12 to the screen and point to it.

13 THE WITNESS: This one right here.

14 THE COURT: On the bottom floor?

15 THE WITNESS: Yes, sir.

16 THE CLERK: Yes, sir.

17 Q Thank you, Captain, you can take your seat.

18 A (Witness complies.)

19 (The video continued to play.)

20 MS. JOYNER: I would ask the clerk if you would bring back
21 the lights.

22 Q Now, the other two cameras that were located in a
23 quadrant of I-block, were those cameras directed towards the
24 cell, was it cell 42?

25 A Yes, ma'am. But no, they weren't pointed toward the door.

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1 Q And so when you pulled the video, the videos from that
2 quadrant, this was the only camera that captured any
3 activity of -- or any part of Mr. Dillard's cell; is that
4 correct?

5 A Yes, ma'am.

6 MS. JOYNER: Thank you. Please answer any questions Mr.
7 Dunn has.

8 THE COURT: Mr. Dunn?

9 MR. DUNN: If it may please the Court?

10 CROSS EXAMINATION

11 BY MR. DUNN:

12 Q Captain Davies, you did not observe firsthand any of
13 the events December 19th, correct?

14 A No, ma'am. No, sir, sorry.

15 Q It's all right, I've been called worse. And is it fair
16 to say that the cells in their construction, they're made
17 out of cinder block, right?

18 A They are steel cells.

19 Q Steel cells?

20 A Yes, sir.

21 Q And the doors are made out of steel?

22 A Yes, sir.

23 Q And the walls are made out of steel, correct?

24 A Correct.

25 Q And the windows are thick plexiglass of some sort.

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1 A Yes, sir. They're glass but they're real thick, yes, sir.

2 Q During that video we saw some lights were flashing,
3 right?

4 A Yes, sir.

5 Q Somebody had pulled a fire alarm somewhere else or had
6 set off a smoke detector or something?

7 A An alarm had activated within the facility, yes, sir.

8 Q And when those lights go off is there also a buzzer?

9 A Yes, sir, it's an audible alarm.

10 Q That you could hear like a fire alarm, right?

11 A Yes, sir.

12 Q The facility in I-block, it's a relatively new
13 construction, correct?

14 A It was part of our renovation, yes, sir.

15 Q A lot newer than some of the older cells, A, B, C,
16 D-block, those are a little bit older than I-block.

17 A Those are the original cells.

18 Q The window that we see in there, they come down to
19 about the waist?

20 A Depending on your height, yes, sir.

21 Q Some of the other cells, the windows are skinnier and
22 small, or smaller in some of other cells throughout the
23 facility but not I-block, correct?

24 A Correct.

25 Q And in this incident we saw two officers responding to

GARY DAVIES - CROSS

1 an upstairs problem of some kind, correct?

2 A They were putting the inmate up once the alarm sounds,
3 yes.

4 Q Were there any other officers within I-block?

5 A There was one.

6 Q Is it standard to have three folks in there?

7 A Yes, sir.

8 Q The one we don't see, he or she stays inside the
9 control center?

10 A They maintain the control room, correct.

11 Q Pushing on the button making doors open --

12 A Answering intercoms, yes, sir.

13 Q When an inmates wants to get somebody's attention, by
14 somebody I mean when they want to get the guard's attention
15 they've got to hit a buzzer to draw the attention to them,
16 correct?

17 A They have an intercom in each room, yes, sir.

18 Q They can't just yell through the door, "Hey look, I
19 need to talk to you."

20 A Well, they do that also when the officer is within the
21 unit but they have door flaps.

22 Q There is a little door flap for food and stuff, is
23 that --

24 A Yes, sir, food flaps.

25 Q When you're sitting in a control facility in a control

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- 1 room, are those folks up or is it ground floor?
- 2 A It's elevated.
- 3 Q How much? A foot, one step, two steps?
- 4 A I would estimate about three feet.
- 5 Q When they're looking out they can see all the common
- 6 area -- the four quadrants are pretty much layed out similar
- 7 to what we saw in this video, right?
- 8 A Correct, sir, yes.
- 9 Q Each one has got a common area?
- 10 A They're all the same, yes, sir.
- 11 Q They're identical, just different directions?
- 12 A Correct.
- 13 Q But when that person is sitting -- when the guard is
- 14 sitting in the control facility and he or she is looking out
- 15 their window to one of the quadrants, they can't really
- 16 see -- a lot of the view of what's going on inside the cells
- 17 is obscured, correct?
- 18 A Correct, sir, it's tinted glass.
- 19 Q Even if the glass isn't tinted the window is waist high
- 20 and up, correct? So anything happening below waist high and
- 21 down is not going to be seen by the guard?
- 22 A It could be, yes, sir, if they're standing up or whatever.
- 23 Q So if they elevated themselves up off the ground -- if
- 24 the inmate elevates themselves up off the ground, right?
- 25 A No, I'm talking about the officers. The officer can see

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1 the ground level in each unit if that's what you're asking.

2 Q Yes. Even the upper floors or just the lower floors?

3 A You can see at a angle.

4 Q That's what I'm getting at. If a guard really wants to
5 see what's going on in there, they need to either walk
6 closer to the door or get some kind of -- standing on the
7 stairs to try to look on in.

8 A Correct, yes. From the control room, yes.

9 Q Just so we're clear, when you're looking at the cell,
10 especially on Mr. Dillard's cell, if we're looking at it
11 there's a window on the right, right? If you walk into it
12 the toilet would be off to the left?

13 A In his cell the window would be to the left.

14 Q The toilet is down -- it's got some privacy with that
15 wall there, right?

16 A Yes, sir.

17 Q And the bed, is his bed laying -- does it flow
18 length-wise away from the door or is it across the room?

19 A It's length wise away from the door.

20 Q So the room is basically narrow --

21 A You walk in, the bed is on the left going to the rear of
22 the cell.

23 Q So it goes toilet, bed, then like a walk area?

24 A Yes, sir.

25 Q In and out of the jail cell?

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1 A Correct.

2 MR. DUNN: No further questions.

3 THE COURT: Redirect?

4 MS. JOYNER: No, sir, Your Honor. We would ask that
5 Captain Davies be excused.

6 THE COURT: Yes. Thank you, sir, you're free to leave.
7 Let me see the lawyers.

8 (A bench conference was held.)

9 THE COURT: Ladies and gentlemen, we're going to go ahead
10 and break for lunch. Before we do that where -- let me
11 appoint -- where is Mr. Lyons? I will appoint you as foreman
12 of the jury, thanks for volunteering. Your job as the foreman,
13 you're going to preside over deliberations in the jury room,
14 you'll be the jury spokesperson here in court and you are going
15 to be the one to sign and write on the verdict form. You can't
16 write on the verdict form until y'all have reached a unanimous
17 verdict, and I will go over that with you at the end, okay?
18 But again thank you for that role. Ladies and gentlemen of the
19 jury, it's now right at noon, I want you to be back in your
20 jury room at 1:45, okay? That will give you time to go home if
21 you need to go home, if you live in the outlying areas, if not
22 just be back at 1:45 in your jury room and the bailiffs will
23 tell you where to be, okay? Don't talk about the case, don't
24 let anybody talk about the case to you, y'all have a good
25 break.

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1 (The jury left the courtroom.)

2 THE COURT: All members of the jury are present, I hope
3 you had a good break. Madam Solicitor, you may call your next
4 went.

5 MS. JOYNER: Thank you, Your Honor. The State calls
6 Officers Jasmine Davis.

7 The witness, JASMINE DAVIS, was first duly sworn and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. JOYNER:

11 Q Officer Davis, can you please state your full name for
12 the record?

13 A Jasmine Davis.

14 Q And how are you employed?

15 A I am employed with the York County Detention Center.

16 Q And what is your title there?

17 A Detention officer one.

18 Q And what are your job duties as a detention officer?

19 What are your job duties?

20 A To maintain control of the facility and protect the
21 public.

22 Q I'm going to ask you to speak up a little bit because
23 there may be some people a little further back and we're
24 having a little trouble. So you said maintain control. Are
25 there -- in addition to sort of security type aspects of

JASMINE DAVIS - DIRECT

1 your job, are there parts of your job such as helping to
2 make sure that inmates are fed and have their laundry and so
3 forth?

4 A Yes, ma'am.

5 Q And when you work at the detention center, are you
6 assigned to a particular housing unit or do you rotate
7 throughout the facility?

8 A We rotate twice on day shift, three times at night.

9 Q And you may work in different units?

10 A Yes, ma'am.

11 Q So how long have you been with the York County
12 Detention Center?

13 A A year and a half.

14 Q And prior to that did you have any type of law
15 enforcement experience?

16 A Yes, ma'am, Georgia Department of Corrections.

17 Q The Georgia Department of Corrections?

18 A Yes, ma'am.

19 Q How long were you at the Georgia Department of
20 Corrections?

21 A Four and a half years.

22 Q What did you do there?

23 A Corrections officer.

24 Q You said four and a half year?

25 A Yes, ma'am.

JASMINE DAVIS - DIRECT

1 Q So a corrections officer works in the actual prison
2 system.

3 A Yes, ma'am.

4 Q Okay. So were you working for the York County
5 Sheriff's Office, the detention center on December 19th of
6 2016?

7 A Yes, ma'am.

8 Q Do you remember what shift you were working?

9 A Second if I remember correctly.

10 Q What is the time that second shift works?

11 A From 6:00 p.m. to 6:00 a.m.

12 Q Do you recall which housing unit you were assigned to
13 on that date?

14 A Housing unit I.

15 Q Okay. And was that a regular day at work, December
16 19th?

17 A Yes, ma'am.

18 Q Did anything noteworthy happen on that date?

19 A Yes, ma'am.

20 Q Can you tell the jury what noteworthy thing happened
21 that day?

22 A I was exposed by Mr. Dillard.

23 Q So you said that you worked the second shift, so coming
24 in about 6:00 p.m. is that correct?

25 A Yes, ma'am.

JASMINE DAVIS - DIRECT

1 Q So what would be the first thing that you would have
2 done coming in at 6:00 p.m.?

3 A The first thing I would have done would have been a guard
4 tour and a beginning count for my shift.

5 Q What's a guard tour?

6 A Where we go around and check to make sure that inmates
7 were fine, not in distress and -- make sure the inmates are
8 fine taking on that shift.

9 Q Okay. So would a guard shift entail you walking
10 through each of the quadrants of the I-block?

11 A Yes, ma'am.

12 Q And would the inmates already have eaten at that point?

13 A No, ma'am, not dinner.

14 Q What time would they've been served dinner?

15 A Anywhere between 7:00 and 7:25 maybe, it just depends on
16 if court ran that day. If court was in session sometimes trays
17 come later and sometimes they come earlier.

18 Q So back on December 19th of 2016 prior to Mr. Dillard
19 exposing himself to you, had you already done a guard tour
20 through his quadrant?

21 A Yes, ma'am.

22 Q Had you seen him, interacted with him?

23 A Yes, ma'am.

24 Q So if you can kind of go back in your memory, tell the
25 jury step by step what was the circumstances under which Mr.

JASMINE DAVIS - DIRECT

1 Dillard exposed himself to you.

2 A There was a fire alarm that went off on that particular
3 day, and whenever a fire alarm goes off we have to put all of
4 the inmates up, the whole facility shuts down, we were going
5 into the unit to put an inmate up that was out on rec. It's
6 become second nature to me whenever I go upstairs to always
7 check the lower levels because I could see within those cells,
8 that's when I saw him moving around and getting up, that's what
9 caught my attention but he wasn't doing anything at that point.
10 As I got to the top tier, which is adjacent to where his room
11 was to secure the inmate that was out on rec, that's what I saw
12 Mr. Dillard expose himself. At this point he inclined himself
13 by getting on his bunk, it was between his toilet and his bunk
14 that he propped himself up to get to a higher level and to put
15 himself within view of me so I could see him clearly. So once
16 I got ready to secure this inmate I happened to look back
17 because I seen him moving, when I looked back that's when I
18 seen him fully exposing himself. So once we secured the
19 inmate, it was myself and another coworker, as I was coming
20 down the stairs he continued to do it as I got closer to the
21 bottom in which as though he stated earlier, his defense
22 attorney, that the window stop at a certain level and he was
23 standing there at that point, and as I walked out I told him,
24 "I will be writing you up." And that's the only thing that I
25 said to the individual because I didn't want to cause a

JASMINE DAVIS - DIRECT

1 commotion and other inmates saying, "Well, what is going on
2 this, that and the third," and I didn't want to put his
3 business out there so I simply told him he would be written up
4 and I walked out of the unit.

5 Q So let me back through a little bit slower so the jury
6 has got all of it. Just by way of background, in the
7 I-block unit you said that -- is there a rule regarding how
8 much rec time an inmate gets a day?

9 A Yes, ma'am. In I-block they all get a hour, so they're
10 locked down 23 hours and they're only out one per day.

11 Q So you mentioned there was an inmate out on rec, is
12 that like short for like recreation?

13 A Yes, ma'am.

14 Q When they're out on recreation, where do they go or
15 what do they do?

16 A They can only -- when they first come out they have the
17 option to shower and that's at their discretion, after that
18 they can use the phone and walk around in the day room area.

19 Q So you mentioned there was a fire alarm somewhere else.
20 Is there a rule that when there's a fire alarm all of the
21 inmates have to be in their cells?

22 A The whole facility shuts down, so anybody that's out they
23 have to go up.

24 Q Is that so that you can know and make sure that
25 everybody is accounted for?

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1 A Yes, ma'am.

2 Q So the alarm went off from a different part of the
3 detention center.

4 A Yes, ma'am.

5 Q And was there -- is it correct that there was an
6 individual who was out on rec. at that time?

7 A Yes, ma'am.

8 Q So when you entered I-block, how many doors do you go
9 through to get to his quadrant, can you recall?

10 A It's actually your control room, you have to be popped out
11 of there, and then there is a sliding door, the sallyport area,
12 and you go into that quadrant.

13 Q Okay. How loud are the doors that been from the
14 sallyport into the quadrant that he was in?

15 A They're pretty loud.

16 Q Was the alarm that was going off, was that loud as
17 well?

18 A Yes, ma'am. When an alarm goes off the entire facility
19 hears it, it sets all of them off so they're pretty loud.

20 Q Could you still hear the doors over the sound of the
21 buzzer?

22 A Yes, ma'am, you could hear the sliding doors.

23 Q I don't think I asked Captain Davies this. The inmates
24 in I-block in this particular quadrant where Mr. Dillard was
25 an inmate, were those one people cells or was there more

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1 than one person per cell?

2 A One person per cell.

3 Q And the layout of those cells, can you describe the way
4 the cell is laid out for the jury?

5 A Whenever you go -- well, in -- block they have sliding
6 doors, so if that door is slid open it slides back towards the
7 right, so it will be my left if I'm sitting this way. The bunk
8 sits to your left as well as the sink and the toilet connect,
9 then they have like a little desk area where they can sit and
10 write, so it's more or less like a little table/desk area.

11 Q So in Mr. Dillard's cell, how close would the bunk be
12 to the toilet?

13 A It's pretty close.

14 Q So kind of going back to something else you said, about
15 how high on one of the windows in the I-block doors, about
16 where would it hit you if you were standing up?

17 A It would stop probably above my stomach.

18 Q So -- okay.

19 A The windows are wide, not necessarily short.

20 Q Okay. So in going back, you were walking through
21 the -- so you walked through the doors, you said you were
22 walking up -- you were on the top level when you first
23 noticed what was going on?

24 A Yes, ma'am.

25 Q Okay. When you looked back and noticed Mr. Dillard,

JASMINE DAVIS - DIRECT

1 did you have an opinion about whether he appeared to see you
2 seeing him?

3 A No opinion at all. I knew for a fact that -- because once
4 I secured -- I did the handcuffs, once I secured this
5 individual my coworker was going to take off the leg irons, so
6 when I saw him moving that's when I glimpsed back. The only
7 reason that I looked because I knew I wasn't mistaken, when I
8 looked back it was to assure the fact that I saw it, instead of
9 saying "Hey, you did something that you didn't do." Because he
10 work out a lot and I thought that's what he was doing
11 initially.

12 Q Okay. So you're saying you looked back one time,
13 thought you saw him doing something and then turned --

14 A No, I saw him moving. At that point I didn't know exactly
15 what he was doing, so when I looked back to see exactly what he
16 was doing that's when I saw him fully exposed, yeah.

17 Q Okay. What was Mr. Dillard wearing?

18 A When he got out of his bunk he only had on boxers, and
19 they're like a chocolate brown color in boxers.

20 Q Okay. And when you say that you saw him fully exposed,
21 could you tell the jury what you mean by fully exposed?

22 A That's just my nature of not using the derogatory words,
23 but he had his pants fully exposed looking directly at me while
24 he was ejaculating.

25 Q Was he ejaculating or masturbating?

JASMINE DAVIS - DIRECT

1 A Masturbating.

2 Q You said he was looking directly at you. Did you look
3 back at him?

4 A Yes, ma'am, I looked directly at him.

5 Q And that's what I was trying to ask you earlier, did
6 you perceive whether he was realizing you were looking for
7 him?

8 A Oh, he knew.

9 Q After -- were you still up on the second level when you
10 made this observation?

11 A Yes, ma'am.

12 Q What did you do after that?

13 A I continued to finish what I was doing, and as I came
14 downstairs when I saw him exposing himself he tried to come
15 closer to the door, but at that point I had already seen him
16 again continuing to do it, so as I came downstairs I looked
17 over and I told him, "I'm going to write you up." I didn't
18 stop and give full confrontation to the situation because we
19 had to make sure the entire unit was locked down.

20 Q So as you were coming down the stairs could you see
21 what Mr. Dillard was doing?

22 A Yes. He had got off the bunk at that point and he was
23 closer towards the door but not completely at the door.

24 Q What was he doing?

25 A He was still masturbating.

JASMINE DAVIS - DIRECT

1 Q Was he looking at you?

2 A Yes, ma'am. He was standing directly at the door looking
3 at me.

4 Q Did you look back at him?

5 A Yeah, to let him know he was going to get written up.

6 Q The man that you saw masturbating that day in I-block,
7 do you see him in the courtroom?

8 A Yes, ma'am.

9 Q Could you please point him to the jury?

10 A He's right there.

11 MS. JOYNER: Your Honor, let the record reflect that she's
12 identified the defendant, Mr. Dillard.

13 THE COURT: All right, noted.

14 Q This is a difficult question to word so be patient with
15 me as I try to put this question together. When you saw
16 that you saw him fully exposed, did you see his penis?

17 A I did.

18 Q If his underwear was a brown color, how do you know
19 that you were, in fact, seeing his penis?

20 A It was a very big difference versus his boxers and his
21 genital area.

22 Q Okay.

23 A It wasn't as if he was doing it under his boxers, it was
24 completely exposed.

25 Q Could you tell from where your vantage point -- from

JASMINE DAVIS - DIRECT

1 where the penis came out of the boxers, were the boxers on?

2 A Yes, ma'am.

3 Q Was it coming from the little slit at the front?

4 A Yes, ma'am.

5 Q And what was the state of his penis?

6 A You mean --

7 Q Was his penis erect?

8 A Yes, ma'am.

9 Q Officer Davis, prior to trial did you review what has
10 been entered as State's Exhibit 1, the surveillance video?

11 A Yes, ma'am.

12 MS. JOYNER: Madam Clerk, if you would bring down the
13 lights.

14 Q Before we begin at the very beginning if you could --

15 MS. JOYNER: With the Court's permission if she could step
16 down for a few minutes.

17 THE COURT: Sure, that's fine, ma'am.

18 Q I'm going to hand you this pointer so if I ask you
19 where something is you can point it, okay? And just to
20 begin, are you able to tell which of these cells was Mr.
21 Dillard's cell?

22 A Yes, ma'am.

23 MS. JOYNER: Your Honor, if the record could reflect --

24 Q Could you hit the pointer again?

25 A (Witness complies.)

JASMINE DAVIS - DIRECT

1 MS. JOYNER: She has indicated the same cell that Captain
2 Davies did, the second door on the bottom floor.

3 THE COURT: Okay. Noted.

4 Q Now, just a moment -- just a second ago I stopped it at
5 7:40 and 09 seconds, just a few seconds back that light
6 that's flashing, is that the alarm?

7 A Yes, ma'am.

8 Q And the gentleman that's moving around up top, that's
9 the individual out on rec?

10 A Yes, ma'am.

11 Q Now, stop this right here, 7:40 and 5 seconds. Can you
12 point for the jury and identify which of those officers is
13 you?

14 A Right there.

15 MS. JOYNER: If the record will reflect she has identified
16 the first officer going up the stairs.

17 THE COURT: Okay.

18 Q Now, I'll stop it again at 7:41 and 19 seconds. Can
19 you tell they jury what is going on with that other inmate?

20 A Right here we're putting the inmate inside his cell. He
21 has on leg irons and handcuffs. In order to secure inmates in
22 the max unit you have to handcuff them to the door for security
23 purposes, and once he's secured to the door that's when we will
24 take off his leg irons first, and once he's in it we will take
25 the handcuffs off.

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- 1 Q Does it generally require two officers to do that?
- 2 A Yes, ma'am.
- 3 Q I'm going to stop right here. It appears you just
- 4 exited the quadrant. Did you go back in that quadrant at
- 5 all close in time after this?
- 6 A I mean --
- 7 Q Are you in the video back in the quadrant any further?
- 8 Do you appear back on this video at all?
- 9 A No, ma'am.
- 10 Q All right, I'll ask that you go ahead and take a seat.
- 11 Now, after you advised inmate Dillard that you're going to
- 12 write him up, did he say anything to you specifically in
- 13 response?
- 14 A After going on the console, it was about a couple of
- 15 minutes later, don't know approximately how many, he pushed a
- 16 button and I told the lady on the console, I said, "Don't
- 17 answer him, I know what he want." So he pushed it again and he
- 18 said, "Don't write me up." I said, "It's too late, you're
- 19 getting written up."
- 20 Q Let me ask you this, not to interrupt you, but the
- 21 console -- is there an intercom in his room?
- 22 A Yes, ma'am.
- 23 Q Is there intercom in every inmate's room?
- 24 A Yes, ma'am.
- 25 Q And it's you -- obviously you don't get to see exactly

JASMINE DAVIS - DIRECT

1 everything that's going on in his room, but as you're
2 walking down the stairs did you observe him continue to
3 masturbate?

4 A That's why I looked over because I saw that he was still
5 doing it.

6 Q And was he still doing it?

7 A Yes, ma'am.

8 Q And was he looking at you?

9 A Yes, ma'am.

10 Q Did you look back at him?

11 A I let him know at that point that he would be written up,
12 that's when I made it to the bottom of the steps. In the video
13 once I made it half way down that's when I looked at him again,
14 because I was about to say it to him then but I saw that he was
15 still doing it, when I made it to the bottom of the steps
16 that's when I told him, "You're going to be written up."

17 Q Okay. So you saw halfway down the stairs that he was
18 still doing it.

19 A Yes, ma'am.

20 Q So was he still looking at you?

21 A Yes, ma'am.

22 Q When you realized that he was masturbating and looking
23 at you, how did that make you feel?

24 A Violated.

25 Q Even after almost six years, then almost five years in

JASMINE DAVIS -- DIRECT

1 this line of work?

2 A It will be six the 11th of this month. Yes, because it's
3 not something that I come to work for.

4 Q You seemed -- you were able to -- you seemed very calm
5 on the video. Is that how you -- did you feel calm?

6 A It wasn't a reason to be upset because I already knew that
7 I was going to take out the warrant and I already knew that I
8 was going to write him up so there wasn't a reason to get into
9 a confrontation about the situation.

10 MS. JOYNER: Thank you very much, please answer any
11 questions that Mr. Dunn has.

12 MR. DUNN: Please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. DUNN:

16 Q When he hit the intercom to say "Don't write me up"
17 according to what you're saying, that's the first time he
18 had hit the intercom button during that incident, correct?

19 A He pushed the buttons twice.

20 Q He hit the button and he hit the button.

21 A Once you hit it it will buzz and it will ring.

22 Q What I'm getting at, he did not hit the button before
23 you walked up those stairs, correct?

24 A Correct.

25 Q He hit that button after you came back down the stairs.

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1 A Correct.

2 Q And when you were walking up the stairs he wasn't
3 banging on the window, correct? In fact, at no point did he
4 ever bang on the window to get your attention, correct?

5 A No.

6 Q Just so that we're clear, when you were going up the
7 stairs he was laying on his bed, right?

8 A Correct.

9 Q He wasn't doing anything, you were reacting to the
10 inmate that needed to be put back in the room.

11 A Correct.

12 Q When the lights are going there's a buzzer going as
13 well, correct?

14 A Correct.

15 Q Fire alarm of some kind that makes noise. I'm assuming
16 it's as annoying as every other firearm we can hear, it gets
17 your attention?

18 A Uh-huh.

19 Q Fair to say your coworker -- what is your coworker's
20 name?

21 A Wilkerson.

22 Q Mr. Wilkerson. He never reacted to any of this,
23 correct?

24 A Not at all.

25 Q Not at all correct, or not at all he didn't react.

JASMINE DAVIS - CROSS

1 A He didn't react.

2 Q And we're at 7:42 and 33 seconds right now on the
3 video, that window is about at his waist, correct, somewhere
4 in the waist area?

5 A Yes, sir.

6 Q Now, it's your testimony this afternoon that he got up
7 on the toilet to -- when he was masturbating while standing
8 on the toilet while you were upstairs, is that my
9 understanding?

10 A Correct.

11 Q Now, after this insurance back on December the 19th as
12 part of this -- what had happened, you wrote up a report,
13 did you not?

14 A I wrote a disciplinary report.

15 Q And part of the reason why you brought a disciplinary
16 report is to remember what happens later on, correct?

17 A Yes, sir.

18 Q And I'm assuming that whatever incident, whether it's
19 this case or any other kind of incident violation, it gets
20 reviewed by folks further up the chain of command, correct?

21 A Yes, sir.

22 Q And so when you're doing this report you want to put as
23 much information in it to justify your actions as possible,
24 right?

25 A Yes, sir.

JASMINE DAVIS - CROSS

1 Q Just to protect yourself and let them know why you're
2 writing somebody up, correct?

3 A Yes, sir.

4 Q Do you remember doing a report in this one?

5 A I do.

6 Q And have -- at no point in this report did you ever
7 mention that he was standing on the toilet masturbating; is
8 that correct?

9 A That is correct. And after that incident that's when I
10 was informed to be more detailed. It's different disciplinary
11 reports that you write, and from that day on I have learned to
12 be very detailed and do event reports on the computer as well.

13 Q Earlier you testified that before you came here you
14 were working for the Georgia Department of Corrections?

15 A Correct.

16 Q I'm assuming that your job duties there were a lot like
17 they are here.

18 A Two different departments, sir.

19 Q You weren't working with inmates there?

20 A I was working with inmates, but under the circumstances
21 that they are sentenced inmates they'll fall under two
22 different guidelines, certain things we can file charges for
23 here we can't on sentenced inmates.

24 Q What I was going to ask is I'm assuming in that job if
25 an inmate did something that was against the rules or the

JASMINE DAVIS - CROSS

1 regulations at the institution you would have to write
2 reports for those as well?

3 A Correct.

4 Q So the report that you wrote on December 19th, that
5 wasn't your first report.

6 A It wasn't.

7 Q It was almost five years at that point in time,
8 correct?

9 A Correct.

10 Q When you're sitting in the control room, which I'm
11 assuming is the lower left hand room of the video, that's
12 the control room; is that correct?

13 A No, sir. You have to go through a sallyport and back
14 around to get to the control station.

15 Q When you're sitting in the control room, can you see
16 inside the common area?

17 A Yes, sir.

18 Q Can you see the doors? You have unobstructed views of
19 the doors of each of the inmates, correct?

20 A Most of the inmates that are in there, it depends on what
21 area you're sitting on the console.

22 Q Fair to say, though, where Mr. Dillard's door is that
23 you didn't have an obstructed view from the console to his
24 door?

25 A Yes, sir.

JASMINE DAVIS - CROSS

1 Q If folks are in the downstairs rooms, if they're
2 sitting down in their bed and you're in the console you
3 can't see in them, correct?

4 A Yes, sir.

5 Q You can or can't?

6 A You can't see.

7 Q And, in fact, just so that -- again, I want to make
8 sure I'm clear, your testimony is as you were walking up
9 these stairs he wasn't doing anything inappropriate, was he?

10 A Correct.

11 (The video was played.)

12 Q So at this point -- it's about 7:40 and 53 seconds, at
13 this point you're responding to the inmate upstairs, right?
14 He's not doing anything incorrect.

15 A (Nods head yes.)

16 Q Take a step out, about 15 seconds or so to walk from
17 the door up to the top of the stairs there, right? Correct?

18 A Yes, sir.

19 Q During that entire 15 seconds he hasn't done anything
20 at any point to draw your attention, correct?

21 A No, sir.

22 Q And it's fair to say that when you're going up those
23 stairs you're going -- you have a purpose, it looks like you
24 have a purpose and you're going to go deal with this other
25 inmate to put him back in his room, right?

JASMINE DAVIS - CROSS

1 A Yes, sir.

2 Q You walk down the stairs and start dealing with this
3 other inmate, right? In fact, it looks like you're the
4 primary person doing most of the work and your fellow
5 officer is sort of I guess is the secondary person or the
6 backup person?

7 A Not relatively the backup but he was doing the leg irons.

8 Q It's fair to say that you're the one at this point
9 doing most of the work and your attention is on this other
10 inmate, right?

11 A Correct.

12 Q And I think earlier at some point you mentioned that
13 you back away and your coworker put iron shackles on or was
14 taking iron shackles off?

15 A Once I connected the handcuffs to that subject in that
16 door I stepped back and that's what warrant my attention, so my
17 coworker then takes off the leg irons at this point.

18 Q And this happens, and at that point for the next five
19 or six seconds that he's dealing with the iron shackles that
20 your view is -- you're actually obscured a little bit from
21 this camera, correct, by part of the mesh and part of the
22 whatever is holding the wire up there, correct? I mean,
23 you're a little obscured from the camera at this point,
24 correct?

25 A Yes, sir.

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1 Q Once the iron shackles are removed and he's placed into
2 his room, y'all make a, I won't say beeline, but y'all are
3 done with him and you go back to the control room, correct?

4 A No. We have to wait in order for them to close the door
5 and that was the next thing that I done -- that's what I was
6 doing at that point.

7 Q So you're waving for the door to be closed. I guess
8 what my point is, though, is that once that door is secured
9 and that inmate is secured, you walked back to the control
10 room.

11 A We don't go to the control room at that point, we go and
12 make sure that every inmate is safe and sound throughout that
13 facility.

14 Q And it's your testimony that as you're walking down the
15 stairs here that you look over at him and you tell him that
16 --

17 A I didn't tell him until I got to the bottom of the steps,
18 sir. When I look over at that point that's when I observe that
19 he was still masturbating.

20 Q Is this what you're saying is he's at the bottom of the
21 stairs here?

22 A I'm not at the bottom of the steps, I'm center ways on the
23 steps, sir.

24 Q You haven't talked to him at this point then?

25 A No. At this point is when I tell him that I'm going to

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- 1 write him up.
- 2 Q Now, every one of those doors has got some kind of
- 3 theater door in it to pass trays through and that's --
- 4 A Correct.
- 5 Q His is close at this point, is it not?
- 6 A You are correct.
- 7 Q And Captain Davies' testimony was that the facility
- 8 here, the floors and doors and walls and all it's made out
- 9 of steel or metal of some kind, correct?
- 10 A Correct.
- 11 Q And that is correct, right?
- 12 A Yes, sir.
- 13 Q We're not talking about -- it's not plastic or it's not
- 14 cheap material.
- 15 A No, sir.
- 16 Q It's there for security purposes, and there's heavy
- 17 glass keeping those on the doors, correct, glass or plastic
- 18 or something?
- 19 A Yes, sir.
- 20 Q And did a lot of the noise -- and my question is if
- 21 you're talking to somebody it's going to be hard for them to
- 22 hear what you say through that door unless there's some kind
- 23 of opening, correct?
- 24 A No, sir, because I'm a very loud individual. And at that
- 25 point they silenced the alarm, the lights were still flashing

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1 but the alarms was silenced. Because the same room that they
2 said that should have been going off for a broken sprinkler, it
3 was a false alarm and the sprinkler actually was not broken,
4 therefore they silenced it.

5 Q You say you're a loud individual, were you yelling at
6 him or just talking --

7 A No. I'm just a loud individual, it's a southern thing.

8 Q Louder than you are in court today?

9 A Yes, sir.

10 Q You don't write every single individual up that you see
11 masturbating in their room, correct?

12 A I don't.

13 Q And that was true back when you were in the department
14 of corrections in Georgia as well?

15 A Correct. It's circumstances that you write disciplinary
16 reports, sir.

17 Q Isn't it true that earlier -- this happened at about
18 7:40 or 7:45, somewhere in that timeframe, right?

19 A Yes, sir.

20 Q You went on shift that night about 6:00; is that right?

21 A Yes, sir.

22 Q Isn't it true that you and he had had an argument
23 earlier that evening about his apple juice, or his juice?

24 A Not that I recall.

25 Q That he was upset that he -- he wanted another cup of

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1 juice because the cup that he had received had had a hair or
2 other foreign matter in it.

3 A No, not that I recall, not having a confrontation or
4 argument, no.

5 Q And, in fact, it was enough of a confrontational
6 argument that some of the other inmates in the jail cells
7 around -- strike that. And, in fact, you had told him at
8 the end of that argument that you have got something for
9 him? "I have got something for you?"

10 A And what would that have been, sir?

11 Q That's not what I'm asking, you said "I got something
12 for you."

13 MS. JOYNER: Your Honor, she's denied the argument, at
14 this point it's arguing.

15 THE COURT: Overruled. Answer the question.

16 A No, sir.

17 MR. DUNN: Beg the Court's indulgence, Your Honor.

18 (Break in proceedings.)

19 MR. DUNN: I have no further questions, Your Honor.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. JOYNER:

23 Q Officer Davis, did you have an argument with the
24 defendant earlier in your shift?

25 A Me and Mr. Dillard has never had an argument. And, in

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1 fact, even after the incident he's conversed with me.

2 Q Okay. And those thick windows, can you see through
3 those thick windows?

4 A Yes, ma'am.

5 Q As part of your job do you sometimes speak with inmates
6 through closed doors through the windows?

7 A Yes, ma'am.

8 Q Have you ever had any problem with them understanding
9 what you're saying?

10 A No, ma'am.

11 MS. JOYNER: Okay. Thank you very much, Your Honor, we
12 have no further questions.

13 THE COURT: Thank you, ma'am, you can step down. Call
14 your next witness.

15 MS. JOYNER: States rests.

16 THE COURT: State rests. Ladies and gentlemen of the
17 jury, I'll ask you to go back to your jury room at this point
18 in time, I've got some matters I need to discuss with the
19 lawyers, y'all don't talk about the case.

20 (The jury left the courtroom.)

21 THE COURT: Mr. Dunn?

22 MR. DUNN: If it please the Court, Your Honor? Your
23 Honor, I would argue -- or entertain the motion of a directed
24 verdict at this time. As the Court is aware, my client is
25 charged with 16-15-130 of the South Carolina Code of Laws, and

1 within that code it requires that a person willfully,
2 maliciously or indecently expose his person in a public place
3 or the property of others in view of any person on the street
4 or highway. Your Honor, I would argue that the State has
5 failed to two different -- has failed to meet the elements --
6 two of the elements in this charge. One, that again raised the
7 issue that a jail is just not property of others as the statute
8 contemplates it and this charge is not appropriate just for
9 that very reason. But even if the Court is inclined to
10 disagree with me on that and say that the jail does cover that
11 phrase on the property of others, the State has not met its
12 burden on the willfully, maliciously and indecently, all three
13 which must be there since there is an injunction in there that
14 ties the three of them together. Even if he is intentionally
15 masturbating that they can't prove the malicious part of it
16 that -- and unlike yesterday where we had -- I guess they have
17 an open door and maybe he was trying to be a little bit
18 exhibitionist, but on this case the man is behind his door and
19 that he can argue he is even in his bathroom or in his bedroom,
20 I would argue in either one of those cases it would be if
21 someone was so inclined to do that kind of thing that that
22 would be the more appropriate -- socially appropriate place for
23 the person to do it. He has no ability to go anywhere else,
24 he's stuck in that room. I think when you look at the video it
25 just doesn't show what Officer Davis says she saw, and that

1 there's -- the malicious part of it just isn't there. There's
2 no kind of -- he didn't hit a buzzer, he didn't try to get her
3 attention to look his way. And I'm not saying he did it, but
4 even if he was doing what she says he was doing there wasn't
5 any evidence showing that he was trying to get her attention to
6 try to do some kind of expedition towards her and for her
7 benefits or to make her uncomfortable or whatever the reasons
8 are that anyone would do that kind of action, and as such I
9 don't believe the State has met the burden on the malicious
10 part of this statute, and as such we would ask for a directed
11 verdict.

12 THE COURT: Thank you. Ms. Joyner?

13 MS. JOYNER: Your Honor, as the directed verdict motion is
14 entered in the light most favorable to the State, we believe
15 we've met our burden. Officer Davis' testimony establishes
16 that he exposed his person, her testimony is that she saw his
17 penis, which would meet that element of the offense. He's on
18 the property of others and he is in our detention center, Your
19 Honor. And I believe that as to the willful, malicious and
20 indecent, I think there is evidence in the record from which
21 the jury could find him guilty. What we have is a situation
22 where he comes from his bed, where he could have been privately
23 doing whatever, comes to the door once he hears -- or once he
24 would have been able to hear the very loud sound of this door
25 open. As the officer comes through he goes up to the window,

1 he positions himself, he could have -- her testimony is that he
2 is positioned up high so that he can be seen by her, and that
3 she looked back several times and, in fact, sees him
4 masturbating, she sees that he saw her seeing him and that he
5 continued the conduct. Had he meant to have privacy he would
6 not have positioned himself up high. Those windows were sat so
7 that he could have had privacy but for the fact that he was
8 positioning himself up to be at an angle where he could be seen
9 by her. So I do think that we have got a purposeful and
10 malicious and certainly it is indecent to display your private
11 parts and masturbate to a person who is basically a stranger.
12 Your Honor, we believe we've met the burden in the light most
13 favorable to the State on all of the elements, we would ask the
14 Court to deny the motion.

15 THE COURT: All right. Thank you for the purpose of the
16 young lawyers in the courtroom, the directed verdict standard
17 is that any evidence standard, is there any evidence which
18 tends to prove the matters alleged by the State. Mr. Dunn,
19 your argument clearly goes to the weight and credibility of the
20 evidence and are excellent jury arguments, however that's not
21 the standard for a directed verdict. There is enough evidence
22 in the record to go to the jury where the jury can determine
23 the weight and credibility of the evidence. And Ms. Joyner is
24 correct, they have to look at the evidence in the light most
25 favorable to the non-moving party which is the State, so

1 considering those two things I respectfully deny your motion
2 for a directed verdict. All right. Mr. Dillard, if you will
3 please stand raise your right hand.

4 (The defendant was sworn.)

5 THE COURT: Mr. Dillard, at this time I will explain
6 certain rights you have as I did yesterday, if you don't
7 understand anything I say please let me know and I'll be glad
8 to explain it in more detail. Are you okay with that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We've now reached the stage in the
11 trial where you get to present your defense. Now, in
12 presenting your defense you have the right to testify if you
13 want to, but you don't have to testify, because the Fifth
14 Amendment to the Constitution of the United States says that no
15 person shall be compelled in any criminal case to be a
16 witnesses against himself, that means that nobody can make you
17 testify in this case. Now, you certainly can testify if you
18 want to but that is a personal decision you have to make but
19 nobody can make you testify, do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, if you do decide to testify the lawyer
22 for the State can cross examine you and try to make you look
23 bad in front of the jury the way your lawyer has tried to do
24 with the witnesses for the State. She may also cross examine
25 you about your criminal record if -- if there's any convictions

1 for dishonesty or false statement or punishable by imprisonment
2 for more than one year if I conduct a balancing test and find
3 that those impeachable convictions are more probative than
4 prejudicial, do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And Madam Solicitor, for the purpose of the
7 record, the crimes that you would believe are impeachable are
8 what?

9 MS. JOYNER: They're all Florida convictions, Your Honor,
10 they are convictions --

11 THE COURT: All within the last ten years?

12 MS. JOYNER: He was released from custody within the last
13 ten years. There are two counts of kidnapping, one count of
14 carjacking, two counts of armed robbery and one count of sexual
15 battery.

16 THE COURT: Okay. All right. And, of course, Mr. Dunn,
17 I'm sure you would argue the introduction of those would be
18 substantially more prejudicial than probative.

19 MR. DUNN: Yes, sir.

20 THE COURT: And more likely than not I would disagree with
21 your argument on that in the event he did testify. So you
22 understand that, Mr. Dillard?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So do you understand your right not to
25 testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you wish to testify?

3 THE DEFENDANT: No, sir.

4 THE COURT: And you've discussed this with your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you're satisfied with his advice on that
7 issue?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Dunn, anything else at this point in time?

10 MR. DUNN: Just renew all my motions but I think that's --

11 THE COURT: Motions have been renewed, motions denied. Do
12 you intend on presenting any evidence?

13 MR. DUNN: No, sir.

14 THE COURT: All right. Are y'all ready to roll right into
15 closing arguments.

16 MS. JOYNER: Yes, sir, Your Honor.

17 MR. DUNN: Yes, sir.

18 THE COURT: Let's do it, bring them in.

19 (The jury returned to the courtroom.)

20 THE COURT: All members of the jury are present. The
21 State has rested, Mr. Dunn, you may call your witness.

22 MR. DUNN: The defense rests, Your Honor.

23 THE COURT: The defense has rested. Ladies and gentlemen
24 of the jury, since both sides have rested that means the
25 testimony and evidence phase of the trial is over with. We

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1 will now go to the closing arguments of the lawyers, please
2 listen carefully to what they tell you, what they talk to you
3 about, and remember at the end of the closing arguments that's
4 when I will instruct you on the law as it pertains to the
5 issues in this case. Madam Solicitor?

6 MS. JOYNER: Thank you, Your Honor. Madam Clerk, if you
7 would please dim lights the lights. The defendant, Tony
8 Dillard, stands trial today for indecent exposure. As I said
9 in the opening it's not maybe the stereotypical case. It's not
10 what you think of perhaps probably when you hear a term like
11 indecent exposure. It's not the person on the street or the
12 highway, it's not a person that's driving along flashing
13 another person. And although it's not a stereotypical case of
14 indecent exposure, it is a case of indecent exposure
15 nonetheless. It happened at the York County Detention Center,
16 but ladies and gentlemen, the laws in the State of South
17 Carolina apply both outside the detention center and inside the
18 detention center. And the way that this law is written, ladies
19 and gentlemen, is that it provides -- it has -- this is the
20 pertinent part, this is the part of the Court will read, "That
21 it is unlawful for a person to willfully, maliciously and
22 indecently expose his person on the property of others," that's
23 the relevant part of the statute for your consideration. The
24 statute also includes those public places and to the view of a
25 person on the street or a highway. But for purposes of your

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1 consideration the defendant was an inmate at the detention
2 center, he was not in the public but he was, ladies and
3 gentlemen, I submit to you, on the property of others. And so
4 in order for you to find the defendant guilty you must find
5 that the State has proven to you beyond a reasonable doubt that
6 the defendant, number one, exposed his person on the property
7 of others and that he did so willfully, indecently and
8 maliciously and he did so here in York County. Ladies and
9 gentlemen, I want to kind of dissect the evidence piece by
10 piece, but I kind of want to start with what I think is sort of
11 the elephant in the room, it's on the property of others. And
12 there may be in some people's minds, and I can completely
13 understand this, is you might be coming back to it and you're
14 like, "Well, it was the detention center." And, you know, it
15 wasn't really his choice to be there, and I get that, and I get
16 that thought and I understand. But remember, ladies and
17 gentlemen, just because he didn't necessarily want to be where
18 he was, that wasn't an excuse, it wasn't a defense, it's not an
19 exemption from following the laws. If you can't do something
20 on the corner, the street corner you can't do it at the
21 detention center either, ladies and gentlemen. Now, going back
22 to all three of these elements we have to prove these three
23 things to you beyond a reasonable doubt. This case is a case
24 like a lot of cases, it's going to come down to your
25 determination of the credibility of the State's witnesses.

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1 When you come into this jury room you come in with all of your
2 common experiences, you come in with the tools that you need to
3 come together in deliberation and find the facts because you as
4 the jury are the finders of facts, and as the finders of facts
5 you have to judge the credibility of the witnesses. You can
6 believe all of what a witness says, some of what a witness
7 says, none of what a witness says, and the things that you can
8 look at are the same tools that you use in your everyday life.
9 You decide everyday whether you believe people, whether you
10 think that makes sense. Does that sound like what happened?
11 Could that person have seen it? How do they know it? Do they
12 have reason to tell me something that's not true? You do that
13 everyday, you're just not used to doing that as a group of 12.
14 It makes the process a little bit more difficult but you
15 certainly came into this room with all of the tools you needed
16 to do it. Now, there's a video, and wouldn't your job be
17 easier if this camera angle was just right and it showed the
18 act? Wouldn't that make this case simpler for you?
19 Absolutely. But ladies and gentlemen, the video doesn't show
20 you the actual act. But ladies and gentlemen, one of the
21 things that you can look at when you're judging the credibility
22 of witnesses, and when you're judging the credibility of
23 Officer Jasmine Davis is whether there's anything that
24 collaborates what she said. Ladies and gentlemen, I ask you to
25 go back and watch this video, watch it. Because, yes, you

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1 don't see his penis but you do see a whole lot and you just
2 have to pay attention and really think about what you're
3 looking at and think about what you're looking for from this
4 video. So these are some still shots from the video, and the
5 timing of this is 7:40 and 04 seconds. There's really not much
6 going on yet, right? Officer Davis hasn't come in to the area
7 yet, and if you look over here where both she and Captain Davis
8 identified it as the defendant's room, you can see pretty
9 clearly, I mean, you can see into that window, right? Not a
10 lot of activity. And so now let's go to 7:40 and 54 seconds.
11 And there is Officer Davis and she's walking in and she's going
12 up here to get this guy because the fire alarm is going off so
13 she's got a job to do. This guy is out on rec, he has to be
14 put up, has to be put back in his cell while they sort out
15 whatever this code situation is, so they're heading up the
16 stairs. And still nothing. Remember the testimony from
17 Captain Davies and Officer Davis both is that this door that
18 opens up to let them in is very, very loud, okay? She's gone
19 through an outdoor into a sallyport in here to get here. So
20 now getting somewhere close to like 7:41 and two seconds, now
21 there's a change over there in that window, isn't there? He's
22 not back on the bed like he was before, he's up. And I want
23 you to go back and you watch this video, it's only about six
24 minutes long but it might feel longer. But when you go back
25 and watch the video I want you to sort of pay attention to when

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1 those flashing lights start versus when he gets up, and I think
2 what you'll see is the timing of him getting up doesn't so much
3 correspond with those lights beginning to flash, but it sure
4 does seem to correspond to Officer Davis coming into the box.
5 And so now we have Officer Davis, 7:41 and 12 seconds, the
6 still shot from the video, so they're over -- Officer Davis and
7 her coworker are over here. And remember what she says, in
8 this particular unit it's a little bit of a cumbersome process
9 to put somebody back in. There's a series of handcuffing onto
10 the doors, you can take off the leg irons, then got to get them
11 in the cell, you're taking it off. I may not have done all of
12 that exactly right, but the gist of it is it's cumbersome and
13 there's two people involved with doing it. So there's
14 still her job that has to be done even if there are other
15 things that are going on. But if you go back and you watch
16 through this video during this same period of time, you see --
17 you can kind of see her head moving to the side several times.
18 And to go back and watch through the video watching the
19 timeframe, I would ask you to go and pay special attention to
20 how he's moving around right in front of this door during this
21 period of time in his motions. And so now at about 7:42 and 23
22 seconds and she's coming back down the stairs, but you could
23 see her turning and looking at him again. And remember her
24 testimony, she's looked in several times and seen what he's
25 doing, and now she's walking down and he's still doing it, and

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1 he remains at the door in 7:42 and 38 seconds. Go back and
2 watch the video, he remains at the door. You saw the whole
3 video with Captain Davies and I didn't replay the whole thing
4 with Officer Davis, but he stays at the door right where that
5 intercom is so when she said that he was buzzing, "Don't write
6 me up." Ladies and gentlemen, when you go back and you think
7 about Officer Davis' testimony, remember her explanation for
8 how he was positioned relative to where she was, and remember
9 the testimony about what that cell looked like. That cell is a
10 long rectangle and the door is here, the sink and toilet are
11 here, the bed is here, so they're all to the left. He could
12 have been far back in that cell and doing whatever he wanted to
13 do and nobody would have seen him, nobody would have cared, but
14 he came -- when Officer Davis came into that area, he came, saw
15 her, can see her up here and positions himself, because
16 remember, the window comes to right here, he positioned himself
17 by standing up on a bunk sort of like catty corner between the
18 bunk and the toilet up high and masturbated himself so that
19 from here she could see. And she told you that she looked at
20 him several times and looked at him and saw him looking at her,
21 he knew that she was seeing him. She wanted him to see it and
22 he knew that she would see, and you see her earlier in the
23 video stop right there and look again and she told you he's
24 still doing it. So when you go back and you think about what
25 the State -- what the evidence has shown you, think about the

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1. testimony of Officer Davis, she saw him, he meant for her to
2. see, he positioned himself for her to see, and when you're
3. trying to decide whether it's willful, as in purposeful,
4. remember how he positioned himself for her to see, and how he
5. kept doing it even after she saw him. That's not an accident,
6. that's on purpose. It is indecent, the Judge will tell you
7. it's vulgar, it is unseemly, it's something that you shouldn't
8. see or had to see, she shouldn't have had to see it, and it was
9. malicious. This wasn't an accident, ladies and gentlemen, this
10. was an intentional thing. He positioned himself so that she
11. could look down and see him. He didn't stop when she saw him,
12. he kept doing it. In his cell even behind a closed door he
13. committed this crime, and he was able to commit it because he
14. had a really, really big window and he wanted to be seen.
15. Officer Davis entered I-block because she had to put an inmate
16. up, she had to go in there and do her job. Those loud doors
17. announced her arrival, and he moved from his bed, you could see
18. that on State's Exhibit 1, he moved from his bed and he moved
19. to the door, he moved to this big window and he positioned
20. himself to be seen. A window is not a barrier to sight, she
21. could see him and she did see him. Now, I'm going to talk
22. about something that the defense asked Officer Davis about, he
23. asked her like, "Isn't it true that you guys had an argument
24. over a cup of apple juice and he wanted a different cup?" When
25. you're judging credibility one of the factors that you can look

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1 at is whether a person has a bias or a reason to lie. From
2 what you saw of Officer Davis, do you believe that she and then
3 her five years of experience working in the department of
4 corrections and dealing with people, do you think that a
5 discussion or an argument really happened over juice? Does it
6 make any sense to you that the person that you saw, the
7 demeanor that you saw, the person that testified, do you
8 believe as was sort of insinuated or suggested that she has an
9 axe to grind because of an argument over juice? Does that
10 make -- does that seem like the person that testified for you?
11 The elements that we talked about that we have to prove to you
12 beyond a reasonable doubt, and the Judge is going to give you a
13 definition of what beyond a reasonable doubt means, and there's
14 several definitions that sometimes get thrown about. Sometimes
15 people say it's not beyond any and all doubt, it's doubt which
16 is reasonable. Some people say it's the type of doubt that
17 causes a reasonable person to hesitate to act. Now, to
18 hesitate to act I think is a great definition, but it's one
19 that I think always requires a little bit of explanation,
20 because hesitation to act is not the same thing as
21 deliberation. Deliberation is the duty of every jury that
22 comes into this courtroom. You go back to the jury room, you
23 sit down at the table, you talk about the evidence that is
24 presented, everyone is given an opportunity to share their
25 viewpoint and you deliberate to reach a unanimous verdict

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1 that's not -- deliberation is not a hesitation to act, but it
2 can be hard because it's a term of art, and sometimes juries
3 struggle with, "How do I know that the State has met its
4 burden?" And I heard all of these definitions but it's still a
5 little confusing. My suggestion is when you go back into that
6 jury room and you sit at that table, you talk about every what
7 if, every maybe, every could be, and if at the end of
8 considering all those things you believe that the defendant got
9 up and went to that window of his cell and positioned himself
10 to be seen by Officer Davis, if you believe that Officer Davis
11 saw, in fact, him masturbating and saw his penis, then I submit
12 to you that the State has met its burden. Ladies and gentlemen
13 of the jury, looking at the video, hearing the testimony of
14 Officer Davis, I submit to you that the defendant wanted to be
15 seen by Officer Davis, he was seen by officer Davis, he had a
16 bad evil intent, malicious intent. I ask you to find him
17 guilty.

18 THE COURT: Thank you, Madam Solicitor.

19 MR. DUNN: If it may please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. DUNN: Good afternoon. As I told you a couple of
22 hours ago the single and the best piece of evidence in this
23 case I think was then the video and I still think it is the
24 video, that we all have the ability to see with our own eyes
25 what happened in I-block on December the 19th of 2016, and that

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1 is not a whole lot of anything. In a second the Court, the
2 Judge, will start telling you what the law is, and there's a
3 bunch of principles that he's going to give you and you've got
4 to listen to, but there's two of them that I really want you to
5 listen to, one is reasonable doubt and the other one is the
6 credibility or the weight of the evidence. That at the end of
7 the day whatever you see, whether it's the tape, whether it's
8 testimony from the witnesses, whether it's something that's
9 been thrown up on the screen, anything you see, hear in the
10 courtroom is evidence. And as the jury you have the ability
11 and the right and the duty to sift through it to decide, "I
12 like this evidence more than this evidence, that this one
13 doesn't seem -- maybe there's some problems with it, this one I
14 think is better," that's the weight of the evidence. And as
15 people everyday all day long we do that with information, we
16 have to judge and weigh information as it's coming to us,
17 whether it's from the family or kids telling us stories that
18 may or may not be true, whether it's from spouses or coworkers
19 and friends and family, we are always processing, it's part of
20 what we do as people, we process information and have to decide
21 I don't know if there's really -- I don't think that says what
22 somebody is telling me that they think it says. Look at the
23 evidence. You've heard the testimony from Officer Davis.
24 These are events that happened over six months ago. The day
25 after she had this incident she had to write a report, which is

CLOSING ARGUMENTS

1 what she testified to, and in that report she doesn't put a
2 whole lot, she didn't put a whole lot in there. In fact, her
3 testimony was she was told later on that maybe she should have
4 done a better job and she has got to start adding more details.
5 But to me what the most important detail and what the State
6 wants you to believe is the most single best piece of evidence
7 of why Mr. Dillard maliciously acted by standing up on the
8 toilet to make sure he got himself into a good view of what was
9 going on upstairs, that part was left out of the narrative,
10 that part was left out of the report, and I think there's a
11 reason for that probably because it wasn't going on -- she was
12 playing Monday morning quarterback trying to go back and
13 recreate and try to make her case stronger, and by her I mean
14 the witnesses. The Court is going to read to you and instruct
15 you on what reasonable doubt is, and as the solicitor has
16 mentioned, reasonable doubt is the type of doubt that causes a
17 reasonable person, each one of you that's on our jury, to
18 hesitate to act. And I would submit to you that the reasonable
19 doubt that exists in this case is look at the video. What does
20 the video show? You can look into Mr. Dillard's cell and see
21 him get up, you can see him sit down, you can see him walking
22 around, you can see what he was doing some of the time in that
23 cell, and during that some of the time you can actually see
24 what's going on. He's not doing anything that would be
25 considered inappropriate, indecent and masturbating, whatever

CLOSING ARGUMENTS

1 word you want to throw in there, he's not doing that, he's just
2 walking around his cell. My guess is he's probably going, "Hey
3 look, something exciting is finally going on, I've been in this
4 cell all day long, there's light and buzzers and people waking
5 around," he's doing what the other person in the other cell is
6 doing, he's watching what's going on. The reactions from both
7 Officer Davis and the other officer, I can't remember his name,
8 the male officer we see in the video, their actions are very
9 important, their actions also create reasonable doubt. The one
10 officer doesn't do anything. He never at one times reacts to
11 what's going on, he goes up, he goes down. Officer Davis
12 glances over and the rest of the time she is very purposeful in
13 her movement and what she's doing, she has a job to do and
14 she's doing it. She's going over to secure that individual and
15 get him back in the cell because there's a smoke alarm going
16 on, and when she gets done she's very purposeful in her
17 movement. She walks down the stairs, out the door and only
18 stops for a second. I would argue that her reaction and --
19 both officers' reactions are reasonable doubts. When you look
20 at the video, and we'll look at it here one more time before
21 the end of the day, that window is at least at his waist, I can
22 see it, you can see it. Anything that's -- if anything was
23 going on below that nobody would have been able to see it,
24 that's reasonable doubt. The one time that Officer Davis says
25 that she was able to look down and see what's going on just

CLOSING ARGUMENTS

1 happens to be very convenient that she's being blocked out by
2 what she's doing or viewing by the posts that are upstairs in
3 the upstairs walkway. That's reasonable doubt. It was her
4 testimony that at no point did he buzz her to grab her
5 attention, he didn't bang on the window, none of that is there
6 to suggest that he's somehow trying to get -- if he's doing
7 what she says he's doing, and I submit to you that there's no
8 evidence that that's there, but even if it's true there's no
9 evidence to suggest that he somehow was drawing her attention
10 to him her to perform this lewd act, or this inappropriate act,
11 that the State is unable prove the maliciousness of the
12 three -- it's willful, malicious and indecent. There's nothing
13 in the evidence that we have seen so far that would suggest
14 that there was anything malicious. There was no banging on the
15 window, no getting her attention, no trying to make sure that
16 she saw what was going on. And, in fact, the other officer
17 never responded so apparently there wasn't enough going on for
18 her to even warrant to tell the other officer that somebody is
19 doing something wrong downstairs. I would submit to you that
20 nothing in the next approximately two minutes in this video
21 would in any way show there was any illegal activity going on
22 down in Mr. Dillard's cell. And again, the single best piece
23 of evidence that you can see or hear in this case is
24 approximately the next two minutes of this video.

25 (The video was played.)

JURY CHARGE

1 MR. DUNN: If Mr. Dillard was doing anything in his jail
2 cell as she was walking down as she testified he was doing you
3 should have been able to see movements of his arm and movements
4 of his body, somehow the gestures one makes when masturbating
5 should have been seen on that camera and at no time do we ever
6 see that in this video. Again, on behalf of Mr. Dillard I
7 thank you for being cooperative and listening and being
8 attentive during this trial and we would ask that you find him
9 not guilty.

10 THE COURT: Thank you, Mr. Dunn. Ladies and gentlemen of
11 the jury, please pay attention to me as I instruct you on
12 various issues of the law that pertains to the things brought
13 up during the trial of this case. Now, Mr. Foreman, members of
14 the jury, you've heard the testimony of the evidence and
15 arguments of both the State and the defense, I am now going to
16 explain to you the law that applies in this case. Under the
17 constitution and laws of the State of South Carolina you are
18 the finders of fact in this case. As jurors it is your duty to
19 determine the affect, the value and the weight of evidence
20 presented during this trial. As presiding judge I am the sole
21 judge of the law of this case, it is your duty as jurors to
22 accept as correct and apply the law as I now state it to you
23 and use that law then to reach your verdict. The fact that I
24 may instruct you on various subjects in this case must not be
25 taken by you as indicating what you think my opinion of the

JURY CHARGE

1 facts are. Finally, I charge you that you should not be
2 concerned with what you think the law ought to be, but rather
3 what I charge you the law is. You're the judges of the
4 credibility of witnesses, that is the believability of
5 witnesses, and in passing upon believability or credibility you
6 could take into consideration many thing such as the demeanor
7 or the manner in which a witness testifies, whether or not a
8 witness had a reason to be biased or prejudiced, or whether or
9 not the witness' testimony was contradicted on the one hand or
10 supported and corroborated on the other hand. Remember, you'll
11 take all of these things into consideration bearing in mind
12 that you should give the defendant the benefit of any
13 reasonable doubt. Now, the fact that the defendant was
14 arrested, charged and indicted is not evidence in this case and
15 cannot be considered by you as evidence of guilt in this case,
16 nor does it create any presumption or inference of guilt. The
17 indictment again is simply the formal written instrument by
18 which a charge against a person comes into court. An
19 indictment is a formal document by which a case is brought into
20 the court. Now, the defendant, as you know, has pled not
21 guilty to the charge in the indictment, and that plea has
22 placed the burden of proof on the State to prove the defendant
23 guilty. A person charged with committing a criminal offense is
24 never required to prove himself innocent. Now, I charge you,
25 ladies and gentlemen, that it is an important rule of law that

JURY CHARGE

1 a defendant in a criminal trial no matter what the seriousness
2 of the charge may be will always be presumed to be not guilty
3 of that charge unless guilt has been proven by evidence
4 satisfying you, the jury, of that guilt beyond a reasonable
5 doubt. Now, this presumption of innocence does not end when
6 you begin your deliberations, but it accompanies the defendant
7 throughout the trial until you reach a verdict of guilt based
8 on evidence satisfying you of that guilt beyond a reasonable
9 doubt. Now, this presumption of innocence, ladies and
10 gentlemen, can be described as a robe similar to what I'm
11 wearing, a robe of righteousness placed about the shoulders of
12 the defendant which remains with him until it has been stripped
13 away from him by evidence satisfying you of that beyond a
14 reasonable doubt standard. Now, this presumption of innocence
15 is not just merely a legal theory, it's not just a legal
16 phrase, it's a substantial right to which every defendant is
17 entitled unless you, the jury, are satisfied from the evidence
18 of his guilt beyond a reasonable doubt. So what is a
19 reasonable doubt? A reasonable doubt is a doubt which make an
20 honest, sincere, conscientious juror in search of the truth to
21 hesitate to act. Proof beyond a reasonable doubt must
22 therefore be proof of such a convincing character that a
23 reasonable person would not hesitate to rely and act upon it in
24 the most important of his or her own affairs. Proof beyond a
25 reasonable doubt could also be described as proof that leaves

JURY CHARGE

1. you firmly convinced of the defendant's guilt. Now, there are
2. very few things that we know in this world with absolute
3. certainty, and in criminal cases the law does not require proof
4. that overcomes every possible doubt. If based upon your
5. consideration of the evidence you're firmly convinced that the
6. defendant is guilty then you must find him guilty. If on the
7. other hand you think there's a real possibility that he's not
8. guilty, you must then give him the benefit of the doubt and
9. find him not guilty. Let's talk about criminal intent. In
10. order to establish criminal liability, criminal intent is
11. required. For example, the mental state required to be proven
12. by the State for a particular crime might be purpose, intent,
13. knowledge, recklessness or criminal negligence. Criminal
14. intent must be proven by the State beyond a reasonable doubt.
15. Now, criminal intent, or what a person intended to do, is a
16. matter that must be determined by you from the circumstances
17. surrounding the situation. There's no way you can prove intent
18. to a mathematical certainty. I mean, medical science, you
19. can't dissect a person's brain and determine what that person
20. had in mind, so the law does not require -- excuse me, there's
21. no way medical science can dissect a person's brain and
22. determine what a person had in mind, so the law says that
23. criminal intent can be inferred from the totality of the
24. circumstances that have been shown to have existed, okay?
25. That's how you make a determination of whether or not the

JURY CHARGE

1 element requiring intent has been made. It's not necessary to
2 establish intent by direct and positive evidence, but intent
3 can be established by inference in the same way as any other
4 fact but looking at all of the facts and circumstances
5 surrounding the case. Criminal intent is a mental state, a
6 conscious wrongdoing. It's up to you to determine what the
7 defendant intended to do based upon the circumstances which
8 have been shown to have existed. Now, I instruct you and
9 emphasize, ladies and gentlemen, that the fact that the
10 defendant did not testify is not a factor to be considered by
11 you in any way in your deliberations and in your consideration
12 on the question of the guilt or innocence of the defendant. It
13 must not be considered by you in any manner whatsoever. A
14 defendant has the constitutional right to remain silent, and
15 the assertion of this right must not be considered by you in
16 your deliberations. So I repeat, under your oath you are to
17 draw no conclusion whatsoever from the fact that the defendant
18 in this case did not testify. The fact that he didn't testify
19 should not even be discussed in the jury room. The burden of
20 proof, as I have stated to you several times before, is always
21 upon the State of South Carolina, the defendant is not required
22 to prove innocence. The defendant is charged with indecent
23 exposure, let me define that for you. The State must prove
24 beyond a reasonable doubt that the defendant willfully,
25 maliciously and indecently exposed his private parts on the

JURY CHARGE

1 property of others. Willfully means that the act is not done
2 by accident but it was done knowingly, consciously and of a
3 suborned purpose. Maliciously means that the act was done with
4 wicked or mischievous intentions or motives, wrongfully and
5 intentionally without just cause or excuse. Indecent means
6 offensive, immodest, grossly, vulgar, obscene, unseemly,
7 unbecoming, unfit to be seen or heard. Let me say something a
8 little bit about your deliberations. The word deliberation is
9 defined, ladies and gentlemen, as a careful consideration
10 weighing up with a view to a decision. See, the genius of our
11 jury system is it allows 12 good people, both men and women
12 from different backgrounds and life experiences and
13 perspectives to consider the evidence and talk about it, and
14 ultimately reach a verdict. The task of a juror is called
15 deliberations for a reason; you, the jury, are to consider the
16 evidence in this case carefully and deliberately, discuss it
17 calmly, thoroughly and courteously. Remember, you're not
18 partisans or advocates one side or the other, you're judges of
19 the facts. The supreme law of our land, the United States
20 Constitution, affords everyone a day in court and a fair trial,
21 so this case is very important to both sides because it's their
22 day. I charge you to listen to the views of your fellow
23 jurors, carefully consider their viewpoints and courteously
24 discuss the evidence. Remember, you're doing so deliberately,
25 you're not in a big hurry and you are tasked with a duty of

JURY CHARGE

1 utmost importance. Now, in conclusion, ladies and gentlemen,
2 you've been selected by both the State and the defense to be
3 fair and impartial. It is your duty then in your deliberations
4 to determine your verdict in this case giving the defendant the
5 benefit of every reasonable doubt, and from those facts which
6 you determine to be true, you take and apply the law which I've
7 just given you and thus arrive at your verdict. I have
8 described to you what the crime of indecent exposure is, you've
9 heard the evidence and now you've heard the law. Whatever your
10 verdict is as to the indictment, guilty or not guilty, Mr.
11 Foreman, you will indicate it by marking the jury's decision in
12 the blank on the verdict form, it either says not guilty or
13 guilty, you check whichever one it is. You can't check it
14 until all 12 of you unanimously agree to what it will be and
15 then you sign it and date it, okay? Ladies and gentlemen, I'm
16 going to send you to your jury room but do not begin to discuss
17 the case until you receive the verdict form and that piece of
18 evidence, once you receive those two things that's your signal
19 to start deliberating. Once you start deliberating you'll
20 deliberate until you reach a verdict, when you reach a verdict,
21 Mr. Foreman, all you've got to do is knock on the door, advise
22 the bailiff and we'll bring you back out here to receive your
23 verdict, okay? So if you'll please go back to your jury room
24 at this time, I need to keep my alternate, Ms. Snyder, if you
25 will stay with me.

1 (The jury left the courtroom.)

2 THE COURT: Any exceptions to the charge from the State?

3 MS. JOYNER: No, sir, Your Honor.

4 THE COURT: Defense?

5 MR. DUNN: No, sir.

6 (The alternate was dismissed.)

7 THE COURT: The first question of the jury is, "Can the
8 jury see the video from a closer view? The video."

9 MS. JOYNER: No, sir, Your Honor, unless we can try to
10 send the laptop back.

11 THE COURT: Well, that's the laptop we were having issues
12 with yesterday. I intend on bringing them back out here, let
13 them look at it again. Number two, "Can the jury see the
14 incident report filed by the officer?"

15 MR. DUNN: Not in evidence.

16 THE COURT: My response to that, it's not in evidence, you
17 have to consider only the evidence presented.

18 (The jury returned to the courtroom.)

19 THE COURT: Thank you. Ladies and gentlemen of the jury,
20 I received your note. The first question is, "Can we see the
21 video more up close?" Unfortunately I don't have a laptop
22 that's working that we can send out to look at. I do have the
23 video to look at again if you want to. Second question is,
24 "Can we receive the report filed by the officer?" That is not
25 in evidence for you to consider in your deliberations, okay?

1 So do y'all want to see the video again? Okay. Cue it up.

2 (The video was played once again.)

3 THE COURT: All right. Thank you, ladies and gentlemen of
4 the jury, please return to your deliberations.

5 (The jury left the courtroom and resumed
6 deliberations.)

7 THE COURT: All members of the jury are present. Ladies
8 and gentlemen, please give me your attention. I received a
9 note indicating that you have been unable to agree on a verdict
10 in this case, and as I instructed you earlier the verdict of
11 the jury must be unanimous. Now, ladies and gentlemen, let me
12 speak to you briefly. When a matter is in dispute it isn't
13 always easy for even two people to agree to something, so when
14 12 people have to agree it even becomes more difficult, I know
15 that again. Again, that's the genius of our jury system, I
16 understand that. Now, in most cases absolute certainty cannot
17 be reached or expected, however you took an oath and you have a
18 duty to make every reasonable effort to reach a unanimous
19 verdict. Now, in doing this you should consult with one
20 another, express your own views and listen to the opinions of
21 your fellow jurors, tell each other how you feel and why you
22 feel that way, discuss your differences with open minds. Now,
23 although the verdict of the jury must be unanimous, everybody,
24 each one of you has the right to your own opinion. The verdict
25 you agree to must be your own verdict, the result of your own

1 convictions, and you should not give up your firmly held
2 beliefs merely to be in agreement with your fellow jurors. The
3 majority of you, I don't know what the split is and I don't
4 want to know, but the majority of you should consider the
5 minorities' position, likewise the minority of you should
6 consider the majorities' position. You should carefully
7 consider and respect the opinions of each other and reevaluate
8 your position for reasonableness, correctness and whether or
9 not you're being impartial. Please lay aside all outside
10 matters and reexamine the questions that you have based upon
11 the law I've given you and evidence you received in this case.
12 Now, if you do not agree on a verdict in this case I'm going to
13 have to declare a mistrial. In that case it doesn't mean
14 that -- it does not mean that anybody wins, it just means that
15 at some future time the Court will try this case with some
16 other jury sitting where you now sit, the same participants
17 will come and the same lawyers will ask basically the same
18 questions and get basically the same answers and we'll go
19 through the whole process again. Now, you were selected in the
20 same manner and from the same source as any future jury will be
21 and there's no reason for me to suppose that the case will ever
22 be submitted to 12 more intelligent and impartial,
23 conscientious and competent jurors than you; or that more or
24 clearer evidence will be produced from one side or the other, I
25 therefore ask you to return to your deliberations. Now go back

1 to your jury room and continue to work.

2 (The jury left the courtroom.)

3 THE COURT: Any objection from the State?

4 MS. JOYNER: No, sir.

5 THE COURT: Defense?

6 MR. DUNN: No, sir.

7 (The jury elected to go home for the evening,
8 deliberations resumed at 9:30 a.m. on September 7,
9 2017.)

10 THE COURT: Mr. Dunn you have a motion?

11 MR. DUNN: I do, Your Honor. Your Honor, I'm sure the
12 record reflects, we're on our second day in deliberations at
13 this point on this matter. A note was sent to the Court
14 probably fairly quickly into the day of deliberations, it has
15 been marked as a Court's Exhibit Number 4 as a result with the
16 content of that note. On behalf of the defense I'm asking for
17 a mistrial. The note says, "Juror 26 told juror 55 she hopes
18 he moved across the street to me and did awful things to my
19 child." I believe it's signed by the foreman. Then there is
20 another note on there also that says -- not sure if is from
21 either juror 26 or 55, but says, "I am very upset. I do not
22 deserve this." I'm not sure who wrote that, I'm assuming it's
23 probably either 26 or 55. The note is a little vague as to all
24 of the contents of the threats, which to me that's a threat,
25 Your Honor. It seems to me that the jurors have taken

1 outside -- they're bringing things from the outside into the
2 jury room and are not making the decisions or deliberating
3 based solely on the evidence if they're threatening each other
4 or each others families with what I'm assuming -- the harm --
5 what some of this is a little -- we can insinuate what they are
6 meaning by it but it concerns me that if the jury comes back
7 with a guilty verdict that if it was a holdout for not guilty
8 that their decision would be based on some kind of a threat of
9 violence. We don't know what the holdout is back there.
10 They've already been Allen charged, we know they've been split
11 for the last couple of hours of deliberating, we don't know
12 what the split is but clearly to me it sounds like it's no
13 longer professional deliberations, there's some personal
14 problems being brought in this. It's not fair to my client,
15 Your Honor.

16 THE COURT: All right. Ms. Joyner on behalf of the State?

17 MS. JOYNER: Your Honor, we would oppose the defense's
18 motion. I don't think that note indicates that one juror was
19 threatened by another juror. There's a sanctity of jury
20 deliberations, we don't typically know how they discuss a case.
21 We happen to know because someone sent a note here and I think
22 the fact that someone sent a note indicates there's not an
23 undue coercion on this other juror, simply the jury -- the
24 foreperson making the Court aware there's been a statement they
25 find to be questionable. This isn't a case of one juror or

1 more than one juror threatening or ganging up on a holdout,
2 this is a statement made in the heat of deliberations and I
3 don't think rises to the level of any sort of jury misconduct.
4 I don't see how the fact that this was said in any way
5 demonstrates that they cannot continue to deliberate or in any
6 way affects the jury deliberations. They have been Allen
7 charged, they haven't at this point said they cannot reach a
8 verdict, I would ask that the Court allow them to continue to
9 deliberate. I haven't had a great deal of time to research the
10 issue but it just seems to me there's no manifestness in
11 granting a mistrial at this juncture. I don't know of any
12 cases that say that there's some sort of fundamental unfairness
13 where one person says something unkind to another foreperson or
14 a ganging up or something so coercive onto a jury that it
15 eliminates the possibility of fair deliberations.

16 THE COURT: All right. The note, Court's Exhibit 4, was
17 signed by apparently juror 55, and juror 55 in her note
18 indicated that juror 26 -- neither one of those are the
19 foreperson of the jury -- indicated that juror 26 had said
20 something to the effect of, "Well, I hope he moves across the
21 street from you and does this to your child." So apparently
22 juror 26 is taking the tone of the note, you know, maybe got
23 dissention in the jury room between guilty and not guilty,
24 apparently 26, I would assume, supports a guilty verdict and
25 apparently 55 has some reasonable doubt issues. So I agree

1 with the State, I'm not going to invade the sanctity of the
2 jury room. I don't take it as a threat. I take 26 saying,
3 "Look, I think he is guilty and how would you like it if he
4 lived across from you doing this?" That's the way I take it,
5 okay? I'm not going to invade their province. I will allow
6 them to continue to deliberate, I believe I cured any potential
7 defect there by my response to the note where I told them to
8 please refrain from any personal references and discuss the
9 facts as you find them to be, and please remember what I
10 instructed you as to what deliberations are, so I believe I
11 remedied any problem there may have been in the jury room. And
12 I take judicial notice they've been in there for the past 45
13 minutes and there's no shouting going on, nothing is going on.
14 But having said that I have just been handed another note and
15 it says, "We have a verdict." So having said that you are
16 protected in the record, Mr. Dunn. We will bring the jury out
17 to receive their verdict.

18 (The jury returned to the courtroom.)

19 THE COURT: All members of the jury are present. It's my
20 understanding that the jury has reached a verdict.

21 THE JUROR: Yes.

22 THE COURT: Is the verdict unanimous?

23 THE JUROR: Yes.

24 THE COURT: Did you indicate it by filling out the jury
25 form and signing it as well?

JURY VERDICT

1 THE JUROR: Yes.

2 THE COURT: You may hand that to my bailiff. Madam Clerk,
3 you may publish the verdict.

4 THE CLERK: In the State of South Carolina versus Tony
5 McKinley Dillard, under indictment 2016-GS-46-01549, we, the
6 jury, unanimously find the defendant guilty. Signed by the
7 foreperson, dated today's date. If this be your verdict so say
8 you all by the raising of your right hand. Let the record show
9 all jurors affirmed this verdict.

10 THE COURT: All right. Ladies and gentlemen of the jury,
11 thank you so much for your service to York County. I'm going
12 to ask that you retire back to your jury room until you receive
13 further instructions in the jury room.

14 (The jury left the courtroom.)

15 THE COURT: Do you have a sentencing sheet ready?

16 MS. JOYNER: I do, Your Honor.

17 THE COURT: Anything for the purpose of the record?

18 MR. DUNN: First I would ask that the jury be polled when
19 they come back. Two, I renew any motion to quash the
20 indictments, my motion for a directed verdict and my motion for
21 a mistrial.

22 THE COURT: Yes, sir. I believe you are protected in the
23 record and I respectfully deny all of those motions. I will
24 grant your motion to poll the jury when they come back in,
25 okay? In fact, well, that should have been done before we sent

JURY VERDICT

1 them back in there, I hate to bring them back in here right
2 now.

3 (The jury returned to the courtroom.)

4 THE COURT: Ladies and gentlemen, normally on a finding of
5 guilt I normally give -- I was going to come back there and
6 speak to you and give you the option of whether or not you wish
7 to stay for sentencing, however in this case there was a motion
8 made by the defense after y'all went out to poll the jury,
9 okay? So I had to bring you back in here to have you polled,
10 and the clerk will explain that to you here in a moment. I
11 have granted his motion, I find it appropriate in this
12 circumstance so they're going to poll the jury, and after that
13 we will proceed to sentencing, then we will go from there, then
14 I will come speak to you back in the jury room so just stick
15 around for about hopefully no more than ten more minutes, okay?
16 All right, Madam Clerk, you may poll the jury?

17 THE CLERK: Juror 130, is this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror 56, is this your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror 106, is this your verdict?

JURY VERDICT

1 THE JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror 26, is this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror 245, is this your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror 139, is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror 216, is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror 119, is this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror 29, is this your verdict?

25 THE JUROR: Yes.

JURY VERDICT

1 THE CLERK: Is this still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror 100, is this your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror 190, is this your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is this still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror 55, is this still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Let the record reflect all jurors affirmed
14 this verdict.

15 THE COURT: All right, the jury has been polled. Madam
16 Solicitor, let's proceed with sentencing.

17 MS. JOYNER: Your Honor, the State is handing up to the
18 Court State's Exhibit 2, these are certified convictions from
19 the State of Florida.

20 THE COURT: What is his previous record?

21 MS. JOYNER: Previous record, Your Honor, beginning in
22 1990 in the State of Virginia he was convicted for indecent
23 exposure, because they destroy court records after 10 years we
24 were unable to get a certified conviction from that. 1991
25 conviction -- I'm sorry, a misdemeanor larceny, misdemeanor

SENTENCING HEARING

1 larceny, misdemeanor unauthorized use, misdemeanor larceny,
2 several other larcenies. And stealing of property 1992 in
3 Virginia. 1994 there was a felony charge of felony malicious
4 wounding, pled to a misdemeanor of assault. 1995 conspiracy to
5 commit armed robbery, the final -- that was the arrest charge,
6 final disposition was a misdemeanor. 1996 was disorderly
7 conduct. I hand up to the Court certified convictions from the
8 State of Florida. They indicate -- it's a little confusing,
9 they indicate incident dates from 1996, a disposition date from
10 2005 for the offense of two counts of kidnapping, one count of
11 robbery/car jacking, two counts of robbery/armed with a weapon,
12 one count of sexual battery. What I'm able to piece together
13 from his NCIC and the department of corrections from Florida,
14 their public website, he served a 17 year sentence on those
15 offenses. They list sentence date of 1998, it appears to me he
16 must have been convicted in 1998, had a successful appeal and
17 retrial in 2005; according to their records he was released
18 from custody August 8th of 2012. He reentered their custody, I
19 believe it must have been on a parole violation, on February
20 13th of 2013 with a release on May 13th of 2013. He has been
21 living in South Carolina since 2013 and registering as a sex
22 offender living in the County of Greenville. Your Honor that's
23 his prior record. The State has a position on sentencing, we
24 would --

25 THE COURT: I know what the State's position is, thank

SENTENCING HEARING

1 you. Mr. Dunn?

2 MR. DUNN: If it please the Court? My client is 45 years
3 old, he's been incarcerated since November 4th on other
4 charges, we would ask certainly for credit all of the way back
5 to December 19th if not back to November 4th. Your Honor, my
6 only argument would be is if this statute carries up to a three
7 year penalty, if we penalize the inmates for indecent exposure
8 inside the jail with a maximum sentence then what is there to
9 do for folks who were outside in the public? Which is where
10 again my arguments have always been, that this statute applies
11 to if we are punishing him for -- the most severe penalty for
12 that where is the discretion for the Court on zero to three?
13 Therefore I would ask for a lesser time than the three years,
14 to reserve those three years for most serious charges of the
15 statute of indecent exposure to public.

16 THE COURT: Mr. Dillard, anything you wish to tell the
17 Court before I impose sentence?

18 THE DEFENDANT: No, sir.

19 THE COURT: Sentence of the Court is three years, credit
20 for time served. Good luck to you, sir. I'm also going to
21 order a sexually violent predator assessment. Start date --
22 I'm giving him credit for time served. I don't like putting
23 particular -- in fact, I don't put them on my sentencing sheets
24 because the South Carolina Department of Corrections will give
25 him whatever credit they believe he is entitled to regardless

SENTENCING HEARING

1 of what I say, okay? I will give him -- I certainly checked
2 the box giving him credit, you know, whatever they come up
3 with --

4 MR. DUNN: The reason why I argued that, Your Honor, is
5 that's fine, as long as it goes back to December.

6 MS. JOYNER: I understand he's already on the registry for
7 his prior conviction but could the Court put him on the
8 registry for this offense as well?

9 MR. DUNN: Your Honor, I oppose that as well just from the
10 nature of what the charge was as opposed to something that
11 happened out in public.

12 THE COURT: Well, considering the totality of the
13 circumstances I'm going to order that he be placed on the South
14 Carolina Sex Offender Registry. All right. That is the order
15 of the Court, y'all go back to your jury room. We are in
16 recess.

17 (End of the trial proceedings.)

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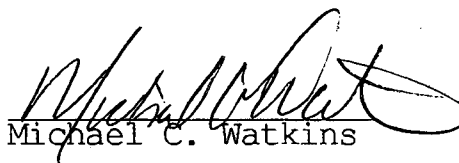
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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence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

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

12
13 December 1, 2017

14
15 
16 Michael C. Watkins

17 Court Reporter
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25

STATE OF SOUTH CAROLINA

COUNTY OF YORK

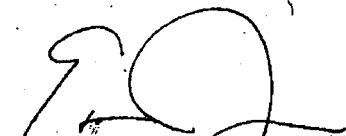
INDICTMENT

At a Court of General Sessions, convened on April 6, 2017, the Grand Jurors of York County present upon their oath:

INDECENT EXPOSURE

The defendant, Tony Mckinley Dillard, did on or about December 19, 2016, in York County, South Carolina, willfully, maliciously and indecently expose his or her person in a public place, on property of others, or to the view of any person on a street or highway. All in violation of 16-15-0130, *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.


ERIN M. JOYNER
ASSISTANT SOLICITOR

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2016A4610202645

**ACTION OF GRAND JURY
TRUE BILL**

[Signature]
Foreperson of Grand Jury
Date: 4-6-17

VERDICT

guilty

[Signature]
Foreperson of Petit Jury
Date: 9.7.17

DOCKET NO. 2017-GS-46- 01549

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 6, TERM 2017

THE STATE

VS.

TONY MCKINLEY DILLARD

INDICTMENT FOR

INDECENT EXPOSURE

SC Code: § 16-15-0130
CDR Code: 0091

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment to

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SC Court of Appeals

Defendant

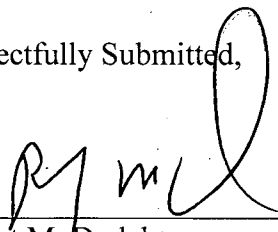
Witness:

C.C.C. PLS. AND G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 12th day of July, 2018.

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